2003

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

GOVERNMENT RESPONSE

TO THE STANDING COMMITTEE ON LEGAL AFFAIRS

REPORT NO 7 2003

CHANGING THE TERM OF ASSEMBLY MEMBERS FROM THREE YEARS TO FOUR YEARS

TABLING STATEMENT

Circulated by authority of the
Attorney General
Mr Jon Stanhope MLA

I present to the Assembly the government response to Report 7 of the Standing Committee on Legal Affairs: *Changing the term of Assembly Members from three years to four years*.

The government considers that the recommendations of the report provide an adequate balance between democratic involvement in the political process and effective representation. The government accepts all three recommendations of the committee.

The benefits of extending the term of the Assembly from three years to four years do not come at the expense of significantly reduced voter sovereignty.

And there are significant benefits. Extending the term of the Assembly is likely to result in fewer ACT elections coinciding with federal elections. This would mitigate the impact of federal elections on the discussion of issues of local significance and on the ACT business community.

The extension of the term of the Assembly from three years to four years would allow Assembly committees to more effectively study longer-term policy issues and trends, and monitor the implementation of their recommendations. Committee members would be able to develop greater expertise in the matters for which they were responsible.

Changing the term of the Assembly from three years to four years would also generate greater certainty for business in the ACT. The committee heard evidence from the Canberra Property Owners Association detailing the frustration experienced by developers as a result of the election cycle.

Of less significance, but relevant none-the-less, is a cost saving of one election in every 12 year cycle. Averaged over 12 years this would amount to $125,000 per annum in today's terms.

Evidence from other jurisdictions suggests that a four year period does not unacceptably alter the dialogue between the community and government. In Australia, six of nine jurisdictions have four year terms. Of 148 national parliaments surveyed, 55 have four year terms and 76 have five year terms. Only 13 have three year terms.

Elections are but one part of the healthy dialogue that exists between the ACT community and the government. The government receives and replies to thousands of items of correspondence each year, conducts extensive community consultation programs on specific issues through consultative committees, inquiries and public meetings, and Ministers are accessible through attendance at public events and participation in regular talkback radio segments. Increasing the term of the Assembly by one year will not dramatically affect popular involvement in the political process.

Concern has been expressed that four years is too long for a government in the ACT. This overlooks the effective checks on the executive government in the ACT political system. Since self-government, no government has held a majority in the Assembly. Minority government means that the executive is answerable to the Assembly. As we know accountability is enforced through the Assembly's system of committees and the government may ultimately be sanctioned by a vote of no confidence. A further check on executive power exists in the form of supervision of the Assembly by the federal parliament.

Four year, fixed terms are now becoming standard across Australian jurisdictions. New South Wales has had a fixed four year term since 1995 and South Australia since 2001. This year, Victoria has moved to a fixed, four year term, the Western Australian government has introduced a bill proposing a fixed four year term, and a fixed four year term has been recommended in the Northern Territory.

The government accepts recommendation one of the report, that the length of the term of members of the Assembly be extended from three years to four years.

Several submissions made to the standing committee raised the issue of a referendum to determine whether the term of the Assembly should be extended to four years.

A referendum is not required. The *Electoral Act 1992* currently prescribes that the term of the Assembly is three years. This may be amended by a simple majority of this Assembly.

Four inquiries have considered extending the term of the Assembly. The inquiries have involved significant community consultation. The standing committee's inquiry was advertised in local newspapers and received considerable media attention. Letters inviting submissions were sent to over 40 individuals and organisations expected to have an interest in the inquiry. The government considers that there would be little value in spending an additional $230,000 to again seek to raise community interest in this issue.

A simple legislative amendment is consistent with the practise of four of the five Australian jurisdictions that have extended the term of their legislature from three years to four years.

Concern about any conflict of interest on the part of Assembly members is largely dispelled by making an amendment to extend the term of the Assembly effective from after the 2004 election. Members would stand for election along side other candidates for a four year term. The electorate would be given the opportunity to elect representatives on the understanding that its representatives would serve for the extended, four year term.

The government accepts recommendation two of the report, that the Assembly make the decision on extending the length of the term of members of the Assembly by amending the *Electoral Act 1992*.

Finally, the government accepts recommendation three made by the report, specifying amendments to the Electoral Act. The recommendation provides for the implementation of the first two recommendations and consequential amendments increasing by one year time limits used for disclosure regime, to take account of the increase in the term of the Assembly.

Mr Speaker, the adoption of a four year fixed term in the ACT will ensure that the ACT government is accountable to the people and can effectively represent the people.

The government will introduce a bill amending the Electoral Act in a manner consistent with recommendation three of the committee's report.

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THREE YEARS TO FOUR YEARS

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Attorney General

Mr Jon Stanhope MLA

The following provides the ACT government's response to the recommendations made by Report 7 of the Standing Committee on Legal Affairs: *Changing the term of Assembly Members from three years to four years.*

The government considers that the recommendations provide an adequate balance between democratic involvement in the political process and effective representation.

RECOMMENDATION 1 – That the length of the term of members of the ACT Legislative Assembly be extended from three years to four years.

The government accepts this recommendation. The benefits of extending the term of Assembly members from three years to four years do not come at the expense of significantly reduced voter sovereignty.

Extending the term of the Assembly is likely to result in fewer ACT elections coinciding with federal elections. This would reduce the likelihood of issues appropriately considered by the federal parliament clouding the discussion of issues properly dealt with by the Assembly. It would also mitigate the effect on business when caretaker periods for the federal and ACT governments coincide. When caretaker periods at the federal and ACT levels of government coincide, this results in a dramatic downturn in new governmental initiatives and contracts for business in the ACT. A four year term would also reduce the number of elections at which ACT electors would be obligated to vote. This is significant in a federal system where different, independent levels of government can impose a significant burden on electors.

The extension of the term of the Assembly from three years to four years would allow Assembly committees to more effectively study longer-term policy issues and trends, and monitor the implementation of their recommendations. Committee members would be able to develop greater expertise in the matters for which they were responsible. An extension of the term of a government to four years would also allow a government to implement, supervise and refine its initiatives more effectively, before returning to the electorate.

Changing the term of the Assembly from three years to four years would also generate greater certainty for business in the ACT. The disruption to government decision making caused by an election frustrates business and investment in the ACT, particularly those businesses dealing with the planning processes. The committee heard evidence from the Canberra Property Owners Association detailing the frustration experienced by developers as a result of the election cycle. The Association detailed the history of Draft Variation 202, the Jamison Master Plan, a project worth $250 to $300 million that was put on hold nine months before the 2001 election, and remained stagnant for six to nine months after that election.

Of less significance, if the term of the Assembly is changed from three years to four years, a cost saving of one election in every 12 year cycle would be realised.
The 2001 Assembly election cost $1.55M. Averaged over 12 years the saving would equate to $125,000 per annum in today's terms.

Objections to changing the term of the Assembly from three years to four years

A number of arguments have been made against extending the term of the Assembly from three years to four years. The government considers that there are persuasive responses to these arguments.

Firstly, it is contended that extending the term of the Assembly from three years to four years involves an unacceptable dilution of voter sovereignty. Fewer elections equates to less community involvement in government. Similarly, there is less continuity of issues between one election and the next, making incumbent members and new candidates less accountable for views expressed at the previous election.

The government does not consider this argument persuasive. Evidence received by the committee indicated that extending the term of the Assembly from three years to four years would not result in a great difference in voter sovereignty or accountability.[1] Extending the term of the Assembly from three years to four years will result in only one fewer election in a twelve year period. Evidence from other jurisdictions suggests that a four year period does not unacceptably alter the dialogue between the community and government. In Australia, six of nine jurisdictions have four year

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[1] ACT, *Transcript of evidence*, Legislative Assembly Standing Committee on Legal Affairs, 7 October 2003, 48 (Prof John Warhurst).

terms. Of 148 national parliaments surveyed, 55 have four year terms and 76 have five year terms. Only 13 have three year terms.[2]

The argument that there will be less community involvement in government if the term of the Assembly is extended from three years to four years does not adequately reflect the myriad of alternative means by which the community engages with government. In the ACT a healthy dialogue exists between the community and government. Government receives and replies to thousands of items of correspondence each year, conducts extensive community consultation programs on specific issues through consultative committees, inquiries and public meetings, and Ministers are accessible through attendance at public events and participation in regular talkback radio segments. Increasing the term of the Assembly by one year will not dramatically affect popular involvement in the political process.

Secondly, it is argued that there is no evidence to support the claim that extending the term of the Assembly from three years to four years would bring benefits to the ACT community. The government disagrees with this assertion. As noted above, extending the term of the Assembly from three years to four years would be likely to result in considerable benefits to the ACT. Of particular note are the separation of federal and ACT elections, added certainty for the business community and resulting investment, and efficiencies realised in the public sector by virtue of less time spent in caretaker mode.

Thirdly, it is asserted that extending the term of the Assembly from three years to four years removes an important check on the power of the executive. It is put that because the ACT has a unicameral legislature, if a majority government were elected it would have few checks on its power. It is argued that this is particularly significant in the context of the ACT, because the Assembly is responsible for a wide spectrum of matters that in other jurisdictions would be the responsibility of two independent tiers of government: state and local.

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[2] Inter-parliamentary Union, *Electoral systems: A world-wide comparative study* (1993); *Blackwell encyclopaedia on political science* (1991), 332.

The government considers that the ACT system of government includes effective checks on the executive government. Since self-government, no government has held a majority in the Assembly. That there will be a government that will hold a majority in the Assembly is less likely in the ACT than in other jurisdictions, because of the use of the Hare-Clark quota-preferential electoral system and Robson-rotation on ballot papers. Minority government means that the executive is answerable to the Assembly. Were a majority government elected by the people of the ACT, that government would be held accountable by a system of Assembly committees, and could ultimately be sanctioned by an expression of no confidence by the people's representatives. A further check exists in the form of supervision of the Assembly by the federal parliament.[3] That a unicameral parliament may operate effectively with a term of greater than three years is evidenced by the Legislative Assembly of the Northern Territory.

Fourthly, it is put that other jurisdictions, such as the Northern Territory, that have a four year term, do not have a fixed term. The ACT has a fixed term. Evidence from those jurisdictions indicates that elections are called, on average, less than four years apart. It would therefore be inappropriate for the ACT to move to a four year term, given that the term of the Assembly is fixed.

This argument overlooks developments in other jurisdictions. The four year term in New South Wales has been fixed since 1995. South Australia moved to a fixed, four year term in 2001 and Victoria made the same move this year. The Western Australian government, on 29 October 2003, introduced a bill to provide for a fixed, four year term. A report commissioned by the Northern Territory government has recommended that the four year term of the Legislative Assembly be fixed. The Queensland Premier has flagged the possibility that Queensland will also move to a

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[3] This may be in the form of an amendment to the *ACT (Self Government) Act 1988*, for example in relation to euthanasia: *Euthanasia Laws Act 1997* (Cth); or enactment of a law with respect to the ACT under s 122 of the *Australian Constitution* with which an ACT law can not operate concurrently: *ACT (Self Government) Act 1988*: s28. The Governor General may also dissolve the Assembly if, in his or her opinion, the Assembly is incapable of effectively performing its functions or is conducting its affairs in a grossly improper manner: *ACT (Self Government) Act 1988*: s16.

fixed four year term, from the existing non-fixed three year term. Were these reforms pursued, Tasmania and the ACT would be the only Australian state and territory without a fixed, four year term. A fixed four year term is the most effective balance between democratic involvement in the political process and effective representation.

Finally, it is asserted that extending the term of the Assembly from three years to four years would unacceptably disadvantage new candidates for Assembly seats. Extending the term of the Assembly by one year would enhance the profile of incumbent representatives to the disadvantage of new representatives.

The government accepts that an inevitable function of representative democracy is that a candidate who is an incumbent is likely to have a greater public profile than a person who is not an incumbent. It is not clear that extending the term of Assembly members by one year will significantly alter this advantage.

RECOMMENDATION 2 – that the Assembly make the decision on extending the length of the term of members of the ACT Legislative Assembly by amending the *Electoral Act 1992*.

The government accepts the recommendation of the committee. A referendum is not required to extend the term of the Assembly from three years to four years. Section 100 of the *Electoral Act 1992* currently prescribes that the term of the Assembly is three years. This may be amended by a simple majority of the Assembly.

Submissions made to the committee confirmed that in jurisdictions where the term of the legislature had been extended from three years to four years, there had been no evidence of community anxiety as a result of the change.[4] Similarly, when the term of the Fourth Assembly was extended from three years to three years and eight months, there was no adverse community comment. The four inquiries that have examined extending the term of the Assembly from three years to four years have involved

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[4] Although those jurisdictions did not have fixed terms at the time the change was made. New South Wales, Victoria and South Australia now have fixed terms. ACT, *Transcript of evidence*, Legislative Assembly Standing Committee on Legal Affairs, 7 October 2003, 42 (Mr Phillip Green, ACT Electoral Commissioner), 49 (Prof John Warhurst).

community consultation. The latest inquiry was advertised in local newspapers in the week commencing 6 September 2003. Letters inviting submissions were sent to over 40 individuals and organisations expected to have an interest in the inquiry. There was media coverage at the beginning of the inquiry. None of the four inquiries identified significant concern in the community regarding this issue.

An amendment without recourse to a referendum would be consistent with the practice of four of the five Australian jurisdictions that have extended the term of their legislature from three years to four years. Only in New South Wales has a referendum been held on the issue. A referendum was required by the constitution of that state.

Objections to changing the term of the Assembly from three years to four years without a referendum

A number of arguments have been made against extending the term of the Assembly from three to four years. The government considers that there are persuasive responses to these arguments.

Firstly, it is argued that the Assembly should not alter the way it is constituted without holding a referendum. This is particularly the case where members of the Assembly would gain an advantage from such a change. Legislating in this way, it is contended, constitutes a conflict of interest on the part of Assembly members.

Concern about a conflict of interest on the part of Assembly members is largely dispelled by making an amendment to extend the term of the Assembly effective from after the 2004 election. In those circumstances Assembly members would not be extending their existing term. Members would stand for election along side other candidates for a four year term. The electorate would be given the opportunity to elect representatives on the understanding that its representatives would serve for the extended, four year term.

Secondly, it is contended that a referendum would instil confidence in the democratic process. A referendum would also provide the opportunity to raise awareness of the democratic process in the community. The government considers that there have been considerable attempts to garner community views on this issue. Four inquiries have reported on the matter and have attracted significant media attention. There has been little or no concern expressed about extending the term of the Assembly from three years to four years. The government considers that there would be little value in spending an additional $230,000[5] to again seek to raise community interest in the issue.

RECOMMENDATION 3 – that the *Electoral Act 1992* be amended as follows (with amendments to commence after the 16 October 2004 election has been held):

- section 100(1) –'3rd year' be changed to '4th year';
- section 201(2)(a) –'4 years' be changed to '5 years';
- section 236(6) –'3 years' be changed to '4 years';
- section 239(1) – '3 years' be changed to '4 years'; and
- section 239(2) '3 years' be changed to '4 years'.

The government accepts the recommendation of the committee. As noted above, making any amendments commence after the next election would largely dispel concerns that Assembly members were acting with a conflict of interest.

The suggested amendment to section 100(1) of the *Electoral Act 1992* would effect a change in the length of the term of the Assembly from three years to four years. The remaining amendments are consequential to an increase in the term of the Assembly from three years to four years. The amendments increase by one year time limits for the disclosure regime, to take account of the increase in the term of the Assembly.

The government will be introducing amendments to the *Electoral Act 1992*, consistent with recommendation 3 of the committee's report.

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[5] The estimated cost of a single-question referendum at the next election: ACT, *Transcript of evidence*, Legislative Assembly Standing Committee on Legal Affairs, 7 October 2003, 39 (Mr Phillip Green, ACT Electoral Commissioner).