

The Legislative Assembly for the Australian Capital Territory — An introduction

The Commonwealth of Australia was created by legislation of the United Kingdom Parliament¹ by which six pre-existing Crown colonies were joined in a federation in 1901 and became the component states of that federation. The structure of the new federation reflected, among other things, the concern of the individual states to retain a high degree of autonomy in domestic matters and the desire to ensure that those states with the largest populations did not come to dominate the new Commonwealth. One expression of this was the decision to have the seat of government located away from the two largest cities, Melbourne and Sydney. Section 125 of the Constitution gave effect to this:

The seat of Government of the Commonwealth shall be determined by the Parliament, and shall be within a territory which shall have been granted to or acquired by the Commonwealth, and shall be vested in and belong to the Commonwealth, and shall be in the State of New South Wales, and be distant not less than one hundred miles [one hundred and sixty kilometres] from Sydney.²

The site for the seat of government was chosen by ballot by the Senate and the House of Representatives, respectively, in 1909.³ Section 3 of the *Seat of Government Act 1908* determined that the seat of government of the Commonwealth shall be in the district of Yass-Canberra in the state of New South Wales (assented to on 14 December 1908).⁴

In 1911, 910 square miles (2,357 square kilometres) of sparsely inhabited⁵ rural land was transferred to the Commonwealth as the Australian Capital Territory (ACT) though it was commonly referred to as the Federal Capital Territory for some years.⁶ The name ‘Canberra’ was announced by Lady Denman, the wife of the Governor-General, on 12 March 1913—‘I name the capital of Australia, Canberra’.⁷

1 *Commonwealth of Australia Constitution Act 1900* (UK) (The Commonwealth Constitution).

2 Commonwealth Constitution, s 125. Parliament met in Melbourne from 1901-1927.

3 Lyall Gillespie, *Canberra 1820-1913*, AGPS, 1991, p 245.

4 The *Seat of Government Act 1904* had nominated a large area at Dalgety as the site for the seat of government, but parliament continued to debate the issue without reaching agreement. *The Seat of Government Act 1908* repealed the 1904 Act.

5 The *Seat of Government (Administration) Act 1910* commenced on 1 January 1911. At the time it was estimated that the human population was 1,714—somewhat overshadowed by approximately 224,764 sheep. See Australian Bureau of Statistics, 1307.8, *Australian Capital Territory in Focus*, 2006.

6 The Territory was generally known as the ‘Federal Capital Territory’ until 1938 when the *Seat of Government (Administration) Act* was amended to confer the name ‘Australian Capital Territory’. See Derek Drinkwater, *How McDougall reached the shore: the Senate and the federal capital site 1901-1910*, Canberra Historical Journal, Vol 42, September 1998, pp 26-35 and David Pegrum, *The Bush Capital*, Hale and Iremonger, Sydney, 1983.

7 Lyall Gillespie, *Canberra 1820-1913*, AGPS, 1991, p 254.

Progress on the construction of Canberra was slow: the Royal Military College at Duntroon was established in 1911; the 'provisional' Parliament House was opened in 1927; and a small number of public servants and military personnel moved to the capital. The Depression further slowed progress and by the mid-1930s the population was approximately 7,000, rising to about 10,000 by the outbreak of the Second World War in 1939. The war resulted in an influx of officials to the national capital but at the same time meant the deferral of any further significant public building projects.

During the war, Australia finally took control of its own foreign policy, and the steady growth of a diplomatic community increased the pressure for the Commonwealth Government to create a genuine capital city. In the late 1950s the government of Sir Robert Menzies committed itself to the full development of the national capital. A National Capital Development Commission was created and the transfer of government functions from Melbourne and Sydney accelerated population growth.⁸

The debate on the Seat of Government (Administration) Act had foreshadowed a local legislature, but throughout this long period the ACT was governed by the Commonwealth Government through the Minister for the Interior and the Department of Territories (under various portfolios and titles). As the population, and consequently its demands for services such as health and education, grew, numerous other Commonwealth agencies became involved, with the result being that minor issues of ACT management were sometimes decided by the cabinet of the national government.⁹ The resulting system has been characterised as fluctuating between 'inert' and 'active' paternalism.¹⁰ It could be argued that the high proportion of public servants in the ACT population, particularly prior to the rapid expansion in the 1970s, disposed its population to accept a bureaucratic rather than a representative form of government.

The first representative body for the ACT was the Advisory Council, established in 1930, comprising three elected and four appointed members. There followed a succession of advisory councils composed of government appointees and elected representatives, the latter increasing in number from three to five and finally, in 1959, to eight. In 1974 a fully elected, but still wholly advisory, Legislative Assembly (later the House of Assembly) of 18 members was established. It ceased to exist on 30 June 1986.¹¹ The role of these bodies was to provide 'some popularly elected voice within the governmental system, despite the general unwillingness of ministers and departmental officials to listen to it'.¹²

The ACT also gained representation in the Commonwealth Parliament as its population grew. It was represented by one member in the House of Representatives from 1949 (with limited voting rights until 1966), two from 1974 and, briefly, three in 1996 (for one term of

8 The ACT's population was approximately 41,000 in 1958, 103,000 in 1967, 207,000 in 1976 and 431,000 in 2020.

9 For a detailed study of the government and administration of the ACT and the emergence of self-government see: P Grundy, B Oakes, L Reeder and R Wettenhall, *Reluctant Democrats*, Canberra, 1996.

10 P Grundy, p 84.

11 P Grundy, p 219.

12 P Grundy, p 7.

parliament).¹³ On 1 September 2017, the Australian Electoral Commission directed that, pursuant to s 59(1) of the *Commonwealth Electoral Act 1918*, the ACT would again be divided into three electoral divisions, with the change taking effect from 4 September 2017.¹⁴ The ACT has also elected two senators since 1975.

Throughout the ACT's history there have been advocates of some form of self-government for the Territory analogous to either the familiar 'town council' model of local government or a 'state-type' government. However, support for self-government, while sometimes vocal, did not command majority support. An advisory referendum held in 1978 was the only occasion on which voters in the ACT were offered an opportunity to indicate their preferences. The questions posed by the plebiscite were:

1. that self-government be granted to the ACT by delegating functions to a locally elected legislative body;
2. that a locally elected legislative body be established in the ACT with local government-type legislative and executive functions; and
3. that the present arrangements for governing the ACT should continue for the time being.

The results of the referendum showed that 63.75 per cent, a majority of the electors casting a valid vote at the referendum, voted in favour of continuing with the present arrangements for the time being.¹⁵

A decade later, the Commonwealth Government introduced legislation to give the ACT a measure of self-government without conducting another plebiscite or referendum. Subsequent commentary suggested that opposition to self-government may have declined since 1978 but that it was still significant.¹⁶ This was reflected by the success of candidates running on explicit anti self-government tickets in the first election after self-government.

The case for self-government was, on purely numerical terms, overwhelming. By the late 1980s, the ACT had a population of more than a quarter of a million, yet its four representatives in the Commonwealth Parliament were its only elected representatives to

13 The ACT's population was sufficient to justify two large House of Representatives electorates but in 1996 was just sufficient to allow for the division of the ACT into three somewhat smaller electorates.

14 Australian Electoral Commission, Direction to commence redistribution of the Australian Capital Territory into electoral divisions, 1 September 2017.

15 elections.act.gov.au/elections_and_voting/act_legislative_assembly_referendums/1978_referendum, accessed on 17 March 2021.

16 See P Grundy, pp 181-182. An opinion poll was conducted on behalf of the *Canberra Times* while the package of self-government legislation was before the Senate. The results, which were published in the paper on 20 November 1988, indicated that if a referendum were to be held on self-government, 44.7 per cent of respondents would have voted in favour, 46.9 per cent against. If offered a choice, 27 per cent favoured no self-government, 38.7 per cent favoured a local council-type government and 30.8 per cent supported state-type self-government (essentially the proposal before the Senate). The same poll indicated that Canberrans overwhelmingly supported (76.5 per cent) any proposal for self-government being put to them in a referendum prior to its adoption. The government did not offer Canberra's citizens a referendum; as ACT Senator Bob McMullan put it: 'this is not an appropriate matter for a referendum. In my view democracy is not optional'. Senate Debates (23.11.1988) 2602.

a body having genuine legislative authority. The national parliament was at the least an unwieldy institution through which to consider the minutiae of managing urban services in the ACT. Whether contrasted with Australia's smallest state, Tasmania, or cities of comparable size to Canberra, the ACT had been regarded as suffering a severe 'democratic deficit'.¹⁷ While it has been argued that, even with self-government, the ACT's voters have too few elected representatives, it should be noted that, unlike any other Australian state or territory, the ACT is almost wholly urban, with its population concentrated in the city of Canberra. Thus, the problems of distance and geographical dispersion that face other jurisdictions do not affect the ACT.

It is against this background that the Australian Capital Territory (Self-Government) Bill 1988¹⁸ was introduced on 19 October 1988 in the Australian House of Representatives. In his second reading speech, the then Minister for the Arts and Territories, The Hon Clyde Holding, explained that under the bill:

... the Australian Capital Territory will be a body politic under the Crown. It will consist of a legislative arm and an executive arm to exercise powers as set out in the Bill ... The ACT will have the same legislative and executive powers and responsibility over finances as the States and the Northern Territory.¹⁹

The bill made provision for the Assembly and an ACT Executive to have carriage of a broad range of public policymaking functions. The bill was passed by the Senate, with amendments, on 24 November 1988,²⁰ received royal assent on 6 December 1988, and its provisions variously commenced from 7 December 1988 until 11 May 1989.

Under the Self-Government Act, executive responsibility is vested in a Chief Minister, elected by the Assembly, and no more than nine ministers,²¹ who must also be members of the legislature. The government is responsible for a range of state and local government functions at a single level.²²

17 As at 31 December 2020, the Australian Bureau of Statistics (ABS) estimated a population of 431,500 for the ACT and 541,500 for Tasmania (ABS National, state and territory population 2020). Tasmania has five members of the House of Representatives, 12 senators, a bicameral state parliament with 15 members in the Legislative Council and 25 in the Assembly, and 29 local government areas with councils.

18 Also introduced were the Australian Capital Territory (Electoral) Bill 1988; the Australian Capital Territory (Planning and Land Management) Bill 1988; and the ACT Self-Government (Consequential Provisions) Bill 1988.

19 House of Representatives Debates, 19 October 1988, p 1922.

20 *Journals of the Senate*, No 114, 24 November 1988, p 1183.

21 Until 2013, the number of ministers was limited to five ministers plus the Chief Minister by reason of s 41(2A) of the Self-Government Act, which provides that 'Until provision is made, the number of Ministers is not to exceed 5'. Provision to increase to nine ministers was made by the Assembly with the passage of the Australian Capital Territory (Ministers) Bill 2013 on 26 November 2013.

22 The ACT Government has responsibility for education, health, social welfare, housing, justice and policing, land management, licensing and municipal services such as public transport, water and power supply and household waste management, and other matters provided for in Schedule 4 of the Self-Government Act.

The first election for the Legislative Assembly for the ACT was held on 4 March 1989, using the modified d'Hondt electoral system, with the whole ACT being one electorate. The election returned five seats for members standing for the Australian Labor Party (ACT Branch), four seats to the Canberra Liberals, four seats to the Residents Rally, three seats to the No Self-Government Party, and one seat to the Abolish Self-Government Coalition. The Assembly first met on 11 May 1989 and proceeded to elect Labor member Rosemary Follet as the first Chief Minister for the ACT. Canberra Liberal member Trevor Kaine was elected as Leader of the Opposition, and No Self Government member David Prowse elected Speaker.

Subject to the provisions of the Self-Government Act, the Assembly may make rules and orders regarding the conduct of its business.²³ The Assembly's first set of standing orders were prepared in consultation with officers of the Territory Administration, the Department of the House of Representatives and the then Assembly Secretariat and were adopted by the Assembly on 11 May 1989.²⁴ In significant areas, the standing orders reflected House of Representatives practice. However, the Legislative Assembly has, since its establishment, substantially amended its standing orders and adopted a number of resolutions relating to its practices and procedures. The influence of the Australian Senate's practices and procedures is now clearly evident in the Assembly's procedural arrangements as it has come to recognise the relevance of that chamber, which is typified by non-government majorities.²⁵

The Assembly has also adopted temporary orders for specified periods and adopted resolutions and orders to have effect for specified periods or to continue in force unless and until amended or repealed. Standing order 16 requires that, in the third year of each term, the Standing Committee on Administration and Procedure will inquire into, and report on, the operation of the Assembly's standing orders and continuing resolutions to ensure that its practices and procedures remain relevant and reflect best practice.

Throughout the history of the Assembly, the ACT's electoral system²⁶ has resulted in a series of minority governments. During the First Assembly there was one coalition majority government for almost 20 months. It took until the Sixth Assembly, elected in 2004, for a single party to achieve a majority (the only single party majority to date).

23 Self-Government Act, s 21.

24 Upon the passage of the Legislative Assembly (Office of the Legislative Assembly) Bill 2012, the Assembly Secretariat became the Office of the Legislative Assembly, with a statutory function to provide impartial advice and support to the Legislative Assembly, its committees and members of the Assembly.

25 It is significant that both the Senate and the Assembly use electoral systems based on proportional representation.

26 Elections to the First Assembly were conducted under a modified d'Hondt system that proved to be extremely complex. It was described by the Australian Electoral Commission as 'fatally flawed' (see P Grundy, p 199). This was replaced by the Hare-Clark system. From 2016, members have been elected from five multi-member constituencies, each returning five members, using a system of proportional representation.

The small size of the Legislative Assembly, the preponderance of minority governments and, perhaps, its unicameral structure, have contributed to a degree of complexity in its operations. The demands of coalition building have, on occasion, resulted in innovative solutions—for example, there have been occasions when an independent member or members of a minor party have held ministerial portfolios without being bound by cabinet solidarity in relation to matters sitting outside of their portfolio responsibilities.²⁷

In a parliamentary context, the combination of state and local government functions operating at a single level is unique in Australia. Ministers have extensive portfolios that often include diverse responsibilities. The Assembly's committees have similarly wide-ranging responsibilities, yet the small number of backbenchers available to serve on them can present challenges that larger legislatures do not encounter. Against that, as the only 'city-state' legislature and the only legislature with responsibility for two levels of government in Australia, the Assembly's capacity to engage with the community and respond to concerns is not limited by the geographical dispersal of its population or delineations between state/territory and local government functions.

The number of members in the Assembly increased from 17 to 25 following the election for the Ninth Assembly in 2016. The expansion in the size of the Assembly followed recommendations of both the Assembly's Standing Committee on Administration and Procedure²⁸ and an expert reference group that had been appointed by the Chief Minister.²⁹ In its report, presented to the Chief Minister on 28 March 2013, the reference group recommended, among other things, that:

- the ACT Legislative Assembly be increased to 25 members at the 2016 election, with five electorates each returning five members; and
- the Assembly be increased to 35 members at the 2020 election, with five electorates each returning seven members.³⁰

27 Michael Moore MLA was a minister in the Carnell government, Shane Rattenbury MLA was a minister in both the Gallagher and Barr governments, and three ACT Greens MLAs became ministers in the Barr ministry in the Tenth Assembly.

28 Standing Committee on Administration and Procedure, *Review of the Australian Capital Territory (Self-Government) Act 1988 (Cwlth)*, report 5, August 2012, p 27. The Assembly and its committees had considered the appropriate size of its membership at various junctures prior to the administration and procedure inquiry. See, for example, resolution passed by the Assembly, MoP, No 3, 12 December 2001, pp 24-25. The resolution requested that the Chief Minister discuss with the Commonwealth Minister for Territories the possibility of amendments to the Self-Government Act to give the Assembly the power to determine the number of members. The resolution also referred to the Standing Committee on Legal Affairs for inquiry and report the matter of the appropriateness of the size of the Legislative Assembly and options for changing the number of members, electorates and other related matters. See also the report of the Select Committee on the Report of the Review of Governance conducted in the Fourth Assembly and the report of the Standing Committee on Legal Affairs, *The appropriateness of the size of the Legislative Assembly for the ACT and options for changing the number of members, electorates and any other related matter*, Report No 4, June 2002.

29 There were 11 inquiries relevant to the size of the Assembly between 1974 and 2012.

30 Further, the expert reference group acknowledged that the electorate may need a longer transition period for such a change, allowing that:

- if the Assembly does not accept an increase to 25 members, the expert reference group would support an increase to 27 members at the 2016 election, consisting of three electorates, each returning nine members; and

The reference group argued that the appropriate size of the Assembly should be determined with reference to the number of members required to perform its functions, including the number of ministers, the number of members to undertake backbench, crossbench and opposition scrutiny and representational roles.³¹ The group noted that, although there had been no change to the number of members in the Assembly since self-government, the population of the Territory had increased substantially and the roles and functions of the legislature had also grown and become more complex.

With the enactment of the *Australian Capital Territory (Self-Government) Amendment Act 2013* (Cth), the Assembly was given the power to determine the size of its membership by an enactment passed by a two-thirds majority of the Assembly.³² On 5 August 2014, the Assembly passed two bills relating to an increase in the size of the Legislative Assembly: the Electoral Amendment Bill 2014 and the Australian Capital Territory (Legislative Assembly) Bill 2014.³³ Together, the resulting enactments provided that:

- the Assembly is to consist of 25 members;
- the ACT must be divided into five electorates; and
- five members must be elected from each electorate.

The expanded membership has impacted on the business of the Assembly in a number of significant ways, and these are explored in greater detail throughout this Second Edition of the Companion. It is notable that 13 of the 25 members elected at the 2016 election were women, making the Assembly the first legislature in Australia with a majority of women legislators. At the 2020 election, 14 of the 25 members elected were women.

Although self-government was resisted in the early days, there is a growing recognition in the ACT community of the critical role that the representative form of government plays in the everyday lives of people living here. From its modest and tentative beginnings, the Assembly has evolved as an innovative and confident legislature. With the Australian Parliament's 2011 repeal of the Commonwealth's powers to disallow or amend Territory laws came a growing sense of acceptance of the autonomy of the Assembly in the Federal system. The Assembly is no longer supervised by the Commonwealth Government but stands on its own feet as a democratic institution representing the unique views and aspirations of almost half a million residents.

While the Australian Parliament will always have a constitutional role to play as the seat of government of the Commonwealth,³⁴ the ACT has taken its place—in more or less equal

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- if the Assembly does not accept an increase to 35 members in 2020, the expert reference group would support an increase to 35 members at the 2024 election.

31 Expert Reference Group, *Review into the size of the ACT Legislative Assembly*, 2013, p 1.

32 Prior to this, only the Commonwealth could regulate the number of members of the Assembly on a resolution of the Assembly. *Self-Government Act*, s 8(3).

33 See MoP, No 62, 5 August 2014, pp 670-671.

34 Unlike the Northern Territory, any aspirations that the ACT might have for statehood are constrained by s 125 of the Constitution.

terms—alongside other states and territories as a body politic, with the capacity to shape its destiny through the passage of laws that derive their legitimacy from the will of ACT electors.