LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ADMINISTRATION AND PROCEDURE

REVIEW OF THE *AUSTRALIAN CAPITAL TERRITORY (SELF-GOVERNMENT) ACT 1988* (CWLTH)

August 2012
Report 5

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RESOLUTION OF APPOINTMENT

In 1995 the Legislative Assembly for the Australian Capital Territory ('the Assembly') amended Standing Order 16, which established the Standing Committee on Administration and Procedure ('the Committee').

Standing Order 16 authorises the Committee to inquire into and report on, among other things, the practices and procedure of the Assembly.

The Committee resolved on 6 December 2011 to undertake a review of the *Australian Capital Territory (Self-Government) Act* 1988.

The Speaker informed the Assembly on 8 December 2011 of the Committee's intention to undertake the review.

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RECOMMENDATIONS

RECOMMENDATION 1

4.8 The Committee recommends that a preamble be included in the Self-Government Act which outlines the Act's purpose and includes:

- the Commonwealth's legitimate interests and powers in relation to the ACT; and
- a formal recognition of the traditional custodians of the land, after consultation with the local Indigenous community.

RECOMMENDATION 2

4.26 The Committee recommends, noting the requirements of the *Proportional Representation (Hare-Clark) Entrenchment Act 1994* regarding a special majority, that section 8 of the Self-Government Act be amended to give the Legislative Assembly the power to determine the number of its Members, so as to have similar powers as the Federal Parliament and the State and Territory Parliaments.

RECOMMENDATION 3

4.41 The Committee recommends that subsection 15(1) of the Self-Government Act be amended as follows to remove certain limitations placed on Members of the Legislative Assembly and to make the provisions contained in subsection 15(1) less ambiguous:

15 Conflict of interest

(1) A Member of the Assembly who is party to, or has a direct or indirect interest in, a contract made by or on behalf of the Territory or a Territory authority under which goods or services are to be supplied by the Territory or Territory authority shall not take part in a discussion of a matter or vote on a question, in a meeting of the Assembly where the matter or question relates directly or indirectly to that contract.

RECOMMENDATION 4

4.45 The Committee recommends that subsection 16(1) be amended by inserting after "Governor-General" (second occurring) "on the advice of the ACT Executive".

RECOMMENDATION 5

4.52 A majority of the Committee recommends that subsections 23(1A) and 23(1B) be removed.

RECOMMENDATION 6

4.57 The Committee recommends that paragraph 23(1)(g) be removed and that Schedule 4 be amended to remove the exemption to censorship powers.

RECOMMENDATION 7

4.61 The Committee recommends that section 25 be amended to reflect the ACT Legislation Register operating as the *Territory Gazette*.

RECOMMENDATION 8

4.66 The Committee recommends that section 27 be replaced with a test that ACT laws bind the Crown unless Commonwealth law has restricted such application. This would change the burden to positive Commonwealth action.

RECOMMENDATION 9

4.81 The Committee recommends that subsection 67B(d) of the Self-Government Act be amended by omitting the words "6 years" and substituting "8 years".

RECOMMENDATION 10

4.85 The Committee recommends that section 67C be amended to provide that the qualifications of a person enrolled as an elector and to vote at an election shall be provided by enactment.

1. INTRODUCTION AND CONDUCT OF INQUIRY

REFERRAL OF THE INQUIRY

1.1. At its meeting on 6 December 2011 the Committee discussed the report *An Assessment of the Performance of the Three Branches of Government in the ACT Against Latimer House Principles* (the Halligan Report) presented to the Legislative Assembly by Professor John Halligan.[1] That assessment identified potential reforms relating to the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) (the Self-Government Act).

1.2. The Committee also noted that there have been recent reviews of the ACT Public Service and the National Capital Authority conducted by Dr Allan Hawke AC. In both those reviews potential reforms related to the Self-Government Act were identified.

1.3. The Committee is also aware of evidence given by Commonwealth public servants from the Territories Division of the Department of Regional Australia, Local Government, Arts and Sport to a Senate Legal and Constitutional Affairs Legislation Committee inquiry on 21 March 2011 where it was stated:

> What I can say though is that the Australian government has provided advice to the ACT government that the review of the self-government act is something that the ACT government could undertake of itself and that it would welcome any advice of the results of that review and would give it consideration.[2]

1.4. Accordingly, the Committee resolved to conduct an inquiry to review the Self-Government Act and any associated regulations, and make recommendations as to whether the Act should be modified. The Committee accepted submissions with a lodgement date of Friday, 16 March 2012. Organisations that sought an extension were provided additional time to lodge their submissions.

1.5. The Committee noted that there was an external *Review of the Governance of the Australian Capital Territory* conducted in April 1998 by Professor Pettit, but considered that a review by an Assembly committee offered the best opportunity to allow Canberra citizens and interested organisations to express a view on the Self-Government Act.[3]

1.6. The Speaker of the Legislative Assembly informed the Assembly on 8 December 2011 of the Committee's intention to undertake the review.

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[1] Professor J Halligan, *An Assessment of the Performance of the Three Branches of Government in the ACT Against Latimer House Principles*, Australia and New Zealand School of Government (ANZSOG), Institute for Governance, University of Canberra, 2011.

[2] Mr J Yates, Senate Standing Committee on Legal and Constitutional Affairs, *Transcript of Evidence*, 21 March 2011.

[3] Professor P Pettit, *Review of the Governance of the Australian Capital Territory*, ACT Government Printer, Canberra, 1998.

TERMS OF REFERENCE

1.7. The Standing Committee on Administration and Procedure resolved to conduct an inquiry to "review the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) and any associated regulations, and make recommendations as to whether the Act should be modified since it was enacted by the Commonwealth Parliament on 6 December 1988".

CALL FOR SUBMISSIONS

1.8. The Committee called for submissions by placing a notice on the Legislative Assembly's website, writing to the responsible Minister and other stakeholders, and writing to all other Parliaments around Australia seeking input during December 2011. There were also advertisements regarding the inquiry placed in the *Canberra Times* on Saturday, 10 December 2011, and then again on Wednesday, 2 May 2012.

SUBMISSIONS RECEIVED

1.9. The Committee received 24 submissions from:

- Professor Philip Pettit
- National Capital Authority
- Professor George Williams AO
- Ethics and Integrity Adviser to the Members of the Legislative Assembly of the ACT, Mr Stephen Skehill,
- Mr Greg Cornwell AM
- ACT Bar Association
- Professor Mike Reynolds AM
- Professor Roger Wettenhall
- ACT Electoral Commission
- Gungahlin Community Council
- Mr Michael Moore
- Civil Liberties Australia
- Woden Valley Community Council
- North Canberra Community Council
- ACT Human Rights Commission
- ACT Government
- Weston Creek Community Council
- ACT Greens

- ACT Law Society
- Mr Bill Stefaniak
- Department of Regional Australia, Local Government, Arts and Sport
- Dr Nick Seddon
- Australian Republican Movement
- Women for an Australian Republic.

WITNESSES

1.10. The Committee heard from 12 witnesses at the public hearings, which were held on 12 April and 11 May 2012.

On 12 April 2012, the following witnesses provided testimony to the Committee:

- Mr Simon Corbell MLA, representing the ACT Government
- Professor George Williams AO
- Mr Ewan Brown, representing the Gungahlin Community Council
- Dr Allan Hawke AC
- Ms Meredith Hunter, representing the ACT Greens.

1.11. On 11 May 2012, the following witnesses provided testimony to the Committee:

- Mr Phillip Walker, representing the ACT Bar Association
- Mr Bill Stefaniak
- Professor Mike Reynolds AM, representing the Public Policy Institute
- Professor Roger Wettenhall, representing the Australian and New Zealand School of Government
- Mr Phillip Green, representing the ACT Electoral Commission
- Mr Greg Cornwell AM
- Ms Chris Faulks, representing the Canberra Business Council
- Mr Jack Waterford.

TWITTER

1.12. The Committee was eager to seek the views of the wider community, and extended its scope to social media, establishing a Twitter account. Although many parliaments around the world use the website to provide information to the community, it appears that this may have been the first use of Twitter to gain community opinion in a parliamentary public hearing.

1.13. The Twitter session trial, held on 11 May 2012, was a great success, with the Committee spending the allotted hour responding to people's thoughts, questions and suggestions on a range of aspects of the Act. Topics raised included the size of the Assembly and role of the Commonwealth Government.

1.14. The Twitter session provided the Committee with unique insights, and added value to the public hearing program.

1.15. The Hansard service usually engaged during a public hearing was replaced with a record of the discussion provided by the Twitter website, which records all messages to and from the account.

2. BACKGROUND

OPERATION OF THE SELF-GOVERNMENT ACT

2.1. The ACT was granted self-government in 1988 through a package of four Commonwealth bills. These included the Australian Capital Territory (Self-Government) Bill 1988, Australian Capital Territory (Electoral) Bill 1988, ACT Self-Government (Consequential Provisions) Bill 1988 and Australian Capital Territory (Planning and Land Management) Bill 1988.

2.2. Part I of the Act includes clauses that deal with matters relating to the short title and commencement of the Act.[4] Section 3 of this part also defines certain terms used in the Act. Part I also deals with the meaning of election day and the day on which the election result is declared[5] and also covers what the powers contained in the Act include.[6]

2.3. Part II of the Self-Government Act establishes the Australian Capital Territory (ACT) as a body politic under the Crown.[7] Parts III and IV of the Self-Government Act create the Legislative Assembly for the Australian Capital Territory and make a number of provisions in relation to the constitution of the Assembly, its powers, procedures and practices. The Self-Government Act stipulates that there shall be a single legislative chamber consisting of 17 Members.[8] Section 16 allows the Governor-General to dissolve the Assembly if he or she consider the Assembly to be incapable of effectively performing its functions or is conducting its affairs in a grossly improper manner.

2.4. The Legislative Assembly has the power to "make laws for the peace, order and good government of the Territory" as stated in subsection 22(1). However, section 23 limits this power, by listing matters on which the Assembly cannot legislate.

2.5. Up until recently section 35 of the Self-Government Act permitted the Governor-General to disallow an Act, or to recommend amendments to a piece of legislation, within six months of the Legislative Assembly enacting a bill. The Governor-General utilised this power in 2006 to disallow the ACT's *Civil Unions Act 2006*. However, on 1 November 2011 the Federal Parliament passed amendments to the Self-Government Act which abolished the veto power, and the power of the Governor-General to amend ACT laws, instead requiring a majority in both houses of Federal Parliament to overturn an enactment of the ACT.[9] These changes came into effect on 4 December 2011.

4 Self-Government Act, sections 1 and 2.

5 ibid, sections 4 and 5.

6 ibid, section 6.

7 ibid, section 7.

8 ibid section 8. The Act, at subsection 8(3), states that this provision can only be amended by the Commonwealth by regulation, however those regulations may not be made for this purpose unless in accordance with a resolution of the Assembly. The issue of whether the Assembly should have the power to determine its own size has been canvassed over the years as well as the need to alter the number of Members. These issues are addressed in detail later in this report.

9 *Territories Self-Government Legislation Amendment (Disallowance and Amendment of Laws) Act 2011*.

2.6. The Executive for the Territory is established under Part V with section 37 setting out the general powers of the Executive, primarily being having responsibility for governing the Territory with respect to matters listed in Schedule 4 of the Self-Government Act. The Executive of the Assembly is limited, by section 41 of the Self-Government Act, to comprise of the Chief Minister and up to four Ministers unless there is Assembly legislation to alter that number.

2.7. Part VA of the Self-Government Act defines the level of the jurisdiction of the ACT Supreme Court and makes provisions with regard to the retirement of judges of the Court, the establishment of a judicial commission and the removal of judicial officers.

2.8. Part VII makes provisions relating to the finance of the ACT and gives the ACT a capacity to raise revenue similar to that of the States and the Northern Territory. Section 65 ensures that it is only the Executive of the day that may initiate or move to increase appropriation proposals in the Assembly.

2.9. Provisions in relation to elections to the Legislative Assembly are dealt with in Part VIII of the Self-Government Act. Members are elected to the Assembly using the Hare-Clark system of proportional representation and serve a fixed four-year term. Elections for the First Assembly were held in March 1989 and the Assembly first met in May of that year. The *Electoral Act 1992* provides for three multi-Member electorates,[10] namely Brindabella, Ginninderra and Molonglo. Brindabella and Ginninderra both return five Members and Molonglo seven.

2.10. Part IX contains miscellaneous provisions including outlining Acts which bind the Territory and remuneration and allowances of certain offices.

2.11. With the establishment of the Legislative Assembly in 1989, provision was made for a comprehensive committee system. Although a small jurisdiction the combination of "state" and "local government" functions at the one level has resulted in governments having a very broad range of responsibilities and significant legislative programs. Therefore the demands on the committees have been significant.[11]

REVIEW OF THE GOVERNANCE OF THE AUSTRALIAN CAPITAL TERRITORY—PETTIT REVIEW

2.12. The *Review of the Governance of the Australian Capital Territory* was prepared by a committee chaired by Professor Philip Pettit, at the request of the Minister for Regional Development, Territories and Local Government in 1998. The Review focussed on the operation of the legislature and the executive and the ability of the community to participate in the government and governance of the Territory.

[10] *Electoral Act 1992*, section 34.

[11] Mr M McRae, *Companion to the Standing Orders of the Legislative Assembly for the Australian Capital Territory*, Canberra, 2009, p 278.

2.13. The principal themes and recommendations of the Review include, however are not limited to, the following:[12]

- The constitutional system subordinates the ACT to the Commonwealth in a measure that does not fit well with the idea of a self governing territory;
- The electoral system more or less ensures against single-party majority government but this has not made government ineffective and in giving the Assembly a relative independence of the Executive, it provides protection against any danger of party dominance;
- The electoral system should be revised, first, to allow for four-year terms; second, to make it possible to maintain a modest ratio of representation established with self government in 1989 (about 1:10,000 electors); and third, consistent with having an odd number of seats in total, to try to keep the electorates geographically coherent and close to one another in number of seats.
- The number of Ministers in the Executive, including the Chief Minister, should be increased to 5 and it should be a general principle that no Department answers to more than one Minister.

2.14. Other recommendations included the inclusion of a preamble indicating that the Commonwealth and Governor-General should only disallow an enactment of the Assembly on the grounds that the legitimate interests of the Commonwealth require such an action. It also recommended that the Assembly have the same powers as State parliaments in respect of normal government processes.

AN ASSESSMENT OF THE PERFORMANCE OF THE THREE BRANCHES OF GOVERNMENT IN THE ACT AGAINST LATIMER HOUSE PRINCIPLES REPORT—THE HALLIGAN REPORT

2.15. In December 2008 the Assembly adopted, as a continuing resolution, the Latimer House Principles. Two years after the adoption of the principles the Speaker appointed Professor John Halligan, Professor of Public Administration, University of Canberra, to conduct an assessment of the implementation of the three arms of government on the ACT against the Latimer House Principles. The report, entitled *An Assessment of the Performance of the Three Branches of Government in the ACT against Latimer House Principles Report* was presented to the Speaker of the Legislative Assembly, by Professor Halligan, on 10 November 2011 and later tabled in the Legislative Assembly on 15 November 2011.

[12] Pettit, op cit, p 11.

2.16. The Halligan Report aimed to assess the ACT's performance against the Latimer House Principles, and identify areas for potential future amendment. The core Latimer House principle is that a jurisdiction's Parliaments, Executives and Judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchment of good governance based on the highest standards of honesty, probity and accountability.

2.17. The Halligan Report determined that the Legislative Assembly performs well against Latimer House Principles as a unicameral parliament for a small jurisdiction with wide responsibilities.

2.18. The Halligan Report argued that the Legislative Assembly needs to have its numbers substantially increased as soon as possible. The increased size and electoral arrangements should be the subject of an independent investigation that includes the Electoral Commissioner, with a major emphasis being governance capacity.

> There has been extensive discussion of this question during the short history of self-government with a series of reviews by the ACT and the Commonwealth recommending a larger Assembly. It is perhaps quite remarkable that despite the consistency in the recommendations ... nothing has transpired.[13]

2.19. Professor Halligan found that a ministry of only five confounds the basic tenets of effective cabinet government, and raises questions about whether the ACT should continue to operate this type of system without an increase in its size. Given the complexities of running both a city and a state government the span of Ministers' portfolio responsibilities is immense. The effectiveness of specific agencies that work closely with parliamentary committees was constrained by the resourcing available for timely action. There are also potential conflicts between the different portfolio responsibilities of Ministers (eg Chief Minister and Health; Treasurer and Education and Training), and constraints on proper debate where a Minister has both whole-of-government and line responsibilities.

2.20. Greater use of the committee system for the consideration of legislation was raised in the Halligan Report. It stated it is common practice in larger jurisdictions for all legislation to be referred to a portfolio-relevant committee. The automatic referral of legislation in the ACT would, given the small number of non-executive Members, seriously impede the progress of legislation through the Assembly. The Assembly does, however, have the capacity to refer legislation to committees.

2.21. The Latimer House Principles state that:

> Parliaments should have control of and authority to determine and secure their budgetary requirements unconstrained by the Executive, save for budgetary constraints dictated by national circumstances.[14]

[13] Halligan, op cit, p 21.

[14] Continuing Resolution of the Legislative Assembly of 11 December 2008, as amended 23 February 2012, *Endorsement of the Commonwealth (Latimer) House Principles on the Three Branches of Government*, p 83.

2.22. Subsequent to the tabling of the Halligan Report, the Assembly has passed the Legislative Assembly (Office of the Legislative Assembly) Act 2012 which establishes the Office of the Legislative Assembly as a separate entity with its own annual appropriation bill.

2.23. The Halligan Report concludes:

> ... the ACT remains in some respects a stunted system of governance that has been constrained by another level of government and lack of agreement on key strategic issues. The single most significant constraint on good governance in the ACT, apart from scale and resourcing relative to its responsibilities as a state and municipal entity, has been the *Australian Capital Territory (Self-Government) Act 1988*, which has imposed severe limitations on the autonomy and power of the jurisdiction. The right of a federal government, whether by legislation or Ministerial fiat, to veto territory laws has reduced the status of the ACT to that of a protectorate.[15]

GOVERNING THE CITY STATE: ONE ACT GOVERNMENT—ONE ACT PUBLIC SERVICE—THE HAWKE REVIEW

2.24. In September 2010, the then Chief Minister, Jon Stanhope MLA, commissioned a comprehensive review into the Australian Capital Territory Public Service. The aim of the review was to ensure the configuration of the ACT public sector remains appropriate for meeting the Government's needs. The report of the review entitled *Governing the City State: One ACT Government—One ACT Public Service* was undertaken by Dr Allan Hawke AC and was released in February 2011. Sections of the Hawke Review discussed matters relevant to the review of the operation of the Self-Government Act and suggested that the Self-Government Act be reformed and that the size of the Assembly and ministry be increased.

2.25. As stated previously the size of the ACT Executive is limited to the Chief Minister and up to four additional Ministers by section 41 of the Self-Government Act. The Hawke Review stated that while that number could be increased by enactment of the Assembly, in a chamber of 17 Members where minority government is the norm, increasing the size of the ministry is not practical given the need for Government Members to fulfil other parliamentary roles, including backbenchers participating fully and properly in the ongoing work of the Assembly and its committees.[16] The review went on to state that:

[15] Halligan, op cit, pp 20-21.

[16] Dr A Hawke AC, *Governing the City State: One ACT Government—One ACT Public Service,* Australian Capital Territory, 2011, p 31.

> A key challenge facing the ACT, which is ultimately hindering performance and capacity, is the breadth and volume of Ministerial responsibilities in a Cabinet of five spanning the uniquely broad range of functions with which the Government is charged. The ACT while geographically contained, is unique in that the Government is responsible for matters dealt with by state governments in other jurisdictions (e.g. health, education, justice) with a Chief Minister who is a member of the Council of Australian Government (COAG), as well as municipal functions that fall to local councils elsewhere.[17]

2.26. The Hawke Review went on to support its argument for a larger number of Members and Ministers by stating:

> In light of the importance of robust and accountable democratic processes in the ACT – characterised by high standards of parliamentary debate, a legislative program covering a range of complex issues, and an active Assembly Committee process – and the significant under-representation of the citizens of the ACT, there is an overwhelmingly sound case for increasing the size of the Assembly. This would enable Members to serve their constituents better, allow the Ministry to be expanded to seven thereby establishing a more reasonable spread of responsibilities, and enhance the capacity of the Legislature to scrutinise the activities of the Executive through a more active committee process.[18]

2.27. Dr Hawke AC suggested that it was beyond the scope of his review to determine what the number of Members of the Legislative Assembly should be, but stated that the Assembly should be empowered to determine its own size.[19]

2.28. The Hawke Review proposed that recommendations made in the 1998 Pettit Review remain just as relevant today. The Review suggested that "Reform of the Self-Government Act, while central to the ACT Government's operations, has for some time been at the periphery of the Commonwealth Government's interests and legislative priorities.".[20] The Review goes onto state that the "lead up to the Centenary of Canberra in 2013 provides a timely opportunity for the Self-Government Act to be reviewed, updated, and perhaps stripped of what might, despite their merits in the early years of self-government, now be considered anachronistic colonial type powers.".[21]

[17] Hawke, op cit, p 33.
[18] ibid.
[19] ibid, p 34.
[20] ibid.
[21] ibid.

3. SUMMARY OF SUBMISSIONS

PROFESSOR PHILIP PETTIT[22]

3.1. Professor Pettit's submission referred to his previous input into discussions on ACT self-government. Professor Pettit highlighted the use of citizens' assemblies for advice on particularly divisive matters and suggested a model similar to that of the British Columbia Citizens' Assembly that was formed in 2004.

NATIONAL CAPITAL AUTHORITY (NCA)[23]

3.2. The submission received from the NCA stated that it would not be appropriate to comment on matters outside direct statutory interests as it might create confusion about the official Australian Government position. The submission stated that it would be more appropriate for the Commonwealth Department of Regional Australia, Local Government, Arts and Sports to comment on behalf of the Australian Government.

PROFESSOR GEORGE WILLIAMS AO[24]

3.3. In both his submission and evidence given to the Committee at public hearing Professor Williams suggested that the Self-Government Act was in need of amendment as it imposed a number of major restrictions on the ACT system of government.

3.4. In his submission Professor Williams proposed that the current system is rigid and unresponsive to local opinion and needs. He stated that any changes to the Self-Government Act should be guided by several constitutional principles of self-government and went on to list those principles. Professor Williams' evidence suggested that the Act is extremely inflexible when it comes to things such as the size of the Assembly and went on to add that it is somewhat ambiguous when it comes to other matters such as the number of Ministers.[25]

3.5. Sections 8, 16, 23 and 41 were identified by Professor Williams as priorities for amendment. Such amendments would enable the Assembly to determine its own size and maximum number of Ministers. He stated that section 16, which deals with the power of the Governor-General to dissolve the Assembly, and section 23 which limits matters on which the Assembly can make laws, could be deleted from the Act as they were obsolete or inappropriate.

3.6. In his submission Professor Williams also proposed that changing the terminology associated with the Assembly and the Chief Minister was important, and should reflect State practice.

[22] Professor P Pettit, Submission No 1.
[23] National Capital Authority, Submission No 2.
[24] Professor G Williams AO, Submission No 3.
[25] Professor G Williams AO, *Transcript of evidence*, 12 April 2012, p 12.

3.7. In both his submission and evidence given to the Committee Professor Williams suggested that any amendments to the Self-Government Act should be driven by a local process, indicating that the ACT should hold a convention or like event, to consider its long-term governance arrangements. He believed that these were matters upon which the people of the ACT should have direct input.

ETHICS AND INTEGRITY ADVISER FOR MEMBERS OF THE LEGISLATIVE ASSEMBLY FOR THE ACT[26]

3.8. The submission received by the Ethics and Integrity Adviser, Mr Stephen Skehill, deals with section 15 of the Self-Government Act relating to conflict of interest. Section 15 provides that a Member of the Assembly who is a party to, or has a direct or indirect interest in, a contract made by or on behalf of the Territory or a Territory authority shall not take part in a discussion of a matter, or vote on a question, in a meeting of the Assembly where the matter or question relates directly or indirectly to that contract.

3.9. Mr Skehill's submission is dealt with in detail at paragraphs 4.34 to 4.40 of this report.

GREG CORNWELL AM[27]

3.10. In his submission Mr Cornwell, a former Member of the Legislative Assembly, suggested that the central issue of any review of the Self-Government Act was the compelling necessity to increase the size of the legislature. Mr Cornwell's submission outlined his reasoning for this opinion. He reiterated his views on this issue when giving evidence to the Committee. The number of electorates was also raised in both Mr Cornwell's submission and during the giving of evidence. Mr Cornwell also suggested that when the number of Members was determined it should be up to the Electoral Commission to determine the number of electorates and Members per electorate.[28] Mr Cornwell indicated that he believed the increase in the number of Members would strengthen the overall function of government, and the operation of committees.

AUSTRALIAN CAPITAL TERRITORY BAR ASSOCIATION[29]

3.11. The Association's submission outlined the need for the Committee to widen its terms of reference to include the *Australian Capital Territory (Planning and Land Management) Act 1988* and its relationship with the Canberra Plan. The submission also highlighted the distinction between "Territory" and "National" land which has the capacity to constrain the powers of the ACT Legislative Assembly in respect of the responsibility for the administration of Territory. The matter of 99 year leases was also raised as a matter for additional consideration.

[26] Ethics and Integrity Advisor to the Members of the Legislative Assembly for the ACT, Submission No 4.
[27] Mr G Cornwell, Submission No 5.
[28] Mr G Cornwell, *Transcript of evidence*, 11 May 2012, p 92.
[29] ACT Bar Association, Submission No 6.

PROFESSOR MIKE REYNOLDS AM[30]

3.12. Professor Reynolds' submission attempted to emphasise the relationship between the Assembly and the Executive and gave suggestions on what opportunities exist to further develop the democratic governance of the Territory. One of the main issues raised in Professor Reynolds' submission was the recommendation of increasing the size of the Assembly. In his submission he stated that the present membership of 17 inhibits necessary reforms taking place because of the limited capacity of the Assembly to implement such reforms. He reiterated his position when giving evidence to the Committee.[31] Professor Reynolds suggested that an independent review be conducted by the ACT Electoral Commission to determine the optimum number of Members and electoral divisions in the Territory.

3.13. In his submission, Professor Reynolds' also argued that the size of the Executive should be increased to build the capacity of the Assembly. It suggests that seven would be an appropriate number, but that the Executive should be able to determine the matter.

3.14. Finally, the submission stated that "There is a demonstrated need of integrity reform", and posed the establishment of a standalone ACT Integrity Commission as an option.

PROFESSOR ROGER WETTENHALL[32]

3.15. In his submission Professor Wettenhall considered the small size of the Legislative Assembly a constraint preventing the system from performing at a higher level against Latimer House Principles. He suggested that 25 Members would be more appropriate. The submission also raised the issue that more Members are needed to strengthen committee procedures and that serious consideration should be given to dividing the ACT into local government areas with conventional municipal councils.

3.16. Professor Wettenhall disagreed with the notion of changing the name of the Legislative Assembly to the "National Capital Legislative Assembly" as addressed in the Halligan Report. The submission however supports declaring select statutory office holders as "Officers of Parliament" to connect them more closely with the legislative rather than the executive branch.

3.17. The submission also made reference to the Hawke Review which observed that the ACT has over 180 boards and committees supported by the ACT Public Service, many of which have a statutory basis. Professor Wettenhall argued that this "outer public service" must be streamlined and better regulated to remove overlaps and inconsistencies.

[30] Professor M Reynolds, Submission No 7.
[31] Professor M Reynolds, *Transcript of evidence*, 11 May 2012, p 71.
[32] Professor R Wettenhall, Submission No 8.

ELECTIONS ACT[33]

3.18. The Commission made the following six recommendations:

- Section 26 of the Self-Government Act should be amended to define the term "a majority of the electors" to mean a majority of electors casting formal votes in a referendum.
- It would be appropriate to amend section 8 of the Self-Government Act to give the Assembly the power to set its own number of Members. This would bring the ACT Legislative Assembly into line with the Northern Territory Legislative Assembly.
- The existing requirement for compulsory enrolment for all persons eligible to vote, as set out in section 67B(c) of the Self-Government Act, should remain unchanged.
- Section 67B(d) of the Self-Government Act should be amended to provide that a redistribution of the Territory into electorates is to commence not later than 8 years after the previous redistribution.
- Section 67C of the Self-Government Act should be amended to provide that the qualifications of a person to be enrolled as an elector and to vote at an election shall be as provided by enactment.
- Legal advice should be sought on the inclusion in the Self-Government Act of a requirement that the Assembly is to be directly chosen by the people, and that each elector may only vote once in an election.

GUNGAHLIN COMMUNITY COUNCIL[34]

3.19. The submission strongly supported changing the electoral boundaries to recognise the growth and district specific needs of Gungahlin and suggested that the size of the Assembly should be increased.

3.20. The submission also proposed a redistribution of the Territory into five electorates with five Members each.

MR MICHAEL MOORE[35]

3.21. Mr Moore, a former Member of the Legislative Assembly, argued that steps should be taken to ensure that the people of the ACT have, as close as possible, the same rights and status as those who live within the States. He gave the example of ensuring that appropriate names and titles of officeholders in the Legislature and the Executive are applied as with other jurisdictions.

[33] Elections ACT, Submission No 9.
[34] Gungahlin Community Council, Submission No 10.
[35] Mr M Moore, Submission No 11.

3.22. It was proposed in the submission that the restrictions on law making regarding matters that are properly the business of an ACT Parliament should be removed; for example laws on euthanasia.

3.23. The submission supported the suggestion raised in the 1998 publication Pettit Review*;* that is, that the number of Members remain at a proportion of 1:10 000 voters, and that the boundaries should be drawn by Elections ACT although there should be a minimum of five Members per electorate.

CIVIL LIBERTIES AUSTRALIA[36]

3.24. Civil Liberties Australia asserted that the Australian Constitution should be changed to give people living in the Territory the same rights as those residing in States.

WODEN VALLEY COMMUNITY COUNCIL[37]

3.25. The submission supported amending sections 8 and 41 to enable the Assembly to determine its own size and the number of Ministers. The Woden Valley Community Council also suggested that it would be appropriate to increase the number of Members in the Legislative Assembly.

3.26. Regarding electorates, it was proposed that there should be five electorates each with five Members and that the boundaries of electorates be aligned with the towns of Canberra.

3.27. The submission supported the notion of holding a convention to enable citizens to consider long term governance arrangements for the Australian Capital Territory.

NORTH CANBERRA COMMUNITY COUNCIL[38]

3.28. North Canberra Community Council made the following recommendations:

- The number of MLAs should be increased according to the increase in Canberra population.
- There is a dysfunction in the Government branches operating in the ACT, all branches should operate with maximum cooperation avoiding waste and balancing their resources by solving their skill constraints.
- The report [Halligan Report] requires an additional study on the position of the community councils in the ACT Governance framework covering the communication process between the ACT Government and the community councils.
- The ACT Auditor-General and Ombudsman should become officers of parliament to increase the ACT Government integrity safeguard levels.

[36] Civil Liberties Australia, Submission No. 12
[37] Woden Valley Community Council, Submission No. 13
[38] North Canberra Community Council, Submission No 14

- To improve ACT governance integrity a Governance Integrity agency should be instituted in Canberra establishing formal coordination and links between designated integrity agencies.
- A ministry of only five is insufficient for effective cabinet government, and raises questions about whether the ACT should continue to operate this type of system without an increase in its size. Given the complexities of running both a city and a state Government the span of Ministers' portfolio responsibilities is immense. The current number of Ministers should be expanded to provide better governance.
- An independent Community Advocate legal position should be created to assist residential planning legal conflicts sent to the ACT Civil and Administrative Appeals Tribunal (ACAT).

THE ACT HUMAN RIGHTS COMMISSION[39]

3.29. In the view of the Human Rights Commission, and in the context of its role in relation to complaint handling, section 27 (Crown may be bound) creates some difficulty for the Commission regarding unlawful discrimination. In the example cited by the Commission, the Commonwealth Discrimination Act only covers sex, race, age and disability. The ACT *Discrimination Act 1991* protects ten additional attributes, including gender identity, industrial activity, relationship status, religious or political conviction, profession, trade occupation or calling. An ACT resident treated unfavourably under one of the additional attributes by a Commonwealth body would be unable to make a complaint of unlawful discrimination.

3.30. The Commission provided other examples relating to health, disability, community services and policing.

3.31. In its submission, the Commission proposed that "it would be more equitable for the Commonwealth to amend the Self-Government Act to submit all Commonwealth bodies operating in the Territory to the jurisdiction of ACT laws, including those dealing with complaints.". Several other alternative methods for resolving this anomaly were proposed.

THE ACT GOVERNMENT[40]

3.32. The ACT Government in its submission expressed the view that it considered it was time for the Self-Government Act to change to better reflect the maturity of the ACT as a self-governing jurisdiction. The submission included a summary table of changes to the Self-Government Act the Government would wish to see implemented.

3.33. The submission suggested including a Preamble into the Act to acknowledge the Territory's democratic self-determination and explicitly set out the Commonwealth's legitimate interests and powers in relation to the ACT. It should also acknowledge prior indigenous custodianship of the ACT land. The submission advised that the matter had been discussed with the ACT's Aboriginal and Torres Strait Islander Elected Body and the response had been supportive.

[39] ACT Human Rights, Submission No 15.
[40] ACT Government, Submission No 16.

3.34. The Government believes the power to determine the size of the Assembly and the Executive should be vested in the Assembly. Acknowledging the difficulties with the Assembly determining the appropriate size, the Government supports Professor Halligan's suggestion that the Electoral Commission should work with an independent investigation team to determine the appropriate size of the Assembly.

3.35. Mr Corbell, Attorney-General, in his evidence to the Committee spoke of the increased complexity of governance of the Territory from 1989:

> ... In 1989 there was no real, significant work or task of the executive when it came to water policy, energy policy or climate change policy. These are now significant elements of the Territory's administration and significant tasks for the executive to have to address.[41]

3.36. Section 27 (Crown may be bound) was raised as a section that the ACT Government proposed be updated given that the statute law base for the ACT had changed significantly since 1989 and to reflect modern practices in relation to binding the Crown through regulations. Mr Corbell in his evidence drew on the example of the management of waterways and suggested that this should be regularised and put in a single piece of ACT legislation rather than the Commonwealth's Lakes Ordinance and administered by the National Capital Authority.[42]

3.37. The Governor-General under section 16 possesses the power to dissolve the Assembly in certain circumstances. It is proposed by the ACT Government in its submission that similar to recent amendments to section 35 of the Northern Territory Self-Government Act, the ACT Executive should be consulted before making a decision to dissolve the Assembly.

3.38. The ACT Government was of the view that two matters should be removed from section 23 (Matters excluded from power to make laws), being censorship and euthanasia. It argued that it is a constraint on the legislative power of the ACT that does not apply to the States. The submission stated "... The people of the ACT should have no less capacity than those across the border in Queanbeyan, to seek that their members of parliament address the issue ...". The Government did not express a view on the two matters but argued that it was an unnecessary constraint on ACT policy choice – a constraint that does not exist in the States.

3.39. Other matters raised included section 9 being amended to include reference to the ACT *Oaths and Affirmations Act 1984*; subsection 14(1)(c) be clarified to better define what is considered a direct or indirect remuneration, allowance, honorarium or reward for services in the Assembly; section 25 be amended to reflect current practice under the *Legislation Act 2001*.

3.40. The submission noted that there is potential for improved harmonisation between planning regimes.

[41] Mr S Corbell MLA, *Transcript of evidence*, 12 April 2012, p 2.
[42] ibid, p 6.

WESTON CREEK COMMUNITY COUNCIL[43]

3.41. The Weston Creek Community Council (WCCC) suggested that the Self-Government Act be amended to reflect the distinction between local government functions and state government functions. One Minister could then be designated "Mayor of Canberra".

3.42. In its submission, the WCCC supported an increase in the number of Members in the Assembly and suggests that a referendum on the size of the increase be part of the October election. The submission acknowledged that there are a number of options for the exact size increase and was supportive of a five x five model, five electorates of five Members. It indicated that the five electorates could be based on the five regional town areas – Gungahlin, Belconnen, Woden, Tuggeranong and inner Canberra.

3.43. The size of the ministry was also discussed with the WCCC not supporting an increase.

ACT GREENS[44]

3.44. The ACT Greens stated that the Self-Government Act is in need of reform, and should be updated to reflect the mature democracy that the ACT has become. The underlying aim of the changes should be to achieve equality between residents of Canberra and other Australian cities. Parliament should be able to set its own size and should not have any additional limitations to its legislative powers than those imposed by the Australian constitution and the federal structure. There should be no regulation making or other discretionary powers given to the Commonwealth Executive. Section 74 together with a range of other discretionary powers should be removed as it is simply not appropriate to have the Commonwealth Executive determining anything about the government of the ACT.

3.45. The ACT Greens suggested changing the terminology associated with the Assembly and proposed that the term "Parliament" be used to properly reflect the separation of powers.

3.46. The size of the Assembly was discussed in the submission with support given to the concept of the Assembly being able to set its own size. The ACT Greens proposed that a formula should be developed, similar to Part III of the *Electoral Act 1918* (Cwlth) which would enable the size of the Assembly to be increased along with population growth.

3.47. Other matters raised in the submission include: inclusion of preamble; fixed four year terms should be set in the Act; inclusion of a reference that Members of Parliament be directly chosen by the people; oath or affirmation should be to the people, not to the Queen; remove section 15 in relation to conflict of interest as it is already covered in section 44 of the Commonwealth Constitution; amend section 16 so that if no Member in the Assembly has the support of the majority of the Assembly to be Chief Minister then automatically an election is called; and there should not be a discretionary power exercised by the Commonwealth executive.

[43] Weston Creek Community Council, Submission No 17.
[44] ACT Greens, Submission No 18.

3.48. The ACT Greens did not support the limitations in section 23 and have advocated that there should be no additional limitations on the Territory Parliament than exist for States. The powers in subsection (1) are covered by the Constitution, and thus unnecessary.

3.49. In addition, the submission proposed that section 37 and Schedule 4 should be replaced by an expanded section 36; section 36 should be amended to reflect section 61 of the Australian Constitution; section 47 should be deleted as it is unnecessary; and Section 48B should be deleted as it replicates section 72 of the Australian Constitution.

ACT LAW SOCIETY[45]

3.50. The ACT Law Society noted the recent reviews by Dr Allan Hawke AC and Professor Halligan and were generally supportive of the recommendations.

3.51. The Society was of the view that there did not appear to be an overwhelming need to increase the size of the Assembly and considered that resources could be better utilised elsewhere. It cited the unique composition and geographical size in comparison to other jurisdictions. The submission highlighted that increasing the size of the Assembly would result in increased financial costs of the Assembly and pose logistic issues.

3.52. Similarly, in relation to the number of Ministers, the Society indicated that an increase in the number of Ministers would be a more appropriate first step to increasing quality and efficiency rather than increasing the number of Members.

3.53. It is also proposed that section 16 (Dissolution of the Assembly by Governor-General) be deleted. In its discussion the Society believed that the section undermined the legitimacy of the Assembly.

3.54. In relation to other possible amendments, the Society proposed the following:

- inclusion of a preamble recognising the traditional owners of the land that the boundaries of the ACT cover;
- section 23 should be revisited, some limitations remain relevant, others may no longer be appropriate;
- the relationship between sections 37 and 43 should be clarified;
- schedules be updated to reflect legislation that has been amended or repealed. Policy decisions may be required in respect of some pieces of legislation to determine whether they should still be included in schedule;
- amend section 29(3) to lift the term on Crown leases to 999 years;

[45] ACT Law Society, Submission No 19.

3.55. The Society also proposed that section 29 of the *Australian Capital Territory (Planning and Land Management) Act 1988* should be clarified to specify how much power can be delegated by the Executive on behalf of the Commonwealth.

MR BILL STEFANIAK[46]

3.56. Mr Stefaniak, a former Member of the Legislative Assembly, submitted that the Self-Government Act should be amended to ensure that the ACT has maximum say about its own affairs.

3.57. In his submission, Mr Stefaniak expressed the view that the ACT needs to be able to legislate for such things as 999 year leases and to determine how many Members and how many Ministers there are in the Assembly. He proposed a 25 Member Assembly on the five x five model with an increase of Ministers to six. His rationale is that this would allow a party gaining a majority to run with six Ministers and sufficient backbenchers to adequately support the committee system.

DEPARTMENT OF REGIONAL AUSTRALIA, LOCAL GOVERNMENT, ARTS AND SPORTS[47]

3.58. The Department noted that any changes to Self-Government in the ACT must take into account the outcomes of broad consultation and consensus across the community.

3.59. In its submission the Department recognised the political maturity and stability that the ACT Legislative Assembly has achieved over this period and considered that the current provisions of the Act have served both governments well and the ACT has prospered. The Department also considered that the self-government framework in place for the future should provide for the Commonwealth to retain its involvement in the National Capital and for the ACT Government to ensure a strong future for its citizens.

3.60. In acknowledging that it was likely that a proposal would come forward to increase the size of the Assembly, the Department indicated that it expected any such proposal to change the size of the Assembly or the process by which it can be altered would need to be considered by the Australian Government at the conclusion of the review.

3.61. Recognising that the ACT Government had proposed to add a preamble to the Act, the Department advised that any such preamble would need to be considered by the Australian Government at the conclusion of the Review. Any preamble that might limit the Commonwealth's powers would not be acceptable to the Australian Government.

[46] Mr B Stefaniak, Submission No 20.
[47] Department of Regional Australia, Regional Development and Local Government (Cwlth), Submission No 21.

3.62. The submission also noted that if amendments proposed are adopted by the Australian Government, it may be appropriate for technical amendments to be made at the same time in order to remove technical provisions now superseded.

DR NICK SEDDON[48]

3.63. Dr Seddon, in his capacity as Special Counsel, Ashurt Australia, provided the review with a list of regulations contained in Schedule 4 of the Self-Government Act and indicated those regulations on the list that were no longer in force and should therefore be deleted from the Schedule.

AUSTRALIAN REPUBLICAN MOVEMENT (ACT BRANCH)[49]

3.64. The submission from the Australian Republican Movement (ACT Branch) focused on the need to update the ACT Coat of Arms, the ACT motto "For the Queen, the Law and the People", and the ACT Flag.

WOMEN FOR AN AUSTRALIAN REPUBLIC

3.65. Women for an Australian Republic raised the issue of what they perceived was the irrelevance of the ACT Coat of Arms.

[48] Dr N Seddon, Submission No 22.
[49] Australian Republic Movement, Submission No 23.

4. THE SELF-GOVERNMENT ACT

PREAMBLE

4.1. A preamble is an introduction to a law. It should reflect the intentions of the law and explain the reason, purpose or object of the Act. The preamble is not binding but can be used to interpret the law that it relates to. The suggestion of a preamble to the Self-Government Act was raised by Philip Pettit in his review of governance of the ACT undertaken in 1998.[50] In his report, Pettit recommended that:

> The Self-Government Act should contain a preamble, indicating that if the Commonwealth Parliament intervenes in Assembly business, or if the Governor-General chooses to disallow an enactment of the Assembly, then that should be on the grounds that the legitimate interests of the Commonwealth require such action.[51]

4.2. In making this recommendation Professor Pettit was suggesting that any preamble should include a statement which outlined that the Commonwealth should only enforce their powers under section 35 of the Act if it relates directly to the city of Canberra, not just because the Government of the day does not agree with a certain enactment.

4.3. The powers held by the Commonwealth under section 35 of the Self-Government Act are no longer relevant as this section was repealed in 2011 by the *Territories Self-Government Legislation Amendment (Disallowance and Amendment of Laws) Act 2011* (Cwlth). However, the Pettit report recommendation is still relevant in relation to section 16 of the Self-Government Act by suggesting that any preamble should include a statement which outlined that the Commonwealth should only enforce its powers if it relates directly to the city of Canberra, not just because the Government of the day does not agree with business of the Assembly.

4.4. Several submissions to the Committee's inquiry also raised the possibility of including a preamble in the Self-Government Act. The issue was also raised during the Committee's public hearings. The ACT Government's submission recommended that a preamble be incorporated into the Act and stated that the preamble should "outline the principle of the Territory's democratic self-determination and explicitly set out the Commonwealth's legitimate interests and powers in relation to the ACT.".[52] The ACT Government's submission also included that a preamble should reflect that "the people of the ACT give the Assembly its political mandate to govern the Territory".[53] Evidence given by the Attorney-General, Mr Simon Corbell MLA, confirmed the Government's view on this matter.[54] The submission went on to indicate that, as many of the ACT's institutions of governance had significantly matured since the beginning

[50] Pettit, op cit, p 35.
[51] ibid.
[52] ACT Government, op cit, p 2.
[53] ibid.
[54] Corbell, op cit, p 5.

of self-government, a preamble should be used as an opportunity to clearly recognise this growth.[55]

4.5. The issue of a preamble acknowledging or recognising the traditional custodians of the land was also raised in several submissions, with the ACT Greens,[56] the ACT Law Society[57] and the ACT Government[58] indicating they would support such an acknowledgement/recognition. The ACT Government's submission went on to state that "Construction of the preamble should be carefully worded and have close regard to the current process for considering a similar preamble for the Australian Constitution.".[59] The submission indicated that the suggestion had been raised with the ACT's Aboriginal and Torres Strait Islander Elected Body which has responded positively. Evidence given by Meredith Hunter MLA also suggested that consultation with the Indigenous community would be required if such a matter was to be addressed in a preamble.[60] Dr Allan Hawke AC also supported the inclusion of a preamble into the Self-Government Act.[61]

4.6. In its submission to the inquiry the Commonwealth's Department of Regional Australia, Local Government, Arts and Sport noted that the ACT Government had indicated a desire to include a preamble in the Act. It went on to note that any recognition of the traditional owners in a preamble would need to be considered by the Australian Government at the conclusion of the review. The Department stated that it had previously advised the ACT Government that any preamble that might limit the Commonwealth's powers would not be acceptable to the Australian Government.[62]

4.7. The Committee is of the view that a preamble should be included in the Self-Government Act to clearly describe the purpose of the legislation and the Commonwealth's interests and powers in relation to the Act. The Committee also believes it would be appropriate for a formal recognition of the traditional custodians to be included in the preamble, and therefore makes the following recommendation.

RECOMMENDATION 1

4.8. The Committee recommends that a preamble be included in the Self-Government Act which outlines the Act's purpose and includes:

- the Commonwealth's legitimate interests and powers in relation to the ACT; and
- a formal recognition of the traditional custodians of the land, after consultation with the local Indigenous community.

[55] ACT Government, op cit, pp 2-3.
[56] ACT Greens, op cit, p 2.
[57] ACT Law Society, op cit, p 3.
[58] ACT Government, op cit, p 3.
[59] ibid, p 3.
[60] Ms M Hunter MLA, *Transcript of evidence*, 12 April 2012, p 41.
[61] Dr A Hawke AC, *Transcript of evidence*, 12 April 2012, p 32.
[62] Department of Regional Australia, Local Government, Arts and Sport (Cwlth), op cit, p 3.

PART I- PRELIMINARY

SECTIONS 1 TO 6

4.9. Part I of the Act contains clauses that deal with matters relating to the short title and commencement of the Act.[63] Section 3 of this part also defines certain terms used in the Act.[64] This part also deals with the meaning of election day and the day on which the election result is declared.[65] The final matter covered in Part I relates to the powers of the Assembly and what they include.[66]

4.10. These sections of the Self-Government Act were not raised during the inquiry and the Committee has no comment on them.

PART II- AUSTRALIAN CAPITAL TERRITORY

SECTION 7—ESTABLISHMENT OF BODY POLITIC

4.11. Part II of the Self-Government Act establishes the Australian Capital Territory as a body politic under the Crown.[67]

4.12. This section of the Self-Government Act was not raised during the inquiry and the Committee has no comment on it.

PART III-LEGISLATIVE ASSEMBLY

SECTION 8—SIZE OF THE LEGISLATIVE ASSEMBLY

4.13. Section 8 of the Self-Government Act states that:

(1) There shall be a Legislative Assembly for the Australian Capital Territory.

(2) Subject to subsection (3), the Assembly shall consist of 17 members.

(3) The regulations may fix a different number of members for the purpose of subsection (2), but regulations shall not be made for that purpose except in accordance with a resolution passed by the Assembly.

4.14. Although the section allows for regulations to amend the number of Members, the Assembly has never passed a resolution to alter the number of Members.

[63] Self-Government Act, sections 1 and 2.
[64] ibid.
[65] ibid, sections 4 and 5.
[66] ibid, section 6.
[67] ibid, section 7.

4.15. The majority of the submissions to the inquiry that canvassed the issue of the size of the Assembly suggested that the current number of Members of the Assembly was inadequate. This issue also dominated the public hearings that were held as part of the inquiry.

4.16. The ability to change the size of the Assembly was also commented on in submissions. As stated by Professor Wettenhall:

> The actual size of the Assembly is set by Commonwealth legislation (in the Self-Government Act), so the Commonwealth will need to be persuaded of the merits of any firm proposal to increase the size. There is no such limitation on the sphere of action of a state or the Northern Territory. Here we see that the ACT enjoys a more limited form of self government than do its 'partners' at the sub-national level of Australian government.[68]

4.17. The ACT Electoral Commission also noted that the ACT had been treated differently to all other jurisdictions in Australia. The submission noted:

> By contrast, every Australian State parliament has the power to change its number of Members by enactment (with New South Wales and Victoria also requiring approval of electors at a referendum in respect of the NSW Legislative Council and both houses of the Victorian parliament). The Northern Territory parliament can alter its number of Members in accordance with section 13(2) of the *Northern Territory (Self-Government) Act 1978* (Cwlth), which provides that "The Legislative Assembly shall consist of such number of Members as is provided by enactment."
>
> The ACT is the only Australian parliament that cannot set its own number of Members (subject in two cases to a referendum as described above), and the only Australian parliament that requires the approval of the federal Government and the federal Parliament to alter its number of Members.
>
> The Commission recommends that it would be appropriate to amend section 8 of the Self-Government Act to give the Assembly the power to set its own number of Members, to bring the ACT Legislative Assembly into line with the Northern Territory Legislative Assembly.
>
> The Commission notes that, should this power be given to the ACT Legislative Assembly, it would be entrenched under the Proportional Representation (Hare Clark) Entrenchment Act. This would effectively require this power to be exercised with multi-party support, given the requirement for a 2/3 Assembly majority if the Assembly was to set its own number of Members without resorting to a referendum. [69]

4.18. In another submission to the inquiry, Professor George Williams AO, for the University of New South Wales, suggested that the Self-Government Act could be usefully improved in a "modest" way by amending section 8 to allow the Assembly to determine its own size.[70] He pointed out that these types of amendments should be guided by the following constitutional principles of self-government:

[68] Wettenhall, op cit, p 2.
[69] ACT Electoral Commission, op cit, p 15.
[70] Williams, op cit, p 2.

- The Act should establish a system of self-government for the ACT.
- The system should be self-governing in the sense that it provides for local representation in the body empowered to make laws generally for the community.
- The system would be also self-governing in that it enables the local community directly or via their representatives to set and change the terms of self government (a community cannot be said to be self-governing in this regard if a rigid system is imposed upon them).
- People living in the ACT should have the same democratic rights, entitlements and responsibilities as other Australians.[71]

4.19. Professor Williams AO noted that the ACT Self-Government Act fares poorly against these principles.[72]

4.20. The Committee notes that in 1993 the Commonwealth Government attempted to allow the Assembly to determine its own size. In the Arts, Environment and Territories Legislation Amendment Bill 1993, the then Government introduced the following proposed amendment to the Self-Government Act:

> Subsections 8 (2) and (3):
>
> Omit the subsections, substitute:
>
> "(2) The Assembly consists of:
>
> (a) 17 members; or
>
> (b) If an enactment provides for a different number of members—that number of members."

4.21. The explanatory statement to the Bill indicated that:

> The main purpose of the Arts, Environment and Territories Legislative Amendment Bill 1993 is to make various minor improvements to the ACT self-government legislation, which are the result of a review of the legislation conducted by the ACT administration and my department in 1992, three years after self-government. Possible more important changes are being examined and would be included in a separate Bill at a later date.
>
> The Bill removes from the *Australian Capital Territory (Self-Government) Act 1988* limitations on the powers of the Legislative Assembly and the executive of the Territory that are no longer considered appropriate. For example, the assembly will be given power to decide the number of its members; how frequently it will meet; how laws passed by it will be notified to the public; and the level of remuneration of its members and the Ministers and senior officers of the ACT Government. This brings the ACT's degree of self-government closer to that of the Northern Territory.[73]

4.22. In debating the Bill, the Minister representing the Minister for the Environment, Sport and Territories, Senator Schacht, argued that:

[71] Williams, op cit, p 1.
[72] ibid.
[73] Senate Debates (27.05.93), p 1420.

> The government believes it would be very odd to say that the ACT assembly should not have the powers that are possessed by every other federal and state government and the other territory government of Australia—that is, the Northern Territory government. I refer to the absolute power of those governments to decide their own numbers.[74]

4.23. Later he stated:

> In the ACT, the 17 members represent individually a much larger proportion per elected member than is the case in the Northern Territory assembly. Therefore, it is very odd to say the ACT government representatives, 'After two elections and having established self-government, we still cannot trust you to make a decision about the members of parliament that you wish to have.[75]

4.24. However, the amendments proposed by the government were not accepted by the Senate. The then Opposition argued that:

> That simply is that the Liberal and National parties do not think that the current ACT assembly should be left in a position where it can determine what numbers of the assembly it will be. It was for this reason that I foreshadowed—and will move— the amendment that the determination of how many members there should be in the ACT assembly is one which, as at present, remains with this parliament, if there is to be any difference in the number of members—that is, 17 members—of the ACT Legislative Assembly, the ACT government would have to convince the government, convince the lower house of this parliament and convince this chamber that there was a need to alter that from the current number of 17 to some other number. I indicated in my speech on the second reading debate that if a good case was made to this parliament and, certainly, to the Liberal and National parties for amending that number of 17, we would not object, we would be objective about it and we would consider the matter on its merits and so determine it, but we did not think that the ACT assembly should have the power.[76]

4.25. The Committee considers that, after more than 23 years of self governance, the Australian Capital Territory should be able to set the size of its legislature in the same terms as the other States and Territories in the Australian system of government. The Committee agrees with the view of the then Minister for Territories in 1993, that "it is very odd" for the ACT not to have the power that is possessed by the Federal Government and State and Territory governments of Australia.

RECOMMENDATION 2

4.26. The Committee recommends, noting the requirements of the *Proportional Representation (Hare-Clark) Entrenchment Act 1994* regarding a special majority, that section 8 of the Self-Government Act be amended to give the Legislative Assembly the power to determine the number of its Members, so as to have similar powers as the Federal Parliament and the State and Territory Parliaments.

[74] Senate Debates (6.9.93), p 977.
[75] ibid, p 977.
[76] ibid, p 976.

4.27. In the event that the Self-Government Act is amended along the lines suggested by the Committee it would then be up to a future Assembly to determine an appropriate size. A number of submissions and persons appearing before the Committee have made suggestions about what an appropriate size might be, with most indicating that 25 Members are necessary to ensure that they Assembly can adequately fulfil the roles allocated to it (eg a ministry, shadow ministry, committees, etc).

4.28. The Committee makes no comment on what is an appropriate size. It does note that, in a comparison to teachers, medical practitioners, nurses, judicial officers and elected representatives on a per capita basis, that there is a significant difference between the ACT and other jurisdictions, as noted by the following table:

KEY PROFESSIONS FOR EACH AUSTRALIAN JURISDICTION (PER 100 000 PEOPLE)[77]

	NSW	VIC	QLD	WA	SA	TAS	ACT	NT
Employed nurses—2009	1 091	1 267	1 133	1 094	1 595	1 389	1 268	1 954
Employed medical practitioners—2009	309	333	335	337	354	366	474	443
Elected representatives—2012	24	14.4	15.3	59.7	43.4	66.9	5.8	79.2
Primary/secondary teachers—2010	1 455	1 544	1 502	1 663	1 564	1 722	1 637	2 257
Judicial officers—2010-2011	3.6	4.5	3.3	5.5	4.6	4.0	3.8	10.9

[77] Productivity Commission, *Report on Government Services 2012*, Australian Government, Canberra, 2012. Figures on elected representatives were compiled by the Committee research staff.

4.29. Should a future Assembly have the power to determine its size, there are a number of options it could take. It could make use of citizens' assemblies for advice, as pointed out by Professor Pettit's submission.[78] It could also follow the practice of the Federal Parliament; with the mechanism set out in Part III of *the Commonwealth Electoral Act 1918* that sets out specific formula for the electoral commission to expand the number of elected representatives as the population grows. Another path that could be taken is for the various parties/independents that make up a future Assembly to make the judgement that an increase is warranted based on; (as stated by the Canberra Business Council)

> ...virtually every credible inquiry or report that has been written on the [size of the Assembly] has recommended an increase in the size of the Assembly[79]

4.30. Having come to that judgement, and recognising that any such decision will need a two thirds majority of the Assembly to have it passed (see *Proportional Representation (Hare Clark) Entrenchment Act 1994*), the Assembly could legislate to alter the size.

4.31. The Committee is well aware that any decision to alter the size of the Assembly will attract significant community and media attention. It notes the view of one of the organisations that appeared before it, where it was stated:

> There is always going to be a political risk when you are trying to increase the size of a legislature like the Legislative Assembly. Obviously, leadership is required. It would be nice if there were some external body and some formula that you could apply automatically so that the size of the Assembly increased as the population increased or whatever. Unfortunately, that is not the case. It will be a hard ask; we are not denying that at all. But at the end of the day this is about good governance.[80]

SECTIONS 9 TO 14

4.32. These sections provide detail regarding the swearing in of Members, the appointment of the presiding officer, and the resignation and disqualification of Members.

4.33. These sections of the Self-Government Act were not raised during the inquiry and the Committee has no comment on it.

SECTION 15—CONFLICT OF INTEREST

4.34. Section 15 of the Self-Government Act provides that where a Member who is a party to, or has a direct or indirect interest in, a contract made by or on behalf of the Territory or a Territory authority shall not take part in a discussion of a matter, or vote on a question, in a meeting of the Assembly where the matter or question relates directly or indirectly to that contract. The Act goes on to state that a question concerning the application of this provision shall be decided by the Assembly and any contravention of the provision does not invalidate anything done by the Assembly.

4.35. Standing order 156 of the Assembly deals with conflict of interest in effectively the same terms as outlined in section 15 of the Act by providing that:

[78] Professor P Pettit, Submission No 1, p 1.
[79] Canberra Business Council, *Transcript of Evidence*, 11 May 2012, p 102
[80] ibid, p 101.

> A Member who is a party to, or has a direct or indirect interest in, a contract made by or on behalf of the Territory or a Territory authority shall not take part in a discussion of a matter, or vote on a question, in a meeting of the Assembly where the matter or question relates directly or indirectly to that contract. Any question concerning the application of this standing order shall be decided by the Assembly.

4.36. There have been several occasions in the Legislative Assembly where Members' rights to propose matters or participate in deliberations have been challenged on the grounds of conflict of interest. One of those occasions occurred on 25 March 2010 when a motion, proposing that the Standing Committee on Public Accounts inquire into the ACT Gambling and Racing Commission's report relating to the proposed sale of the Canberra Labor Club Group, was called on.[81] A motion was then moved seeking to exclude two Ministers from the debate on the basis that they had staff who were members of the executive committee of the Australian Labor Party in the ACT, which was the subject of the inquiry and the motion to be dealt with by the Assembly. After some debate the motion to exclude the Ministers was adjourned. Later in the day a further motion was agreed to by the Assembly which called on the Speaker to:

> (1) obtain advice from the Ethics and Integrity Adviser as to:
>
> (a) the scope of standing order 156;
>
> (b) the existence, or extent, of any conflicts of interest that may arise for Members in relation to the activities of Members' staff; and
>
> (c) any conflicts of interest that may arise as a result of Members' interests, direct or indirect, in any licence, payment, contract, lease or other transaction issued under Territory law; and
>
> (2) provide the Assembly with a copy of the advice received.[82]

4.37. The advice received from the Ethics and Integrity Adviser, Stephen Skehill, was presented to the Assembly by the Speaker on 6 May 2010.[83] In that advice Mr Skehill stated that standing order 156 was effectively the same as section 15 of the Self-Government Act and that even if standing order 156 was revoked, Members would still be bound by section 15. He went on to state that "(a)ccordingly, in the balance of this advice, I refer for simplicity of expression to section 15 rather than standing order 156.".[84]

4.38. In his advice Mr Skehill stated that section 15 of the Self-Government Act had no equivalent in the Commonwealth Parliament or, as far as he was able to ascertain, in Australian States. He outlined provisions contained in both the Australian Constitution and the standing orders of the Senate and the House of Representatives concerning the limitations placed on Members and Senators when participating in parliamentary debate in relation to conflict of interest. The advice stated that:

[81] MoP 2008-12/664.
[82] ibid, p 668.
[83] ibid, p 699.
[84] Ethics and Integrity Adviser, op cit, p 3.

> ... the standing orders of the House of Representatives and of the Senate respectively provide only that a Member must declare certain interests on a register or that a Senator with a conflict of interest may not sit as a member of a committee in relation to an inquiry being conducted ... Members and Senators with interest in some contracts with the Commonwealth may still participate in parliamentary discussion and vote on matters where, on the face of section 15, Assembly Members cannot.[85]

4.39. Mr Skehill went on to state that:

> ... section 15 contains in its terms no limitation on the range of contracts with the Territory to which it applies, whereas the provisions in the Northern Territory and Norfolk Island apply only to contracts "under which goods or services are to be supplied to the Territory".
>
> As a result, in section 15 the Commonwealth has imposed limitations on Assembly Members that are over and above not only those to which Members and Senators [of the Commonwealth Parliament] are subject but also beyond those to which members of the parliaments of other Territories are subject.[86]

4.40. The Committee considers that the current wording of section 15 of the Self-Government Act creates uncertainty for the legislature in relation to conflict of interest, as outlined by the Ethics and Integrity Adviser in his advice, and believes it would be appropriate to clarify the wording in section 15 to bring it more into line with provisions contained in statutes and standing orders of other Australian jurisdictions.

RECOMMENDATION 3

4.41. The Committee recommends that subsection 15(1) of the Self-Government Act be amended as follows to remove certain limitations placed on Members of the Legislative Assembly and to make the provisions contained in subsection 15(1) less ambiguous:

> 15 Conflict of interest
>
> (1) A Member of the Assembly who is party to, or has a direct or indirect interest in, a contract made by or on behalf of the Territory or a Territory authority under which goods or services are to be supplied by the Territory or Territory authority shall not take part in a discussion of a matter or vote on a question, in a meeting of the Assembly where the matter or question relates directly or indirectly to that contract.

SECTION 16—DISSOLUTION OF ASSEMBLY BY GOVERNOR-GENERAL

4.42. Section 16 allows the Governor-General to dissolve the Assembly if he or she believes the Assembly is incapable of performing effectively or conducts its affairs in a grossly improper manner. The ACT Government submission suggested that section 16 be amended to require the Governor-General to consult with the ACT Executive before making a decision.

[85] Ethics and Integrity Adviser, op cit, p 4.
[86] ibid.

4.43. The Committee acknowledges that consultation with both the ACT and Commonwealth Executive would be the preferred practice prior to the Assembly being dissolved. Legal advice provided to the Clerk by the Solicitor-General indicated that whilst the convention is that the Governor-General acts on the advice of the Executive Council (Commonwealth Ministers) and whilst a Governor-General can (and should) continue to act in accordance with that convention, a specific requirement for the Governor-General to also consult with the ACT Executive is possible.[87]

4.44. If section 16 were amended or deleted, the Assembly could still be dissolved by an Act of the Commonwealth Parliament, or suspension of, the Self-Government Act.

RECOMMENDATION 4

4.45. The Committee recommends that subsection 16(1) be amended by inserting after "Governor-General" (second occurring) "on the advice of the ACT Executive".

SECTIONS 17 TO 22

4.46. These sections provide for meetings of the Assembly protocol including the requirement that minutes are kept, standing orders can be made and details the protocols to be followed for a vote of no confidence in the Chief Minister to succeed. Section 22 grants law making power to the Assembly for the peace, order and good government of the Territory.

4.47. This section of the Self-Government Act was not raised during the inquiry and the Committee has no comment on it.

SECTION 23—MATTERS EXCLUDED FROM POWER TO MAKE LAWS

4.48. Section 23 provides a list of matters that the ACT Legislative Assembly is prohibited from making laws in respect to. These include matters that remain the domain of the Commonwealth such as the raising or maintaining of any naval, military or air force and the coining of money. A number of submissions suggested that the list includes matters that the ACT is now capable of managing such as censorship and the provision of police services.

4.49. Submissions suggested that section 23 be amended to remove part, or all, of the limitations in recognition of the Assembly being an independent self-governing body. This would mean that the Assembly would be able to legislate however it wished in relation to all (or certain matters, for example copyright was one specific deletion requested) whilst in accordance with the Commonwealth of Australia Constitution Act.

4.50. The Committee considers that the ACT Government has demonstrated its maturity in respect to law making over the 23 years of self-government. As a result, the ACT should have equal law making powers to that of the States. This principle of equality with the States dictates that both subsections (1A) and (1B) should be removed.

[87] *Advice to the Clerk of the Legislative Assembly*, received from the Solicitor-General, dated 7 August 2012.

4.51. The Committee appreciates the sensitivities associated with the broad approach and would consider it appropriate for this section to be reframed in light of the principle of law making equality. A measure could include removing particular subsections, or inserting a test that provides for the ACT Legislative Assembly to only legislate in the best interests and good governance of the people of the Territory.

RECOMMENDATION 5

4.52. A majority of the Committee recommends that subsections 23(1A) and 23(1B) be removed.

4.53. One Member has made additional comments on this recommendation and this is shown at Appendix B.

4.54. The Committee notes that a number of sections in the Self-Government Act are mirrored in the Constitution and would appear, at face value, to be a duplication. The Committee, through the Clerk of the Assembly, sought legal advice from the ACT Solicitor-General on what would be the legal effect of removing section 23 in its entirety. The Solicitor-General noted that:

> Should sections 23(1)(a) to (g) be removed from the Self-Government Act, any territory law that may be enacted in the area covered by these exclusions would be susceptible to being overridden by an inconsistent Commonwealth law. In the absence of a clear policy intention that the Assembly should be authorised to enact such territory laws, and in the absence of any clear understanding with the Commonwealth to that effect, the wholesale removal of section 23 from the Self-Government Act may be fruitless.[88]

4.55. However, the ACT Government in its submission pointed to an issue with paragraph 23(1)(g). It stated:

> However, some exceptions – specifically the exemption of the power for the ACT to make a law for the classification of materials for the purposes of censorship – create an unnecessary distinction between the ACT and the other States and Territories. This exemption should be removed. The people of the ACT should have no less capacity than those across the border in Queanbeyan, to seek that their members of parliament address the issue of classification. Today, the exception also may be used by those wishing to launch legal attacks on legislation considered and debated in the Assembly. The ACT should not suffer the burden of an increased risk of litigation by those disaffected by the legislative process.[89]

4.56. The Committee agrees with the Government's approach to this issue.

RECOMMENDATION 6

4.57. The Committee recommends that paragraph 23(1)(g) be removed and that Schedule 4 be amended to remove the exemption to censorship powers.

[88] Solicitor-General, op cit, p 3.
[89] ACT Government, op cit, p 6.

SECTION 24—POWERS, PRIVILEGES AND IMMUNITIES OF ASSEMBLY

4.58. Section 24 of the Self-Government Act gives the Assembly the power to make laws in respect of powers, privileges and immunities of Assembly Members. This section of the Self-Government Act was not raised during the inquiry and the Committee has no comment on it.

SECTION 25—NOTIFICATION OF ENACTMENT

4.59. Section 25 requires that when a law is passed or notified in the Assembly, it must be published.

4.60. This section appears outdated with reference to the *Territory Gazette*. Given that sections 18 and 19 of the *Legislation Act 2001* require that an ACT legislation register be established, and contains all Acts and notifiable instruments it would appear that this meets the requirement of section 25.

RECOMMENDATION 7

4.61. The Committee recommends that section 25 be amended to reflect the ACT Legislation Register operating as the *Territory Gazette*.

SECTION 26—SPECIAL PROCEDURES FOR MAKING CERTAIN ENACTMENTS

4.62. Section 26 proscribes the protocols for the Assembly to entrench a law. This section of the Self-Government Act was not raised during the inquiry and the Committee has no comment on it.

SECTION 27—CROWN MAY BE BOUND

4.63. Section 27 provides that the Crown is not bound by an ACT law unless the Commonwealth makes a regulation specifically binding the Crown in respect of that law.

4.64. Section 27 was identified in several submissions as a section failing to meet its intended operational purpose. The section relies upon the Commonwealth updating its regulations every time an ACT law changes or repeals the obligations of the Commonwealth, or Commonwealth officers. This has not worked in practice and a new mechanism needs to be considered, this was supported by legal advice received from the Solicitor-General.[90]

4.65. This was raised by a number of submissions. The Human Rights Commission noted that it has received advice that complaints may be possible against Commonwealth statutory authorities, created by legislation, but not against Commonwealth Departments operating under “the Crown”.

[90] Solicitor-General, op cit.

RECOMMENDATION 8

4.66. The Committee recommends that section 27 be replaced with a test that ACT laws bind the Crown unless Commonwealth law has restricted such application. This would change the burden to positive Commonwealth action.

SECTIONS 28 TO 34

4.67. These sections are procedural in nature and relate to the correct application of laws and enactment of bills passed through the Assembly.

4.68. These sections of the Self-Government Act were not raised during the inquiry and the Committee has no comment on them.

PART V – THE EXECUTIVE

SECTIONS 36 TO 48

4.69. Sections 36 to 48 detail the role and responsibilities of the Executive.

4.70. This part of the Self-Government Act was not raised during the inquiry and the Committee has no comment on it.

PART VA – THE JUDICIARY

SECTIONS 48A TO 48D

4.71. This part of the Act was inserted in 1992 following the enactment of the *ACT Supreme Court (Transfer) Act 1992* (Cwlth), as amended by the *Supreme Court Amendment Act 2001* (Cwlth) and associated legislation.

4.72. This part sets out the jurisdiction and powers for the Supreme Court, makes provision for the retirement ages of the Chief Justice, Judges and the Master of the Supreme Court and makes provision for the removal from office of a judicial officer. It entrenches in the Supreme Court all original and appellate jurisdiction that is necessary for the administration of justice in the Territory.[91] Amendments in 2001 established the Australian Capital Territory Court of Appeal and removed the jurisdiction of the Federal Court in relation to appeals from the ACT Supreme Court.

4.73. The ACT Law Society, in its submission proposed amendments relating to the removal of a judicial officer.[92] The Committee was of the view that no amendment to the Self-Government Act was required and that the process should be reconsidered within the scope of the *Judicial Commissions Act 1994.*

4.74. None of the submissions or witnesses to the inquiry proposed any amendments to this Part.

[91] McRae, op cit, paragraph 1.54.
[92] ACT Law Society, op cit.

PART VII – FINANCE

SECTIONS 57 TO 65

4.75. The Self-Government Act gives, through this Part, the ACT the capacity to raise revenue similar to that of the States and the Northern Territory. Key aspects are:

- section 57 (Public Money) provides that money raised through revenues, loans and other money – public money is available for the expenditure of the Territory
- section 58 (withdrawals of public money) provides that no public money shall be issued or spent other than by enactment; and
- section 65 (proposal for money votes) relates to the "financial initiative of the Crown" and stipulates that only a Minister can propose the appropriation of money and the only amendment that can be made by non-executive Members is to reduce expenditure.

4.76. While section 65 has received considerable attention, particularly in relation to appropriation bills and budget debates, none of the submissions or witnesses to the inquiry proposed any amendments to this Part.

PART VIII – ELECTIONS TO THE ASSEMBLY

SECTIONS 66 TO 67D

4.77. This part deals with the election of Members to the Assembly. It leaves most of the details for the processes for general elections and qualifications of candidates and electors for determination by enactment. This was done with the passage in the Assembly of the *Electoral Act 1992*.

4.78. There has been considerable discussion within the Assembly and the community regarding a proposal to reduce the voting age from 18 to 16 or 17. An inquiry by the Standing Committee on Education, Training and Young People in September 2007 into the eligible voting age proposed that non-compulsory enrolment for electors under 18 be considered however the operation of subsection 67B(c) would make that impossible. Should there be a change in this view, no amendment to the Self-Government Act would be required, rather an amendment to the Commonwealth Electoral Act dealing with the eligibility to be on the roll of electors would need to be made. The ACT Electoral Commission, in its submission, did not support a change to the voting age.

4.79. The ACT Electoral Commission, in its submission, recommended that, in light of the change of term for Assembly Members after the 2004 election, that Section 67B (d) be amended to increase the maximum time allowable between redistributions from six years to eight years which would adhere to the principle that a redistribution be held after every second election.

4.80. The Committee considers that this is a sensible amendment and accordingly it recommends:

RECOMMENDATION 9

4.81. The Committee recommends that subsection 67B(d) of the Self-Government Act be amended by omitting the words "6 years" and substituting "8 years".

4.82. Section 67C (Qualifications of electors) sets the terms for when a person is entitled to vote in a Territory election, that being that a person who was eligible at the time of a Territory election to choose a member of the House of Representatives.

4.83. The ACT Electoral Commission is of the view that subsection 67C(1) appears to be transitional pending an ACT electoral enactment and proposed that section 67C be amended to provide that the qualifications of a person to be enrolled as an elector and to vote at an election be provided by enactment.

4.84. Again, the Committee considers that this is a sensible amendment.

RECOMMENDATION 10

4.85. The Committee recommends that section 67C be amended to provide that the qualifications of a person enrolled as an elector and to vote at an election shall be provided by enactment.

PART IX – MISCELLANEOUS

SECTIONS 69A TO 73

4.86. These sections largely reflect common law legal principles to ensure that Commonwealth laws that apply to States also apply to the Territory, and that trade between the Territory and States or other Territories shall be free. Section 73 provides that Assembly Office holders may receive remuneration for their service.

4.87. These sections of the Self-Government Act were not raised during the inquiry and the Committee has no comment on them.

SECTION 74—REGULATIONS

4.88. Section 74 (Regulations) allows the Governor-General to add further responsibilities by regulation. It was put in the original act in 1988 before the law and order components were added to the Self-Government Act. It was proposed in the submission from the ACT Greens "...there should be no regulation making to other discretionary powers given to the Commonwealth Executive. Section 74, together with a range of other discretionary powers should be removed as it is simply not appropriate to have the Commonwealth Executive determining anything about the government of the ACT.".

4.89. With the passage of the *Territories Self-Government Legislation Amendment (Disallowance and Amendment of Laws) Act 2011* there was a recognition of the growing maturity of self government arrangements in the ACT, however the passage of the Act did not remove the power of the Commonwealth legislature, under section 122 of the Australian Constitution to make laws "for the government of any territory.".

4.90. If, as proposed by the ACT Greens, section 74 is omitted from the Self-Government Act, this would further strengthen the independence of the Territory by removing the role of the Governor-General to make regulations, similarly to the way disallowance provisions have. It should be noted that the related section 75 of the *Northern Territory (Self-Government) Act 1978* had a sunset clause of 30 June 1979.

4.91. The ACT Greens also proposed that Sections 36 (Australian Capital Territory Executive) and section 37 (general powers of Executive) should be merged along the lines of section 61 of the Constitution. Schedule 4 may not be needed.

4.92. The Committee took note of the issues and makes no recommendation on them.

5. ADDITIONAL ISSUES RAISED

5.1. A number of suggestions received by the Committee touched on matters that were, in the committee's opinion, outside the scope of the terms of reference or could not be considered given the timeframe for the inquiry. These included:

- the right to own property;
- the Assembly hosting a reformatory referendum in 2020 or 2025;
- reviewing the *Proportional Representation (Hare-Clark) Entrenchment 1994* and the *Electoral Act 1992;*
- commissioning a study on community councils in the ACT Governance framework;
- creating an independent Community Advocate legal position;
- reviewing the removal of a judicial officer;
- reviewing the funding and resourcing of ACT Courts;
- lifting the term limits on Crown Leases granted in the ACT;
- the ACT flag;
- the Coat of Arms;
- the name of the Assembly; and
- titles of Ministers.

5.2. The Committee considered some issues more appropriate for additional consideration at a later time, recognising that staged reforms are useful for evaluating change and assessing progress against the goals of equality with other Australian jurisdictions. The Committee believes that amending the Self-Government Act to reflect the ACT's independence as a governing body is an ongoing process and as such recommends that initial amendments focus on operational sections of the Act.

5.3. This approach means that the Committee will not be seeking reform in respect of the following matters identified in the submissions and public hearings:

- the establishment of a governance integrity agency;
- creation of a Mayor of Canberra;
- amendment of the *Australian Capital Territory (Planning and Land Management) Act 1988;* and
- amendment of section 37 of the *Self-Government Act*.

CONCLUSION

5.4. In 1988 the Federal Parliament passed the Self-Government Act bringing self-government to the Australian Capital Territory. In his second reading speech the Federal Minister for the Arts and Territories indicated that:

> The Australian Capital Territory (Self-Government) Bill 1988 now before the House will establish the ACT as a body politic, with the legislative and executive powers of the States and the Northern Territory ... It will allow 270 000 people the same democratic rights and social responsibilities as their fellow Australians.[93]

5.5. The Minister posed some relevant questions in his speech:

> However, unlike every other person in this country, where a fair go is the creed by which we live, they cannot elect a member of their own community to their own government. They have no say in the decisions which affect their everyday lives. What an extraordinary admission in a country so committed to democratic ideals, and why? Are these people somehow different to other Australians? Are they second class citizens in some way? Do they not understand, or have options on, the issues that confront them daily? Can they not be trusted with their own destiny? The answer to all these questions is simple. The only difference between these people and the rest of Australia is that they live in the Australian Capital Territory.[94]

5.6. The recommendations contained in this report are designed to ensure that the Self-Government Act lives up to those ideals and principles espoused by the Federal Minister when he introduced the Bill. That is to ensure that the residents of the Territory have the same democratic rights and responsibilities as their fellow Australians.

Shane Rattenbury, MLA

Chair

August 2012

[93] House of Representatives Debates (19.10.88), p 1922.
[94] ibid.

APPENDIX A: *AUSTRALIAN CAPITAL TERRITORY (SELF-GOVERNMENT) ACT 1988*

AN ACT TO PROVIDE FOR THE GOVERNMENT OF THE AUSTRALIAN CAPITAL TERRITORY, AND FOR RELATED PURPOSES

UPDATED 8 DECEMBER 2011

Contents

An Act to provide for the Government of the Australian Capital Territory, and for related purposes

Part I—Preliminary

1 Short title [*see* Note 1]

This Act may be cited as the *Australian Capital Territory (Self-Government) Act 1988*.

2 Commencement [*see* Note 1]

(1) Section 1 and this section commence on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

3 Interpretation

In this Act, unless the contrary intention appears:

Assembly means the Legislative Assembly for the Australian Capital Territory established by section 8.

Attorney-General of the Territory means the Minister who has the responsibility for the administration of justice in the Territory.

casual vacancy means a vacancy in the membership of the Assembly occurring otherwise than because of section 10 or 16.

Chief Magistrate means the Chief Magistrate appointed under the *Magistrates Court Act 1930* of the Territory.

Chief Minister means the Chief Minister elected under section 40.

commencing day means the day on which section 22 commences.

Commissioner means a Commissioner appointed under section 16.

Commonwealth Gazette means the *Commonwealth of Australia Gazette*.

Commonwealth Minister means the Minister of State administering this Act, and has the additional meaning given by section 19A of the *Acts Interpretation Act 1901*.

Deputy Chief Minister means the Deputy Chief Minister appointed under section 44.

Deputy Presiding Officer means the person (if any) elected under subsection 21(2).

elector of the Territory means a person who is entitled to vote at a general election.

enactment means:

(a) a law (however described or entitled) made by the Assembly under this Act; or

(b) a law, or part of a law, that is an enactment because of section 34.

Executive means the Australian Capital Territory Executive established by section 36.

Finance Minister means the Minister administering the *Financial Management and Accountability Act 1997*.

general election means a general election of members of the Assembly.

judicial commission means a body or authority established by the Assembly having the function (whether alone or together with another body or authority of the Territory) of investigating, and reporting to the Attorney-General of the Territory on, complaints concerning the conduct or the physical or mental capacity of a judicial officer.

judicial officer means:

(a) the Chief Justice of the Supreme Court; or

(b) a Judge (other than an additional Judge) of the Supreme Court; or

(c) the Master of the Supreme Court; or

(d) the Chief Magistrate; or

(e) a Magistrate; or

(f) any other judicial office holder or member of a tribunal specified in an enactment relating to the establishment of a judicial commission for the Territory.

Magistrate means a Magistrate (other than a Special Magistrate) appointed under the *Magistrates Court Act 1930* of the Territory.

meeting means a meeting of the Assembly.

member means a member of the Assembly.

Minister means the Chief Minister or a Minister appointed under section 41.

Presiding Officer means the officer elected under section 11, by whatever title determined by the Assembly.

public money of the Territory means revenues, loans and other money received by the Territory.

resolution of no confidence means a resolution passed in accordance with section 19.

subordinate law means an instrument of a legislative nature (including a regulation, rule or by-law) made under an enactment.

Supreme Court means the Supreme Court of the Territory existing under the *Supreme Court Act 1933* of the Territory.

Territory:

(a) when used in a geographical sense, means the Australian Capital Territory; and

(b) when used in any other sense, means the body politic established by section 7.

Territory authority:

(a) except in Part VII—means a body, whether corporate or not:

(i) established by or under enactment; or

(ii)otherwise established by the Executive; or

(b) in Part VII—means a body corporate established for a public purpose by or under enactment and having power to borrow money.

Territory Gazette means the *Australian Capital Territory Gazette*.

4 Meaning of day on which election held

A reference in this Act to the day on which an election has been, is, or is to be, held, is a reference to the polling day for that election.

5 Meaning of day on which result of election declared

Where the results of a general election are declared on different days, a reference in this Act to the day on which the result of the election is declared is a reference to the last of those days.

6 Powers includes functions and duties

In this Act, unless the contrary intention appears:

(a) a reference to powers includes a reference to functions or duties; and

(b) a reference to the exercise of powers includes a reference to the performance of functions or duties.

Part II—Australian Capital Territory

7 Establishment of body politic

The Australian Capital Territory is established as a body politic under the Crown by the name of the Australian Capital Territory.

Part III—Legislative Assembly

Division 1—Constitution of Assembly

8 Legislative Assembly

(1) There shall be a Legislative Assembly for the Australian Capital Territory.

(2) Subject to subsection (3), the Assembly shall consist of 17 members.

(3) The regulations may fix a different number of members for the purpose of subsection (2), but regulations shall not be made for that purpose except in accordance with a resolution passed by the Assembly.

9 Oath or Affirmation of Allegiance

(1) A member shall, before taking his or her seat, make and subscribe an oath or affirmation in accordance with the form in Schedule 1.

(2) The oath or affirmation shall be made before the Chief Justice of the Supreme Court of the Australian Capital Territory or some person authorised by the Chief Justice.

(3) This section has effect subject to any enactment.

10 Term of office of member

The term of office of a member duly elected begins at the end of the day on which the election of the member is declared and, unless sooner ended by resignation or disqualification, or by dissolution of the Assembly, ends on the polling day for the next general election.

11 Presiding Officer of Assembly

(1) At the first meeting of the Assembly after a general election, the members present shall, before any other business, elect one of their number to be the Presiding Officer of the Assembly.

(2) The title of the Presiding Officer shall be determined by the Assembly.

(3) If there is a vacancy in the office of Presiding Officer (not because of a dissolution of the Assembly), then:

(a) if the vacancy happens at a meeting, the members present shall, before any further business, elect one of their number to be the Presiding Officer; or

(b) if the vacancy happens at any other time, at the next meeting the members present shall, before any other business, elect one of their number to be the Presiding Officer.

(4) This section does not prevent the Assembly from appointing a person to preside at meetings in the absence of the Presiding Officer, but a person holding office as a Minister shall not be so appointed.

12 Vacation of office by Presiding Officer

(1) A person holding office as Presiding Officer vacates the office:

(a) immediately before a Presiding Officer is elected at the first meeting of the Assembly after a general election;

(b) when the person resigns office as Presiding Officer;

(c) when the person ceases to be a member of the Assembly (not because of a general election); or

(d) when an absolute majority of the members of the Assembly vote in favour of the person's removal from office.

(2) A person who has vacated the office of Presiding Officer may be re-elected.

13 Resignation of members

(1) A member may resign office as a member by written notice delivered to a person authorised by the Assembly to receive it.

(2) The Presiding Officer may resign office as Presiding Officer by written notice delivered to a person authorised by the Assembly to receive it.

(3) The person receiving a notice of resignation must arrange for it to be laid before the Assembly as soon as practicable after receiving that notice.

14 Disqualification of member

(1) A member vacates office if the member:

(a) at any time after the beginning of the first meeting of the Assembly after a general election, is not qualified to take a seat as a member;

(b) is absent without permission of the Assembly from:

(i) such number of consecutive meetings as is specified by enactment for the purposes of this subparagraph; or

(ii) if no such enactment is in force—4 consecutive meetings of the Assembly; or

(c) takes or agrees to take, directly or indirectly, any remuneration, allowance, honorarium or reward for services rendered in the Assembly, otherwise than under section 73.

(2) A person who has vacated an office of member may be re-elected.

(3) Paragraph (1)(c) does not apply to a superannuation scheme:

(a) that is established by or under an enactment; and

(b) under which any or all of the following benefits are provided:

(i) benefits for a person upon ceasing to hold an office of member;

(ii) benefits for a person who is or was a member in the event of the permanent or temporary disability of the person;

(iii) benefits for dependants of a person who is or was a member in the event of the death of the person.

(4) In subsection (3):

dependant has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

15 Conflict of interest

(1) A member of the Assembly who is a party to, or has a direct or indirect interest in, a contract made by or on behalf of the Territory or a Territory authority shall not take part in a discussion of a matter, or vote on a question, in a meeting of the Assembly where the matter or question relates directly or indirectly to that contract.

(2) A question concerning the application of subsection (1) shall be decided by the Assembly, and a contravention of that subsection does not invalidate anything done by the Assembly.

16 Dissolution of Assembly by Governor-General

(1) If, in the opinion of the Governor-General, the Assembly:

(a) is incapable of effectively performing its functions; or

(b) is conducting its affairs in a grossly improper manner;

the Governor-General may dissolve the Assembly.

(2) Where the Assembly is dissolved:

(a) the Governor-General:

(i) shall appoint a Commissioner for the purposes of this section; and

(ii) may, at any time, give directions to the Commissioner about the exercise of the powers of the Executive; and

(b) a general election shall be held on a day specified by the Commonwealth Minister by notice published in the *Commonwealth Gazette*, being not earlier than 36 days, nor later than 90 days, after the dissolution of the Assembly.

(3) The Commonwealth Minister shall not specify a day that is the polling day for an election of the Senate or a general election of the House of Representatives.

(4) The Commissioner:

(a) shall exercise all the powers of the Executive in accordance with any directions given by the Governor-General; and

(b) if it is necessary to issue or spend public money of the Territory when not authorised to do so by or under enactment—may do so with the authority of the Governor-General.

(5) The Commissioner shall be paid such remuneration and allowances as are determined by the Governor-General.

(6) Unless sooner terminated by the Governor-General, the term of office of the Commissioner ceases at the beginning of the first meeting of the Assembly held after the next general election.

(7) The powers of the Governor-General under this section shall be exercised by Proclamation.

(8) The Commonwealth Minister shall cause a statement of the reasons for the dissolution to be:

(a) published in the *Commonwealth Gazette* as soon as practicable after the day of the dissolution; and

(b) laid before each House of the Parliament within 15 sitting days of that House after the day of the dissolution.

(9) A person holding office, or acting as, Chief Executive of the Chief Minister's Department must not be appointed as a Commissioner under this section.

(10) If the name of the office of Chief Executive, or of the Chief Minister's Department, is changed, a reference in subsection (9) to that office or Department is to be taken to be a reference to the office or Department under the new name.

Division 2—Procedure of Assembly

17 Times of meetings

(1) Subject to subsection (3), the Assembly shall meet:

(a) within 7 days after the result of a general election is declared; and

(b) within 7 days after a written request for a meeting, signed by such number of members as is fixed by enactment, is delivered to the Presiding Officer.

(2) The Presiding Officer shall, by notice published in the *Territory Gazette*, convene a meeting when it is necessary to do so to comply with subsection (1).

(3) If the Presiding Officer is required by subsection (2) to convene a meeting within a particular period and:

(a) the office of Presiding Officer is vacant, whether or not a person has been previously elected to the office; or

(b) the Presiding Officer is unable, or refuses or fails, to convene a meeting within that period;

the Commonwealth Minister shall, by notice published in the *Commonwealth Gazette*, convene the meeting within that period or, if that is not practicable, within 7 days after that period.

18 Procedure at meetings

(1) At a meeting of the Assembly, a quorum is formed by an absolute majority of the members.

(2) Questions arising at a meeting shall be decided by a majority of the votes of the members present and voting, unless a special majority is required by the standing rules and orders.

(3) The member presiding at a meeting has a deliberative vote only, and, if the votes on a question are equal, the question shall pass in the negative.

(4) Subject to subsection 15(1) and to the standing rules and orders, the Presiding Officer shall preside at all meetings of the Assembly at which he or she is present.

19 Resolution of no confidence in Chief Minister

A resolution of no confidence in the Chief Minister has no effect unless:

(a) it affirms a motion that is expressed to be a motion of no confidence in the Chief Minister;

(b) at least one week's notice of the motion has been given in accordance with the standing rules and orders; and

(c) the resolution is passed by at least the number of members necessary to be a quorum.

20 Minutes of meetings

(1) The Assembly shall cause minutes to be kept of meetings.

(2) A copy of any minutes so kept shall, on request made by a person:

(a) be made available for inspection by the person; or

(b) be supplied to the person on payment of such fee (if any) as is fixed by or under enactment.

(3) Subsection (2) does not apply to minutes of a committee meeting held in private.

21 Standing rules and orders

(1) Subject to this Act, the Assembly may make standing rules and orders with respect to the conduct of business.

(2) Without limiting the generality of subsection (1), standing rules and orders may be made:

(a) for the election of a deputy (however titled) to the Presiding Officer; and

(b) conferring on that deputy such powers as are specified in the rules and orders (including powers of the Presiding Officer under this Act).

Part IV—Powers of Legislative Assembly

22 Power of Assembly to make laws

(1) Subject to this Part and Part VA, the Assembly has power to make laws for the peace, order and good government of the Territory.

(2) The power to make laws extends to the power to make laws with respect to the exercise of powers by the Executive.

23 Matters excluded from power to make laws

(1) Subject to this section, the Assembly has no power to make laws with respect to:

(a) the acquisition of property otherwise than on just terms;

(c) the provision by the Australian Federal Police of police services in relation to the Territory;

(d) the raising or maintaining of any naval, military or air force;

(e) the coining of money;

(g) the classification of materials for the purposes of censorship.

(1A) The Assembly has no power to make laws permitting or having the effect of permitting (whether subject to conditions or not) the form of intentional killing of another called euthanasia (which includes mercy killing) or the assisting of a person to terminate his or her life.

(1B) The Assembly does have power to make laws with respect to:

(a) the withdrawal or withholding of medical or surgical measures for prolonging the life of a patient but not so as to permit the intentional killing of the patient; and

(b) medical treatment in the provision of palliative care to a dying patient, but not so as to permit the intentional killing of the patient; and

(c) the appointment of an agent by a patient who is authorised to make decisions about the withdrawal or withholding of treatment; and

(d) the repealing of legal sanctions against attempted suicide.

(2) The regulations may omit any of the paragraphs in subsection (1) or reduce the scope of any of those paragraphs.

24 Powers, privileges and immunities of Assembly

(1) In this section:

powers includes privileges and immunities, but does not include legislative powers.

(2) Without limiting the generality of section 22, the Assembly may also make laws:

(a) declaring the powers of the Assembly and of its members and committees, but so that the powers so declared do not exceed the powers for the time being of the House of Representatives or of its members or committees; and

(b) providing for the manner in which powers so declared may be exercised or upheld.

(3) Until the Assembly makes a law with respect to its powers, the Assembly and its members and committees have the same powers as the powers for the time being of the House of Representatives and its members and committees.

(4) Nothing in this section empowers the Assembly to imprison or fine a person.

25 Notification of enactment

(1) Where a proposed law has been passed by the Assembly, the Chief Minister, or another person authorised by enactment to do so, shall publish in the *Territory Gazette* a notice of the proposed law having been passed and of the place or places where copies of the law can be purchased.

(2) Where a proposed law is notified in the *Territory Gazette*, it takes effect upon the day of notification or, if the proposed law otherwise provides, as so provided.

(3) At the time of publication of the notice under subsection (1) of the passing of a proposed law or as soon as practicable thereafter, copies of the law shall be made available for purchase at the place, or at each of the places, specified in the notice.

(4) Where, on the day of publication of the notice under subsection (1) of the passing of a proposed law, there are no copies of the law available for purchase at the place, or at one or more of the places, specified in the notice, the Chief Minister shall cause to be laid before the Assembly, within 15 sitting days of the Assembly after that day, a statement that copies of the law were not so available and the reason why they were not so available.

(5) Failure to comply with the requirements of subsection (3) or (4) in relation to a proposed law shall not be taken to constitute a failure to comply with subsection (1).

(6) Subsections (1) to (5) (inclusive) cease to have effect on and after the commencement of an enactment providing for:

(a) the publication of a notice of the passing of a proposed law by the Assembly otherwise than under subsection (1); and

(b) the commencement of such a proposed law.

26 Special procedures for making certain enactments

(1) The Assembly may pass a law (in this section called the ***entrenching law***) prescribing restrictions on the manner and form of making particular enactments (which may include enactments amending or repealing the entrenching law).

(2) The entrenching law shall be submitted to a referendum of the electors of the Territory as provided by enactment.

(3) If a majority of the electors approve the entrenching law, it takes effect as provided by section 25.

(4) While the entrenching law is in force, an enactment to which it applies has no effect unless made in accordance with the entrenching law.

(5) If an entrenching law includes the requirement (however expressed) that an enactment or enactments be passed by a specified majority of the members (in this subsection called a ***special majority***), the same requirement shall be taken to apply to the entrenching law, so that it must be passed by:

(a) that special majority; or

(b) if it specifies different special majorities for different enactments—the highest of those special majorities.

(6) If an entrenching law passed by the Assembly:

(a) includes the requirement (however expressed) that an enactment or enactments be submitted to a referendum of the electors of the Territory; and

(b) includes provision (however expressed) that, to have effect, the referendum is to be passed by a specified majority of the electors (in this subsection called a ***special majority***);

the same requirement shall be taken to apply to the entrenching law, so that the reference in subsection (3) to a majority of the electors shall be taken to be a reference to:

(c) that special majority; or

(d) if the entrenching law specifies different special majorities for different enactments—the highest of those special majorities.

27 Crown may be bound

Except as provided by the regulations, an enactment does not bind the Crown in right of the Commonwealth.

28 Inconsistency with other laws

(1) A provision of an enactment has no effect to the extent that it is inconsistent with a law defined by subsection (2), but such a provision shall be taken to be consistent with such a law to the extent that it is capable of operating concurrently with that law.

(2) In this section:

law means:

(a) a law in force in the Territory (other than an enactment or a subordinate law); or

(b) an order or determination, or any other instrument of a legislative character, made under a law falling within paragraph (a).

Note: Sections 29 and 40 of the *Fair Work Act 2009* deals with inconsistency between awards and agreements made under that Act, and laws of the Territory.

29 Avoidance of application of enactments to Parliament

(1) In this section:

enactment includes a part of an enactment.

Parliamentary precincts means the precincts defined by subsection 3(1) of the *Parliamentary Precincts Act 1988*.

(2) If either House of the Parliament passes a resolution declaring that an enactment made after the commencing day does not apply:

(a) to that House;

(b) to the members of that House; or

(c) in the Parliamentary precincts;

the resolution has effect according to its tenor and the enactment does not apply accordingly.

(3) A resolution under subsection (2):

(a) does not have effect in respect of the application of an enactment on a day before the day on which the resolution is passed; and

(b) has effect, to the extent that the enactment ceases to apply, as if the enactment were repealed by another enactment.

30 Judicial notice

All courts, judges and persons acting judicially shall take judicial notice of enactments and subordinate laws.

31 Publication of enactments

The Executive shall publish copies of enactments and subordinate laws and make them available for purchase by the public.

33 Application of Acts Interpretation Act

Neither paragraph 46(1)(a) of the *Acts Interpretation Act 1901* nor paragraph 13(1)(a) or (b) of the *Legislative Instruments Act 2003* applies to:

(a) an enactment;

(b) a subordinate law; or

(c) an instrument required by this Act to be published in the *Territory Gazette*.

34 Certain laws converted into enactments

(1) In this section:

Imperial Act has the same meaning as in the *Imperial Acts Application Ordinance 1986* of the Territory.

law includes a provision of a law.

(2) A law specified in Schedule 2 shall be taken to be an enactment, and may be amended or repealed accordingly.

(4) A law (other than a law of the Commonwealth) that, immediately before the commencing day:

(a) was in force in the Territory; and

(b) was an Ordinance, an Act of the Parliament of New South Wales or an Imperial Act;

shall be taken to be an enactment, and may be amended or repealed accordingly.

(5) Subsection (4) does not apply to a law specified in Schedule 5.

(9) This section does not limit the power of the Assembly to make laws with respect to the common law.

Part V—The Executive

36 Australian Capital Territory Executive

There shall be an Australian Capital Territory Executive.

37 General powers of Executive

The Executive has the responsibility of:

(a) governing the Territory with respect to matters specified in Schedule 4;

(b) executing and maintaining enactments and subordinate laws;

(c) exercising such other powers as are vested in the Executive by or under a law in force in the Territory or an agreement or arrangement between the Territory and the Commonwealth, a State or another Territory; and

(d) exercising prerogatives of the Crown so far as they relate to the Executive's responsibility mentioned in paragraph (a), (b) or (c).

38 Executive matters not limited by Schedule 4

A matter specified in Schedule 4 does not limit the generality of any other matter specified in that Schedule.

38A Executive's powers under Commonwealth Acts

An enactment may provide for the exercise by a member or members of the Executive of powers vested in the Executive by or under an Act.

39 Membership of Executive

(1) The members of the Executive are the Chief Minister and such other Ministers as are appointed by the Chief Minister.

(2) The exercise of the powers of the Executive is not affected merely because of a vacancy or vacancies in the membership of the Executive.

40 Chief Minister for the Territory

(1) At the first meeting of the Assembly after a general election, the members present shall, after electing a Presiding Officer and before any other business, elect one of their number to be the Chief Minister for the Territory.

(2) If there is a vacancy in the office of Chief Minister (not because of a dissolution of the Assembly), then:

(a) if the vacancy happens at a meeting, the members present shall elect one of their number to be the Chief Minister; or

(b) if the vacancy happens at any other time, the Presiding Officer shall, by notice published in the *Territory Gazette*, convene a meeting as soon as practicable and, at the meeting, the members present shall elect one of their number to be the Chief Minister.

(3) If a resolution of no confidence in the Chief Minister is passed, the members present shall elect one of their number to be the Chief Minister.

41 Ministers for the Territory

(1) The Chief Minister must appoint Ministers for the Territory from among the members of the Assembly.

(2) The number of Ministers is to be as provided by enactment.

(2A) Until provision is made, the number of Ministers is not to exceed 5.

(3) A Minister may be dismissed from office at any time by a person holding office as Chief Minister at that time.

42 Presiding Officer or Deputy Presiding Officer not to be a Minister

The person for the time being holding office as Presiding Officer or Deputy Presiding Officer is not eligible to be a Minister.

43 Ministerial portfolios

(1) A Minister shall administer such matters relating to the powers of the Executive as are allocated to that Minister from time to time by the Chief Minister.

(2) The Chief Minister may authorise a Minister or Ministers to act on behalf of the Chief Minister or any other Minister.

(3) The Chief Minister shall publish particulars of such arrangements in the *Territory Gazette*.

44 Deputy Chief Minister for the Territory

(1) The Chief Minister shall appoint one of the Ministers to be Deputy Chief Minister for the Territory.

(2) The Deputy Chief Minister shall act as Chief Minister at any time when there is a vacancy in the office of Chief Minister or the Chief Minister is absent from duty or from Australia or is, for any other reason, unable to exercise the powers of Chief Minister.

(3) While the Deputy Chief Minister is acting as Chief Minister, he or she shall exercise all the powers of the Chief Minister other than the dismissal of a Minister.

(4) The exercise of the powers of the Chief Minister by the Deputy Chief Minister during the absence of the Chief Minister from Australia does not affect the exercise of a power by the Chief Minister.

45 Resignation of Ministers

(1) The Chief Minister may resign office as Chief Minister by written notice delivered to the Presiding Officer.

(2) Any other Minister may resign office as Minister by written notice delivered to the Chief Minister.

46 Vacation of office by Ministers

(1) A person holding office as Chief Minister vacates the office:

(a) when the person resigns the office; or

(b) when the person ceases to be a member (not because of a general election); or

(c) immediately before a Chief Minister is elected after:

(i) the next general election; or

(ii) the passing of a resolution of no confidence in the Chief Minister.

(1A) A person holding office as a Minister (other than the Chief Minister) vacates the office:

(a) when the person resigns the office; or

(b) when the person ceases to be a member (not because of a general election); or

(c) when the person is dismissed from office by the Chief Minister; or

(d) immediately before another Chief Minister is elected after:

(i) the next general election; or

(ii) the passing of a resolution of no confidence in the Chief Minister.

(2) A person who has vacated an office of Minister may be re-elected or re-appointed.

47 Vacancies in all Ministerial offices

(1) If:

(a) at any time after the election of a Chief Minister, all the Ministerial offices (including the office of Chief Minister) have become vacant; and

(b) it is necessary to exercise powers of the Executive for the purpose of maintaining the provision and control of essential services;

the Commonwealth Minister may exercise those powers for that purpose until a Chief Minister is elected.

(2) Subsection (1) does not apply where the vacancies result from a dissolution of the Assembly.

48 Resolution of no confidence in Chief Minister

(2) If:

(a) on a particular day, the Assembly passes a resolution of no confidence in the Chief Minister;

(b) the Assembly does not, within the period of 30 days after that day, elect a Chief Minister; and

(c) the Governor-General does not, within that period of 30 days, dissolve the Assembly under section 16;

a general election shall be held on a day specified by the Commonwealth Minister by notice published in the *Commonwealth Gazette*, being not earlier than 36 days, nor later than 90 days, after the end of that period of 30 days.

(3) The Commonwealth Minister shall not specify a day that is the polling day for an election of the Senate or a general election of the House of Representatives.

Part VA—The Judiciary

48A Jurisdiction and powers of the Supreme Court

(1) The Supreme Court is to have all original and appellate jurisdiction that is necessary for the administration of justice in the Territory.

(2) In addition, the Supreme Court may have such further jurisdiction as is conferred on it by any Act, enactment or Ordinance, or any law made under any Act, enactment or Ordinance.

(3) The Supreme Court is not bound to exercise any powers where it has concurrent jurisdiction with another court or tribunal.

48AA ACT laws may give concurrent jurisdiction to the Federal Court of Australia

Nothing in section 48A is to be taken to imply that a law of the Australian Capital Territory may not confer on the Federal Court of Australia original or appellate jurisdiction in any matter in respect of which, by virtue of section 48A, jurisdiction is conferred on the Supreme Court.

48B Retirement age of Judges etc. of the Supreme Court

(1) This section applies to the following offices:

(a) Chief Justice of the Supreme Court;

(b) Judge (other than additional Judge) of the Supreme Court;

(c) Master of the Supreme Court.

(2) An enactment that changes the retirement age in relation to an office to which this section applies does not affect the term of office of a person who was appointed to such an office before the commencement of that enactment unless the person has consented in writing to the application of the enactment to him or her.

48C Judicial commission

(1) An enactment relating to the establishment of a judicial commission for the Territory must provide that:

(a) the commission is to be constituted by persons who:

(i) have been Justices of the High Court or are, or have been, Judges of a superior court of record of the Commonwealth or of a State or Territory (other than persons who are Judges of the Supreme Court of the Territory appointed under subsection 7(1) of the *Supreme Court Act 1933* of the Territory); and

(ii) are appointed by the Executive for such terms as are determined in accordance with the enactment; and

(b) the commission is to have the function (whether alone or together with another body or authority of the Territory) of investigating, and reporting to the Attorney-General of the Territory on, complaints concerning the conduct or the physical or mental capacity of a judicial officer.

(2) A judicial commission may have functions in addition to the function mentioned in paragraph (1)(b).

48D Removal of a judicial officer from office

An enactment relating to the removal from office of a judicial officer must provide that:

(a) a judicial officer may only be removed from office if:

(i) a judicial commission appointed by the Executive to examine a complaint concerning the judicial officer has submitted to the Attorney-General of the Territory a report that:

(A) sets out the facts found by the commission in relation to the subject matter of the complaint;
and

(B) states that, in the commission's opinion, the facts so found could amount to misbehaviour or physical or mental incapacity (as the case may be) warranting the officer's removal from office; and

(ii) the Assembly:

(A) has determined that the facts so found amount to misbehaviour or physical or mental incapacity identified by the commission; and

(B) has passed a motion requiring the Executive to remove the officer from office on the ground of that misbehaviour or incapacity; and

(b) a judicial officer may only be removed from office by the Executive in writing.

Part VII—Finance

57 Public money

(1) The public money of the Territory shall be available for the expenditure of the Territory.

(2) The receipt, spending and control of public money of the Territory shall be regulated as provided by enactment.

58 Withdrawals of public money

(1) Subject to subsection 16(4), no public money of the Territory shall be issued or spent except as authorised by enactment.

(2) The public money of the Territory may be invested as provided by enactment.

59 Financial relations between Commonwealth and Territory

(1) The Commonwealth shall conduct its financial relations with the Territory so as to ensure that the Territory is treated on the same basis as the States and the Northern Territory, while having regard to the special circumstances arising from the existence of the national capital and the seat of government of the Commonwealth in the Territory.

(2) The Territory is not liable to bear the cost, or part of the cost, of:

(a) any power of the Commonwealth relating to a matter referred to in section 23;

(b) administering a law, or a provision of a law, referred to in Schedule 5; or

(c) any other power of the Commonwealth, or of a Commonwealth authority, relating to the Territory.

60 Borrowing from Commonwealth

The Finance Minister may, on behalf of the Commonwealth, out of money appropriated by the Parliament for the purpose, lend money to the Territory or to a Territory authority on such terms and conditions as that Minister determines in writing.

65 Proposal of money votes

(1) An enactment, vote or resolution (***proposal***) for the appropriation of the public money of the Territory must not be proposed in the Assembly except by a Minister.

(2) Subsection (1) does not prevent a member other than a Minister from moving an amendment to a proposal made by a Minister unless the amendment is to increase the amount of public money of the Territory to be appropriated.

Part VIII—Elections to Assembly

66 Interpretation

In this Part:

electoral enactment means an enactment described in subsection 67A(1).

66A Part to bind Crown

This Part binds the Crown in right of the Territory, but nothing in this Act renders the Crown liable to be prosecuted for an offence.

66B Election of members

The members are to be elected in accordance with this Part.

67 Qualifications of candidates

(1) The qualifications of a person to be elected and take a seat as a member shall be as provided by enactment.

67A General elections

(1) The members to be elected at a general election are to be elected as provided by sections 67, 67C and 67D and by an enactment that:

(a) provides for general elections; and

(b) complies with section 67B; and

(c) was made after polling day for the second general election.

67B Electoral enactment

An electoral enactment is to provide, among other things:

(a) for the times of general elections; and

(b) for a Roll of the electors of the Territory for the purposes of general elections; and

(c) that every person who is entitled to be enrolled on that Roll and who is resident in the Territory is required to claim enrolment; and

(d) if the electoral enactment provides for the distribution of the Territory into electorates—that a redistribution of the Territory into electorates is to commence not later than 6 years after the previous distribution or redistribution.

67C Qualifications of electors

(1) At a general election held on a particular day, a person is entitled to vote if:

(a) on that day, the person's name is on the Roll of the electors of the Territory for the purposes of general elections; and

(b) the person would be entitled to vote at an election held on that day to choose a member of the House of Representatives for the Territory.

(2) A person's name is taken not to be on the Roll for the purposes of paragraph (1)(a) if an electoral enactment so provides.

(3) This section does not prevent an electoral enactment from providing that other persons, in addition to persons entitled under subsection (1), be entitled to vote at a general election.

67D Territory electorates

(1) In this section:

quota, in relation to an electorate for the Territory, means the number calculated in accordance with the formula:

$$\frac{\text{Number of Territory electors} \times \text{Number of electorate members}}{\text{Number of Territory members}}$$

where:

Number of Territory electors means the number of electors of the Territory.

Number of electorate members means the number of members to be elected by the electorate.

Number of Territory members means the number of members of the Assembly.

(2) A distribution or redistribution of the Territory into electorates is not to result in any electorate having, immediately after the distribution or redistribution:

(a) a number of electors of the Territory greater than 110% of its quota; or

(b) a number of electors of the Territory less than 90% of its quota.

Part IX—Miscellaneous

69A Acts that bind States to bind Territory

(1) If an Act (whether or not by express provision) binds each of the States, or the Crown in right of each of the States, that Act binds the Territory, or the Crown in right of the Territory, by force of this subsection, unless that Act specifically provides otherwise.

(2) Subsection (1) does not affect the application of a law of the Commonwealth in and in relation to the Territory otherwise than as provided in that subsection.

69 Trade and commerce to be free

(1) Subject to subsection (2), trade, commerce and intercourse between the Territory and a State, and between the Territory and the Northern Territory, the Jervis Bay Territory, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands, shall be absolutely free.

(2) Subsection (1) does not bind the Commonwealth.

70 Validity of certain actions

(1) In subsection (2):

office means the office of Chief Minister, Deputy Chief Minister, Minister, Presiding Officer, Deputy Presiding Officer or Commissioner.

(2) Anything done by or in relation to a person who has been elected or appointed to an office, or a person purporting to act in an office, under this Act is not invalid on the ground that:

(a) the occasion for the election or appointment had not arisen;

(b) there was a defect or irregularity in connection with the election or appointment;

(c) the election or appointment had ceased to have effect; or

(d) the occasion for the person to act had not arisen or had ceased.

(3) Anything done by or in relation to a person who has purported to sit or vote as a member at a meeting of the Assembly or of a committee is not invalid on the ground that the person:

(a) was not duly elected or chosen; or

(b) had vacated office as a member.

73 Remuneration and allowances

(1) In this section:

office means any of the following offices:

(a) Chief Minister;

(b) Deputy Chief Minister;

(c) Minister;

(d) member;

(e) Presiding Officer;

(f) Deputy Presiding Officer;

(fa) Chief Justice of the Supreme Court;

(fb) Judge of the Supreme Court;

(fc) Master of the Supreme Court;

(fd) Chief Magistrate;

(fe) Magistrate;

(g) an office declared by an enactment to be an office to which this section applies.

(2) Subject to subsection (3A) of this section and subsection 29A(2) of the *A.C.T. Self-Government (Consequential Provisions) Act 1988*, a person is, in respect of services in an office, to be paid such remuneration and allowances:

(a) if they are determined or specified by or under an enactment—as so determined or specified; or

(b) in any other case—as are determined by the Remuneration Tribunal.

(3A) The remuneration and allowances of a person holding an office specified in paragraph (1)(fa), (fb), (fc), (fd) or (fe) are not to be diminished while the person holds that office.

(4) Where:

(a) the term of office of a person as member ends on the polling day for a general election; and

(b) the person is re-elected at that general election;

then, for the purposes of this section, the person shall be taken to have continued to serve in the office of member until the day on which the election of the person is declared.

(5) Where:

(a) the term of office of a person as member ends because the Assembly is dissolved under section 16; and

(b) the person is a candidate at the next general election;

then, for the purposes of this section, the person shall be taken to have continued to serve in the office of member until the polling day for that general election or, if the person is re-elected, until the day on which the election of the person is declared.

74 Regulations

The Governor-General may make regulations:

(a) prescribing matters:

(i) required or permitted by this Act to be prescribed; or

(ii) necessary or convenient to be prescribed for carrying out or giving effect to this Act; and

(b) adding further matters to Schedule 4.

Schedule 1

Section 9

OATH

I, *A.B.*, swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her heirs and successors according to law: So help me God!

AFFIRMATION

I, *A.B.*, solemnly affirm that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her heirs and successors according to law.

Schedule 2—Commonwealth Acts and provisions to become enactments

Section 34

Commonwealth Functions (Statutes Review) Act 1981, Part II

Commonwealth Teaching Service Act 1972

Removal of Prisoners (Australian Capital Territory) Act 1968

Australian Capital Territory Evidence (Temporary Provisions) Act 1971

Australian Capital Territory Supreme Court Act 1933

University of Canberra Act 1989.

Schedule 4—Matters concerning which the Executive has power to govern the Territory

Section 37

Remuneration, allowances and other entitlements in respect of services of members of the Assembly, the Chief Minister, the Deputy Chief Minister, Ministers, the Presiding Officer, the Deputy Presiding Officer, and the holders of offices established by or under Assembly Law

Territory insurance

Territory banking

Taxation

Provision of rural, industrial and home finance credit and assistance

The public service

Legal aid

Correctional and remand services

Private law

Administration of estates and trusts

Civil liberties and human rights

Inquiries and administrative reviews (including matters relating to a Territory Ombudsman)

Markets and marketing

Consumer affairs

Sales and leases of goods, supply of services, and security interests in or over goods

Control of prices and of rents

Industry, including primary production

Regulation of businesses, professions, trades and callings (excluding the legal profession)

Tourism

Printing and publishing

Industrial relations (including training and apprenticeship and workers' compensation and compulsory insurance)

Occupational health and safety

Exploration for, and recovery of, minerals in any form, whether solid, liquid or gaseous

Territory Land as defined in the *Australian Capital Territory (Planning and Land Management) Act 1988*

Use, planning and development of land

Civil aviation

Regulation of transport on land and water (including traffic control, carriers, roads, tunnels and bridges, vehicle registration and compulsory third party insurance, driver licensing and road safety)

Environment protection and conservation (including parks, reserves and gardens and preservation of historical objects and areas)

Flora and fauna

Fire prevention and control

Water resources

Use and supply of energy

Public utilities

Public works

Registration of instruments

Registration of births, deaths and marriages

Local government

Housing

Public health

Public safety

Education

Territory Archives

Welfare services

Territory museums, memorials, libraries and art galleries

Scientific research

Recreation, entertainment and sport

Community, cultural and ethnic affairs

Gambling

Liquor

Firearms, explosives and hazardous and dangerous substances

Civil defence and emergency services

Territorial censorship, except classification of materials

Landlord and tenant

Co-operative societies

The Public Trustee and the Youth Advocate

Matters in respect of which the Assembly may make laws under section 24

Matters in respect of which powers or authorities are expressly conferred on the Chief Minister, the Deputy Chief Minister, a Minister or a member of the public service by or under any law in force in the Territory (including an enactment or subordinate law) or an agreement or arrangement referred to in paragraph 37(c)

Matters provided for by or under a law made by the Assembly under another Act that expressly provides for the making of such a law

Making instruments under enactments or subordinate laws

Matters arising under instruments made under enactments or subordinate laws

Entering into, and implementing, agreements and arrangements with the Commonwealth, a State or the

Northern Territory

Matters incidental to the exercise of any power of the Executive

Law and Order

Legal practitioners

Magistrates Court and Coroners Court

Courts (other than the Magistrates Court and Coroners Court)

The formation of corporations, corporate regulation and the regulation of financial products and services

Schedule 5—Laws and provisions other than those that shall become enactments

Section 34

Part 1—Ordinances of the Territory

Canberra Institute of the Arts Ordinance 1988

Classification of Publications Ordinance 1983

Companies Auditors and Liquidators Disciplinary Board Ordinance 1982

Corporate Affairs Commission Ordinance 1980

National Land Ordinance 1989

National Memorials Ordinance 1928

Ordinance Revision (Companies Amendments) Ordinance 1982

Police Pensions Ordinance 1958

Reserved Laws (Administration) Ordinance 1989

Reserved Laws (Interpretation) Ordinance 1989

The Commercial Banking Company of Sydney Limited (Merger) Ordinance 1982

The Commercial Bank of Australia Limited (Merger) Ordinance 1982

Unlawful Assemblies Ordinance 1937

Part 2—Acts of the Parliament of New South Wales in force in the Territory

Life, Fire and Marine Insurance Act 1902

Part 3—Imperial Acts in force in the Territory

Demise of the Crown	(1760) 1 Geo. 3 c. 23
Naval Prize Act	(1864) 27 and 28 Vic. c. 25
Naval Prize (Procedure) Act	(1916) 6 and 7 Geo. 5 c. 2
Prize Act	(1939) 2 and 3 Geo. 6 c. 65
Prize Courts Act	(1894) 57 and 58 Vic. c. 39
Prize Courts Act	(1915) 5 and 6 Geo. 5 c. 57
Prize Courts (Procedure) Act	(1914) 4 and 5 Geo. 5 c. 13
Territorial Waters Jurisdiction	(1878) 41 and 42 Vic. c. 73.

Notes to the *Australian Capital Territory (Self-Government) Act 1988*

Note 1

The *Australian Capital Territory (Self-Government) Act 1988* as shown in this compilation comprises Act No. 106, 1988 amended as indicated in the Tables below.

The *Australian Capital Territory (Self-Government) Act 1988* was amended by the *Australian Capital Territory (Self-Government) Regulations 1989* (1989 No. 86 as amended by 1989 No. 87; 1990 No. 405 and SLI 2006 No. 39) and the *Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1)* (SLI 2006 No. 50). The amendments are incorporated in this compilation.

All relevant information pertaining to application, saving or transitional provisions prior to 30 May 1997 is not included in this compilation. For subsequent information *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Australian Capital Territory (Self-Government) Act 1988	106, 1988	6 Dec 1988	Ss. 1 and 2: Royal Assent Ss. 3–6, 8–21, 66–68, 73 and 74: 7 Dec 1988 (*see Gazette* 1988, No. S374) S. 34(8): 31 Jan 1989 (*see Gazette* 1989, No. S39) S. 56(1): *(a)* Remainder: 11 May 1989 (*see Gazette* 1989, No. S164)	
Arts, Territories and Environment Legislation Amendment Act 1989	60, 1989	19 June 1989	Ss. 11 and 13: 7 Dec 1988 Part 5 (ss. 14, 15): 11 May 1989 (*see* s. 2(3) and *Gazette* 1989, No. S164) Remainder: Royal Assent	S. 8(2)
Arts, Sport, Environment, Tourism and Territories Legislation Amendment Act 1991	33, 1991	21 Mar 1991	Ss. 3 (in part) and 5: 1 July 1991 Remainder: Royal Assent	S. 5
Australian Capital Territory Self-Government Legislation Amendment Act 1992	10, 1992	6 Mar 1992	Ss. 4, 7–9 and 11: *(b)* Remainder: Royal Assent	—
A.C.T. Supreme Court (Transfer) Act 1992	49, 1992	17 June 1992	1 July 1992	—

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Territories Law Reform Act 1992	104, 1992	30 June 1992	S. 24: 1 July 1992 *(c)*	—
Superannuation Industry (Supervision) Consequential Amendments Act 1993	82, 1993	30 Nov 1993	Ss. 1, 2, 14, 16(2), 41, 42, 45, 46, 48(1) and 52–64: 1 Dec 1993 Remainder: 1 July 1994	—
Arts, Environment and Territories Legislation Amendment Act 1993	6, 1994	18 Jan 1994	S. 5: Royal Assent *(d)*	—
Australian Capital Territory Government Service (Consequential Provisions) Act 1994	92, 1994	29 June 1994	1 July 1994 (see Gazette 1994, No. S256)	—
Australian Capital Territory Electoral Legislation Amendment Act 1994	165, 1994	16 Dec 1994	16 Dec 1994	—
Euthanasia Laws Act 1997	17, 1997	27 Mar 1997	27 Mar 1997	—
Education Legislation Amendment Act 1997	66, 1997	30 May 1997	Schedule 1 (item 14): *(e)*	Sch. 1 (items 19–23) [*see* Table A]
Gas Pipelines Access (Commonwealth) Act 1998	101, 1998	30 July 1998	Schedule 1 (item 1): 30 July 1998 *(f)*	—
Australian Capital Territory Legislation Amendment Act 2003	1, 2003	24 Feb 2003	25 Feb 2003	—
Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003	140, 2003	17 Dec 2003	S. 4 and Schedule 1 (item 11): *(g)*	S. 4 [see Table A]
Maritime Transport and Offshore Facilities Security Amendment (Security Plans and Other Measures) Act 2006	109, 2006	27 Sept 2006	Schedule 2 (items 9–11): Royal Assent	—
Fair Work (State Referral and Consequential and Other Amendments) Act 2009	54, 2009	25 June 2009	Schedule 5 (item 4): *(h)*	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Schedule 5 (items 20, 21): 19 Apr 2011	—

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Territories Self-Government Legislation Amendment (Disallowance and Amendment of Laws) Act 2011	166, 2011	4 Dec 2011	S. 4 and Schedule 1: Royal Assent	S. 4 [*see* Table A]

(a) Subsection 56(1) of the *Australian Capital Territory (Self-Government) Act 1988* was repealed by section 22 of the *Australian Capital Territory Government Service (Consequential Provisions) Act 1994* before a date was fixed for the commencement.

(b) Subsection 2(2) of the *Australian Capital Territory Self-Government Legislation Amendment Act 1992* provides as follows:

(2) Sections 4, 7, 8, 9 and 11 commence immediately after polling day for the second general election of members of the Legislative Assembly for the Australian Capital Territory.

Polling day for the second general election was 15 February 1992.

(c) The *Australian Capital Territory (Self-Government) Act 1988* was amended by section 24 only of the *Territories Law Reform Act 1992*, subsection 2(3) of which provides as follows:

(3) The remaining provisions of this Act commence on 1 July 1992.

(d) The *Australian Capital Territory (Self-Government) Act 1988* was amended by section 5 only of the *Arts, Environment and Territories Legislation Amendment Act 1993*, subsection 2(1) of which provides as follows:

(1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.

(e) The *Australian Capital Territory (Self-Government) Act 1988* was amended by Schedule 1 (Part 2) only of the *Education Legislation Amendment Act 1997*, subsection 2(4) of which provides as follows:

(4) Parts 2, 3 and 4 of Schedule 1 commence immediately after the commencement of Part 1 of Schedule 1.

Part 1 of Schedule 1 commenced on 1 December 1997.

(f) The *Australian Capital Territory (Self-Government) Act 1988* was amended by Schedule 1 (item 1) of the *Gas Pipelines Access (Commonwealth) Act 1998*, subsection 2(1) of which provides as follows:

(1) Subject to subsections (2) and (3), this Act commences at the commencement of sections 13 and 14 of the *Gas Pipelines Access (South Australia) Act 1997* of South Australia.

The *Gas Pipelines Access (South Australia) Act 1997* of South Australia came into operation on 30 July 1998 (*see South Australian Government Gazette* 2 April 1998, p. 1606).

(g) Subsection 2(1) (items 2 and 3) of the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences on the day or at the time specified in column 2 of the table.

Commencement information

Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
2. Sections 4 and 5	Immediately after the commencement of sections 3 to 62 of the *Legislative Instruments Act 2003*	1 January 2005
3. Schedule 1	Immediately after the commencement of sections 3 to 62 of the *Legislative Instruments Act 2003*	1 January 2005

(h) Subsection 2(1) (item 11) of the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	**Commencement**	**Date/Details**
11. Schedule 5, items 1 to 30	Immediately after the commencement of Part 2-4 of the *Fair Work Act 2009*.	1 July 2009

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part I	
S. 3	am. No. 33, 1991; Nos. 10 and 49, 1992; Nos. 6 and 92, 1994; No. 5, 2011
Part III	
Division 1	
S. 10	am. No. 6, 1994
S. 13	am. No. 6, 1994
S. 14	am. No. 33, 1991; No. 82, 1993
S. 16	am. No. 1, 2003
Division 2	
S. 17	am. No. 6, 1994
Part IV	
S. 22	am. No. 49, 1992
S. 23	am. Statutory Rules 1989 No. 86 (as am. by Statutory Rules 1989 No. 87; SLI 2006 No. 39); No. 49, 1992; No. 17, 1997
S. 25	am. No. 60, 1989; No. 6, 1994
S. 26	am. No. 6, 1994
S. 28	am. SLI 2006 No. 50
Note to s. 28	ad. SLI 2006 No. 50
	am. No. 54, 2009
S. 32	rep. No. 109, 2006
S. 33	am. No. 140, 2003
S. 34	am. No. 60, 1989; No. 49, 1992; No. 6, 1994
S. 35	am. No. 109, 2006
	rep. No. 166, 2011
Part V	
S. 37	am. No. 6, 1994
S. 38A	ad. No. 6, 1994
S. 41	am. No. 10, 1992
S. 46	am. No. 6, 1994; No. 1, 2003
S. 48	am. No. 165, 1994; No. 1, 2003
Part VA	
Part VA	ad. No. 49, 1992
S. 48A	ad. No. 49, 1992
S. 48AA.....	ad. No.101, 1998
Ss. 48B–48D	ad. No. 49, 1992
Part VI	rep. No. 92, 1994

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 49–56	rep. No. 92, 1994
S. 59	am. No. 6, 1994
S. 60	am. No. 5, 2011
Ss. 61–63	rep. No. 33, 1991
S. 64	rep. No. 10, 1992
S. 65	am. No. 6, 1994
Part VIII	
S. 66	rs. No. 10, 1992
Ss. 66A, 66B	ad. No. 10, 1992
S. 67	am. No. 1, 2003
S. 67A	ad. No. 10, 1992
	am. No. 165, 1994; No. 1, 2003
S. 67B	ad. No. 10, 1992
S. 67C	ad. No. 10, 1992
	am. Nos. 6 and 165, 1994
S. 67D	ad. No. 10, 1992
S. 67E	ad. No. 10, 1992
	rep. No. 1, 2003
S. 68	am. No. 10, 1992; No. 165, 1994
	rep. No. 1, 2003
Part IX	
S. 69A	ad. No. 6, 1994
S. 69	am. No. 104, 1992
S. 70	am. No. 1, 2003
S. 71	rep. No. 92, 1994
S. 72	rep. No. 6, 1994
S. 73	am. No. 49, 1992; Nos. 6 and 92, 1994
S. 74	am. No. 60, 1989
	rs. No. 6, 1994
Schedules	
Schedule 2	am. No. 66, 1997
Schedule 3	am. Statutory Rules 1989 No. 86
	rep. No. 6, 1994
Schedule 4	am. Statutory Rules 1989 No. 86 (as am. by SLI 2006 No. 39); No. 1, 2003
Schedule 5	am. Statutory Rules 1989 No. 86 (as am. by Statutory Rules 1990 No. 405)

Table A

Application, saving or transitional provisions

Education Legislation Amendment Act 1997 (No. 66, 1997)

Schedule 1

19 Purpose of this Part

This Part sets out transitional provisions relating to the transfer of the responsibility for the University of Canberra from the Commonwealth to the Australian Capital Territory.

20 Definitions

In this Part, unless the contrary intention appears:

ACT enactment means an enactment as defined by section 3 of the *Australian Capital Territory (Self-Government) Act 1988*.

transfer day means the day on which Part 1 of this Schedule commences.

University means the University of Canberra established by section 4 of the University Act.

University Act means the *University of Canberra Act 1989* as in force from time to time before the transfer day.

21 Terms and conditions of employment of University employees

If a person was employed by the University immediately before the transfer day, this Act does not affect the terms and conditions (including any accrued entitlement to benefits) of that employment.

22 Audit

If the transfer day is less than a year after the end of the last period in respect of which a report was made by the Auditor-General under subsection 37(4) of the University Act, that subsection has effect in respect of the period (the ***final reporting period***) beginning immediately after the end of that last period and ending immediately before the transfer day as if the reference to a year in that subsection were a reference to the final reporting period.

23 Annual report and financial statements

If the transfer day is less than a year after the end of the last year in respect of which a report was prepared under section 39 of the University Act, that section has effect in respect of the period beginning immediately after the end of that last year and ending immediately before the transfer day as if:

(a) a reference in that section to a year were a reference to that period; and

(b) a reference in that section to 31 December were a reference to the transfer day.

Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003 (No. 140, 2003)

4 Transitional provisions

(1) If legislation introduced into the Parliament before the commencing day but commencing on or after that day:

(a) authorises an instrument to be made in the exercise of a power delegated by the Parliament; and

(b) is expressed to require that instrument to be published as a statutory rule under the *Statutory Rules Publication Act 1903*;

any instrument so made is taken to be an instrument referred to in paragraph 6(b) of the *Legislative Instruments Act 2003* despite the repeal by this Act of the *Statutory Rules Publication Act 1903*.

(2) If legislation introduced into the Parliament before the commencing day but commencing on or after that day:

(a) authorises an instrument to be made in the exercise of a power delegated by the Parliament; and

(b) is expressed to declare that instrument to be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*;

any instrument so made is taken to be an instrument referred to in subparagraph 6(d)(i) of the *Legislative Instruments Act 2003* despite the repeal by this Act of section 46A of the *Acts Interpretation Act 1901*.

(3) If legislation that is in force immediately before the commencing day or that is introduced into the Parliament before that day but that commences on or after that day:

(a) authorised or authorises an instrument to be made in the exercise of a power delegated by the Parliament that adversely affects the rights of a person, or results in the imposition of liabilities on a person; and

(b) provided or provides that the instrument has effect, to the extent that it adversely affects those rights or results in the imposition of those liabilities, despite subsection 48(2) of the *Acts Interpretation Act 1901*, before the date of its notification in the *Gazette*;

that legislation is to be construed, on and after the commencing day or the day of its commencement, whichever last occurs, as if it had provided instead that the instrument, to the extent that it adversely affects those rights or results in the imposition of those liabilities, has effect, despite subsection 12(2) of the *Legislative Instruments Act 2003*, before its registration under that Act.

(4) If:

(a) legislation (the ***enabling legislation***) in force immediately before the commencing day:

(i) authorises the making of an instrument; and

(ii) does not declare such an instrument to be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901* but nonetheless makes provision for its disallowance by the application, with or without modification, of the provisions of Part XII of that Act; and

(b) an instrument is made in the exercise of that authority on or after the commencing day; and

(c) the instrument is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003* or otherwise;

the enabling legislation has effect, on and after the commencing day, as if:

(d) it had declared such instruments to be disallowable instruments for the purposes of section 46B of the *Acts Interpretation Act 1901*; and

(e) it had provided for such modifications of the operation of that section as are necessary to ensure that the effect of the applied provisions of Part XII of the *Acts Interpretation Act 1901* is preserved.

(5) In this section:

commencing day means the commencing day within the meaning of the *Legislative Instruments Act 2003.*

Territories Self-Government Legislation Amendment (Disallowance and Amendment of Laws) Act 2011 (No. 166, 2011)

4 Objects of Act

The objects of this Act are:

(a) to remove the Governor-General's power, under section 35 of the *Australian Capital Territory (Self-Government) Act 1988*, to disallow an enactment (or part of an enactment) of the Legislative Assembly for the Australian Capital Territory or to recommend amendments of any enactments; and

(b) to remove the Governor-General's power, under section 9 of the *Northern Territory (Self-Government) Act 1978*, to disallow a law (or part of a law) of the Legislative Assembly of the Northern Territory or to recommend amendments of any laws of the Northern Territory.

APPENDIX B: ADDITIONAL COMMENTS—MR JEREMY HANSON MLA

RECOMMENDATION 5

Recommendation 5 is not agreed to.

It is appropriate that some restrictions be placed on the ability of the ACT Assembly to pass legislation that would have significant consequences for all Australians.

The Legislative Assembly for the ACT has relatively few checks and balances on it and represents the smallest number of Australian citizens. The Assembly is small relative to other parliaments around Australia and legislation can be passed with a simple majority of nine members. There is no upper house, Governor or Administrator to apply an additional level of scrutiny on bills. There is limited committee scrutiny of bills especially relative to other Commonwealth jurisdictions. Past and current experience of the Legislative Assembly is that there is often a very short period between introduction and passage of a bill. This greatly reduces the amount of the time the community has to scrutinise the legislation.

The matters prescribed in section 23(1A) and 23(1B) are issues that would have significant consequences for all Australians if the current legislative position was changed. It is not appropriate that they be considered by the ACT Legislative Assembly.

Jeremy Hanson MLA

August 2012