
STATES OF JERSEY



DEMOCRATIC ACCOUNTABILITY AND GOVERNANCE SUB-COMMITTEE

**Presented to the States on 18th February 2022
by the Privileges and Procedures Committee**

STATES GREFFE

REPORT

In February 2021, the Privileges and Procedures Committee (PPC) established the Democratic Accountability and Governance Sub-Committee in order to review Jersey's system of governance. The Sub-Committee was chaired by Senator T.A. Vallois and constituted the following Members:

Senator I.J. Gorst
Senator S.Y. Mézec
Connétable R. Buchanan
Connétable J. Le Bailly
Deputy K.F. Morel

The main aim of the Sub-Committee's work was: *To undertake a review of the accountability of government to the public and the Assembly, with a view to making recommendations for improvement.* The scope of the Sub-Committee's review, as agreed by PPC, included:

- The roles of the Council of Ministers, the Chief Minister, Deputy Chief Minister, Ministers, Assistant Ministers, and the States Employment Board and how they may be held to account by the public and the Assembly.
- The relationship between ministerial structures and civil service structures in relation to policy development, implementation and operational management, particularly in view of the development of the OneGov project, and how this affects accountability to the public and the Assembly.
- The role of Scrutiny and the Public Accounts Committee in holding the Executive to account.
- Whether the current ministerial and Scrutiny portfolios set out in Standing Orders remain appropriate or whether there is an alternative structure, or an alternative system for electing Members to ministerial office or Scrutiny, which would enhance accountability and effectiveness.
- Opportunities for States members to be engaged in the process of government.

The Sub-Committee submitted its final report to PPC on 17th February 2022. The Committee is pleased to present the Sub-Committee's report, which includes a number of key findings and recommendations. The Sub-Committee's final report is attached as an appendix to this report.



Democratic Accountability and Governance Sub-Committee

PRIVILEGES AND PROCEDURES COMMITTEE

February 2022

R.23/2022
Appendix

CONTENTS

1. EXECUTIVE SUMMARY	4
2. CHAIR'S FOREWORD	7
3. KEY FINDINGS AND RECOMMENDATIONS	9
KEY FINDINGS	9
RECOMMENDATIONS	10
4. INTRODUCTION	14
SCOPE OF THE REVIEW	14
METHODOLOGY	14
STRUCTURE OF THE REPORT	15
5. JERSEY'S SYSTEM OF GOVERNMENT: AN OVERVIEW	16
HOW DID WE GET HERE?	16
COMMITTEE TO MINISTERIAL GOVERNMENT	16
CALLS FOR CHANGE SINCE THE MINISTERIAL SYSTEM WAS IMPLEMENTED	17
6. THE STRUCTURE OF GOVERNMENT IN THE PRESENT DAY	20
THE LEGISLATURE (STATES ASSEMBLY)	20
SCRUTINY	20
THE EXECUTIVE	21
THE CIVIL SERVICE	21
RECENT CHANGES TO MINISTERIAL GOVERNMENT (P.1/2018)	22
7. HOW IS GOVERNMENT HELD TO ACCOUNT?	26
ACCOUNTABILITY OF STATES MEMBERS	26
CHIEF MINISTER	27
DEPUTY CHIEF MINISTER	27
ASSISTANT MINISTERS	27
ACCOUNTABILITY IN DECISION-MAKING	28
POLICY DEVELOPMENT BOARDS	28
ACCOUNTABILITY OF ARM'S LENGTH ORGANISATIONS AND SPECIFIED ORGANISATIONS	29
SKILL SET WITHIN THE STATES ASSEMBLY	30
MINISTERIAL SUPPORT UNIT	30
ACCOUNTABILITY BETWEEN MINISTERS AND OFFICERS	31
8. THE SCRUTINY FUNCTION	33

LEGISLATIVE SCRUTINY	33
<u>9. THE STATES EMPLOYMENT BOARD</u>	<u>36</u>
OVERVIEW AND FUNCTIONS	36
GOVERNANCE	37
MANAGING CONFLICTS	37
COMPTROLLER AND AUDITOR GENERAL REPORT	38
CIVIL SERVICE CODE OF CONDUCT	38
<u>10. RECOMMENDATIONS</u>	<u>40</u>
<u>11. APPENDIX 1: MEMBERSHIP AND TERMS OF REFERENCE</u>	<u>47</u>
SUB-COMMITTEE MEMBERSHIP	47
TERMS OF REFERENCE	47
ATTENDANCE AT MEETINGS	48
REVIEW COSTS	48

1. Executive Summary

In February 2021, the Privileges and Procedures Committee (PPC) established the Democratic Accountability and Governance (DAG) Sub-Committee in order to review Jersey's system of governance. The main aim of the Sub-Committee's work has been: ***To undertake a review of the accountability of government to the public and the Assembly, with a view to making recommendations for improvement.***

The Sub-Committee spoke to a number of stakeholders, including former States Members, current States Members and Government Officials, about Jersey's system of government. It started its work, however, by exploring Jersey's political system since 1998.

The move from the committee arrangement into ministerial government in 2005 was a major change for Jersey. The ministerial system has now been in operation for 16 years and numerous conversations have taken place over the years within the Assembly and amongst members about the changes and whether they could be improved or amended.

The most recent changes to the current ministerial system relate to the proposals contained in [P.1/2018](#) which set out three main changes:

1. the establishment of the Chief Executive Officer as the Principal Accountable Officer (PAO) for the public administration.
2. the making of changes to Ministerial offices by Orders made by the Chief Minister and transfers of budget by a single decision of the Minister for Treasury and Resources.
3. the establishment of a single legal entity for Government (which has not been implemented).

The Sub-Committee received a number of views from stakeholders about the changes initiated through P.1/2018 and the impact they have had on accountability and governance. Although the establishment of a single legal entity has not yet been created, it was a particular bone of contention for many.

Some stakeholders believe the implementation of P.1/2018 has resulted in a number of missing links between the Executive/civil service and the States of Jersey. There is no longer a chief officer in a department reporting to one Minister which some believe has affected the balance of power within the Executive function. Concerns were raised that P.1/2018 has also impacted on the number of Ministerial leads in each department - as there are a smaller number of departments, some have several Ministers exercising political responsibility within them and some have none.

The Sub-Committee has made a number of suggestions in order to address these concerns, primarily to ensure that there is better alignment between the responsibilities of Ministers and Departments. Perhaps one of the major recommendations made by the Sub-Committee in this regard is to create a Cabinet Office style function which would merge the Ministerial Support Unit and the Strategic Policy, Planning and Performance Department to support Cabinet Ministers. The Cabinet Office would include a team of Ministers chosen by the Chief Minister to lead on specific policy areas and would be responsible to the Council of Ministers for policy advice and delivery. The Sub-Committee has also recommended that the creation of a Single Legal Entity should no longer be pursued. The Sub-Committee believes that a unified Council of Ministers should be a practice, rather than set out in law.

A strong theme from stakeholders was about the skill set within the States Assembly. In terms of Ministers, some believe that Ministers on their own cannot have the time, talent or fortitude to cross-examine officers to ensure that their plans have been delivered effectively. These thoughts were accompanied by views on the training provided to Ministers when they enter into office. Many thought it would be beneficial for Ministers to have a general job description which would assist members, particularly new candidates in understanding their brief plus their roles and responsibilities.

The Sub-Committee has made a number of recommendations which would provide States Members and Ministers with extra support in order to undertake their roles. In particular, the Sub-Committee believes that enhanced support should be provided through more structured training in leadership and decision making for Members. In terms of Ministers, the Sub-Committee believes that the Ministerial Support Unit should be provided with extra resources which could include access to diary managers and researchers/speech writers. Consideration should also be given as to whether a communications function should be included within the Cabinet Office (should one be created) which would assist Ministers with media relations.

Some stakeholders provided their views on the overall structure of the government system and commented that some matters relate to cultural issues and others relate to problems within the structural make-up of the government. One particular theme in this area was the creation of sub-structures such as the Chief Minister's Policy Development Boards which are not formal boards of the States and therefore do not have Assembly approved governance around them. Some believe that the creation of Policy Development Boards has caused confusion over whether they create policy or simply make recommendations for a Minister to consider. In order to address this, the Sub-Committee has recommended that sub-structures such as Policy Development Boards/Oversight Groups should be established as formal Sub-Committees of the Council of Ministers, which would ensure a clear line of accountability back to the "parent" Committee.

In terms of Scrutiny, there was a general consensus amongst Members that the Scrutiny function is, largely, well provided for within legislation, Standing Orders and the associated Codes of Practice. Concerns were raised, however, on accessing the required information in order to undertake scrutiny work. Some commented that there are pockets of political or civil service misunderstanding of the role of Scrutiny, or more calculated non-compliance or disregard to the formally mandated framework of the function. The result of these instances undermines informed decision making by the Assembly which results in unnecessary challenges and conflicts within the system.

A number of stakeholders raised concerns about the inflexibility of the Scrutiny function. Although some changes have been made in recent years with the ability to establish Review Panels to review cross-cutting matters, some stakeholders believe that the system is still inflexible, and that Scrutiny gets involved in policy too late in the process.

The Sub-Committee has made a number of recommendations in order to address these concerns. In particular, the Sub-Committee believes that the Scrutiny Liaison Committee (SLC) should have greater autonomy and flexibility to change the name and remit of a Panel under Standing Orders. This would provide the same level of flexibility that would be seen within the government, should a Cabinet style function be introduced.

The Sub-Committee also considered the States Employment Board (SEB) and how it may be held to account by the public and the Assembly. Most stakeholders were uncertain of the functions of SEB and where it sat within the government structure. Some viewed it as a sub-committee of the Council of Ministers, others thought it was, (or should be), a sub-committee of the States Assembly

and others found they could not place it into one particular area. The SEB is in fact, [under the Law](#), a body corporate with perpetual succession.

Most stakeholders acknowledged that SEB is the employer of all staff but found the detail around that difficult to determine. Some also commented that the relationship between SEB and Departments was not always clear. The Sub-Committee met with some of the Unions who commented that there were often difficulties in discussing issues directly with SEB members and believed that there should be more representation of the Unions on the Board. The Sub-Committee had requested a meeting with SEB as part of its consultation process, but unfortunately this never took place.

The Sub-Committee's review has identified 18 main key findings and 36 recommendations which span across the States Assembly, ministerial government, Scrutiny and the civil service in terms of governance and accountability. Some of the recommendations made by the Sub-Committee would be relatively easy to implement whilst others may need to be considered further and consulted upon.

2. Chair's Foreword

A system should never be designed to meet the needs of personalities but should ensure best practice in governance, accountability and demonstrate the ability to deliver on behalf of those it aims to serve.

The political body is one that creates/directs legislation and policy on behalf of the people. Our public service are the deliverers who implement/enforce on behalf of the people. Together, they create a potentially powerful conundrum that is on a democratic platform.

In 2005, the States of Jersey introduced Ministerial Government. A number of changes have taken place since then in an attempt to improve the structure - whether that be legislative, structural or organisational changes.

In our review, we have observed that there continues to be a divide in opinion as to whether Ministerial Government is fit for purpose in the Jersey context. In conjunction with many Parliaments within the Commonwealth, we continue to learn from each other about Committee and Ministerial structures to ensure good governance for the people we serve.

A number of previous reviews have assisted us in our work, and we have attempted to reach out to as many stakeholders to ensure we encapsulate the valuable experiences, knowledge and expectations in order to move our current system forward.

This is my third review into the machinery of government where we aimed from the outset to consult and engage with a broad range of stakeholders. Unfortunately, we experienced a continuous lack of engagement from some Government Officials. The reluctance to engage in this work was particularly disappointing as we wanted to ensure everyone could be involved in order to find practical solutions to very real problems within our system of Government. By trying to address these issues and find ways to enhance and improve the system we have would assist our whole community.

However, I am extremely grateful to those that did engage in this review which provided us with valuable information in identifying where areas could be improved. Our review has focused on how we could improve the system we currently have, taking into account what we have experienced or observed since the last review was undertaken in 2013.

Essentially, our review has found that:

- P.1/2018 and the changes to the machinery of government implemented in 2018 were highly controversial.
- The Public Finances Law 2019 was implemented without requisite legislative changes which has been highly problematic.
- The OneGov structure was implemented with very little consideration for the machinery of government and lines of political accountability.

So here we are and how do we move forward?

Our report has taken account of many views and looked to other jurisdictions for possible answers to our actual or perceived problems. A number of key findings and recommendations sit within this report that should not be tucked away for another day.

I am extremely grateful for the support I have received from Sub-Committee members and our extremely diligent and capable officer.

Considering the limited time available to bring forward some of these changes in advance of the election, I look to create a taskforce immediately to bring forward required legislative/policy changes in order to put the next Assembly on a better footing at the start of its term of office.



On a final note, moving back into a committee-based system never formed part of the scope of our review, however, we did receive a number of comments from stakeholders that it was a “better system”. This matter will be open to a future Privileges and Procedures Committee to ignite this discussion at the beginning of a term of office. I would encourage a future Committee to do so in order to properly consider the possible merits and implications of moving to a committee system and whether it would be acceptable to the people we serve.

Senator Tracey Vallois
Chair, Democratic Accountability and Governance Sub-Committee

3. Key Findings and Recommendations

Key findings

1. There is an imbalance of power between the Chief Executive/Civil Service and the States of Jersey, which leads to a lack of political accountability for decisions.
2. Some Departments do not have a single Minister with political responsibility, which leads to a lack of clarity and accountability.
3. There are blurred lines of accountability between Executive and Non-Executive responsibilities.
4. There is confusion over policy ownership, with a lack of political accountability for the development of policy or for the implementation of policy agreed by the Assembly following a proposition brought forward by a non-executive member.
5. There is a lack of governance around Arm's Length Bodies and Specified Organisations, leading to uncertainty about to whom they are accountable and how their decisions can be influenced.
6. Accountability of the role of Chief Minister within the public arena is lacking as voters do not have a say on who should be elected to the role.
7. The Council of Ministers is at risk of being fragmented/politically divided because the Assembly can impose its choices on the Chief Minister.
8. There is a lack of transparency over the role of Deputy Chief Minister, undermining accountability for the areas for which the DCM is given responsibility.
9. The role of Assistant Minister is unclear, which undermines accountability and may deter some States Members from expressing interest in the roles available.
10. Some Ministers give the impression that they are not on top of their brief and Ministers are inconsistent in terms of how they approach their ministerial duties, so not all Ministers discharge all aspects of their role adequately.
11. States Members do not all have the skills and capabilities required in a modern legislature and opportunities to enhance their skillset are lacking.
12. The Scrutiny function is not sufficiently flexible to undertake effective reviews as it gets involved in policy too late in the process.
13. The Scrutiny function does not always have the required skill set to hold Ministers to account for their actions, particularly in the development and scrutiny of legislation.
14. Scrutiny is seen by some as the opposition to Ministers, undermining its true role as a 'critical friend' of government.
15. Legislative Scrutiny has improved in recent years to become a routine part of Scrutiny work but is still held back by a lack of time and skills.

16. Many Members of the States consider that the role of the States Employment Board is unclear.
17. The governance arrangements for the States Employment Board are lacking, despite recent recommendations from the Comptroller and Auditor General to address various deficiencies.
18. Record keeping within the Executive sometimes lacks rigour, causing a lack of transparency and accountability.

Recommendations

Government structure

1. Each department should have one Minister who is ultimately accountable for the whole of the department. Where the scope of a department is such that it is felt additional Ministers are required, there should be a lead Minister and non-CoM Ministers with responsibility for specific areas of the department.
2. A Cabinet Office style function should be created which would merge the Ministerial Support Unit and the Strategic Policy, Planning and Performance Department. Consideration should be given as to whether a Communications function should be included in the creation of the Cabinet Office, which would ultimately be responsible to the Council of Ministers for policy advice and delivery.
3. In creating a new Cabinet Office, the creation of a Single Legal Entity should not be pursued. A unified Council of Ministers should be a practice rather than set out in law.
4. The States of Jersey Law 2005 should be amended to reduce the timeframe for agreeing a Common Strategic Policy from 4 months to 8 weeks.

Accountability within government

5. All reports by sub structures such as, Policy Development Boards should be published with immediate effect and receive a published response from the Chief Minister within 6 weeks with expected action to be taken.
6. The Council of Ministers should report to the Assembly and keep updated a Policy Pipeline showing the policies currently being worked on and proposed timescales for States decisions and implementation. The Pipeline should state which Minister is accountable for each policy.
7. There should be a supervisory committee which would monitor the performance of Arm's Length Organisations. This would help link government priorities via Memorandum of Understanding/Service Level Agreements with ALOs (such as the Carbon Neutral Strategy).
8. Voters should be provided with the opportunity to indicate their preferred candidate for Chief Minister during the voting process.
9. The Chief Minister should nominate his or her preferred slate of Ministers to the States Assembly within 5 working days of being elected.
10. The States of Jersey Law 2005 should be amended to expand the role of Deputy Chief Minister and clarify that he or she is the authorised substitute for an executive decision whenever the Chief Minister is out of the Island or is otherwise indisposed.

11. If a Cabinet Office is introduced in Jersey, Assistant Ministers would likely become the “Cabinet Office Ministers” who would have a specific remit, role and responsibility. Whether Assistant Ministers remain, or they become “Cabinet Office Ministers” in the development of a Cabinet Office, a list of their roles and responsibilities should be kept up to date and published as a matter of course.

Training and development

12. The Ministerial Support Unit requires additional capacity and resources which should be explored further in the development of a Cabinet Office. Specifically, the Ministerial Team should have access to a Private Secretary, a Diary Manager and researchers/speech writers.
13. Each Ministerial role should be accompanied by a general job description.
14. All Ministers and Assistant Ministers (if they remain) should receive a structured induction by the Ministerial Support Unit immediately after being elected to their respective roles.
15. The Ministerial team should have a dedicated base to work from within their department or the Government’s administration building.
16. All States Members should have access to leadership and decision-making training.
17. The Nolan Principles should be amended to align with the values contained in the People Strategy.

The Scrutiny function

18. The Scrutiny Liaison Committee should have greater autonomy and flexibility to change the name and remit of a Panel under Standing Orders.
19. Chairs of Panels should be elected by the Assembly but would be responsible for forming their own Panel memberships.
20. Once all 5 Chairs have been elected by the Assembly, the Scrutiny Liaison Committee would present to the States a list of Scrutiny members and the remit of the respective Panels.
21. There should be a minimum of 3 Members sitting on each Panel but no maximum.
22. Each scrutiny role should be accompanied by a general job description.
23. Standing Orders should provide a set list of expectations of each Member of Scrutiny including attendance at meetings. It should be provided for in Standing Orders that if Members do not attend Scrutiny meetings for a long period without good reason (to be determined by the Scrutiny Liaison Committee), their membership on that Panel will be terminated.

Legislative Scrutiny

24. The suggestions made by the former Comptroller and Auditor General in her [thinkpiece](#) should be given due consideration:

- a. Clear, agreed principles on when 'green papers' (initial consultations on policy or legislative proposals) and 'white papers' (detailed proposals for legislation) should be prepared. These would in turn trigger the opportunity for timely review by Scrutiny Panels in advance of preparation of draft legislation;
- b. Clear and consistent standards for instructions for legislative drafting. Drafting instructions provide a clear statement of the policy intentions underpinning proposed legislation. They provide rigour in the legislative drafting and facilitate effective scrutiny of the extent to which policy objectives have been captured in draft legislation.
- c. Establishing clear standards for preparing marked up versions of legislation, comparing the existing legislation and draft legislation, highlighting the differences and reasons for them. Such an analysis facilitates effective scrutiny of draft legislation, including facilitating scrutiny of matters not specifically referred to in other documents made available by the Government to a Scrutiny Panel.

25. Drafting instructions should be received by Scrutiny for each piece of legislation as standard.

26. There should be a dedicated Law Officer within the Law Officer's Department in order to assist with legislative Scrutiny.

27. Changes should be made to how legislation is debated in the Assembly as follows:

- a. The debate on the principles and second and third reading should be separated.
- b. Scrutiny of legislation should cover both the principles and Articles/Regulations.
- c. A mechanism should be introduced whereby Scrutiny could trigger a further period of scrutiny of the Articles/Regulations after the Assembly has agreed to the principles.
- d. The minimum lodging period between lodging and debate for legislation should be extended by 10 weeks unless an agreement is made with Scrutiny to reduce or extend the lodging period (but it can be no sooner than 6 weeks, unless it is in the public interest to do so).
- e. Non-executive propositions in relation to legislation should be included within the scope of Scrutiny and a mechanism should be introduced whereby an in-principle debate should take place which would enable the Minister to develop the Articles and bring them back to the States Assembly.

28. There should be a mandatory requirement for an official schedule of legislation to be published by Government at the start of each year. The schedule should include deadlines and should be updated every quarter to take account of any delays or new legislation.

States Employment Board

29. The budgetary arrangements for the States Employment Board should be addressed as a matter of priority.

- 30.** The legislative arrangements around the States Employment Board should be more refined and the recommendations made by the Comptroller and Auditor General in this respect should be implemented as a matter of priority.
- 31.** The States Employment Board should set their policy and their strategy at the beginning of their term. The Head of the Public Service and departmental officers should then demonstrate how they are complying with and meeting the requirements set by the Board.
- 32.** Joint working between the States Employment Board and the Unions requires some attention, particularly as there appears to be issues with the level of engagement between the two parties. Consideration should be given as to whether a consultative committee should be established which would constitute members of the States Employment Board and representatives from each Union.
- 33.** The Government should consider how the States Employment Board would fit into the creation of a Cabinet Office in order to oversee the enabling/supporting functions such as Comms, HR and IT, which are functions currently in the Chief Operating Office and Office of the Chief Executive.
- 34.** the States Employment Board should be established as a committee of the States of Jersey and should include a mixture of executive and non-executive members. In this new scenario, the Head of the Public Service would be answerable and accountable to the committee and it would not be appropriate to appoint the Chief Minister (or any executive member) as the chair.

The role of the Chief Executive

- 35.** Consideration should be given to the role of the Chief Executive and whether there are too many powers invested in only one individual. If a Cabinet Office is established, the Head of the Cabinet Office could be responsible for providing advice to the Council of Ministers, and the Chief Executive to account to them for delivery policy initiatives.
- 36.** The appointment of the Chief Executive should go through the States Employment Board with the Jersey Appointments Commission only playing a regulatory role.

4. Introduction

In February 2021, the Privileges and Procedures Committee (PPC) established the Democratic Accountability and Governance (DAG) Sub-Committee in order to review Jersey's system of governance. This followed a [debate on a proposition](#) lodged by Deputy John Young, which called for an independent, external review of Jersey's ministerial government. Although the proposition was defeated, there was a general consensus amongst Members that a review should be undertaken in order to consider Jersey's machinery of government and its governance arrangements.

Scope of the review

The main aim of the Sub-Committee's work was: ***To undertake a review of the accountability of government to the public and the Assembly, with a view to making recommendations for improvement.***

The scope of the Sub-Committee's review included:

- The roles of the Council of Ministers, the Chief Minister, Deputy Chief Minister, Ministers, Assistant Ministers, and the States Employment Board and how they may be held to account by the public and the Assembly.
- The relationship between ministerial structures and civil service structures in relation to policy development, implementation and operational management, particularly in view of the development of the OneGov project, and how this affects accountability to the public and the Assembly.
- The role of Scrutiny and the Public Accounts Committee in holding the Executive to account.
- Whether the current ministerial and Scrutiny portfolios set out in Standing Orders remain appropriate or whether there is an alternative structure, or an alternative system for electing Members to ministerial office or Scrutiny, which would enhance accountability and effectiveness.
- Opportunities for States members to be engaged in the process of government.

Methodology

The Sub-Committee's work has been informed by a number of desktop studies on the functions of comparable governments elsewhere. This included the structure of local authorities in the UK; the process followed in appointing senior officials in the UK; and a look back on reviews of the machinery of government in Jersey since 1998.

The Sub-Committee was keen to hear the views of a wide range of stakeholders including States Members, government officials and the general public. Although a number of one-to-one interviews were undertaken with senior government officers, these were limited and did not reflect the number of invitations sent out inviting views and/or written submissions (in private and in confidence). In that regard, the Sub-Committee was disappointed with the level of engagement and the reluctance to submit views amongst government officials.

In July 2021, the Sub-Committee organised a series of workshops for States Members in order to generate discussion on a range of matters identified during the consultation stage of the review. These were separated into the following areas:

- **Workshop 1:** The role of Scrutiny
- **Workshop 2:** Accountability and decision making
- **Workshop 3:** Ministerial and civil service structures

A further “mop-up” session was organised in order to discuss with Members the main themes of the workshops, which had taken place over three afternoons.

More recently, the Chair of the Sub-Committee attended a Council of Ministers meeting to discuss the main findings of the report. The Sub-Committee had also requested to meet with the States Employment Board but unfortunately this was not made possible.

The Sub-Committee has drawn on all of the views expressed during this review and makes a number of recommendations for PPC to consider and take forward as necessary.

Structure of the report

The Sub-Committee firstly provides an overview of Jersey’s system of government and how it has developed since 1998 with the move away from the committee system into ministerial government. This section also includes a summary of the number of attempts by Members to change the system since ministerial government was implemented in 2005.

The Sub-Committee then explains the structure of Jersey’s government today, which includes a brief description of the legislature (States Assembly and Scrutiny function), the Executive (ministerial government) and the civil service. This section also includes an explanation of the most recent changes to ministerial and civil service structures through the implementation of P.1/2018, which generated the most discussion amongst stakeholders.

Following these sections, the Sub-Committee then explains the different ways in which the government is held to account. During stakeholder discussions on accountability in government, stakeholders raised a number of related issues including arm’s length bodies and the skill set within the States Assembly.

The next section provides a summary of the views expressed on the Scrutiny function, how it is working and whether it could be improved. A separate section provides an overview of stakeholders’ thoughts on the effectiveness of legislative scrutiny. The views presented in this section were expressed mostly during the workshop exercise with members which focussed on the role of Scrutiny.

The penultimate section relates to the role and functions of the States Employment Board, including the recommendations for change by the Comptroller and Auditor General in her report: [‘The role and operation of the States Employment Board’](#).

The last section identifies a number of recommendations for change to be considered by PPC. The recommendations have been based on the 18 key findings identified throughout the report.

5. Jersey's system of government: an overview

Jersey has its own democratically elected parliament – the Assembly of the States of Jersey. The majority of States Members sit as independents, but there are currently three registered political parties and more may be formed in the next term of the Assembly.

A ministerial system of government was introduced in 2005, replacing the previous committee structure. Constitutionally, ministerial government is underpinned by the following pieces of legislation:

- [States of Jersey Law 2005](#): provides for the constitution and proceedings of the States (powers, privileges and immunities) and established the ministerial system of government.
- [Employment of States of Jersey Employees \(Jersey\) Law 2005](#): established the States Employment Board (which employs all employees on behalf of the States and administrations of the States) and the Appointments Commission (which oversees the appointment of employees and certain office holders).
- [Public Finances \(Jersey\) Law 2019](#) (that replaced the Public Finances (Jersey) Law 2005): provides for the administration of the public finances of Jersey.
- [Standing Orders of the States of Jersey](#): although not legislation, they are a comprehensive set of rules that govern the way in which the Assembly conducts its business.

The scope of the Sub-Committee's review has not included changing from the ministerial system of government to an alternative system, although it has considered how the best aspects of the former committee system could be incorporated within the current system.

How did we get here?

There have been a number of changes to Jersey's system of government since 1998. The Sub-Committee felt that it was important to provide this background, as it demonstrates that the government system, and how it works, has been a recurring topic of conversation amongst Members since the ministerial system was introduced in 2005.

Committee to ministerial government

The move from the committee arrangement into ministerial government in 2005 was a major change for the Island's political system.

The call for change started in January 1998 when a workshop of States Members and Chief Officers considered the role and responsibilities of the former Policy and Resources Committee, as well as the more general question of the strategic and corporate management of the States¹.

As a result of these discussions, in July 1998 the Policy and Resources Committee lodged a proposition ([P.164/1998](#)) which stated that there was a need for a general review of the machinery of government, and that this review should be carried out by a body independent of the States.

¹ [P.122/2001](#) Machinery of Government: Proposed Reforms

The States agreed in principle to appoint an independent body to undertake a review and the Policy and Resources Committee was asked to bring back terms of reference, together with nominations for the Chair and membership of the review body (later known as the “Clothier Panel”).

The findings and recommendations of the [Clothier report](#) effectively abolished the Committee system and created the ministerial government including a Scrutiny function. The Policy and Resources Committee brought forward its proposals ([P.122/2001](#)) to reform the machinery of government which were based on the recommendations made in the Clothier report.

The Proposition was accepted by the Assembly but was subject to a number of amendments by States Members at the time. One of the accepted amendments resulted in the “[Troy Rule](#)” being applied to the constitution of the States Assembly. The rule ensures that members of the States who are not involved in the Executive is greater than those who are by a margin equivalent to at least 10% of the total membership of the States.

These decisions were the very start of the process for changing Jersey’s system of government. Since the move from the committee arrangement, numerous conversations have taken place within the Assembly and amongst Members about the changes and whether they could be improved or amended.

Calls for change since the ministerial system was implemented

In November 2009, PPC established a sub-group to look at the organisation of States business due to concerns about the significant increase in the number of States meetings during 2009, and the associated increase in the number of questions and length of debates. The sub-group’s report suggested that ministerial government should be reviewed, and the concerns expressed in relation to States business were symptoms of a wider problem.

The sub-group also found that, in comparison to the Committee system, fewer members were involved in each piece of work under ministerial government and that the design of ministerial government was more suited to a party political structure. At the time, one member suggested that the structure of ministerial government was flawed, in that the States Chamber was divided, causing unnecessary friction and duplicating both work and costs.

In June 2010, former Senator Alan Breckon lodged a proposition ([P.70/2010](#)) which proposed an amended structure to Jersey’s system of government in order to establish a more inclusive system, with the aim of giving all members greater opportunities to participate in executive decision making. The proposition was later withdrawn.

In August 2010, Senator Breckon lodged [P.120/2010](#) which proposed the establishment of ministerial boards and a revised system of scrutiny. P.120/2010 included a report by a working party, established following the debate on P.70/2010, to review its proposals in greater detail. The working party concluded that there was a significant dissatisfaction among members in relation to the operation of the ministerial system. It believed that the people of Jersey would be better served by a revised system which was more inclusive. The proposition was defeated 28 against and 21 for with 1 abstention.

In 2011, the Council of Ministers lodged a proposition ([P.17/2011](#)) which proposed that there should be a review of ministerial government in order to identify required improvements and develop proposals to address them. Although the proposition was later withdrawn, it and the other propositions mentioned in this section, provide an indication that there were different perceptions about how successful the machinery of government changes had been.

In February 2012, PPC established a Machinery of Government Review Sub-Committee in order to conduct a diagnostic review of the existing system.

The Sub-Committee presented its initial findings and recommendations in April 2013 ([R.39/2013](#)) following a desktop study. The Sub-Committee's recommendations were designed to deliver some initial improvements to accountability in the ministerial system and to promote open and collaborative working.

In September 2013, the Sub-Committee presented its final report ([R.105/2013](#)) which presented two options - the States could move closer to the model proposed by the Clothier Panel and give that model sufficient time to demonstrate that it could deliver the remedies envisaged in December 2000 or, alternatively, the States could pursue a ministerial/committee hybrid or blend some executive/non-executive roles.

Following an 'in Committee' debate held on 9th October 2013, a Steering Group was established to take forward consideration of the Sub-Committee's recommendations. The Steering Group took into account the comments of members during the debate and consulted with States Members in their various roles on the recommendations. The Group considered possible amendments to the States of Jersey Law 2005, which were referred back [to PPC for consideration](#) on 6th March 2014.

At that time, PPC did not feel that it was in a position to take the proposed changes to the States Assembly and the then Chief Minister agreed to take the matter forward.

In March 2014 the then Chief Minister (Senator Gorst) lodged a proposition ([P.33/2014](#)) which sought to amend the machinery of government in order to improve its function and implement those recommendations of the Machinery of Government Sub-Committee which had gained broad support. The proposition was approved by the States, as amended. It introduced into legislation the concept of collective responsibility, whereby Ministers were each required to support (or at least not to oppose) actions to implement agreed government policy (set out in the Strategic Plan). Collective responsibility also extended to Assistant Ministers in relation to the policy of the Ministerial department they were in.

P.33/2014 also enabled the States to make subsequent decisions regarding arrangements for Scrutiny through Standing Orders and ensured that the Chief Minister was responsible for the overall organisation of the Council of Ministers and the allocation of functions to Ministers.

In January 2018, the then Chief Minister (Senator Gorst) lodged a proposition ([P.1/2018](#)) which asked members to approve a number of changes to the machinery of government including the establishment of the Chief Executive Officer as Principal Accountable Officer, making changes to ministerial officers by Order of the Chief Minister, the removal from legislation of reference to collective responsibility and the establishment of a single legal entity for government (which has yet to be implemented). The proposition, as amended, was accepted by the States on 20th March 2018.

In July 2020, Deputy John Young lodged a proposition ([P.98/2020](#)) which called for an independent, external review of Jersey's system of governance. Although the proposition was defeated, during the [debate](#) Senator Tracey Vallois suggested that there should be a standing committee to consider changes to the machinery of government. The suggestion of a review was taken forward by PPC and the Democratic Accountability and Governance Sub-Committee was formed on 23rd February 2021.

The ministerial system has now been in operation for 16 years. Views from stakeholders were varied as to whether a sufficient amount of time has passed for the system to truly “bed-in”. It was agreed by some, however, that as each Assembly passes, there is a growing understanding and acceptance of its merits. Some believe that there is increasing knowledge of the various branches, roles and responsibilities that collectively make up Jersey’s government, and, broadly at least, the importance of maintaining appropriate distinctions between them to ensure the integrity of the accountability and governance framework.

6. The structure of Government in the present day

There are generally considered to be three branches of government: the Legislature (the States Assembly with a scrutiny function), the Executive (Ministers and the public administration) and the Judiciary (courts). This section provides a summary of the main functions of the Legislature (including scrutiny) and the Executive.

The Legislature (States Assembly)

The Legislature can be described as a body of elected representatives that makes laws (the States Assembly). The prime functions of the States Assembly include:

- holding the government to account;
- making and amending laws and regulations;
- approving the amount of public money to be spent by the Government every year;
- approving the amount of tax to be raised;
- determining through debate major internal and external policies.

The legislature also provides a forum for public participation through lobbying their elected representatives, contributing to the work of Scrutiny, or participating in consultations and petitions.

The way in which the States Assembly operates is set out in various pieces of legislation. In addition, the [Standing Orders of the States](#) are a comprehensive set of rules that govern the way in which the Assembly conducts its business including the terms of reference of the various committees and panels of the Assembly and the way in which they must carry out their business.

Scrutiny

The States Assembly scrutinises policy and legislative proposals through five Scrutiny Panels:

1. Corporate Services
2. Environment, Infrastructure and Housing
3. Children, Education and Home Affairs
4. Economic and International Affairs
5. Health and Social Security

The Public Accounts Committee (PAC) comes under the Scrutiny umbrella but is different to a Scrutiny Panel in that it focusses on implementation, rather than policy. Rather than holding Ministers to account, it principally holds officers to account for what has happened in the past so that it is able to make recommendations for meaningful and lasting improvement².

Along with the Standing Orders of the States of Jersey, there are two Codes of Practice that set out the rules by which the Panels and PAC operate. One code governs [engagement with the Government](#) with the other covering the [proceedings of panels and PAC](#) work.

The Scrutiny Liaison Committee (SLC) is an oversight body which comprises the Chairs of the five Scrutiny Panels and the Chair of PAC. It has responsibility for maintaining oversight of the work of the Scrutiny Panels and PAC, including Scrutiny expenditure.

² [Comptroller and Auditor General: Governance: A Think Piece.](#)

The Executive

The Executive consists of the Chief Minister and the Council of Ministers. The Chief Minister's role is to provide long-term strategic direction for Jersey. The Chief Minister is supported by a number of Ministers and Assistant Ministers who are allocated political responsibility for a range of policy areas and operational departments. All Ministers are appointed individually by the States Assembly to a number of ministerial offices:

- Children and Education
- Economic Development, Tourism, Sport and Culture
- Environment
- External Relations and Financial Services
- Health and Social Services
- Home Affairs
- Housing and Communities
- Infrastructure
- International Development
- Social Security
- Treasury and Resources

The Chief Minister chairs the Council of Ministers, which is responsible for the Island's common strategic policy, co-ordinating the Government's policies and administration, and prioritising executive and legislative proposals³. The Council of Ministers is supported by the Chief Executive (and Head of the Public Service) and undertakes a number of functions including:

- co-ordinating the policies and administration for which they are responsible as Ministers;
- discussing and agreeing policy;
- agreeing a common policy regarding external relations;
- prioritising executive and legislative proposals; and
- producing a common strategic policy.

The Civil Service

The civil service undertakes the practical and administrative work of government. There are nine government departments in total:

1. Office of the Chief Executive
2. Customer and Local Services
3. Children, Young People, Education and Skills
4. Health and Community Services
5. Justice and Home Affairs
6. Treasury and Exchequer
7. Growth, Housing and Environment
8. Strategic Policy, Performance and Population
9. Chief Operating Office

There are also a number of Non-Ministerial Departments, but these were out of scope for this review.

³ [R.10/2020](#)

The Chief Executive Officer is Head of the Public Service and Principal Accounting Officer. The CEO is responsible for providing leadership across the Government of Jersey and ensuring good governance and sound financial management. The CEO is accountable to the Chief Minister⁴.

The Sub-Committee received a number of comments from stakeholders about the confusion over the term “Government of Jersey” and what it actually means. Before the States of Jersey Law was implemented in 2005, the States Assembly was both the legislature and the executive. Until this point, the executive business of government was performed by committees which, subject to statutory exceptions, were delegates whose decisions could be overturned by the States⁵.

When the States of Jersey Law (2005) was enacted it had the effect of moving from committee to ministerial government. It made each individual Minister a “corporation sole”. This gave ministers legal personality with the power to enter into agreements, deal with property, sue and be sued, and exercise functions associated with that office or proscribed by law. This fulfilled the objective at that time of separating the majority of executive functions from the Assembly.

In 2014, the Council of Ministers formally adopted the “Government of Jersey” as the official identity for the government in official correspondence and overseas. This aimed to clarify the differences in the roles and responsibilities between the government and the States Assembly, although in Jersey, the government continued to use the States of Jersey identity until 2018 when the Council of Ministers began to use the Government of Jersey identity.

In March 2018, the States Assembly adopted P.1/2018 - Machinery of Government (Miscellaneous Amendments) (Jersey) Law 2018 (as amended). Part 4 of that law would have removed from individual ministers the status of corporation sole and created a new legal entity, the Government of Jersey. This would have formally created the Government of Jersey as a “corporation aggregate” capable of carrying out powers previously held by individual ministers. Under this new legal entity, any Minister could have exercised functions conferred on the Government of Jersey. It is important to note that these changes have not yet been brought into force and so individual Ministers remain corporations sole. If, or when, these changes are brought into force, it will have no impact on the changes originally made in the 2005 Law to separate executive and legislative functions.

Recent changes to ministerial government (P.1/2018)

The most recent changes to the current ministerial system relate to the proposals contained in [P.1/2018](#). It set out three main changes:

- **the establishment of the Chief Executive Officer as the Principal Accountable Officer (PAO) for the public administration:** This changed the structure of the civil service and introduced the role of PAO and Accountable Officer to the Public Finances Law. Accounting Officers of each Department became Accountable Officers and retained responsibility for expenditure in their area. Previously, the Chief Executive of the States was not differentiated from other Accounting Officers and had no power to hold Chief Officers to account. This has now changed with the Chief Executive as PAO having ultimate responsibility and control of expenditure across the government.
- **the making of changes to Ministerial offices by Orders made by the Chief Minister and transfers of budget by a single decision of the Minister for Treasury and Resources:**

⁴ Chief Executive Officer - [Job Description](#)

⁵ Bailhache, P, Ministerial Government – A Brave New World?, JLR 2005

This changed the decision-making powers of the States Assembly with the power shifting to the Chief Minister who is now able to move Ministers and make changes to ministerial offices by Order. The States Assembly are no longer involved in the decision-making to move Ministers around, other than after the event through the powers to challenge Ministerial Orders.

It is worth noting here that ministerial posts are still set out in Standing Orders so any changes in title or mergers still need to come to the States Assembly for approval.

- **the establishment of a single legal entity for Government:** This change (which has not yet been brought into force) would replace the current structure of Ministers being “corporations sole”, which means that each Minister has sole legal responsibility for the areas of government they represent. Implementing a single legal entity for government would mean that Ministers would be referred to as the “Jersey Ministers”.

The Sub-Committee received a number of views from stakeholders about the changes initiated through P.1/2018 and the impact they have had on accountability and governance. Although the establishment of a single legal entity has not yet been created, it was a particular bone of contention for many stakeholders.

Some believe that a single legal entity for Government will compromise the roles and responsibilities of individual Ministers by providing the Chief Minister and the Chief Executive with more power and authority.

In contrast, some believe that the absence of a single legal entity has created tensions between ministerial and public service structures. The overall purpose of creating a single legal entity is to remove silos at the political level, with P.1/2018 aiming to strengthen accountability by making changes to both the civil service and political structures. P.1/2018 has achieved what it set out to do for the public service structure (OneGov), but those changes are yet to be accompanied by the creation of a single legal entity for Ministers. Some believe that this has led to a fragmented ministerial structure which is supported by a unified civil service structure.

In March 2018, following the Assembly’s approval of P.1/2018, the then Chief Executive, Charlie Parker, published [‘One Island, one community, one future’](#) which set out a long-term vision and ambition for Jersey’s public services. The purpose of OneGov was to reorganise the public service, focussing on collaborative working, eliminating silos and improving services.

It is not necessary for the Sub-Committee to include all the details set out in the ‘One Government’ reforms, but it is worth mentioning that they aimed to streamline governance and improve corporate performance management (relevant parts highlighted in bold):

Jersey has developed a distinct model of governance that reflects our history and heritage. We need to be conscious of this in the way we are organised and the way we work for islanders. We need to retain and enhance the principle of direct democracy embodied in our parishes, but we cannot be trapped by ways of working that no longer support the good governance the island needs to flourish.

All too often, what we have been commissioned to do by Ministers is delayed by complicated processes and unwieldy governance procedures, long before the Assembly gets to decisions. Our public service and its officers must get much better at supporting our elected representatives across their different democratic roles.

To do this, we will improve the arrangements that support and include our Parishes, our elected States Assembly and the Council of Ministers. We will focus on improvements that help them to do the different jobs that they were elected to do and support them in their efforts to make and take good decisions on behalf of the islanders they represent.

This includes:

- ***Better policy options, supported by better evidence and options around implementation.***
- *Putting our customers' needs at the heart of how we design our policy, working with them rather than making assumptions about what they need and want.*
- *Better business cases that accurately reflect the requirements of islanders and customers, and which are clear on costs and benefits necessary to support decisions by elected politicians.*
- ***Better support and facilities for both Assembly Members and the Council of Ministers, to assist them in their different roles and responsibilities, while also representing the islanders who elected them.***
- ***Ensuring that the Assembly's scrutiny panels have the information and time they need to make an effective contribution to better policy and governance.***
- ***More effective, efficient and compliant ways of organising and executing the Government's business and law-making functions.***

*This also means that we must work better with the government as it establishes its priorities and programme for its time in office. This should drive a **radically overhauled corporate planning and performance management process which gives Ministers confidence that their programme is going to be delivered.** This means we have to deliver:*

- *An integrated corporate planning process, which accurately ties resource allocation to agreed government priorities, and transparent scrutiny of the most important aspects of operational performance, the biggest projects, key risks and organisational health.*
- *A more transparent and open process of challenge and scrutiny of progress and performance, with a focus on identifying problems and resolving them, rather than allocating blame.*

The Sub-Committee received a number of views about how the public service is now structured. Some believe that lines of accountability have been blurred since the implementation of P.1/2018 with a number of missing links between the Chief Executive/civil service and the States of Jersey. Some described the government structure as "unsatisfactory" with "haphazard reporting lines" where there is no longer a Chief Officer in a department reporting to one Minister, thereby affecting the balance of power.

There was a constant theme raised by stakeholders that the introduction of the OneGov reforms have had a negative effect on governance. Some reflected on the old departments which were each accountable to a specific Minister. These have now been replaced by a smaller number of departments headed by Directors General who are accountable to the Chief Executive. Some Departments have several Ministers exercising political responsibility within them and some have none. The following examples were provided:

- The Strategic Policy, Planning and Performance Department has no political lead (other than the Chief Minister) and one Director General.
- The Infrastructure, Housing and Environment Department has three political leads and one Director General.
- The Customer and Local Services Department has one Director General and is politically led by the Minister for Social Security but not all responsibilities of the Department fall under that role.

Concerns were raised on the scenario where a Director General has several Ministers exercising responsibilities in a department (as is the case in Infrastructure, Housing and Environment) and the division between Ministers if the Director General fails to deliver in relation to one Minister but not to others.

Key Findings

- 1. There is an imbalance of power between the Chief Executive/Civil Service and the States of Jersey, which leads to a lack of political accountability for decisions.**
- 2. Some Departments do not have a single Minister with political responsibility, which leads to a lack of clarity and accountability**

The implementation of P.1/2018 has resulted in a number of missing links between the Executive/civil service and the States of Jersey. There is no longer a Chief Officer in a department reporting to one Minister which has affected the balance of power within the Executive function. P.1/2018 has also impacted on the number of Ministerial leads in each department. As there are a smaller number of departments, some have several Ministers exercising political responsibility within them and some have none.

7. How is government held to account?

A number of stakeholders stressed the importance of accountability within government. One commented that strong accountability can increase trustworthiness and the legitimacy of government decisions in the eyes of the public. Another believes that it is only through being held accountable that Ministers and officials can learn from mistakes and resolve to improve their performance. Having direct lines of accountability is important because it is the basis of democracy. As the Sub-Committee's consultation demonstrated, there are concerns amongst many that the democratic lines of accountability in the present system are missing in some areas.

Accountability of States Members

Accountability of States Members begins with their elections. Manifestos delivered by each candidate are a declaration of intentions, motives or views which are published before each election to let the voter know which set of policies they stand for and would wish to implement if they were elected. In theory, the electorate can then hold the Member to account on the performance of their election pledges throughout their term of office (if they are elected) and, if they haven't delivered, cast their vote elsewhere at the next election.

Some stakeholders commented on the effectiveness of individual manifestos in the absence of party politics. A former States Member remarked that if Members are not part of the Executive then their election pledges become "meaningless". Unlike the UK where a party manifesto is seen as a programme for government and Ministers are held to account for implementing that manifesto during their term of office, in Jersey, Ministers come together after they are elected to develop their common strategic policy. The public have no say in the common strategic policy and there seems very little accountability within the Assembly in relation to what Ministers have delivered in terms of their strategic priorities.

Essentially, Ministers are accountable to the Assembly for the actions of government. This means that Ministers have to explain and provide information on what is happening in their area of responsibility. Part 5 of the [Codes of Conduct and Practice for Ministers and Assistant Ministers](#) states that Ministers have a duty to the States Assembly to account for matters for which they are responsible, including for the policies, decisions and actions of the departments and agencies which discharge their responsibilities.

There are many ways the Assembly can scrutinise and hold Ministers to account. The main ones include:

- **Oral/written questions** - submitted by other members to be answered in the Assembly.
- **Scrutiny** - Ministers (and government officials) appear before the Panels and the Public Accounts Committee to answer questions.
- **Correspondence** - Scrutiny often write to Ministers to raise issues. These are published (unless of a confidential nature) which increases pressure on Ministers to respond.

The electorate can also hold Ministers to account by contacting non-executive members, who may be able to explore matters of public importance on their behalf through the above means.

Chief Minister

Some Members commented on the way in which a Chief Minister is elected, which is determined by the States Assembly and not by the public. Some members agreed with the current process and others believed that voters should get a say.

There were mixed views as to whether any changes should be made to the way in which the Chief Minister is elected but one Member suggested that a declaration of intentions should be mandatory for those standing for election. This would require a person to declare whether he or she intended to stand for Chief Minister which would enable voters to consider them on that basis.

In terms of the election of the Council of Ministers, some stakeholders raised concerns about the process followed and the fact that, at present, the Chief Minister does not have the freedom to pick his or her own ministerial team. Although the Chief Minister can put forward the elected Members he or she would like to be Ministers, other Members can also make nominations (if there is only one candidate they are declared the Minister). One stakeholder expressed the view that, if the Chief Minister is elected by a majority of the Assembly, he or she should choose his or her ministerial team, arrange portfolios as necessary and then hold them to account for what they achieve. Following this viewpoint, most Members agreed that the Chief Minister should put forward a slate of Ministers which could be adopted by the Assembly en-bloc.

Deputy Chief Minister

Some Members commented that there is a lack of transparency over the role of Deputy Chief Minister and what happens when the Chief Minister is absent. In order to address this issue, there was a suggestion that the role of Deputy Chief Minister should be formally recognised in Standing Orders which would make the role more transparent.

When the Chair of the Sub-Committee attended a Council of Ministers meeting in February 2022, the Chief Minister advised that this matter was in the process of being addressed.

Assistant Ministers

During the workshop exercise, some Members raised concerns about the role of Assistant Minister. Some commented that the formal roles Assistant Ministers play were presently unclear, which undermines accountability and may deter some Members from expressing interests in the roles available. The general consensus amongst stakeholders was that Assistant Ministers should be able to step in for the Minister and should be knowledgeable about the Department and have a full understanding of their portfolio.

Some also commented that, although there is a legal duty under the States of Jersey Law to publish a list of Assistant Ministers alongside their delegated responsibilities and keep it up-to-date, this is routinely ignored by Government. This makes it hard for the public (and other Members) to see who is responsible for what area which impacts accountability.

There was a suggestion that Assistant Ministers should be titled as Assistant Ministers for their specific roles e.g. Assistant Minister for Sport, Assistant Minister for Heritage, Assistant Minister for Mental Health. This would make it clearer to the public which responsibilities had been transferred, noting that Ministers maintain overall responsibility under law. The role of Assistant Minister will need to be considered in further detail if the Sub-Committee's recommendation of establishing a Cabinet Office type function is taken forward.

Accountability in decision-making

Ministers and Assistant Ministers should provide policy direction to officers in each of the areas for which they are responsible, and the senior official in each area should be accountable to the Minister or Assistant Minister for this, in line with the [States of Jersey Law 2005](#). There were mixed views about whether this is the case in practice, particularly since the implementation of P.1/2018. Many stakeholders commented on the former committee system of government and how it provided all Members with a direct voice in decision-making. Some described ministerial government as marginalising some Members (who do not sit on the Executive) and delegating more power to unelected officials (the civil service). Informative and collaborative government was viewed by many as distinctly lacking within the current system, despite the establishment of Policy Development Boards (see below).

Other stakeholders drew attention to the influence non-executive members of the Assembly have over government which would be the envy of parliamentarians in many other democracies. There are a number of examples of policy changes which have been driven by non-Executive Members and the government has sometimes had to fight for every vote to get its priorities through the Assembly. There are a number of examples of non-Executive Members influencing policy including the declaration of a climate emergency ([lodged by Deputy Rob Ward](#)) and banning the sale of single-use carrier bags ([lodged by Deputy Inna Gardiner](#)).

Policy Development Boards

The Chief Minister has set up a number of policy development boards (PDBs), on a non-statutory basis, to consider matters of public interest or concern. It was the Chief Minister's intention that policy development boards would support States Members to be more involved in the policy development process. The Sub-Committee can see the merits in establishing such groups given the comments from Members that the committee-based system had afforded greater opportunity for all Members to become involved in, and contribute to, policy development.

Some stakeholders believe that there is a lack of transparency around PDBs and that the work resulting from a Board could be dismissed by the Chief Minister as they are only accountable to him or her (the Terms of Reference for PDBs read 'The Boards will be set up with the agreement or at the request of the Chief Minister' and 'Having completed their work, the advice of a Board will be provided to the Chief Minister and the responsible Minister in written form [.....] The advice shall also be tabled before the Council of Ministers and published as soon as practical and appropriate').

In terms of transparency around PDBs, the gov.je website provides information on each of the live Boards, including their membership, Terms of Reference, minutes and supporting papers. Some of them have also published their reports following submission to the Chief Minister. Some stakeholders raised concerns about the timeliness of the published documents. For example, the Early Years Policy Development Board last met on 3rd January 2020 and there are published minutes to reflect that meeting. The final report, however, was only published in September 2021. An explanatory note accompanied the report explaining that the Covid-19 response had caused a hiatus in progressing the final report, but it is odd that the Board had not met for well over a year not least to discuss/approve the report before it was published.

A number of stakeholders commented that PDBs have blurred the lines between 'Executive' and 'Non-Executive' responsibilities, particularly in terms of scrutiny. The Terms of Reference for PDBs specify that, where a non-Executive Member is asked to participate in a PDB they must be a member of Scrutiny, but not on the Scrutiny Panel which would ordinarily be scrutinising the policy developed by the Board. The SLC raised concerns about the insistence of using Scrutiny members, rather than

existing Executive Members, to make-up the PDB's membership. The SLC believes that this approach has taken valued experience away from Scrutiny.

The majority of stakeholders agreed that there is confusion over who owns policy, with a lack of political accountability for the development of policy and for the implementation of policy agreed by the Assembly following a proposition brought forward by a non-Executive Member. The fact that Strategic Policy Planning and Performance (SPPP) does not have a ministerial lead (other than the Chief Minister) was cited as a contributing factor to this confusion. Some Members believe that if a proposition is endorsed by the Assembly, it should take priority on the policy pipeline because it was a decision made by the States and not just by the Council of Ministers.

Accountability of Arm's Length Organisations and Specified Organisations

Arm's Length Organisations are defined in the Public Finances Manual as organisations which fulfil a role or function the States of Jersey would otherwise perform. The following are a sample of ALOs:

- Jersey Competition Regulatory Authority
- Digital Jersey
- Jersey Heritage
- Visit Jersey
- Jersey Opera House

Specified Organisations are not defined anywhere, but a list of them are included in the [Public Finances Law](#) (2019):

- Andium Homes Limited and its subsidiary companies (if any)
- Jersey Post International Limited and its subsidiary companies (if any)
- JT Group Limited and its subsidiary companies (if any)
- Ports of Jersey Ltd.
- States of Jersey Development Company Limited and its subsidiary companies (if any)
- Jersey Overseas Aid Commission

A number of views were expressed on the governance arrangements around ALOs and Specified Organisations with many Members commenting that there is "a lack of oversight" and "lack of governance and accountability" of how they operate.

Some Members believed that better governance arrangements should be put in place for the relevant ALOs and Specified Organisations where the States of Jersey is a shareholder. Members also commented that any Memoranda of Understanding (MoU) or Service Level Agreements (SLA) made with them should not just be the responsibility of the relevant Minister or Director General. In terms of Scrutiny, some Members believe that Panels could play an important role in providing oversight over ALOs and Specified Organisations but commented that, where MoUs came under the responsibility of the Minister for Treasury only, it made it challenging for Panels to get involved because they were not always aware when changes had been made to them.

Skill set within the States Assembly

There were many views from stakeholders about the skill set within the States Assembly. In terms of Ministers, some believe that Ministers on their own cannot have the time, talent or fortitude to cross-examine officers to ensure that their plans had been delivered effectively. These thoughts were accompanied by views on the training provided to Ministers when they entered into office. Many thought it would be beneficial for Ministers to have a general job description which would assist them in understanding their brief and their roles and responsibilities.

The Sub-Committee received a number of accounts from former Ministers who expressed concern about the level of training provided in order to assist them to become decision makers and create policies in their particular Ministerial roles. They recalled receiving initial training from the States Greffe in matters relating to how they should conduct themselves as politicians, law makers and the operation of the States Assembly, however, in terms of Executive functions, there was little else provided. One former Minister suggested that all Members should be able to access the courses available to civil servants, particularly ones that promote leadership and models of decision making.

In terms of communication, some views were expressed that Ministers should be on top of their brief and be able to communicate in layman's terms, particularly when in the media. This had not always been the case in recent times which some stakeholders believe has led to a distrust of government.

Many stakeholders agreed that adequate space should be given to all Members but most importantly to Ministers who should have their own office and a dedicated space to work. There were mixed views as to whether this should be in the main government building, or whether they should be based elsewhere. Some believed that communication between Ministers and Assistant Ministers has been enhanced since they were based centrally at Broad street. Some believed, however, that having all Ministers together has created a "bubble" of like-minded Members which has affected diversity within decision making.

Ministerial Support Unit

As part of the changes initiated by P.1/2018, a new Ministerial Support Unit (MSU) was established in order to support the interface between the civil service and the Scrutiny and political process. The MSU should provide a political governance and procedural framework so that these duties can be discharged under the direction of the Chief Minister.⁶

As part of its role, the MSU oversees a range of ministerial boards, co-ordinates the work of the government across departments and Ministers and advancing policies. There were mixed views as to whether this actually worked in practice.

Some stakeholders commented on the MSU in relation to its relationship with the Strategic Policy, Performance and Population Department. According to the Office of the Chief Executive Business Plan, the MSU should work closely with SPPP to facilitate working between Directors General, Group Directors and Ministers on day-to-day work and set piece projects, such as the Government Plan and individual strategies.

Some stakeholders believe that the MSU and SPPP should be combined into a more consolidated structure with a Cabinet Office style function which would be responsible to the Council of Ministers for policy advice and delivery. This would better support Ministers and drive change. Others disagreed with this suggestion and believe that the MSU should remain separate from SPPP as the MSU does more than just policy-based work with a lot of ministerial business involving projects and

⁶ Office of the Chief Executive Business Plan 2020

operational matters. This leaves the Sub-Committee concerned that the vision and expectation of the MSU was not clear from the beginning and clear direction needs to be determined before the incoming Ministers take up office following the election.

Others believe that the MSU could have a stronger impact in supporting Ministers in the development of policies. There was a general consensus amongst stakeholders that the MSU is under-resourced, and that Ministers and Assistant Ministers would benefit from much greater levels of support than they currently have.

The Sub-Committee notes that there was a strong theme during the consultation phase of the review that Ministers in particular require extra support within their roles. Enhanced support could be provided through more structured training in leadership and decision making or Ministers could have access to paid advice. In that regard, the Sub-Committee believes that Ministers should be provided with extra support including diary managers and researchers/speech writers. Consideration could also be given to providing Ministers with the opportunity to appoint paid special advisors, particularly where they are leading a department for which they have no direct expertise.

Accountability between Ministers and Officers

Some stakeholders provided their views on the overall structure of the government system and commented that some matters relate to cultural issues and others relate to problems within the structural make-up of the government. In terms of Ministerial and Officer responsibilities, one stakeholder expressed the view that ensuring Ministerial policy is implemented is as much a cultural issue as a matter of structure and if Ministers and Officers are not working as a team, then the results can be sub-optimal.

There is already a system whereby a Minister can instruct an Accountable Officer to proceed with a course of action, even if the Accountable Officer considers that the action requested by the Minister could have implications. The Public Finances Law 2019 places a personal responsibility on the Accountable Officer for a number of matters, including the propriety, regularity and value for money (economy, efficiency and effectiveness) of all income and expenditure for their area of responsibility. In this respect, Accountable Officers are accountable to the Principal Accounting Officer and answerable to the Public Accounts Committee.

In circumstances where an Accountable Officer considers that a course of action requested by the Minister with responsibility for a department's activity may have implications, specifically for the statutory responsibilities mentioned above, the Accountable Officer would write to the Minister setting out their concerns. If the Minister still wished to proceed, the Accountable Officer would request a formal [letter of instruction](#), which is a procedure set out in the Public Finances Manual. A copy of the letter would be sent to the Comptroller and Auditor General and the Public Accounts Committee would be expected to recognise that the Accountable Officer bore no personal responsibility for the course of action.

Letters of Instruction issued to date are published on the [gov.je website](#). The process followed is largely similar to the process for [Ministerial Directions](#) in the UK. These are formal instructions from Ministers telling their department to proceed with a spending proposal, despite an objection from their permanent secretary. Permanent secretaries in the UK are the most senior civil servant in each department and are also accounting officers. They have a duty to seek a ministerial direction if they think a spending proposal breaches any of the following criteria:

- **Regularity** – if the proposal is beyond the department's legal powers, or agreed spending budgets.

- **Propriety** – if it does not meet ‘high standards of public conduct’, such as appropriate governance or parliamentary expectations.
- **Value for money** – if something else, or doing nothing, would be cheaper and better.
- **Feasibility** – if there is doubt about the proposal being ‘implemented accurately, sustainably or to the intended timetable’.

Key Findings

3. There are blurred lines of accountability between Executive and Non-Executive responsibilities.

The creation of Policy Development Boards has blurred the lines between Executive and Non-Executive functions with Members of Scrutiny able to participate in Policy Development Boards. This has reduced accountability in decision making processes and risks compromising the Scrutiny function

4. There is confusion over policy ownership, with a lack of political accountability for the development of policy or for the implementation of policy agreed by the Assembly following a proposition brought forward by a non-executive member

The creation of Policy Development Boards has caused some confusion over whether they create policy or simply make recommendations for a Minister to consider.

There are no special rules requiring Ministers to implement the requests made of them by the Assembly. Although this is a wider matter already being considered by PPC (compliance with States decisions) there are a number of examples where Ministers have not implemented a decision made by the Assembly. The most recent being the failure to implement P.165/2020 as amended, which resulted in the lodging of a Vote of Censure against the Council of Ministers (which was subsequently rejected).

5. There is a lack of governance around Arm’s Length Bodies and Specified Organisations, leading to uncertainty about to whom they are accountable and how their decisions can be influenced

6. Accountability of the role of Chief Minister within the public arena is lacking as voters do not have a say on who should be elected to the role

7. The Council of Ministers is at risk of being fragmented/politically divided because the Assembly can impose its choices on the Chief Minister

8. There is a lack of transparency over the role of Deputy Chief Minister, undermining accountability for the areas for which the DCM is given responsibility

9. The role of Assistant Minister is unclear, which undermines accountability and may deter some States Members from expressing interest in the roles available

10. Some Ministers give the impression that they are not on top of their brief and Ministers are inconsistent in terms of how they approach their ministerial duties, so not all Ministers discharge all aspects of their role adequately

11. States Members do not all have the skills and capabilities required in a modern legislature and opportunities to enhance their skillset are lacking

8. The Scrutiny function

The Sub-Committee consulted with the Scrutiny Liaison Committee (SLC) in order to generate views on the Scrutiny function, how it is working and whether there could be any areas for improvement. The SLC provided a collective response, but all Scrutiny Members from the various Panels had an opportunity to provide their views. The Sub-Committee also held a dedicated workshop with all States Members to specifically discuss the Scrutiny function.

There was a general consensus amongst Members that the Scrutiny function is, largely, well provided for within legislation, Standing Orders and the associated Codes of Practice. Concerns were raised, however, on accessing the required information in order to undertake Scrutiny work. Some commented that there are pockets of political or civil service misunderstanding of the role of Scrutiny, or more calculated non-compliance or disregard to the formally mandated framework of the function. The result of these instances undermines informed decision making by the Assembly which results in unnecessary challenges and conflicts within the system.

A number of stakeholders raised concerns about the inflexibility of the Scrutiny function. Although some changes have been made in recent years with the ability to establish Review Panels to review cross-cutting matters, some stakeholders believe that the system is still inflexible, and that Scrutiny gets involved in policy too late in the process.

One former States Member believes that Ministers should be willing to engage with Scrutiny earlier in the process of policy development. There was also a suggestion that Assistant Ministers should be given the freedom to join Scrutiny panels outside their ministerial remit.

Another theme emerged from some stakeholders that Scrutiny is often seen as the opposition. As Jersey does not yet have party politics, one stakeholder believes that an adverse consequence is that the role of the President of the SLC tends to be seen, particularly by the media, as Jersey's equivalent to the Leader of the Official Opposition. It is worth noting here that PPC [commissioned an independent review of Political Parties](#) which identifies where Standing Orders might need to be changed should parties become a permanent feature of Jersey politics. Although the Sub-Committee has not considered the report in detail, the authors of the report say that, should parties become a longstanding feature in Jersey, or the number of Members with a party affiliation increases, the practice of Jersey politics may shift from its current status to something more closely resembling traditional Westminster politics with a party-based government/executive dominating the legislature, and a party-based opposition without executive functions.

Legislative Scrutiny

Most of the views expressed on legislative scrutiny were received during the focussed workshop exercise with States Members. Some Members raised concerns about a skills deficit within the Assembly particularly in the development and scrutiny of legislation. Members also commented on the speed at which some pieces of legislation are approved by the Assembly, particularly financial legislation.

Given the concerns around how effective legislative scrutiny currently is, the Sub-Committee looked back on a previous proposition lodged by PPC in 2018 proposing a number of changes to the scrutiny of legislation⁷. These were:

⁷ [P.103/2018 'Draft Amendment \(No.37\) Standing Orders of the States of Jersey'](#)

- *With some exceptions when a proposition is lodged it is referred automatically to the relevant Scrutiny Panel.*
- *The Panel would have a minimum of 6 weeks to scrutinise and report back on the proposition (in the case of legislation, scrutiny could cover both the principles and the Articles/Regulations).*
- *The Panel and Minister/Member could agree for extra time to be provided for scrutiny (without limit), or the Panel could request the Assembly to allow up to an additional 4 weeks for scrutiny (i.e. on the basis of an application to the Presiding Officer, which would be debated and decided by the Assembly).*
- *In the case of legislation, the Panel would have the option of automatically triggering a further period of scrutiny of the Articles/Regulations after the Assembly has agreed to the principles: otherwise, it would remain possible for the legislation to go through all its stages in one Sitting.*
- *This new process of automatic referral to a Panel would not apply to propositions lodged under Standing Order 26(3) [i.e. dismissal of a Minister, votes of no confidence, censure, suspension, annulment of an Order, opposing a land transaction], appointment propositions, amendments, a draft budget or a draft medium term financial plan. It would apply to backbench propositions.*

These proposals were withdrawn by the Committee due to concerns about resourcing. Since 2018, it is worth noting that Scrutiny has been provided with increased resources but there would need to be more discussion on whether Panels would be in a better position now to undertake more thorough reviews of legislation, noting that some Members raised concerns that legislative scrutiny was often limited to one briefing session with Ministers and/or government officials due to time constraints and other review commitments.

Although the proposals were never debated and implemented, they did seem to signal the start of a cultural shift in that every piece of legislation brought before the Assembly is now considered by the relevant Panel. Legislative scrutiny is also now embedded on work programmes so that Panels schedule time during its term to focus on legislation. The cultural shift is evidenced by the number of Comments/Amendments (related to legislation) there are now compared to earlier Assembly terms:

YEAR	AMENDMENTS	COMMENTS
2015	10	5
2016	1	6
2017	2	11
2018	10	12
2019	16	10
2020	10	34

Key Findings

- 12. The Scrutiny function is not sufficiently flexible to undertake effective reviews as it gets involved in policy too late in the process.**
- 13. The Scrutiny function does not always have the required skill set to hold Ministers to account for their actions, particularly in the development and scrutiny of legislation**
- 14. Scrutiny is seen by some as the opposition to Ministers, undermining its true role as a 'critical friend' of government**
- 15. Legislative scrutiny has improved in recent years to become a routine part of scrutiny work but is still held back by a lack of time and skills**

9. The States Employment Board

Overview and functions

The [Employment of States of Jersey Employees \(Jersey\) Law](#) 2005 established the States Employment Board (SEB). Effectively the SEB has responsibility for the employment of civil servants and their terms and conditions. The implementation of the Employment of States of Jersey Employees (Jersey) Law was one of the final significant elements following the move to ministerial government as it instituted the Jersey Appointments Commission and introduced new arrangements which established how public service employees are treated. Following approval of the Law, public sector employees (with some exceptions) became employees of the SEB which is constituted as a legal entity and was created to act as the employer.

The functions of the SEB include:

- ensuring that the public service conducts itself with economy, efficiency, probity and effectiveness;
- ensuring the health, safety and wellbeing of States employees;
- issuing Codes of Practice on recruitment, training and development, appraisal, discipline, suspension and termination of employment with which Accountable Officers (for Ministerial Departments) and Accounting Officers (for Non-Ministerial Departments) have a duty to comply;
- agreeing lists of senior positions where their appointment is subject to oversight by the Jersey Appointments Commission; and
- preparing an annual report to the States Assembly.

Most stakeholders were uncertain of the functions of SEB and where it sat within the government structure. Some viewed it as a sub-committee of the Council of Ministers, others thought it was, (or should be), a sub-committee of the States Assembly and others found they could not place it into one particular area. The SEB is in fact, [under the Law](#), a body corporate with perpetual succession.

Most stakeholders acknowledged that SEB is the employer of all staff but found the detail around that difficult to determine. Some also commented that the relationship between SEB and departments was not always clear. For example, one stakeholder commented that matters of staff discipline, attendance, and general day-to-day management are often dealt with at departmental level with the SEB seeming to be more focussed on pay scales, policies and wage negotiations. This might make employees feel that they are working for a particular department but are employed centrally by the SEB which could make accountability difficult to pinpoint when problems arise.

The Sub-Committee met with some of the Unions in January 2022 who commented that there were often difficulties in discussing issues directly with SEB members and believed that there should be more representation of the Unions on the Board. One of the Unions cited the Isle of Man as a good example of where its equivalent to SEB (the Public Services Commission) regularly consults and communicates with Unions through a Joint Consultative Committee. The role of the JCC is to provide a channel of communication between the Public Services Commission Joint Negotiation Committee and Local Authorities on matters affecting their overall and specific areas.

When the Sub-Committee met with the Unions, they explained that there used to be a Civil Service Forum which was a joint group between the SEB and the Unions. It is understood that this group fell

away when the 'OneGov' modernisation programme was implemented in 2018. The Sub-Committee believes that joint working between SEB and the Unions requires some attention, particularly as there appears to be issues with the level of engagement between the two parties.

Governance

The SEB is chaired by the Chief Minister, or his nominee, along with two members who are Ministers or Assistant Ministers and two non-executive members.

The Chief Executive and Head of the Public Service is the lead officer for the SEB, providing advice and guidance, supported by officers from People Services and the Chief Operating Office. The SEB is provided with legal advice from the Law Officers' Department and People and Corporate Services provide secretariat and co-ordinating functions for the Board. The States Greffe provides administrative support and minute taking duties during meetings.

The SEB is able to appoint up to two independent advisors, but there is currently only one in post. The Sub-Committee notes that the role of independent advisor is not defined or explained anywhere in legislation. One government official explained the importance of this role, particularly when there is a conflict of interest in matters being addressed by the Board. It is understood that a document outlining the responsibilities of the independent advisor is currently being developed which will clarify their role on the Board.

The SEB has no allocated budget to support the discharging of its duty. This is also the same position for the Jersey Appointments Commission. From looking at a response to a report by the C&AG on SEB in 2019, the Sub-Committee understands that the People and Corporate Service directorate undertook a review of its budgets and submitted a business case for additional funds. The business case included a proposal to fund secretariat support for both SEB and the Jersey Appointments Commission, funds for SEB to commission work, and funding for JAC to operate with independence. A second business case was prepared to fund a 'People Strategy' and includes the resource requirements to fund a number of recommendations by the C&AG (see below)⁸. It is unclear what happened to the first business case but it does demonstrate a recognition that SEB requires a budget in order to discharge its functions. When the Sub-Committee asked whether a budget was ever allocated it was advised that SEB is unable to have a direct budget because there is no Accountable Officer, but provision within People and Corporate Services for Secretariat functions has been allocated.

Managing conflicts

Given that there were a number of concerns raised by stakeholders about conflicts of interest, the Sub-Committee asked government officials whether the governance arrangements around SEB were appropriate in terms of the CEO (and Head of the Public Service) being lead officer and providing an advisory role (which is recognised in Law). SEB could be easily conflicted when it comes to matters about senior officers, particularly the CEO. Although other senior officials could step in and provide that advisory role, there is no statutory provision for them to do so and therefore no protection on the advice they are providing.

This led onto a discussion around accountability of the CEO in general. At present, the Chief Executive is accountable to the Council of Ministers, answerable to the Public Accounts Committee

⁸ [States Employment Board response to the C&AG audit Role and Operation of the States Employment Board](#)

and employed by, but not defined as accountable to, the SEB. There was a suggestion that the Head of the Public Service should be answerable and accountable to a separate body.

Comptroller and Auditor General Report

Before making any recommendations for change in relation to the governance arrangements around the SEB, the Sub-Committee has considered that changes may already be in train following a review of SEB by the Comptroller and Auditor General. The C&AG issued a [report](#) on the role and operation of the SEB in March 2019 and recommended a fundamental review of the framework for the oversight of human resources of the States. She found three main areas of weakness (in summary):

1. the framework for the oversight of HR management
2. the arrangements to enable the SEB to discharge its functions
3. an insufficient focus by the SEB on monitoring of implementation

The C&AG also found that the SEB has not adopted an overarching People Strategy in which it can undertake its statutory responsibilities. The C&AG recommended that a strategy should include:

- the States' future workforce requirements;
- the assumptions, values, beliefs and aspirations which guide the SEB as an employer;
- how the SEB intends to discharge its statutory duties;
- linkages to key strategic HR policies; and
- the respective roles and responsibilities of the SEB, the Principal Accounting Officer and the Council of Ministers.

The Government accepted all 20 recommendations made by the C&AG and developed an action plan in response. The Council of Ministers has also commissioned a review of the Employment of the States of Jersey Employees (Jersey) Law to address the weaknesses identified by the C&AG related to legislation. The Sub-Committee understands that the C&AG is currently undertaking a [follow up](#) review.

Civil Service Code of Conduct

The [current code of conduct for the civil service is dated 2002](#) and is considerably out of date given the significant changes to the ministerial and civil service structures, described in this report. The Sub-Committee has been advised, however, that SEB have approved a new Standards in Public Service code as part of its work on developing a People Strategy. As far as the Sub-Committee can see, this has not yet been implemented or published.

The Standards in Public Service will include a set of principles and discussions have been had with the States Greffe as to whether the same set of principles should be applied to the Code of Conduct for Elected Members which is currently being reviewed by PPC following a report by the C&AG on anti-corruption. Interestingly, one stakeholder believes that the public service, Members and Ministers should share common values and common standards which they suggested would be key to working collaboratively together.

One Member raised concerns about the lack of audit trail within the civil service and believes there should be more formal rules around record keeping. If senior civil servants are meeting stakeholders and discussion takes place on matters pertinent to a department, these should be formally recorded.

The Sub-Committee understands that part of the work on the new Standards in Public Service includes transparency, particularly in recording any potential conflicts.

Key Findings

- 16. Many Members of the States consider that the role of the States Employment Board is unclear**
- 17. The governance arrangements for the States Employment Board are lacking, despite recent recommendations from the Comptroller and Auditor General to address various deficiencies.**
- 18. Record keeping within the Executive sometimes lacks rigour, causing a lack of transparency and accountability**

10. Recommendations

The Sub-Committee's review has identified 18 main key findings which span across the States Assembly, ministerial government, scrutiny and the civil service in terms of governance and accountability. This section proposes a number of recommendations to Jersey's system of government which will need to be considered further by PPC. Some would be relatively easy to implement whilst others may need to be considered further and consulted upon.

In order to address:

- 1. There is an imbalance of power between the Chief Executive/Civil Service and the States of Jersey, which leads to a lack of political accountability for decisions**
- 2. Some Departments do not have a single Minister with political responsibility, which leads to a lack of clarity and accountability**

There should be better alignment between the responsibilities of Ministers and Departments. Each department should have one Minister who is ultimately accountable for the whole of the department. Where the scope of a department is such that it is felt that additional Ministers are required there should be a lead Minister and Non-CoM Ministers with responsibility for specific areas of the department.

The Ministerial Support Unit and the Strategic Policy, Planning and Performance Department should be merged into a more consolidated structure in order to form a Cabinet Office style function to support Ministers and drive change. Consideration should be given as to whether a Communications function should be included in the creation of the Cabinet Office, which would ultimately be responsible to the Council of Ministers for policy advice and delivery.

The prime purpose of the Cabinet Office would be to support the Chief Minister and ensure the effective running of government, similar to the Cabinet Office in the UK which has the following responsibilities:

- Supporting collective government, helping to ensure the effective development, coordination and implementation of policy;
- Coordinating the government's response to crises and managing cyber security;
- Promoting efficiency and reform across government through innovation, better procurement and project management, and by transforming the delivery of services;
- Promoting the release of government data, and making the way government works more transparent;
- Creating an exception civil service, improving its capability and effectiveness;
- Political and constitutional reform.

In creating a new Cabinet Office, the creation of a Single Legal Entity should not be pursued. A unified Council of Ministers should be a practice rather than set out in law.

The States of Jersey Law provides that the Council of Ministers should agree a Common Strategic Policy within 4 months of their appointment. This timeframe is too long for setting out Ministers high-level ambitions for Jersey and should be condensed down to 8 weeks.

In order to address:

3. There are blurred lines of accountability between Executive and Non-Executive responsibilities.

As Policy Development Boards are not formal boards of the States and there are no rules around them, they should form a structural part of the system and include formal governance structures via a published Code of Practice and Proceedings Code.

Policy Development Boards should be established as Sub-Committees of the Council of Ministers. This would ensure a clear line of accountability back to the “parent” Committee of the Council of Ministers. A member of the Council of Ministers would need to sit on any PDB established in order to report back to the Council with progress updates.

All reports by Policy Development Boards should be published as a matter of course and receive a published response from the Chief Minister within 6 weeks of being published.

In order to address:

4. There is confusion over policy ownership, with a lack of political accountability for the development of policy or for the implementation of policy agreed by the Assembly following a proposition brought forward by a non-executive member.

The Council of Ministers should publish and keep updated a Policy Pipeline showing the policies currently being worked on and proposed timescales for States decisions and implementation. The Pipeline should also state which Minister is accountable for each policy. This would provide the opportunity for other Members of the Assembly to express views on timescales and the order of priority.

In order to address:

5. There is a lack of governance around Arm’s Length Bodies and Specified Organisations, leading to uncertainty about to whom they are accountable and how their decisions can be influenced

There should be a supervisory committee which would monitor the performance of ALOs.

This should be based on the States’ Trading Supervisory Board in Guernsey, which carries out the States’ role as shareholder of any incorporated companies which are owned by the States. It oversees a diverse portfolio of companies. Some are fully formed commercial companies in their own right and so the Board is not involved in the day-to-day running of these businesses but is involved in decision-making.

The Sub-Committee believes that establishing a supervisory committee in Jersey would help in linking Government priorities via Memorandum of Understanding/Service Level Agreements with ALOs (such as the Carbon Neutral Strategy).

In order to address:

6. Accountability of the role of Chief Minister within the public arena is lacking as voters do not have a say on who should be elected to the role.

Voters should be provided with the opportunity to indicate their preferred candidate for Chief Minister during the voting process.

In order to address:

7. The Council of Ministers is at risk of being fragmented/politically divided because the Assembly can impose its choices on the Chief Minister

The Chief Minister Designate should nominate his or her preferred slate of Ministers to the States within 5 working days.

The Chief Minister should explain their preferred choice of Ministers by way of a written proposal, to be published by the Greffier of the States at the point of nomination. The proposal should name the preferred candidates and summarise the rationale underpinning the Chief Minister's choices.

The States would reconvene two working days after the list of Ministerial nominees is published. The Chief Minister designate would be questioned by the Assembly on the list of preferred candidates and there would be a vote on his or her slate of Ministers.

The States should vote for or against the list of proposed Ministers.

A negative vote would prompt the Chief Minister to return to the Assembly with an alternative list.

Rejection of a second Ministerial team would trigger the dismissal of the Chief Minister Designate and a new election for Chief Minister, in which the dismissed Chief Minister Designate would be excluded from standing.

Members would be required to weigh very carefully any relevant concerns regarding one or more prospective Ministers against the perceived benefit of maintaining their first choice of Chief Minister.

In order to address:

8. There is a lack of transparency over the role of Deputy Chief Minister, undermining accountability for the areas for which the DCM is given responsibility

The States of Jersey Law 2005 should be amended to expand on the role of Deputy Chief Minister and clarify that he or she is the default port of call for an executive decision whenever the Chief Minister is out of the Island or is otherwise indisposed.

In order to address:

9. The role of Assistant Minister is unclear, which undermines accountability and may deter some States Members from expressing interest in the roles available

The list of Assistant Ministers should be kept up-to-date and published as a matter of course. This would fulfil the legal duty under the States of Jersey Law and enhance accountability and transparency to the public and States Assembly.

If a Cabinet Office is introduced in Jersey, Assistant Ministers would likely become the "Cabinet Office Ministers" who would have a specific remit, role and responsibility. Whether Assistant Ministers remain, or they become "Cabinet Office Ministers" in the development of a Cabinet

Office, a list of their roles and responsibilities should be kept up to date and published as a matter of course.

In order to address:

- 10. Some Ministers give the impression that they are not on top of their brief and Ministers are inconsistent in terms of how they approach their ministerial duties, so not all Ministers discharge all aspects of their role adequately.**
- 11. States Members do not all have the skills and capabilities required in a modern legislature and opportunities to enhance their skillset are lacking.**

The Ministerial Support Unit requires additional capacity and resources which should be explored further in the development of a new Cabinet Office. Specifically, the Ministerial Team should have access to a Private Secretary, a Diary Manager and researchers/speech writers.

Each Ministerial role should be accompanied by a general job description.

In order for Ministers and Assistant Ministers (or non-CoM Ministers) to be fully briefed on their roles and responsibilities, they should receive a structured induction by the Ministerial Support Unit immediately after being elected to their respective roles.

The Ministerial team should have a dedicated base to work from within their department or the Government's administration building.

All States Members should have access to leadership and decision-making training.

The Nolan Principles should be amended to align with the values contained in the People Strategy

In order to address:

- 12. The Scrutiny function is not sufficiently flexible to undertake effective reviews as it gets involved in policy too late in the process.**
- 13. The Scrutiny function does not always have the required skill set to hold ministers to account for their actions, particularly in the development and scrutiny of legislation**
- 14. Scrutiny is seen by some as the opposition to Ministers, undermining its true role as a 'critical friend' of government**

The current system of five Scrutiny Panels should remain within Standing Orders but the Scrutiny Liaison Committee should have greater autonomy and flexibility to change the name and remit of a Panel under Standing Orders.

Chairs of Panels would be elected by the Assembly and would be responsible for forming their own Panel memberships. During the election of the Chairs, the nominees would express which core area they would be interested in scrutinising i.e. economy, policy and resources, health, education and environment.

Once all 5 Chairs have been elected by the Assembly, the Chairs would be responsible for forming their own Panel's remit and membership, with final approval by the Scrutiny Liaison

Committee. The Scrutiny Liaison Committee should present to the States a list of Scrutiny members and the remit of the respective Panels but this would be for information purposes only and not for States Assembly approval.

There should be a minimum of three Members sitting on each Panel but no maximum.

Each scrutiny role should be accompanied by a general job description.

Standing Orders should provide a set list of expectations of each Member of Scrutiny including attendance at meetings. It should be provided for in Standing Orders that if Members do not attend Scrutiny meetings for a long period without good reason, their membership on that Panel will be terminated.

In order to address:

15. Legislative scrutiny has improved in recent years to become a routine part of scrutiny work but is still held back by a lack of time and skills

The suggestions made by the former C&AG in her [thinkpiece](#) should be given due consideration:

- clear, agreed principles on when ‘green papers’ (initial consultations on policy or legislative proposals) and ‘white papers’ (detailed proposals for legislation) should be prepared. **These would in turn trigger the opportunity for timely review by Scrutiny Panels in advance of preparation of draft legislation;**
- **clear and consistent standards for instructions for legislative drafting.** Drafting instructions provide a clear statement of the policy intentions underpinning proposed legislation. They provide rigour in the legislative drafting and facilitate effective scrutiny of the extent to which policy objectives have been captured in draft legislation.
- **establishing clear standards for preparing marked up versions of legislation,** comparing the existing legislation and draft legislation, highlighting the differences and reasons for them. Such an analysis facilitates effective scrutiny of draft legislation, including facilitating scrutiny of matters not specifically referred to in other documents made available by the Government to a Scrutiny Panel.

Drafting instructions should be received by Scrutiny for each piece of legislation as a standard.

There should be a dedicated Law Officer within the Law Officer’s Department in order to assist with legislative Scrutiny.

Changes should also be made to how legislation is debated in the Assembly. Currently, draft laws are debated in three stages - the principles, the second reading (Articles/Regulations) and the third reading (a final debate when the law is adopted). The debate on the principles and second and third reading are often debated altogether. The proposed changes are:

- The debate on the principles and second and third reading should be separated so that they do not occur at the same meeting unless there are exceptional reasons to require this.
- Scrutiny of legislation should cover both the principles and Articles/Regulations.

- A mechanism should be introduced whereby scrutiny could trigger a further period of scrutiny of the Articles/Regulations after the Assembly has agreed to the principles.
- The minimum lodging period between lodging and debate for legislation should be extended by ten weeks unless an agreement is made with scrutiny to reduce or extend the lodging period (but it can be no sooner than six weeks, unless it is in the public interest to do so).
- Non-executive propositions in relation to legislation should be included within the scope of Scrutiny and a mechanism should be introduced whereby an in-principle debate should take place which would enable the Minister to develop the Articles and bring them back to the States Assembly.

There should be a mandatory requirement for an official schedule of legislation to be published by government at the start of each year. The schedule should include deadlines and should be updated every quarter to take account of any delays or new legislation.

In order to address:

16. Many Members of the States consider that the role of the States Employment Board is unclear

17. The governance arrangements for the States Employment Board are lacking, despite recent recommendations from the Comptroller and Auditor General to address various deficiencies.

The budgetary arrangements for the States Employment Board need to be addressed. As the Board does not currently have its own budget, any issues are picked up by Ministerial government in terms of liabilities and risk.

The legislative arrangements around the States Employment Board need to be more refined. The recommendations made by the Comptroller and Auditor General need to be implemented as a matter of priority.

The States Employment Board should set their policy and their strategy at the beginning of their term. The Head of the Public Service and officers should then demonstrate how they are complying with and meeting the requirements set by the Board.

Joint working between the States Employment Board and the Unions requires some attention, particularly as there appears to be issues with the level of engagement between the two parties. Consideration should be given as to whether a consultative committee should be established which would constitute members of the States Employment Board and representatives from each Union.

In considering the role of the States Employment Board, the Government should consider how it would best fit into the creation of a new Cabinet Office in order to oversee the enabling/supporting functions such as Comms, HR and IT, which are functions currently in the Chief Operating office and Office of the Chief Executive.

Consideration should be given as to whether the SEB should be established as a committee of the States of Jersey and whether it should include a mixture of executive and non-executive members as is the case presently. In this new scenario, the head of the public service would be answerable and accountable to the Committee and it would not be appropriate to appoint the Chief Minister (or any executive member) as the chair.

The Chief Executive has a number of different roles including the CEO/Head of the public service, advisor to the Council of Ministers and executive support to the SEB (although the Group Director of People and Corporate Services has since taken an active part in providing the executive support function to SEB). Consideration should be given to the role of the Chief Executive and whether there are too many powers invested in only one individual. If a Cabinet Office is established, the Head of the Cabinet Office could be responsible for providing advice to the Council of Ministers, and the Chief Executive to account to them for delivery policy initiatives.

The appointment of the CEO should go through SEB and the Jersey Appointments Commission should play a regulatory role only.

In order to address:

18. Record keeping within the Executive sometimes lacks rigour, causing a lack of transparency and accountability

The States Employment Board should implement more formal rules around record keeping within the civil service.

The Sub-Committee acknowledges that some of its recommendations will require a restructure in Ministerial roles and public administration. In that regard, the Sub-Committee will request that the Chief Minister and the Council of Ministers formally respond to each of the key findings and recommendations. As the 2022 Election is approaching, the Sub-Committee hopes that this report will act as a first step in making the required changes in preparation for the next term.

11. Appendix 1: Membership and Terms of Reference

Sub-Committee Membership



Senator Tracey Vallois (Chair)



Senator Ian Gorst



Senator Sam Mézec



Connétable John Le Bailly



Connétable Richard Buchanan



Deputy Kirsten Morel

Terms of Reference

AIM: To undertake a review of the accountability of government to the public and the Assembly, with a view to making recommendations for improvement.

DELIVERABLES: A report to PPC that sets out the Sub-Committee's findings in respect of the issues to be addressed. This report should define any problems with the current system of government and should also contain recommendations to resolve those problems.

SCOPE

Included

The roles of the Council of Ministers, the Chief Minister, Deputy Chief Minister, Ministers, Assistant Ministers, and the States Employment Board and how they may be held to account by the public and the Assembly.

The relationship between ministerial structures and civil service structures in relation to policy development, implementation and operational management, particularly in view of the development of the OneGov project, and how this affects accountability to the public and the Assembly.

The role of Scrutiny and the Public Accounts Committee in holding the executive to account.

Whether the current ministerial and scrutiny portfolios set out in Standing Orders remain appropriate or whether there is an alternative structure, or an alternative system for electing Members to ministerial office or Scrutiny, which would enhance accountability and effectiveness.

Opportunities for States members to be engaged in the process of government.

Excluded

Matters in relation to the efficient use of resources to achieve value for money.

The maintenance of standards of performance through financial management and forms of governance.

Consideration of the accounting officer structure.

Changing from a ministerial system of government to an alternative system, although the review will consider how the best aspects of the former committee system could be incorporated within the current system.

Attendance at meetings

The Sub-Committee held a total of 16 meetings between March 2021 - February 2022.

Senator Tracy Vallois	-	17/17
Senator Ian Gorst	-	6/17
Senator Sam Mézec	-	17/17
Connétable Richard Buchanan	-	5/17
Connétable John Le Bailly	-	11/17
Deputy Kirsten Morel	-	11/17

Review costs

The costs of this review totalled £871.20 which were incurred in transcription costs.



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