



# LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY – AN INTRODUCTION

The Commonwealth of Australia was created by legislation of the United Kingdom Parliament<sup>1</sup> by which six pre-existing Crown colonies were joined in a federation in 1901 and became the component states of that federation. The structure of the new federation reflected, among other things, the concern of the individual states to retain a high degree of autonomy in domestic matters and to ensure that those states with the largest populations did not come to dominate the new Commonwealth. One expression of this was the decision to have the seat of government located away from the two largest cities, Sydney and Melbourne. Section 125 of the Constitution gave effect to this:

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

The actual site for the seat of government was chosen by ballot by the Senate and the House of Representatives, respectively, in 1909.<sup>3</sup> Section 3 of the *Seat of Government Act 1908* had determined that the seat of government of the Commonwealth shall be in the district of Yass-Canberra in the state of New South Wales (assented to on 14 December 1908).<sup>4</sup>

In 1911, 910 square miles (2,357 square kilometres) of sparsely inhabited<sup>5</sup> rural land was transferred to the Commonwealth as the Australian Capital Territory (ACT) though it was commonly referred to as the Federal Capital Territory for some years.<sup>6</sup> The name ‘Canberra’ was announced by the wife of the Governor-General, Lady Denman, on 12 March 1913 – ‘I name the capital of Australia Canberra’.<sup>7</sup> Progress on the construction of Canberra was slow; the Royal Military College at Duntroon was established in 1911; a ‘provisional’ Parliament House was opened in 1927; and a small number of public servants and military personnel moved to the capital. The Depression further slowed progress and by the mid-1930s the population was approximately 7,000, rising to about 10,000 by the outbreak of the Second World War in 1939. The war resulted in an influx of officials to the national capital but at the same time meant the deferral of any further significant public building projects.

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1 *Commonwealth of Australia Constitution Act 1900* (63 and 64 Victoria, Chapter 12).

2 *Commonwealth of Australia Constitution Act 1900*, section 125.

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

4 The *Seat of Government Act 1904* had nominated a large area at Dalgety as the site for the seat of government but Parliament continued to debate the issue without reaching agreement. The *Seat of Government Act 1908* repealed the 1904 Act. <<http://www.canberrahistory.org.au/discover.asp>>.

5 *Seat of Government (Administration) Act 1910* – commenced 1 January 1911. At the time it was estimated that the human population was 1,714, somewhat overshadowed by approximately 224,764 sheep. Of the original inhabitants of the region Queen Nellie, who died in the Queanbeyan Hospital at the age of about 60 on 1 January 1887, was believed to be the last full blood member of her tribe see <[www.legislation.act.gov.au/di/2001-329/current/rtf/2001-329.rtf](http://www.legislation.act.gov.au/di/2001-329/current/rtf/2001-329.rtf)>.

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

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

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

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

The first representative body for the ACT was the Advisory Council established in 1930, comprising three elected and four appointed members. There followed a succession of advisory councils composed of government appointees and elected representatives, the latter increasing in number from three to five and finally, in 1959, to eight. In 1974 a fully elected, but still wholly advisory, Legislative Assembly (later the House of Assembly) of 18 Members was established. It ceased to exist on 30 June 1986.<sup>11</sup> The role of these bodies was to provide 'some popularly elected voice within the governmental system, despite the general unwillingness of Ministers and departmental officials to listen to it'.<sup>12</sup>

The ACT also gained representation in the Commonwealth Parliament as its population grew. It was represented by one Member in the House of Representative from 1949 (with limited voting rights until 1966), two in 1974 and, briefly, three in 1996 (for one parliament only).<sup>13</sup> The ACT has also elected two Senators since 1975.

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

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

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8 The ACT's population was 41 000 in 1958, 103 000 in 1967, 207 000 in 1976 and 322 000 in 2006.

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

10 P Grundy, B Oakes, L Reeder and R Wettenhall, *Reluctant Democrats*, Canberra, 1996, p. 84.

11 P Grundy, B Oakes, L Reeder and R Wettenhall, *Reluctant Democrats*, Canberra, 1996, p. 219.

12 P Grundy, B Oakes, L Reeder and R Wettenhall, *Reluctant Democrats*, Canberra, 1996, p. 7.

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

The results of the advisory referendum showed that 63.75%, a majority, of the electors casting a valid vote at the referendum voted in favour of continuing with the present arrangements for the time being.<sup>14</sup>

A decade later the then Commonwealth government introduced legislation to give the ACT a measure of self-government without conducting another plebiscite or referendum. Contemporary commentary suggests that opposition to self-government may have declined since 1978 but that it was still significant.<sup>15</sup> This was to be reflected by the success of candidates running on explicit anti self-government tickets in the first election after self-government.

The case for self-government was, on purely numerical terms, overwhelming. By the late 1980s the ACT had a population of more than a quarter of a million, yet its four representatives in the Commonwealth Parliament were its only elected representatives to a body having genuine legislative authority. The national parliament was at the least an unwieldy institution through which to consider the minutiae of managing urban services in the ACT. Whether contrasted with Australia's smallest state, Tasmania, or cities of comparable size to Canberra, the ACT suffered a severe 'democratic deficit'.<sup>16</sup> While it has been argued that, even with self-government, the ACT's voters have too few elected representatives, it should be noted that, unlike any other Australian state or territory, the ACT is almost wholly urban, with its population concentrated in the city of Canberra. Thus the problems of distance and geographical dispersion that face other jurisdictions do not affect the ACT.

The ACT's system of government, created by the Self-Government Act, has a single legislative chamber of 17 Members. Executive responsibility is vested in a Chief Minister, elected by the Assembly, and no more than five Ministers, who must also be Members of the legislature. The government is responsible for a range of 'state' and 'local government' functions at the one level. This broad range of responsibilities results in governments with significant legislative programs.<sup>17</sup>

The Assembly has the right to develop its own practices and procedures. However, in relation to powers and immunities the Self-Government Act, at subsection 24(3), establishes that 'until the Assembly makes a law with respect to its powers' they are taken to be the same as those of the House of Representatives. The first standing orders of the Assembly were prepared in consultation with officers of the Territory Administration, the Department of the House of Representatives and the Assembly secretariat but in significant areas reflected House of Representatives practice. The Legislative Assembly has amended its standing orders and adopted a number of resolutions with regard to its practices and procedures since its establishment.

Members are elected to the Legislative Assembly from three multi-Member constituencies (two returning five Members and the third returning seven), using a system of proportional

14 <<http://www.elections.act.gov.au/FactReferendum.html>>.

15 See P Grundy, B Oakes, L Reeder and R Wettenhall, *Reluctant Democrats*, pp. 181-2. An opinion poll was conducted on behalf of the *Canberra Times* while the package of self-government legislation was before the Senate, the results of which were published in the paper on 20 November 1988, indicated that, were a referendum to be held on self-government, 44.7% of respondents would have voted in favour, 46.9% against. If offered a choice, 27% favoured no self-government, 38.7% favoured a local council-type government and 30.8% supported state-type self-government (essentially the proposal before the Senate). The same poll indicated that Canberrans overwhelmingly supported (76.5%) any proposal for self-government being put to them in a referendum prior to its adoption. The government did not offer Canberra's citizens a referendum; as ACT Senator Bob McMullan put it, '... this is not an appropriate matter for a referendum. In my view democracy is not optional.' Sen. Deb. (23.11.1988) 2602.

16 In September 2006 the Australian Bureau of Statistics recorded a population of approximately 329 500 for the ACT and 489 600 for Tasmania. Tasmania has five Members of the House of Representatives, 12 Senators, a bi-cameral state parliament with 15 Members in the Legislative Council and 25 in the Assembly and 30 local government areas.

17 The ACT Government has responsibility for education, health, social welfare, housing, justice and policing, land management, licensing and municipal services such as public transport, water and power supply and household waste management.

representation.<sup>18</sup> The electoral system resulted in a series of minority governments. During the course of the First Assembly there was one coalition government for almost 20 months. Not until the Sixth Assembly, elected in 2004, did a single party have a majority.

The small size of the Legislative Assembly, the preponderance of minority governments and, perhaps, its unicameral structure, have contributed to a certain complexity in its operations. Procedures have been adopted in response to the exigencies of the moment which depart from 'standard' practice, thus providing a range of sometimes conflicting precedents. The demands of coalition building have on occasion resulted in innovative solutions; for example, one minor party Member held a ministerial portfolio yet was not bound by cabinet solidarity in relation to matters outside his portfolio.

In a parliamentary context, the combination of state and local government functions at the one level is unique in Australia. The small membership puts considerable strain on Ministers whose portfolios are extensive and often include diverse responsibilities. The Assembly's committees have similarly wide-ranging responsibilities, while the small number of backbenchers available to serve on them can present problems which larger legislatures do not confront.<sup>19</sup>

Located as it is in a 'city state', the Legislative Assembly is immediately accessible to the public and closely scrutinised by the local media. This adds to the pressure on Members in particular and the institution more generally. To these pressures might be added the scepticism of the electorate, many of whom were unconvinced of the need for self-government<sup>20</sup> and voted for a succession of minority governments.

Debate on the nature of the ACT's self-government continues. In 2006, during consideration of a bill to amend the Self-Government Act to limit the Governor-General's (effectively the Commonwealth government's) power to disallow ACT legislation, a Federal government Minister provided, at best, lukewarm support for self-government in the ACT.

The reality is that the Assembly will always be subject to the wishes of the Commonwealth Parliament. In addition, unlike the Northern Territory, the ACT can have no aspirations to statehood. The Territory is and will remain the seat of government of the Commonwealth. Experience has demonstrated that when the Commonwealth Parliament has seen fit it has amended the Self-Government Act to remove certain legislative powers from the Assembly and has supported the Federal government in the steps it has taken to disallow an enactment where it felt the need to.

2009 marks the 20<sup>th</sup> anniversary of the Assembly's establishment. This book chronicles how much it has matured as a parliamentary institution over those 20 years. If the experiences to date serve as a guide, it will undoubtedly continue to develop and enhance the way it governs the Territory in the future.

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18 Elections to the First Assembly were conducted under a modified d'Hondt system that proved to be extremely complex. It was described by the Australian Electoral Commission as 'fatally flawed'; see Grundy et al, *op cit*, p. 199. This was replaced by the Hare-Clark system.

19 See Chapter 16 – *Committees*, p. 1.

20 Four candidates specifically committed to the abolition of self-government were elected to the First Assembly; one became the first Speaker.