



The ACT Greens

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Secretary
Standing Committee on Administration and Procedure
ACT Legislative Assembly
GPO Box 1020
ACT 2601
By Email tom.duncan@parliament.act.gov.au

Dear Mr Duncan,

Re Inquiry into the *Australian Capital Territory (Self Government) Act 1988 (Cth)*

The *Australian Capital Territory (Self Government) Act 1988 (cth)* 'Self Government Act' is in need of reform and the ACT Greens welcome the opportunity to contribute to this inquiry. Much has changed in the Territory since self government more than 20 years ago and the Greens believe that what is effectively our constitution should be significantly updated to reflect the mature democracy that the ACT has become.

This submission discusses a number of specific concerns in relation to the current provisions of the Self Government Act as well some more general observations for changes to the Self Government Act.

In amending the Self Government Act the underlying aim of the changes should be to achieve equality between residents of Canberra and other Australian cities. Certainly there will be a distinction between the seat of the federal government and other Australian jurisdictions, however there is still much that can be done to address the current situation where Canberrans and their Parliament are afforded fewer rights than those in the states.

Generally, the Self Government Act should do no more than set up the essential framework for the government of the ACT and allow the ACT Parliament to be self governing and reflect the contemporary views and values of the people it represents. It is the people of the ACT who should own and be responsible for our governance; not representatives of other jurisdictions with little real interest in the ACT.

The most important points to note are that the 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. Additionally 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.

There are a number of important principled changes that should also be made to the Self Government Act both to properly recognise the status of the institutions and to better reflect the separation of powers. These include providing for a Parliament rather than a Legislative Assembly. It is not clear why the Self Government Act refers to the Legislative Assembly instead of the Parliament and consistent with the nature of the role of the current Legislative Assembly the Act should refer to a Parliament. Further sections 48A to 48D should be removed from Part V (which covers the executive) and given their own part covering the judiciary.

The Greens believe that fixed four year terms of the Parliament should be set out in the Self Government Act. The Greens would also support the explicit inclusion of equivalent provisions to sections 7 and 24 of the Australian Constitution, providing that Members of the Parliament be directly chosen by the people. Although these probably already exist for the ACT and are passed through from section 122 of the Australian Constitution it would be worthwhile to state clearly the nature and obligations of the Parliament and consequent limitations placed upon it.

The Greens would also support a reference, perhaps in a preamble to the Act, acknowledging the Indigenous people of the area.

Size of the Assembly and the number of Ministers

Section 8 currently limits the size of the Assembly to 17 members. The Greens believe that this should be removed and the section should simply create the parliament of the ACT. Subsection (2) should be replaced with a provision allowing the parliament to determine the number of the members, though not fewer than 17. Subsection (3) should be deleted. The Greens believe that the size of the Parliament should be increased and support a mechanism, analogous to Part III of the *Commonwealth Electoral Act 1918*, that sets out an ACT specific formula for the electoral commission to expand the number of elected representatives as the population grows.

Members Oath or Affirmation

Section 9 and schedule 1 currently only provide for an allegiance to the Queen. The *Oaths and Affirmations Act 1984* schedule 1A does provide for an oath or affirmation to serve the people of the Australian Capital Territory, however the Self Government Act should be amended to either omit section 9 and schedule one and simply allow for the oath or affirmation to be determined by the parliament or to provide within section 9 that the oath or allegiance must be made to the people of the Australian Capital Territory.

Conflicts of Interest

Section 15 deals with conflicts of interest and the Greens note the comments that the Assembly Ethics and Integrity Advisor has previously made on this issue. Noting section 44(v) of the Australian Constitution, the Greens view is that this clause should be left for the ACT Parliament to deal with and proscribing it in the Self Government Act is unnecessary and akin to provisions normally made in relation to local councils rather than state governments. If such a provision is to remain we would support an expanded definition providing for the Parliament to determine conflicts of interest and the removal of the reference to 'contracts'.

Dissolution of the Assembly

Section 16 allows the Governor General to dissolve the Assembly if of the view that it is not able to perform its functions or is conducting its affairs in a grossly improper manner. This is simply no longer appropriate in a mature democracy. The Greens would support an amendment to provide that if no Member has the support of the majority of the Parliament to be Chief Minister then automatically an election is called. There should not be a discretionary power exercised by the commonwealth executive. This amended section could also include the process created in section 48 (Resolution of no confidence in Chief Minister).

Limitations on the Power of the Assembly

Section 23 deals with limitations on the power of the Assembly. The Greens do not support these provisions and believe that they should be removed. Just terms acquisition should remain, even though it is likely that the limitation relating to just terms acquisition in the Australian Constitution binds any acquisition of property by the ACT Government, for clarity the Greens support it being maintained in the Self Government Act.¹ In relation to the other powers set out in subsection (1) we believe these to be unnecessary as they are provided for in section 51 of the Australian Constitution. In relation to policing it is hard to see how the Assembly could compel the commonwealth to provide additional police services and certainly it seems accepted that there is a good ongoing relationship and no need to address this issue in the Self Government Act.

The important point is that to the extent possible under the Australian Constitution there should be no additional limitations on the Territory Parliament than exist for the states.

The Executive

Section 37 and schedule 4 set out the powers of the executive although not exhaustively. It is hard to see the need for such provisions and the Greens believe that section 36 should be the equivalent of section 61 of the Australian Constitution and that is all that is required. It is not necessary to articulate the scope of the executive power exercisable by the ACT Government. The necessary part of section 37 should be merged into section 36 and the remainder deleted.

The Ministry

The Territory has proven itself to be a mature democracy with a respected and responsible parliament. Section 47 which provides for vacancies in all ministerial offices is simply unnecessary and should be deleted. Not only is it almost unimaginable that there will be a situation where all ministerial offices are vacant, the important principle is that a Commonwealth Minister should not be exercising a discretionary power in place of the ACT Parliament. In the context of an amended section 16 as

¹ See generally *Wurridjal v The Commonwealth of Australia* [2009] HCA 2; *Jango v Northern Territory of Australia* [2006] FCA 318.

proposed above, a general election where no grouping of members has the support of the majority of the Parliament is all that is required.

The Judiciary

As set out above the Greens believe that the sections relating to the judiciary should be separated from the executive and given their own part within the Act. Section 48B which provides the Assembly the ability to set the retirement of judges should set the maximum age at 70 to replicate the constitutional requirement for federal judges in section 72 of the Australian Constitution.

Conclusion

In *NSW v Commonwealth* [2006] HCA 52 (the WorkChoices case) Justice Callinan opined that the decision of the majority of the High Court in that case risked turning the Parliament of each state into an "impotent debating society".² We have seen this occur in relation to the ACT Parliament on the issues of civil unions and voluntary euthanasia and until recently that risked being the case for any matter that a commonwealth minister determined. The Parliament of the ACT should be afforded the same respect as all other Australian Parliaments and so too should the people it represents. The ACT Parliament should be able to legislate on the same scope of matters as any state Parliament and the Self Government Act should be significantly amended to correct the current shortcomings.

Yours Sincerely



Simon Copland
Convenor ACT Greens
10 April 2012

² at [779].