LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

# SELECT COMMITTEE ON SELF–GOVERNMENT

## REPORT 1990

# TERMS OF REFERENCE OF THE COMMITTEE

A select committee be appointed to enquire into and report on:

(a) a financial agreement between the ACT and the Commonwealth Government as a result of Self-Government for the Territory;

(b) the form of government most appropriate in the ACT taking into account the responsibilities of state, territory and municipal governments;

(c) the method and practice of the first ACT election with particular regard to the electoral system and the election process with a view to recommending changes which might improve the process and expedite the count; and

(d) the reserve powers retained by the Commonwealth under the ACT Self-Government legislation particularly with respect to:

(i) the responsibility for future electoral arrangements;

(ii) the size and structure of the Legislative Assembly;

(iii) the size of the Executive; and

(iv) the role and powers of the Governor-General.

## MEMBERS OF THE COMMITTEE

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| Chairman | Mr Norm Jensen (from 15 December 1989)<br>Mr Trevor Kaine* (to 14 December 1989) |
| Deputy Chairman | Ms Carmel Maher (from 15 December 1989)<br>Mr Craig Duby* (to 14 December 1989) |
| Member | Mr Bill Wood |

All Members were appointed to the Committee on 4 July 1989.

* indicates members who were discharged from the Committee on 14 December 1989.

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| Secretary to the Committee | Ms Karin Malmberg |
| Secretary to the Inquiry | Ms Cheryl Scarlett |

# Preface

This report addresses the fundamental issues of self government for the Australian Capital Territory. The proposal to establish the Select Committee came out of the clear indication of dissatisfaction by many ACT voters with self government.

However, now that self government has been in place for twelve months it is clear that there is a role for self government in the ACT. Members of the Committee have listened carefully to the concerns and issues raised in the many submissions received and during public hearings. The Committee appreciates the effort that went into these submissions and thanks all those who appeared before it as witnesses.

The Committee has come to the conclusion that self government is appropriate for the ACT and that it provides a way in which the people, through their elected representatives, can influence the decision making process. Indeed, this Select Committee has been a part of that process.

Many witnesses also expressed concern about the need to ensure that the residents of the ACT are not forced to pay more than their fair share of the costs of Canberra and the ACT. It is important for the Federal Parliament to squarely face up to its responsibilities to pay its share of capital and recurrent costs of our National Capital.

While acknowledging that the Federal Parliament has a constitutional interest in the National Capital, the Committee was convinced that responsibility for the form and structure of the parliamentary system, including the electoral system, should be transferred to the people of the ACT.

I would like to thank the inaugural Chairman of the Committee, Trevor Kaine, and original Committee member, Craig Duby, for their contributions prior to December 1989. On behalf of these previous members and the rest of the Committee, I would like to thank Cheryl Scarlett and Karin Malmberg for their support and assistance during the preparation of such a complicated report.

It is expected that the report will form a basis for reasoned political and community debate on the issue of self government. This should result in the implementation of a process of self government and an electoral system that meets the needs of the majority of the people of the ACT.

Norm Jensen
Chairman
April 1990

## PART 3
## RESERVE POWERS



## PART 4
## FINANCES

# PART 5
# ELECTORAL SYSTEMS

**APPENDICES**

## RECOMMENDATIONS

### STRUCTURE OF GOVERNMENT

**The Committee recommends that:**

1. **There be an increase in the number of ACT Legislative Assembly members only in proportion to an increase in the number of electors.**

(Paragraph 5.48)

2. **The Chief Minister request the responsible Commonwealth Minister amend the Australian Capital Territory (Self-Government) Act 1988 to remove the ultimate power concerning the number of ACT Legislative Assembly members from the Commonwealth and transfer this power to ACT Legislative Assembly.**

(Paragraph 5.52)

3. **The Chief Minister request the responsible Commonwealth Minister amend the Australian Capital Territory (Self-Government) Act 1988 to remove the ultimate power concerning the number of Ministers from the Commonwealth and transfer this power to the ACT Legislative Assembly.**

(Paragraph 5.60)

## ROLE OF THE COMMONWEALTH GOVERNMENT

**The Committee recommends that:**

4. **The Chief Minister request the responsible Commonwealth Minister amend Section 16 of the Australian Capital Territory (Self-Government) Act 1988 to include a requirement that the Governor-General consult with the ACT Legislative Assembly and have regard for any views expressed prior to forming an opinion with respect to the dissolution of the Assembly.**

(Paragraph 6.14)

5. **The Chief Minister request the responsible Commonwealth Minister amend the Australian Capital Territory (Self-Government) Act 1988 to:**

- **remove the power of the Governor-General to disallow or amend an ACT Legislative Assembly law except that the Governor-General should be able to exercise this power when it is necessary for action to be taken temporarily pending the Commonwealth Parliament taking action; and**
- **wherever possible the Commonwealth will legislate for the Territory by, or under, Acts of Parliament on matters where it is considered necessary to amend or repeal ACT legislation.**

(Paragraph 6.23)

**LAND PLANNING AND DEVELOPMENT**

**The Committee recommends that:**

6. **The Chief Minister request the responsible Commonwealth Minister amend the Australian Capital Territory (Planning and Land Management) Act 1988 to provide a mutually agreeable definition of the term 'national significance'.**

(Paragraph 7.33)

7. **The Chief Minister request the responsible Commonwealth Minister amend the Australian Capital Territory (Planning and Land Management) Act 1988 to include provisions for consultation between the National Capital Planning Authority and the ACT Legislative Assembly on planning issues.**

(Paragraph 7.35)

**FINANCIAL AGREEMENT**

**The Committee recommends that:**

8. **The Chief Minister continue negotiations with the Commonwealth Government to seek an extension of the period of guaranteed funding from the Commonwealth by at least one year and that period to be followed by the two year transition period; and**

**Those negotiations should seek to ensure that the extension of the guarantee period shall not lead to lengthening the period of operation of the Trust Account established following the 1990 Premiers Conference.**

(Paragraph 8.13)

9. **The Chief Minister continue negotiations with the Commonwealth Government to develop a formal financial agreement between the ACT and Commonwealth Governments.**

(Paragraph 8.41)

**ELECTORAL MATTERS**

**The Committee recommends that:**

10. **The Chief Minister request the responsible Commonwealth Minister amend all relevant sections of the Australian Capital Territory Self Government legislation necessary to give the ACT Legislative Assembly full control over the electoral system for the Territory; and**

**The Chief Minister prepare an ACT Electoral Bill.**

(Paragraph 9.2)

**MODIFIED D'HONDT**

**The Committee recommends that:**

11. **If a form of d'Hondt is used for future elections:**

- **the Chief Minister request the responsible Commonwealth Minister amend the Australian Capital Territory (Electoral) Act 1988 to provide the pure d'Hondt system with amendments only to provide for independents and the allocation of preferences; or**
- **if the ACT Legislative Assembly has responsibility for its own electoral system it should provide for the pure d'Hondt system with amendments only to provide for independents and the allocation of preferences.**

(Paragraph 10.67)

## THE ROLE OF THE AUSTRALIAN ELECTORAL COMMISSION

**The Committee recommends that:**

**12.** **The Chief Minister examine the feasibility of establishing a separate electoral office in the ACT to:**

- **administer the proposed Australian Capital Territory Electoral Act;**
- **provide policy advice to the Government; and**
- **conduct education and information campaigns to promote public awareness of matters relating to Assembly elections.**

(Paragraph 11.10)

## THE REFERENDUM

**The Committee recommends that:**

**13.** **The alternatives listed on the referendum paper contain sufficient detail as to leave no doubt as to the type and form of electoral system to be implemented.**

(Paragraph 13.4)

**14.** **An option of the revised d'Hondt system as proposed in Chapter 10 be included in the referendum questions.**

(Paragraph 13.7)

**15.** **All parties should agree to introduce at the earliest opportunity whichever of the electoral systems is preferred by a majority of ACT voters.**

(Paragraph 13.9)

16. **If an alternative system to the modified d'Hondt cannot be agreed upon, then the revisions to system, as outlined in Chapter 10, should be made to make that system more effective.**

(Paragraph 13.11)

17. **The Chief Minister request the Commonwealth Government to provide funds for the Australian Electoral Commission to conduct the referendum.**

(Paragraph 13.12)

18. **The Chief Minister request the Commonwealth Government to provide funds for the establishment of an Australian Capital Territory Electoral Office.**

(Paragraph 13.14)

19. **That the alternative electoral systems be rotated on the referendum paper so that each appears in each position on an equal number of referendum papers.**

(Paragraph 13.16)

**OTHER ELECTORAL MATTERS**

**The Committee recommends that:**

20. **If the next ACT election is not conducted using single member electorates:**

- **The Chief Minister request the responsible Commonwealth Minister amend the Australian Capital Territory (Electoral) Act 1988 to require that vacated positions within the ACT Legislative Assembly be filled by the count back of votes; or**
- **If the ACT Legislative Assembly has responsibility for its own electoral legislation then that should include a requirement that vacated positions within the ACT Legislative Assembly be filled by a count back of votes.**

(Paragraph 14.3)

21. **The Chief Minister request the responsible Commonwealth Minister amend the Australian Capital Territory (Electoral) Act 1988 to require that the number of members of a political party and the number of nominees for independents be twenty; or**

**If the ACT legislative Assembly has responsibility for its own electoral legislation then that should include a requirement that the number of members of a political party and the number of nominees for independents be twenty.**

(Paragraph 14.21)

22. **The Chief Minister request the responsible Commonwealth Minister amend the Australian Capital Territory (Electoral) Act 1988 to increase the required deposit for candidates to $250; or**

**If the ACT Legislative Assembly has responsibility for its own electoral legislation then that legislation require a deposit for candidates of $250.**

(Paragraph 14.30)

23. **The Chief Minister request the responsible Commonwealth Minister amend the Australian Capital Territory (Electoral) Act 1988 to prevent an individual from:**

- **being the registered officer for more than one political party or independent in the ACT at any one election; and**
- **being able to register as a candidate for more than one party at any one election; or**

**If the ACT Legislative Assembly has responsibility for its own electoral legislation then that should include provision to prevent the same individual from:**

- **being the registered officer for more than one political party or independent in the ACT at any one election; and**

. being able to register as a candidate for more than one party at any one election.

(Paragraph 14.33)

24. The Chief Minister request the responsible Commonwealth Minister amend the Australian Capital Territory (Electoral) Act 1988 to require that the closing date for the receipt of postal votes is the date of the election; or

If the ACT Legislative Assembly has responsibility for its own electoral legislation then that should include a requirement that the closing date for the receipt of postal votes is the date of the election.

(Paragraph 14.37)

25. The Chief Minister request the responsible Commonwealth Minister amend the Australian Capital Territory (Electoral) Act 1988 to include the Robson rotation if the Hare-Clark system is implemented in the ACT; or

If the ACT Legislative Assembly has responsibility for its own electoral legislation then that should include the Robson rotation if the Hare-Clark system is implemented in the ACT.

(Paragraph 14.45)

26. If an electoral system other than Hare-Clark with Robson rotation is introduced, the Chief Minister request the responsible Commonwealth Minister amend the Australian Capital Territory (Electoral) Act 1988 to make provision whereby independent candidates are permitted to lodge the equivalent of a registered party voting ticket; or

If the ACT Legislative Assembly has responsibility for its own electoral legislation then that should include provision whereby independent candidates are permitted to lodge the equivalent of a registered party voting ticket.

(Paragraph 14.54)

27. The Chief Minister request the responsible Commonwealth Minister amend the Australian Capital Territory

**(Electoral) Act 1988 to require that independents should be listed vertically to the right of the ballot paper; or**

**If the ACT Legislative Assembly has responsibility for its own electoral legislation then that should include a requirement that independents be listed vertically to the right of the ballot paper.**

(Paragraph 14.60)

**COMPUTERISATION**

**The Committee recommends that:**

28. **The Chief Minister request the responsible Commonwealth Minister to investigate the use of computers for election counting; or**

**If the ACT has its own Electoral Office then request that the ACT Electoral Officer investigate the use of computers for election counting.**

(Paragraph 15.14)

# PART 1

# INTRODUCTION

## CHAPTER 1

## BACKGROUND

1.1 Self-government should enable full democratic representation for, accountability to and control by the community as a whole. It must encourage the government of the people by the people. The concept of self-government may be summed up in Sir G Currie's statement that:

> *People in democracy need for their own well being to take part in and assume responsibility for the management of affairs which affect their immediate domestic and civic life.*[1]

1.2 Prior to 1989, the ACT was the only capital in the western democracies which did not have some form of self-government either local or state. Self-government was essential for the people of the ACT to enjoy the same rights and responsibilities as the rest of the Australian community and have a say in determining the community's priorities.

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[1] Sir G Currie, *'A Canberra Citizen Looks at the National Capital'*, ACT Liberal Party Seminar on Self-Government for the ACT. August 1968.

1.3 The reason for the delay in granting self-government was succinctly described by the Department of Interior's report on *'Self-Government for the ACT - A Preliminary Assessment'* tabled in Parliament in May 1967:

> *To extend to the community the full range of authority normally exercised through state and municipal governmental organisations would be to place that community in substantial control of the national capital, whereas the national capital was always intended to be the responsibility of the people of the Commonwealth as a whole and to exist for the benefit of the nation as a whole. On the other hand, to consider only the position of Canberra as the seat of government and the national capital at the expense of all community participation in government would unjustly deprive the Members of the local community of their fundamental democratic rights and responsibilities.*[2]

1.4 When self-government was granted the ACT had become an integral part of a wider geographic area and community matters tended to lose impact within the context of Commonwealth national policies and interests. The Government needed to respond more rapidly and flexibly to changing circumstances. Even simple changes to administrative ordinances were required to pass through both Houses of Federal Parliament. Canberra had grown to the point where the previous system of government was becoming increasingly unsuitable for city management and regional development.

1.5 It was inappropriate to have Federal Ministers being responsible for local matters in view of their position as agents of the Commonwealth Parliament and representatives of the people of Australia as a whole. Good government requires that functions are carried out at the right scale by the appropriate sphere.

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[2] Department of Interior, *Self-Government for the Australian Capital Territory: A Preliminary Assessment.* May 1967. Commonwealth of Australia.

1.6 Prior to 1989, the citizens of the ACT had no rights or responsibilities in relation to the functions of state and local government which are basic and essential to the needs of their community. Self-government was introduced into the ACT to address a number of issues.

1.7 The ACT was represented in the Commonwealth Parliament by two Senators and two Members of the House of Representatives. There were no elected representatives responsible for local issues to act as advocates for the ACT community in negotiation with the Commonwealth and State/Territory political leaders and to provide participation with inter-governmental bodies on an equal basis.

1.8 The House of Assembly which preceded the current Legislative Assembly had limited powers which were of an advisory nature. Wide discretionary and legislative powers remained with the Commonwealth Minister for the Territory and the Commonwealth Parliament. Therefore, prior to the introduction of self-government the ACT had no law making process accompanied by a democratic or representative structure apart from the process of Parliamentary disallowance.

1.9 Government is evolutionary in character and the most appropriate system for Canberra and the Australian Capital Territory will develop in accord with community needs. There has been a long history of debate and a great deal of literature produced on what might be considered the most appropriate form of government for the ACT.

1.10 The form of government introduced into the ACT was based on the model of established government in Australia. This system was introduced in the 1850's from Britain where it represented several hundreds of years of development. There is an immense challenge to design a system of government suited to a community of a quarter of a million people moving through the last decade of the twentieth century.

1.11 The existing form of government is already more progressive and innovative than the traditional "State or Territorial" model in having a unicameral legislature with the removal of the traditional division and fragmentation of responsibilities between state and local government. People in the ACT today, however, should be involved in deciding the form of government they want in the ACT. For this reason, the ACT Legislative Assembly established a Select Committee to inquire into and report on the current views on many important aspects of self-government. This inquiry provided a further opportunity to develop a form of government necessary for the coming decades in Canberra.

1.12 The machinery of government in the ACT needs to be able to effectively and positively co-ordinate functions of a territorial and local nature. As a geographical and political entity the Territory is compact. It is small enough and sufficiently homogeneous in its economic, commercial, industrial and social fabric to require a system of integrated governmental services.

1.13 It is also essential that all such functions are open to scrutiny and are accountable to the citizens of the ACT through their elected representatives. A representative government shares interests in common with the electors it represents and it is assumed that it will be responsive to the needs and desires of electors and act to promote their well being in a fair, equitable and efficient manner.

1.14 The Commonwealth's central interests in the establishment of the national capital have now been largely satisfied and will no longer be the main engine for growth. It is essential to diversify the ACT economic base and the ACT community will be paying for the initiatives to achieve this. The ACT should therefore be fully in charge of its own destiny in these matters and should be deciding through its elected representatives the fundamental directions of future growth and social equity.

1.15 The Territory is nonetheless the home of the National Capital and the Committee acknowledges that the Commonwealth will continue to have a close interest in the Territory's government. It is also essential, however, that the form of government in the ACT normalises the philosophies and institutional arrangements in the ACT in a way readily understood by local residents and by other Australian communities.

1.16 The ACT community has been able to observe the operation of the Legislative Assembly for a year. This inquiry is therefore timely in enabling the ACT community to express their views on the form of government they prefer. The Australian Parliamentary System was the model for the form of government introduced into the Territory and this has served as a sound basis from which to develop a progressive and innovative form of government to meet the needs of our unique situation. This inquiry is also timely in that it provided the ACT community with an opportunity to make substantial changes before the system becomes entrenched in tradition.

1.17 There were many events in the lead up to the introduction of self-government that still have a marked influence on the public perceptions of the existing form of government. In the next section it is therefore appropriate to present a chronology before discussing the available options.

## CHAPTER 2

## INTRODUCTION

### History of self-government

2.1 There has been a long history of argument and discussion over self-government for the ACT which has been outlined here as much of it is relevant to and/or sets a precedent for the current perceptions of the appropriateness of the existing form of government in the ACT. During the early development of the concept of federation in Australia the Australian Capital Territory was established in its present location to prevent any bias in the influence of Sydney and Melbourne on the Australian Parliament.

2.2 The *Seat of Government Act* 1908[3] nominated the Yass/Canberra District as the location for the National Capital.

2.3 The land transfer from New South Wales to the Commonwealth was achieved by the *New South Wales Seat of Government Surrender Act* 1909[4] and the *Commonwealth Seat of Government Acceptance Act* 1909[5]. Under Section 6 of the latter, the laws of New South Wales and a number of Imperial Statutes were applied to the Australian Capital Territory.

2.4 The *Seat of Government (Administration) Act* 1910[6] delegated power to the Governor-General to make ordinances for peace, order and good government in the Australian Capital Territory.

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[3] No 24 of 1908.

[4] No 14 of 1909.

[5] No 23 of 1909.

[6] No 25 of 1910.

2.5 The long title of the *Seat of Government (Administration) Act* 1910 was *'An Act to provide for the Provisional Government of the Territory of the Seat of Government of the Commonwealth'* indicating that it was intended to be an interim measure.

2.6 The Bill contained the following clause relating to the making of laws in the Territory which read as follows:

> *Until the Parliament makes other provisions for the establishment of a local legislature for the Territory the Governor-General may make Ordinances having the force of law in the Territory.*

2.7 The reference to the establishment of a local legislature was deleted from the Bill during the debate and any substantial commitment to self-government in the Territory was removed from the *Seat of Government (Administration) Act* 1910.[7]

2.8 When the *Commonwealth Seat of Government Acceptance Act* 1909 came into force in 1911, the responsibility for the building of the Capital was vested in the Minister for Home Affairs. The Minister appointed an Administrator who was responsible for developing a suitable organisation for administrative control and the formulating of ordinances and regulations to be made under the *Seat of Government (Administration) Act* 1910. However it was not until 12 March 1913 that Canberra was inaugurated and dedicated as the National Capital.

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[7] Department of the Capital Territory. Inquiry into self-government for the Australian Capital Territory: Statement of evidence for presentation to the Joint Committee on the ACT. November 1973.

2.9 In 1920 the Federal Capital Advisory Committee was established to take over the construction and planning of the city. The *Seat of Government (Administration) Act* 1924[8] constituted the Federal Capital Commission to perform the functions embraced by municipal and State Governments and the national aspects of Canberra for which it was the Commonwealth's advisor.

2.10 Intense public opposition to the Commission form of Government soon developed as a result of its business like approach and a lack of any means of participation by the Canberra community. So intense was this opposition that in 1927, a community organisation known as the Federal Capital Territory Citizen's Representation League formally protested against the lack of representation for the 8000 residents of ACT.

2.11 Under the *Seat of Government (Administration) Act* 1928[9] the first major attempt at self-government proposals for the Australian Capital Territory was made when one of three Members of the Federal Capital Development Commission was elected on what was then a property franchise. This was, however, a body deprived of administrative and executive powers. The Commission was characterised by frequent internal friction between the local representatives and the appointed Commissioners.

2.12 The Federal Capital Development Commission was abolished during the depression in 1930.

2.13 Under the *Advisory Council Ordinance 1930* the first ACT Advisory Council of four appointed officials including the Civic Administrator and three elected Members was established. It was to be an advisory body to the Minister for Home Affairs, however, few of its recommendations were found to be acceptable.

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[8] No 8 of 1924.

[9] No 44 of 1928.

2.14 As early as 1934 the Scullin Government expressed the view that within a few years it should be able to give the people full civic control.

2.15 After a campaign by the Citizen's Rights League, the *Australian Capital Representation Act* 1948[10] provided for the election of the first member for the ACT to the House of Representatives with a right to vote on ACT matters only. This limitation was imposed because the territorial electorate was smaller than the average Australian electorate.

2.16 In 1949 the Chifley Government asked the Hobart Town Clerk to inquire into the possible form of self-government for the ACT. The Clerk considered the national, territorial and municipal activities of the administration were indivisible but he advised that a municipal council be formed[11]. There was a change of Government in 1951 and the recommendations were not accepted.

2.17 In 1952, the number of elected Members on the Advisory Council was increased to five which gave them a majority on the Council for the first time.

2.18 In June 1955, the Advisory Council again advocated the establishment of some form of self-government in Canberra.

2.19 In the same year a Senate Select Committee on the Development of Canberra recommended the establishment of a Legislative Council with responsibility for making laws on specified subjects, but with no executive or administrative functions[12]. Under this proposal the Governor-General would have the right to delegate further powers but the Federal Parliament would retain the rights of disallowance of any ordinance introduced under the legislative powers of the Council.

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[10] No 57 of 1948.

[11] Cole, HJR, Report on Civic Administration with a recommendation for a City Council for Canberra, 1949.

[12] Australia, Parliament, 1955, Report from the Senate Select Committee on the Development of Canberra, Parliamentary Paper.

2.20 In March 1957 a Joint Parliamentary Committee was established to report on all proposals which may result in the modification of the Burley Griffin plan of the layout of Canberra and other matters relating to the ACT.

2.21 Later in that year a Royal Institute of Public Administration study group recommended a form of government comprised of a National Capital Council (a form of statutory authority with elected representatives), a Joint Standing Committee of Parliament as a safeguard , a Minister of State for the ACT, a Planning Advisory Committee to replace the National Capital Development Commission and with the later option to establish a Canberra City Council. In all respects the proposed Government of the ACT was to remain ultimately the responsibility of the Minister. These suggestions were also not implemented.[13]

2.22 During its long history the self-government movement was largely manifested through the Advisory Council. Up to 1959 the size of the Advisory Council grew so that the ratio of the elected Members to the number of electors was maintain at approximately 1:3000. It is interesting to note that if that procedure had continued to apply then there would have been 55 Members on the Advisory Council in January 1990.

2.23 In 1966 the Member for the ACT was given the right to vote in any division in the House of Representatives.

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[13] Australian Capital Territory Regional Group of the Royal Institute of Public Administration. The Government of the Australian Capital Territory - Report of a Study Group, 1957.

2.24 In 1967 the Minister for the Interior, Mr Anthony MP, proposed Commonwealth control of Central Canberra with a handover at a later date of state-type functions and with new municipal governments at Woden and Belconnen cities. This proposal emphasised the necessity to keep inviolate the interest of the Commonwealth while providing an effective and efficient system of government to the domestic and community affairs of the local region.[14]

2.25 There were a number of public inquiries and in 1969 the Members of the Advisory Council resigned en masse as a device to press their case. The Council's main concerns were that it was not being fully consulted and that its advice was not being heeded.

2.26 Mr Anthony's successor, Mr R Hunt MP, suggested in 1971 that 1980 would be the date for the implementation of self-government in the ACT.[15]

2.27 In 1973 another Parliamentary Joint Committee on self-government and finance in the Australian Capital Territory was appointed and the then Prime Minister, Mr G Whitlam MP, asserted that self-government would arrive as soon as practicable after the presentation of that Committee's report.

2.28 In July 1974, Cabinet decided to replace the Advisory Council with a larger, wholly elected, Legislative Assembly. The first election was held in September 1974, however, the Legislative Assembly's powers were limited by the extent of the Minister for the Capital Territory's wide discretionary powers.

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[14] Australia, Parliament, 1967, Self Government for the Australian Capital Territory - A Progress Report by the Honourable J D Anthony, MP, Minister for the Interior, on Preliminary Studies into the question of Self-Government for the people of Canberra and of the Australian Capital Territory, Parliamentary Report 49, pp 24-25.

[15] Cited by Senator Reid (Member for Australian Capital Territory) Senate Hansard, 24 November 1988 p 2722.

2.29 In 1975 the Joint Parliamentary Committee tabled its report recommending that the ACT be granted self-government *"in as wide terms as was consistent with the national interest"*.[16] It also recommended a unicameral legislative assembly operating on parliamentary lines and with powers delegated in stages.

2.30 There seemed to be further progress when the then Prime Minister, Mr M Fraser MP, came to power in 1975 and established a Task Force to report on the transfer of functions and necessary legislative, administrative and financial arrangements for the transfer. The report was presented in March 1976[17] but the Minister for the Capital Territory, Mr A Staley MP, later announced that the Government had abandoned the 1 July 1976 deadline for the transfer of executive powers and had not set a new date.

2.31 In September 1977 the Minister announced that the Government had decided to release a proposal for constitutional development in the Australian Capital Territory with the objective of encouraging:

> *widespread public examination and comment on the issues prior to a final decision being made.*[18]

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[16] Australia, Parliament, 1975, Self Government and Public Finance in the Australian Capital Territory, Report from the Joint Committee on the Australian Capital Territory, Parliamentary Paper.

[17] Australia, Report of the Task Force on Self-Government in the Australian Capital Territory, March 1976.

[18] H of R, Hansard, 15 September 1977, p 1181.

2.32 The public debate was stifled, however, in 1978 when the Liberal Government held a referendum of the people of Canberra. The voters were given three options:

> . a state-type legislature to which functions would be delegated in stages;
>
> . local government type legislature and executive functions; or
>
> . allowing present arrangements to continue for the time being[19]

2.33 The result was 63 per cent for allowing the existing arrangements to continue, 30 per cent for state-type and 6 per cent for the municipal type government.[20]

2.34 In 1979 the Legislative Assembly was renamed the House of Assembly and elections were held in June.

2.35 When opening the 33rd Parliament in April 1983 following a change in Government, the Governor-General said:

> *my Government is committed to bringing self-government to the ACT. As a first step a broad range of local government powers will be transferred to the ACT House of Assembly.*[21]

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[19] R J Ellicott, Minister for the Capital Territory. Self-Government Referendum in the Australian Capital Territory: Information for Voters. AGPS Canberra. 1978.

[20] The Parliament of the Commonwealth of Australia. Inquiry into the ACT Election and Electoral System. Report No 5 of the Joint Standing Committee on Electoral Matters. November 1989.

[21] H of R, Hansard, 21 April 1983.

2.36 In November of that year the then Minister for Territories and Local Government, Mr T Uren MP, in a media statement said that:

> *it is a source of continuing shame to national politicians that, with few exceptions, decisions made on behalf of the people of Canberra have over the years been made by people elected outside the ACT.*[22]

2.37 He went on to say:

> *one of the tenants of our approach to government is to strive for a just and equitable society based on the notion of freedom and efficiency. Self-government for the ACT fits with this aim.*[23]

2.38 The Minister appointed The Task Force on Implementation of ACT Self-Government. The report by the Task Force, known as the Craig Report, was tabled in May 1984[24] and recommended the establishment of a body politic with its own legislative, executive and judicial institutions. When tabling the report the Minister for Territories and Local Government committed the Commonwealth Government to a phased introduction of Self-Government.[25]

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[22] Statement to media. Minister for Territories and Local Government, 10 November 1983.

[23] Ibid.

[24] Task Force on the Implementation of ACT Self-Government: Advice to the Minister for Territories and Local Government. May 1984.

[25] Ibid.

2.39 In August 1985 the House of Assembly's Standing Committee on the Transition to Territorial Government recommended a membership of 21 full-time members elected from multimember electorates.[26]

2.40 A White Paper on Self-Government Implementation foreshadowed by the Minister for the first half of 1985 was not published. This document was intended to provide a detailed basis for public education and discussion.

2.41 In November 1985 self-government was referred to an ad hoc committee of Ministers to finalise a submission to Cabinet.

2.42 In December 1985 the submission *"A proposal for ACT Government"*, was endorsed by Cabinet and the Prime Minister announced administrative changes based on the 1985 Report which included an integration of the Territories portfolio and the establishment of an ACT Council to enable elections to be held no later than September 1986 with a handover date of 1 January 1987.[27] It was proposed that the Council would consist of one full time chair person and 12 part-time Members elected from single member electorates. The Commonwealth established a hierarchical set of committees to develop and implement proposals for the transfer of functions of the ACT Council.

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[26] Australian Capital Territory, House of Assembly, Report: Proposals for Self Government, Report of the Standing Committee on the Transition to Territorial Government, August 1985.

[27] Ibid.

2.43 In 1986 a Draft ACT Council Bill and (Consequential Provisions) Bill 1986 were introduced into Cabinet in February, the House of Representatives in March and to the Senate in April. In May however the Government announced a compromise proposal on the electoral system and in June the Minister declared that the Self-Government Legislation for the ACT would not proceed due to the opposition from the Liberals and the Democrats. The principal reason given for the time taken in the resolution of this matter and for the failure to establish self-government in 1986 was the difficulty in finding an acceptable electoral system.[28]

2.44 On 30 June 1986 the House of Assembly's term expired in accordance with the timetable proposed by the Minister for Territories for the introduction of self-government.

2.45 It was not until 1988 that the Australian Capital Territory (Self-Government) Bill, the Australian Capital Territory (Electoral) Bill, the Australian Capital Territory (Planning and Land Management) Bill and the Australian Capital Territory (Consequential Provisions) Bill were presented to the Parliament.

2.46 On 3 November 1988, a former Minister for Territories, Mr G Scholes MP, stated in his address to the House of Representatives that:

> *it is not in their best interests in the long term to be a creature of the national government at the whims of national policies which may not necessarily coincide with their needs or ambitions. The functions of the Executive will be to govern the Territory with respect to the matters outlined in Schedule 4 which gives it power over virtually all matters which affect the Territory.*[29]

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[28] Senate, Hansard, 24 November 1988, p 2723.

[29] H of R, Hansard, 3 November 1988 p 2442.

2.47 On 7 November 1988 the Bills with the amendments agreed to by the House of Representatives was transmitted to the Senate.

2.48 On 7 November 1988 Senator Richardson, Minister for Arts, Sport, the Environment, Tourism and Territories, made this comment during the debate on the Australian Capital Territory (Self-Government) Bill:

> *It is ironical that in the National Capital, the symbol of Australian democracy, it has proven too hard for us to grant its citizens that most fundamental of democratic rights - the right to look after its own affairs.*[30]

2.49 On 8 November 1988 the Australian Democrats introduced into the Senate the Australian Capital Territory (Open Government, Probity and Citizens Rights) Bill, the Australian Capital Territory (Protection of National Interests) Bill and the Australian Capital Territory (Establishment and Amendment of New Constitution) Bill. All these Bills were defeated.

2.50 On 24 November 1988 the amended Australian Capital Territory Self-Government Bills were passed by the Senate and returned to the House of Representatives. On 29 November 1988 the Government's four Bills with the Senate amendments were passed in the House of Representatives.

2.51 On 4 January 1989 it was announced that there would be an election on 4 March 1989.

2.52 On 4 March 1989 the first general election was held in the Australian Capital Territory to elect the 17 Members for the Legislative Assembly. The poll was declared on 8 May 1989 and the ACT Legislative Assembly sat for the first time on 11 May 1989.

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[30] Senate, Hansard, 7 November 1988 p 2124.

2.53 At the election there was a strong protest vote from the electorate indicating the voters discontent of the form of government 'imposed' on the Territory.

**Establishment of the Committee**

2.54 On 4 July 1989 the Legislative Assembly established a Select Committee to seek the community's comments and report on a number of issues relating to the Government of the ACT. The Committee was to report to the Assembly by 30 April 1990.

**Submissions**

2.55 The Committee placed advertisements in *The Canberra Times, The Weekend Australian* and the *N.T. News*.

2.56 In all 32 submissions were lodged with the Committee (see Appendix 1).

**Number of Hearings**

2.57 The Committee held 7 public hearings and examined 8 private witnesses plus witnesses representing 13 organisations. (see appendix 2 for list of witnesses).

# PART 2

# FORM OF GOVERNMENT

## CHAPTER 3

## THE CONSTITUTION

### Relevance of the Commonwealth Constitution

3.1 Under the *Commonwealth of Australia Constitution Act* 1900[31] the Commonwealth Parliament has the power to make laws for the Government of the Territories under Sections 51, 52, and 122.

3.2 There is also a general source of power derived from Sections 51 and 52 by which the Commonwealth can legislate with respect to certain issues of national application.

3.3 Section 52(i) refers to the specific power enabling the Parliament, subject to the Constitution, to make laws with respect to the Seat of Government of the Commonwealth.

3.4 Section 122 states that the Parliament may make laws for the Government of any Territory surrendered by any State to and accepted by the Commonwealth.

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[31] No 63& 64 Victoria 1900 (hereafter known as the Constitution).

3.5 Some believed that there was an apparent contradiction between conferring self-government on the ACT pursuant to Section 122 and the operation of 52(i) of the Constitution. So far as is relevant, Section 52(i) confers exclusive power on the Commonwealth Parliament to make laws for peace, order and good government of the Commonwealth with respect to the Seat of Government.

3.6 However, in Spratt v Hermes (1965) 114 CLR 226[32] the High Court held that the Seat of Government is not coterminous with the ACT, but within the ACT. The Court also held that Section 122 is the constitutional source of law for the general governing of the ACT (that is, whether it is self-governing or not) and that the operation of the Section is not limited by Section 52(i).

3.7 In light of the High Court's decision the true relevance of Section 52(i) to a self-governing ACT would appear to be that it allows the Commonwealth to enact laws to limit the effects of ACT laws. The same result could, however, be achieved by a law made pursuant to Section 122.

3.8 Professor Sawer in his paper on *"Constitutional Issues"* at the Seminar for Self-Government 1981 gave the opinion that:

> *the "Seat of Government" need only consist of the land and buildings actually occupied by the Commonwealth Parliament, Executive Government and Judiciary and associated Departments and Authorities. The rest of the area comprising the ACT can, if Parliament wishes, be treated quite separately as a Territory similar in all respects and can be given the same degree of autonomy and self-government as the Northern Territory.*[33]

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[32] Commonwealth Law Reports, Vol 114 p 226.

[33] Self Government for the ACT. Papers presented in a Seminar on Self Government on 24 October 1981 at Canberra TAFE, Reid pp 1 - 95.

3.9 The Craig Report concluded that, following High Court decisions in Attorney-General (WA) v Australian National Airlines Commission (1976) 138 CLR 492[34] and Berwick Ltd v Gray (1976) 133 CLR 603[35], the Commonwealth Parliament can choose any form of Government for the Territory that it pleases. Under Section 122 the Commonwealth was able to establish an ACT Government which had the power to make laws and had executive power over the ACT fiscus, administration and local matters.[36]

3.10 Prior to March 1989, Canberra did not have a form of locally responsible government consistent with the Federal System for which it is the Capital. Canberra's status as a national capital and the Seat of Government does not negate the local community's rights and responsibilities to administer local activities. The objective of self-government is to empower people to govern themselves and to confer on them these rights and responsibilities.

3.11 The Committee therefore considers that the introduction of a form of self-government into the ACT was legal and proper and that three major alternatives were open to the Commonwealth Government in granting self-government to the ACT i.e. Local, State or Territory Government.

**Local Government**

3.12 During debate in the House of Representatives on 3 November 1988 on the introduction of self-government to the ACT, the former opposition spokesman on the Australian Capital Territory, Mr P Ruddock MP, pointed out that a precedent has been set in that Washington and Canberra are the only two western cities that have unique national capital areas and that Washington has had a Mayor and a Council since 1973.[37]

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[34] Commonwealth Law Reports Vol. 138 p 492.

[35] Commonwealth Law Reports Vol. 133 p 603.

[36] Task Force on the Implementation of ACT Self-Government Advice to the Minister for Territories and Local Government. May 1984.

[37] H of R, Hansard, 3 November 1988 p 2431.

3.13 The situation in Canberra is unique and in many respects it would be difficult to grant effective local government as local government is not referred to in the Commonwealth Constitution. Local government in Australia was established by the States and its powers derive from legislation within each State. Local governments are not traditionally responsible for education, transport, housing and health. Although the submission from the No Self-Government Party expressed the opinion that there was no impediment to their being invested with these responsibilities[38], there are, however, some practical difficulties.

3.14 The 1980 report of Advisory Council for Inter-governmental Relations referred to a number of relevant points which are summarised below.[39]

3.15 The scheme for the federal distribution of legislative power adopted in the Constitution is to enumerate the powers of the Commonwealth Parliament leaving the residue to the States. Local Government does not therefore have the power to make laws. It acts as an authority charged with the administration of laws made by the State and can only make decisions within the laws and ordinances of the State Government which has been its creator. Even the control of building approvals, town planning and road traffic by Councils involve the application of standards set by State Governments.

3.16 Therefore the only way in which local government could be guaranteed full partnership status in the Australian Federation, and a share of the nation's "sovereignty" to go with it, would be by a major rewriting of the Commonwealth Constitution, wherein the three tiers of government were identified and powers shared among them. Local government is not at present part of, and does not exercise the authority of, "the Crown" in the same way as the Commonwealth and the States.

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[38] Evidence, p S109.

[39] Advisory Council for Inter-governmental Relations: Constitutional Recognition of Local Government: Discussion Paper 3. Hobart August 1980.

3.17 The Commonwealth Constitution is difficult to change. The formal procedure specified in the Constitution itself includes a requirement for a referendum which must be accepted by a majority of electors voting and by a majority of electors in a majority of States. Therefore a proposed amendment must have a high degree of consensus between all spheres of government and political parties for it to stand even a reasonable chance of success.

3.18 While the possibility of the Commonwealth Government support for the recognition of local government in the Commonwealth Constitution is still theoretically open, some State Governments are firmly opposed to the idea. Such an action is seen by them as a potential threat to State power with respect to local government. This factor presents a considerable hurdle to any recognition of local government in the Australian Constitution.

3.19 Further, the Commonwealth has had very little experience in relating directly to city, municipal and shire governments. The Commonwealth's main-line relationship is with the Territories and States and it is highly unlikely to give high priority to its relationship with a third tier government. Control of a few civic matters like streets, footpaths and dog licences does not make for a system of government and it is not likely to be recognised as such.

3.20 By default, this would fall with the Commonwealth Government and again there would be legislation promulgated by people who are not responsive to the ACT electorate. Another alternative is to have one of the States e.g. New South Wales, undertake the state type functions with the ACT being a municipal government responsive to them. There would then be a State Government administering a Commonwealth Territory.

3.21 Within the ACT the State type functions represent 90% of the budget. If the ACT had no control over these functions but only had the form of local government traditionally found in Australia, there would be no control over changes to state type functions and policies that affect various elements in the local community. Canberra's economy is based on a higher public sector. If this city is developed by increasing the role for the private sector, the community must have a greater say in how the economy is allowed to develop.

**State Government**

3.22 In order to admit the Territory as a new State of the Commonwealth it would be necessary to define a part of the Territory to be the Seat of Government with a minimum area of one hundred square miles. The Committee believes it is unlikely that this will ever occur as it would not relieve the Commonwealth of the administration of local matters for the new Seat of Government and therefore largely negate the benefits to be derived from the Commonwealth in granting Self-Government to the Territory.

3.23 If the ACT were to gain statehood it would require an amendment of Section 128 the Commonwealth Constitution to return the new State to the status of Territory, if this was ever desired.

3.24 The Committee, however, believes that the Commonwealth is unlikely to relinquish its right to exercise its legislative authority in the ACT and on this basis ACT will not gain statehood.

**Territory Government**

3.25 There was no constitutional obstacle to giving the Australian Capital Territory the same degree of autonomy and self-government as the Northern Territory. Given the difficulties associated with the previous two options the Committee is of the view that this was the most appropriate alternative.

3.26 The concept of "territorial" government is appropriate because it is consistent with both the Australian constitutional framework and the basic idea of the City State model without seeking to create a sovereign political entity in the ACT. The major functions of the ACT are more like those of a State than a local government and the financial relationship between the ACT and Commonwealth Government is on a State/Territory basis. The ACT's representation on Commonwealth/State/Territory inter-governmental bodies has also been strengthened now that it is represented by its own elected politicians with Ministerial status rather than through Commonwealth Ministers or by senior public servants.

3.27 The ACT Administration's submission to the inquiry emphasised the view that it would be a retrograde step to go back to the practice before Self-Government whereby the ACT's interests were only represented by relevant Commonwealth Ministers of State.[40] The submission pointed out that it is not unusual for a Commonwealth Minister to adopt a different policy stance at such forums in respect the ACT issues. This could clearly lead to potential conflict in policy objectives. Under the current ACT government arrangements it is possible and proper for the ACT representative to take a completely independent and different policy stance from that of the Commonwealth.[41]

**Body Politic**

3.28 Under the *Australian Capital Territory (Self-Government) Act 1988* the formation of a body politic has been a very large step from the previous situation where there was no locally responsible system of decision making. The term body politic signifies that the ACT has become an entity recognised in law as a new self governing political entity with independent institutions of government for legislation, administration and adjudication. The purpose of establishing a body politic is to recognise the social, economic and political development of the ACT community, and to provide a government that is responsive and accountably to the community and to ensure community participation in and control of its own affairs.

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[40] Evidence p S29

[41] Evidence p S28

3.29 There are two types of body politic in Australia. There are those established under the Crown i.e. the Commonwealth, States and the Northern Territory, and those established as a body politic under the authority of the Commonwealth i.e. Norfolk Island. The ACT falls in to the former category.

3.30 Theoretically the ACT does not need to be part of the second tier of Government in the Australian context to be able to participate in major inter-governmental forums. Such participation is a matter for political decision and does not depend upon the existence of a 'Crown in right of the ACT'. If a model of a municipal corporation or other local government model has been followed, there would not be a 'Crown in right of the ACT".

3.31 The Committee considers that it was essential that the ACT be given the status of body politic established under the Crown to enable it to participate in inter-governmental meetings on an equal footing with the States and the Northern Territory.

3.32 The most important decisions on resource allocations in Australia are made at inter-governmental meetings. It is essential for the ACT to be represented at various bodies like the Premiers Conference, the Australian Education Council, the Australian Health Ministers Conference, the State Housing Ministers Conference, Council of Social Welfare Ministers, Tourist Ministers Council, the Australian Police Ministers Council, the Australia and New Zealand Environment Council and other bodies at an appropriate level. No local government any where in Australia sits on these committees, councils or conferences. Without any legislative force, the States cannot give the ACT any status in these forums. This was one of the important reasons that the Commonwealth Government, in creating the Self-Government Act, has put our government on the same basis as the States and the Northern Territory.

3.33 The Committee believes that the granting of a body politic under the Crown was the most appropriate action as this leaves the widest range of options open for the form that government within the ACT will take. This opens the challenge to the ACT community to design a system suited to its unique situation. The opportunity is there to develop an innovative government model to form a sound basis to move towards the twenty first century.

# CHAPTER 4

# SELF-GOVERNMENT MODELS

## Criteria for the Appropriateness of Self-Government Models

4.1 In order to assess the appropriateness of the proposals placed before the Committee a number of essential criteria were used.

## Protection of the Commonwealth's Interests

4.2 The Committee accepts that the Commonwealth's interests must be protected. The Commonwealth has, on behalf of Australia as a whole, undertaken the responsibility for planning, developing and constructing the physical city of Canberra and must remain free in the execution of its constitutional authority as the Seat of Government.

4.3 The form of government in the ACT must therefore have mechanisms by which the national interest can be adequately identified and implemented in a way which is both acceptable to the national parliament and responsive to the views of the local community. The current system replaced the previous system of diffusion of political power between several Commonwealth Ministers whose primary responsibility was to the national parliament.

4.4 Any modification of this system must facilitate the co-ordination of policy formulation, administration and budgetary control over territorial functions which occurred only incidentally, if at all, under the previous governmental and administrative arrangements.

**Separate Political Entity**

4.5 The Committee considers that it is appropriate that there should be a separate political entity for the ACT which is outside the departmental administrative structure and is separate from the Commonwealth Government. This should be accompanied by a devolution of local political responsibility to that entity.

4.6 It is essential that the form of government is stable and workable and must fit comfortably within the total Australian system to enable effective participation in inter-governmental agreements and organisations which are an integral part of the Australian Federal System.

**Law Making Powers**

4.7 The Assembly must be empowered to originate legislation for the Territory on local matters. In order for the ACT to be able to operate as a true democracy the locally elected body must have legislative responsibilities. The power to give effect to policy objectives through legislation is fundamental to a community's capacity to govern its own affairs.

4.8 The legislature must provide a mechanism by which political decisions can be made on issues which are the focus for dissent and disagreement in the community and where choices are made between competing and otherwise irreconcilable social values by those directly responsible to the electorate.

4.9 Laws are not finite things that someone takes and then administers. Laws emerge over time and the alteration, development and change in those laws is an important part of the process. It is essential to have a process that can allow for those changes and which is directly accountable to the electorate.

**Democratic Principles**

4.10 The appropriate form of government must be democratic and therefore responsible, equitable and representative of the people of the ACT community. The political decision makers must be accountable to the community on the full range of local matters.

4.11 It must allow maximum participation by the community as a whole particularly in the control and co-ordination of local matters. Effective government means identifying local needs and priorities which must be developed.

**The Models**

4.12 In the Commonwealth Government's consideration of the transition to Self-Government for the Australian Capital Territory the primary concern was to establish the foundations and necessary infrastructure rather than attempting to prescribe how the future government should operate. The form of government existing in the ACT is appropriate with respect to the formation of a body politic and the establishment of a unicameral legislature. It is also sufficiently flexible so that a number of models can be successfully employed within this basic structure.

4.13 In his address to the ACT division of the Royal Institute of Public Administration in 1963, the Lord Mayor of Brisbane, Alderman Clem Jones stressed that any form of local government should serve the particular needs of that community and it is not possible to apply a standard pattern from one place to another.[42] Forms of government are most appropriate if they are accepted by the community.

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[42] Department of the Capital Territory. Inquiry into self-government for the Australian Capital Territory: Statement of evidence for presentation to the Joint Committee on the ACT. November 1973.

City State Model

4.14 There are a number of major models for the City State form of government including West Berlin, Hamburg and Bremen in West Germany and Venice in Austria. In each of these cases the City State not only combines functions normally the responsibility of the state and local governments but also has legal and constitutional status of both levels. These City States participate in National/State inter-governmental relations on an equal basis as the other States.

4.15 Whilst it is not likely that the ACT will ever have full Statehood, elements of the city model have been incorporated in our current form of government. The Committee considers that there is no justification for the separation of "state" and "local" responsibilities because the ACT is an integrated urban community.

The Northern Territory Model

4.16 The Northern Territory model has also figured prominently in discussions on an appropriate form of government for the ACT. The *Northern Territory (Self-Government) Act 1978*[43] established the Northern Territory as a body politic under the Crown. It established the Northern Territory Legislative Assembly with power to make laws for the peace, order and good government. It also establishes the mechanisms by which the Commonwealth can protect its interests. At the time of implementation of self-government for the ACT this model represented the most recent and relevant constitutional development in Australia.

4.17 The Committee considers, however, that there are significant differences between the situation in the ACT and the Northern Territory. The Northern Territory is currently inquiring into the issue of statehood so as to address a number of problems in relation to their status as a Territorial Government. The Committee does not consider this an option open to the ACT Government in the foreseeable future.

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[43] No 58 of 1978

## CHAPTER 5

## STRUCTURE OF GOVERNMENT

5.1 The Committee considers that there should be a single tier of Territorial Government in the ACT which includes both state and municipal functions. The ACT is small enough and sufficiently homogeneous in its economic, commercial, industrial and social fabric that the opportunity is there to maintain these under one administration.

5.2 With local, State and Commonwealth Governments, there can be a problem with the demarcation of responsibility between the co-ordination of the levels of government and the interpretation of all those functions. This can be one of the greatest inhibitions to an efficient government system. The unnecessary duplication of functions, split of responsibility, the ability to "pass the buck" to somebody else and the lack of coordination can be largely avoided by the implementation of a single tier of government. The Committee therefore believes that the existing combined state and municipal form of government is most appropriate for the needs of the ACT.

5.3 Within a single tier of government there are a variety of structures that could be seen to operate effectively. There is the Australian Parliamentary System based on the Westminster traditions and several variations on the Committee System.

### The Australian Parliamentary System

5.4 There have been a number of studies on self-government for the ACT over several decades all of which concluded that the traditional Australian Parliamentary System was most the appropriate form of government in terms of dignity and tradition to initiate debate and make laws for the ACT.

5.5 This system is based on the Westminster System of Government as used universally throughout Australia. It was introduced into Australia from Britain where it represented hundreds of years of evolution in that country.

5.6 The Australian Parliamentary System has proved itself to be an effective mechanism for enabling dynamic political change within a stable institutional and structural framework. This system recognises the reality of political development in the ACT with competing party interests. This system has a Government and Opposition and therefore provides for the scrutiny and criticism of government ensuring procedures for accountability and responsibility.

5.7 The National Capital should be a symbol of integration for the Federation and should not have a form of government which is out of step with the major components of the Federation. Possible alternatives to this form of government must be analysed in terms of their consistency with the Australian system.

5.8 Professor Wettenhall pointed out to the Committee that the Westminster System is appropriate for the ACT because it provides the traditional three arms of the legislature, the executive and judiciary and is an appropriate institution on which to confer a delegated law making authority.[44] Professor Miller in his paper to ACT Branch of Liberal Party Symposium on Canberra Today and Tomorrow in 1964 stated that this was important because there is no clear division between laws and their administration in modern government.[45]

5.9 Since self-government was introduced in the ACT there has been a significantly greater interaction through the legislative and the executive arms of government and between the process of government and the people of Canberra. The success or otherwise of self-government will depend on the opportunity for community groups to join in the process of government and on their perception of the degree of that participation.

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[44] Evidence p S20.

[45] ACT Branch of the Liberal Party Symposium on 'Canberra Today and Tomorrow', June 1964.

5.10 A Cabinet or an Executive is an integral part of the Westminster System and consists of Ministers who have ultimate responsibility to the legislature and are accountable to the electorate for political decision making as well as the administration of their portfolios. There is a greater incentive for Ministers to take an active role in decision making since they are held responsible for its outcome. Persons who are aggrieved by government decisions will know who was responsible and whom to make representations to. Ministers are held accountable through the electoral system, the process of debate and criticism within the legislature and mechanisms of scrutiny through Parliamentary committees and more general public scrutiny through the media, Freedom of Information legislation etc.

5.11 A further feature of the Australian Parliamentary system is that in allocating defined responsibilities to a Minister it allows for day-to-day political direction to be given to departments and statutory authorities.

5.12 Any parliamentary model based on the Westminster System also has the power to make and unmake governments and the necessary powers and privileges to enable it to perform properly its parliamentary functions.

5.13 While the Australian Parliamentary System is also flexible in terms of size and can be adapted to meet the needs of the community as the population increases, this system is not without some difficulties.

5.14 There are problems faced by a small legislature of 17 Members trying to apply the Westminster system with a Government, Opposition and parliamentary committees. The ministerial/cabinet system introduces multiple roles and divisions more suited to larger legislatures. The Northern Territory Legislative Assembly was considered too small with 19 Members to provide a government backbench and an opposition and therefore considered moving to a Committee System of Government. The Assembly, however, acted in a more conventional manner by enlarging the legislature instead.

5.15 In the ACT a drive for simplification emerges as being a more significant issue than an enlargement of the legislature to provide sufficient numbers to furnish, after the ministry, a government backbench and opposition.

5.16 The current Government has modified the traditional Parliamentary system to the extent that in the ACT Government backbenchers are now Executive Deputies, without executive power, assisting the Ministers. The Ministers, however, retain the responsibility for their portfolio.

5.17 In Canberra there are a unique set of circumstances. There is a State-type Assembly elected from an electorate at large with a unique electoral system. It could be argued that the ACT is not bound by traditional forms of state type government, specifically the Westminster style. The system of government in the ACT should be allowed to evolve over time provided appropriate safeguards are in place against unreasonable changes being implemented.

**The Committee Systems**

5.18 A fundamental aim of the structure of parliamentary government is to ensure openness and accountability. Parliamentary committees provide a prime mechanism for achieving this aim through their continuing surveillance of government activity.

5.19 Committees allow members of the community to have a direct input into Parliamentary deliberations by making written and oral submissions and attending public hearings. A committee system is far more visible to the electorate and allows for easy and effective communication between the electorate and the various elements of the Assembly.

5.20 There are two main types of Committees that are used in western democracies, Executive and Parliamentary Committees.

**Executive Committees**

5.21 An executive committee system modelled on the Donoughmore version of Westminster,[46] has chairmen who have the status of Ministers and constitute an executive board.

5.22 This system allows all political parties and independents to participate in administrative supervision and policy development. It would give backbenchers and minority representatives an effective share of responsibility and contribute to the political education of representatives generally and open up the areas of policy making.

5.23 The Committee heard that this system would help to dissipate tensions between the various political elements that make up the parliament and help resolve issues without going to the full parliament i.e. a consensus style of government. This would fully utilise all available talent within the Assembly and would allow for the full access to official information and the expression of views.

5.24 The "opposition" parties effectively become part of the executive. There is, however, a danger that this would blur accepted avenues of political accountability. Whilst legislation can prescribe formal rights for committee members the effectiveness of the structure would depend on the willingness of all parties to co-operate.

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[46] Described in Wettenhall R L, Government Structures: Models and Options. Paper for Australian Institute of Urban Studies (ACT Division) Seminar on Self-Government for Canberra, CCAE, July 1982.

5.25 A further problem is that the process of coalition forming and reforming on particular issues and bargaining for political support could see frequent changes in political direction.

5.26 The Committee considers that the paramount difficulty with the Executive Committee System is the absence of an individual ultimately responsible and accountable for a particular portfolio. Establishing a committee will diffuse responsibility. It is simply a denial of personal responsibilities of the Ministers.

5.27 In a democracy the effectiveness of a structure of government should be measured against the scrutiny and control exercised by the electorate, the control exercised by the elected representatives over the administration and the responsiveness of the Administration to demands placed on it by the elected representatives. The electoral system itself provides the decisive mechanisms by which governments can be controlled and ultimately changed. One of the strengths of the current electoral system, is that every individual, every elector can vote for every elected member. Mr Dunne of the Liberal Party pointed out that it is more difficult for the electorate to vote out a committee member if the committee merely provided a majority decision and the elector does not know which members voted for that decision.[47]

5.28 The necessity to examine the Government's actions would not be as acute if the Executive Committee System is adopted, because this will be achieved to some extent by that system. However, if the Assembly is to consider basic political issues it should have the capacity to form these more general parliamentary committees.

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[47] Evidence p 108

5.29 The Executive Committee System does not sit well with public questioning and scrutiny of the Executive by the minority parties, or "opposition", which is a feature of the Australian Parliamentary system. In a committee system where the majority parties, or "Government" has a majority on each committee then the minority would have to accept and possibly defend the executive decisions made in those committees.

5.30 The Executive Committee System can only work if the Government has final decision making responsibility as the Committee may recommend something that is contrary to government policy. In practice the chair of each executive committee will be a member of the majority.

5.31 Another disadvantage of the Executive Committee System is that the voting public could be sceptical of a committee which tendered advice to a Minister which was also chaired by that Minister.

5.32 In the long term if the Assembly changed its form from a Ministerial system to an Executive Committee system or any other form, it is unlikely to impinge on the Commonwealth's interests.

5.33 The Executive Committee System was tried at national level in two small island states, the Seychelles in the Indian Ocean and the Solomons in the Pacific. After experimenting with the committee system, those States moved to a more conventional ministerial system.

**Parliamentary Committees**

5.34 The ACT Legislative Assembly has a Parliamentary Committee System to examine government activities and scrutinise bills. There are legislative and general purpose standing committees, legislative scrutiny committees, select committees, and estimates committees.

5.35 These Committees have the authority to scrutinise and make policy recommendations to the Assembly over all of the various areas of responsibility. This system enables all non-executive Members in the Assembly to be involved and make a real contribution.

5.36 The Assembly's Committee System has proved most valuable in enabling Members to give detailed consideration to complex matters which could not otherwise have been undertaken in Assembly proceedings. These committees serve as a forum for the exchange of Government and community views on administrative and policy issues. In this way matters of public concern can be "aired" and considered in a committee and in subsequent Assembly debate on the Committee's report.

5.37 These Committees examine and report on aspects of government planning, policy, finances, legislation and as such serve an important function. These are advisory Committees and the Chairman does not have executive or administrative responsibility for the areas of committee responsibilities but develops recommendations contained in a committee report to the Assembly. Action on committee recommendations rests with the Executive.

5.38 The Committee believes that the nature and operation of the ACT Assembly committees should be left as flexible as possible with the ACT Legislative Assembly being responsible for determining their powers, functions and composition.

5.39 The Committee believes that only an independent committee system operating within the Australian Parliamentary System is appropriate for the ACT. An independent committee system together with parliamentary questions enables the elected representatives to supervise the Executive.

**Number of Parliamentary Representatives**

5.40 One of the common objections to self-government is that it will lead to an excessive number of parliamentarians.

5.41 Prior to self-government there were four Federal Representatives, two in the House of Representatives and two in the Senate. It was not possible for those four people to adequately represent all the interests and concerns of more than a quarter of a million residents in the Territory, given the primary responsibility of the Federal Parliament is to govern the nation.

5.42 In addition, Federal Ministers should not be involved in the day to day decisions of the community and should concentrate on federal responsibilities. They have been elected to perform federal, not municipal and state-type responsibilities.

5.43 With the additional 17 Members of the ACT Legislative Assembly, there are still fewer elected representatives in the ACT than in any other part of Australia on a population basis. Each of the 17 elected representatives in the Territory have more people to represent than do the representatives in the Northern Territory or Tasmania. However, if one includes the number of local government councillors who represent the people then there are fewer elected representatives on a population basis in Canberra than any other part of Australia.

**Number of Members**

5.44 If the ACT Legislative Assembly was smaller than 17 Members there would be the possibility that there would not be fair representation of different views. The Assembly must be sufficiently large to provide a number of Ministers, a Speaker and a suitable number of backbenchers. Backbench members are able to keep closer contact with their electorate and so are able to provide the government with an accurate measure of attitudes of the electors on sensitive issues and seek pertinent information which is of concern to the people. They also provide a strong group from which the Assembly committee members are drawn.

5.45 Further, there were 18 Members in the previous House of Assembly. A model which drastically reduced the number could involve a perceived loss in political representation. A further reduction in the size of the Assembly would decrease the access of the public to members by reducing the voters likelihood of being personally acquainted with a member or having a preferred member with whom to raise grievances.

5.46 The Committee for Self-Government Report indicated support for an Assembly of 19 or 21 full-time Members[48] and the Joint Committee on the ACT in its 1974 report recommended 19 full-time Members.[49]

5.47 There is no perfect number, however, the Committee considers that 17 Members for 170,000 electors is the minimum number required to provide for an effective Assembly, Executive Government and Parliamentary Committee operations. This is considered even more reasonable when the ACT has no local government representatives.

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[48] Task Force on Implementation of ACT Self Government: Advice to the Minister for Territories and Local Government. May 1984. AGPS. Canberra.

[49] Joint Parliamentary Committee on the ACT. Report on Self-Government and Public Finance in the ACT. 1974.

**5.48 The Committee recommends that:**

- **there be an increase in the number of ACT Legislative Assembly members only in proportion to an increase in the number of electors.**

5.49 The Commonwealth has the power to determine the number of members in the Legislative Assembly under Section 8 (3) of the *Australian Capital Territory (Self-Government) Act* 1988 which states:

> *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.*

5.50 The Committee is strongly of the view that the Federal Parliament should legislate to transfer such power to the Assembly.

5.51 The number of Members the Legislative Assembly is a matter solely for the ACT to resolve, since it is the citizens of the ACT who will have to bear the costs of any increase. The ACT Legislative Assembly can pass a resolution but the Commonwealth could ignore it. Therefore the ACT Assembly needs the power to ensure that the resolutions of the Assembly are carried out. Accordingly the Committee considers that the power to vary the size of the Legislative Assembly should rest with the Legislative Assembly not the Commonwealth, thus bringing the ACT into line with the States and the Northern Territory.

**5.52 The Committee recommends that:**

- **the Chief Minister request the responsible Commonwealth Minister amend the Australian Capital Territory (Self-Government) Act 1988 to remove the ultimate power concerning the number of ACT Legislative Assembly members from the Commonwealth and transfer this power to the ACT Legislative Assembly.**

5.53 These changes would significantly increase the real and perceived independence of the ACT from the Commonwealth.

**Size of Executive**

5.54 The breadth of portfolios that individual Ministers have to administer is very much broader than is the case in Federal, State or the Northern Territory Governments. It would, however, be difficult to expand the ministry significantly without expanding the size of the Legislative Assembly. There will always be a need to be a trade off between a larger Assembly and perhaps limitations of a small executive.

5.55 The size of the executive may need to increase with the transfer of additional powers in the next few years. This may place unreasonable strain on the Ministers because of the wide ranging and diverse functions they are required to administer and the continuing need to consult with their counter-parts in other State Governments and the Commonwealth.

5.56 The Committee believes that this is a matter for the Assembly and this power should be transferred from the Federal Parliament.

5.57 Section 41 (2) of the *Australian Capital Territory (Self Government) Act* 1988 states:

> *The regulations may fix a different number of Ministers for the purpose of subsection (1), but regulations shall not be made for that purpose except in accordance with a resolution passed by the Assembly.*

5.58 Mr Dunne of the Liberal Party told the Committee that if the Executive is not sufficiently large the result would be a Government with Ministers with portfolios that were so all-encompassing that the ACT would in effect be administered by the Public Service, the situation prior to Self Government[50].

5.59 Mr Donohue, President of the Residents Rally for Canberra, said that:

> *the Government of the day should have some flexibility with respect to the number of Ministers as it does in the Federal system.*[51]

**5.60 The Committee recommends that:**

- **the Chief Minister request the responsible Commonwealth Minister amend the Australian Capital Territory (Self-Government) Act 1988 to remove the ultimate power concerning the number of ACT Legislative Assembly Ministers from the Commonwealth and transfer this power to the ACT Legislative Assembly.**

**Full Time Membership**

5.61 It is essential that the Members of the Legislative Assembly are full time. As well as normal parliamentary and electoral duties, members have Committee responsibilities and interface with territorial and municipal sectors of government as well as the Federal Government. Also, there can only be rigorous and comprehensive scrutiny of the effectiveness and integrity of the ACT Administration by a parliament with sufficient time and resources.

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[50] Evidence p 112

[51] Evidence p 354

5.62 Having full time Members underlines to the electorate that the Assembly has a real job to perform. It may also have some impact on the quality of future candidates for Assembly elections.

**Cost of Self-Government**

5.63 The estimated cost of operation of the ACT Legislative Assembly, including the Executive, is $5.716 million for 1989-90 ($4.430 million for support to the Assembly and $1.286 million for the Executive). This is 0.37% of the total amount included in *Appropriation Act* 1989-90.[52]

5.64 The current form of government combines both State and local tiers of government and thus can avoid some of the duplication and overlap that occurs inevitably elsewhere in Australia, particularly in the areas of policy development and service delivery. The ratio of elected representatives (Federal, State and local) in the ACT to population is 1: 13 041. This compares favourably with the Northern Territory (1: 1 924) and Tasmania (1:846).

5.65 As the ACT Legislative Assembly is a unicameral parliament, further savings in salaries and on-costs that would be required for upper house Members, employees and accommodation, for example, are achieved.

5.66 The ACT Administration is also smaller than traditional models of the States and the Northern Territory with a low ratio of public servants to population. For example, while the Northern Territory has 1 (State/local) government employee for every 9.4 people and Tasmania 1 for every 10.5, in the ACT there are only 1 for 16.

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[52] Budget Paper No. 5 1989-90; Response to Estimates Committee; Appropriation Act 1989-90.

# PART 3

# RESERVE POWERS

## CHAPTER 6

## COMMONWEALTH GOVERNMENT AND GOVERNOR-GENERAL

### The Role of the Commonwealth Government

6.1 The Territory is the home of the nation's capital. The Committee therefore acknowledges that the Commonwealth will continue to have a considerable interest in the Government of the Territory. The Constitution makes no provision as to the scope of the legislative power of the Australian Capital Territory. There are some restraints which arise from the limitations on the Assembly's power given under the *Australian Capital Territory (Self Government) Act* 1988 and the Commonwealth under the Constitution retains a plenary power to make laws with respect to the Territory.

6.2 Laws of the ACT are subordinate to those of the Commonwealth and if inconsistent with those laws, will be invalid to the extent of that inconsistency. The establishment of the ACT as a body politic with a plenary law making power does not in anyway inhibit the Commonwealth from exercising its overriding legislative authority on any matter because of the Self-Government Legislation.

6.3 It is necessary for the Commonwealth to be able to disallow ACT laws or to exclude the ACT from legislating in respect to the functional responsibilities of the Commonwealth. These must be, however, instruments of last resort and the Commonwealth and ACT Governments must attempt to resolve any potential conflict by consultation and negotiation.

6.4 The Committee does not deny the Commonwealth this right and indeed wishes to see that adequate checks and arrangements are made to preserve the standards already achieved in the development and maintenance of the national capital.

**Role of Governor-General**

6.5 A number of powers relating to the Commonwealth Government are vested in the Governor-General who is advised by Ministers of his Executive Council.

6.6 The Committee is concerned that there are reserve powers in respect of the ACT that remain with the Commonwealth Governor-General that are above and beyond those that apply to any other state or territory. The Committee believes that to make the ACT truly self-governing these powers ought to be vested in some part of an ACT Government mechanism.

6.7 There are several Sections in the *Australian Capital Territory (Self-Government) Act 1988* referring to the reserve powers of the Governor-General.

**Dissolution of the Assembly**

6.8 In extraordinary circumstances, the Governor-General may dissolve the Assembly. Section 16(1) of the *Australian Capital Territory (Self-Government) Act 1988* states that:

> *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*

6.9 Mr R Braithwaite MP, the Member for Dawson, said in the House of Representatives on 3 November 1988:

> *I go back to this Government's recent experience of dismissing Assemblies. The Christmas Island Assembly two weeks after election. .....this Bill has the potential to do exactly the same as in the other Act*[53].

6.10 Subsequent to the power to dissolve the Assembly there are a number of other procedures set in train. The responsible Commonwealth Minister will be required in that event to decide the date for a general election and the Governor-General shall appoint a Commissioner to exercise the powers of the Executive in the interim. If the Governor-General has dissolved the Assembly under section 16 then Ministers cease to be Members.

6.11 Where the Assembly is dissolved the Governor-General shall appoint a Commissioner and may from time to time give directions to the Commissioner about the exercise of power of the Executive. The Governor-General shall determine such remuneration and allowances to be paid to the Commissioner. The Governor-General may terminate the office of the Commissioner.

6.12 There are also provisions under the *Australian Capital Territory (Self-Government) Act* 1988 that state that public money of the Territory may not be issued or expended except as authorised by the Assembly. The Act also provides for the exception which arises in the circumstance where the Assembly has been dissolved by the Governor-General under clause 16. The Commissioner, with the authority of the Governor-General is able to issue or expend public money of the Territory where no legislative authorisation exists if it is necessary to do so.

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[53] *H of R Hansard, 3 November 1988, p.2438*

6.13 The Committee believes that it is essential that the ACT Legislative Assembly is fully consulted whenever decisions concerning the ACT are made by the Govenor-General. This should be done out of courtesy, however, the Committee is concerned that the current legislative framework does not make it obligatory for the views of the Assembly to be considered prior to making such decisions.

**6.14 The Committee recommends that:**

- **the Chief Minister request the responsible Commonwealth Minister amend Section 16 of the Australian Capital Territory (Self-Government) Act 1988 to include a requirement that the Governor-General consult with the ACT Legislative Assembly and have regard for any views expressed prior to forming an opinion with respect to the dissolution of the Assembly.**

**Disallowance of Enactments**

6.15 Under Section 35 of the *Australian Capital Territory Self-Government) Act 1988* the Governor-General has the power to disallow an Assembly law within 6 months after the law is made. The Governor-General can also make recommendations to the Assembly concerning desired amendments to an Assembly law with a consequent extension to the period for disallowance. Upon publication in the Gazette, a disallowance has the same effect as a repeal. If a disallowed law amended or repealed a law previously in force, the disallowance revives the previous law but only from the date of disallowance.

6.16 The power of the Governor-General to make Ordinances under the *Seat of Government (Administration) Act 1910* was not affected by the *Australian Capital Territory (Self-Government) Act 1988*. However, the power of the Governor-General to make Ordinances under the *Seat of Government (Administration) Act* 1910 was reduced considerably by the *Australian Capital Territory Self Government (Consequential Provisions) Act* 1988.[54]

6.17 Similar provisions are found in the Northern Territory legislation, the *Northern Territory (Self-Government) Act 1978*. This power has never been used in the Northern Territory, however, Senator Macklin, Deputy Leader of the Australian Democrats, stated in the Senate on 24 November 1988 during the debate on the ACT Self-Government legislation that it has been threatened a number of times.[55] It is, however, more likely to be used in the ACT because the ACT is the Seat of Government of the National Capital. *The Australia Act 1986*[56] has effectively abolished the powers of reservation and disallowance of the States. However the provision for disallowance in the *Australian Capital Territory (Self-Government) Act 1988* still stands and is available to the Commonwealth. This lessens the strength of legislation in the ACT and the Northern Territory significantly in comparison to the States.

6.18 The Commonwealth Parliament can, however, repeal the Governor-General's decision. Subsection 35(3) of the *Australian Capital Territory (Self Government) Act* 1988 provides that an instrument of disallowance is itself a "disallowable instrument" under Section 46A of the *Acts Interpretation Act 1901*[57] of the Commonwealth.

6.19 The Governor-General has ordinance-making powers within the ambit of the powers of the Assembly. These powers will be further limited after 1 July 1990. This does not happen in the Northern Territory. Further, under the *Norfolk Island Act 1979*, the Governor-General cannot deal with a whole range of matters

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[54] No 109 of 1988

[55] Senate Hansard 24 November 1988 p2808

[56] No 142 of 1986

[57] No 2 of 1901

listed in Schedule 2 of that Act. It is only in an emergency that the Governor-General can intervene.

6.20 The Committee believes that the amendment of those sections of the *Australian Capital Territory (Self-Government) Act 1988* which allow the Governor-General to interfere on a legislative basis does not give the ACT genuine self-government. The committee believes that if the Commonwealth Parliament wishes to use its constitutional power to override the ACT Assembly then it should do so in a specific Act.

6.21 The *Australian Capital Territory (Protection of the National Interest) Bill 1988* which was introduced by the Australian Democrats contained part of these recommendations, but was not passed into law.

6.22 The implementation of these provisions would protect the Commonwealths interest but at the same time give the people of the ACT genuine Self-Government and not a Clayton's Self-Government where legislation passed by the ACT Legislative Assembly could simply be dismissed by the Executive of the Federal Government.

6.23 **The Committee recommends that:**

- **the Chief Minister request the responsible Commonwealth Minister amend the Australian Capital Territory (Self-Government) Act 1988 to:**
  - **remove the power of the Governor-General to disallow or amend an ACT Legislative Assembly law except that the Governor-General should be able to exercise this power when it is necessary for action to be taken temporarily pending the Commonwealth Parliament taking action; and**
  - **wherever possible the Commonwealth will legislate for the Territory by, or under, Acts of Parliament on matters where it is considered necessary to amend or repeal ACT legislation.**

**Regulations**

6.26 Under Section 74 of the *Australian Capital Territory (Self-Government) Act 1988:*

> *The Governor-General may make regulations not inconsistent with this Act:*
>
> *(a) prescribing matters:*
>
> *(i) required of permitted by this Act to be prescribed; or*
>
> *(ii) necessary or convenient to be prescribed for carrying out or giving effect to this Act;*
>
> *(b) amending Schedule 3 as provided by Section 34; and*
>
> *(c) adding further matters to Schedule 4.*

6.27 These provisions can only be used to extend the powers of the Legislative Assembly and the ACT Executive respectively.

6.28 The Committee appreciates that although the Governor-General has a number of powers as the head of government in respect of the ACT, the Commonwealth in the provisions of the Self-Government legislation has in some respects gone further in removing the possibility of viceregal interference in government in the ACT than anywhere else in Australia.

## CHAPTER 7

## LAND PLANNING AND MANAGEMENT

7.1 The Committee does not intend to comment in detail on the reserve powers pursuant of the *Australian Capital Territory (Planning and Land Management) Act 1988*.[58] This is considered the responsibility of the Assembly's Planning, Development and Infrastructure Committee. This Committee is concerned, however, about some of the developments since the implementation of self-government for the Territory.

### Responsibility for Planning

7.2 The Commonwealth has, on behalf of Australia, undertaken the responsibility for planning, developing and constructing the physical city of Canberra as its National Capital. Therefore the Commonwealth Government must have sufficient freedom to execute its constitutional authority in its Seat of Government.

7.3 Town planning is, however, normally regarded as a municipal function. It is essential that the Territory is governed in an effective manner with adequate provision for co-ordination of urban administration, planning, development and construction. In Canberra, this must be balanced with the application of the national capital concept. The Commonwealth Government must therefore give effect to responsible participation by the community while, at the same time, protecting the interests of the Commonwealth.

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[58] No 108 of 1988

7.4 The Australian Capital Territory House of Assembly Report No 3 stated that:

> *The National Capital Development Commission (NCDC) has long expounded the view that the special planning, development, construction and administrative standards for Canberra cannot be separated in either functional or geographical terms. On this basis, the NCDC argued that it would be impossible to handover complete control of these activities to a territorial government.*[59]

7.5 The Committee wishes to stress that in the sphere of overall planning with the duality of national and community interests there should also be involvement by elected community representation. It is therefore essential that there are adequate institutional arrangements for liaison and co-operation to closely co-ordinate and integrate the national and community functions of the ACT.

7.6 The Committee believes that an essential element of self-government is the ability of the community to manage its own land. This is the core of local responsibility with all its political and financial implications.

7.7 The Chief Minister, Mr T Kaine MLA, in announcing the Government's plans to create an ACT Planning Authority and an ACT Heritage Council said on 21 February 1990 that:

> *land planning is one of the most crucial matters the Assembly will deal with in its early years*[60]

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[59] Australian Capital Territory House of Assembly, Standing Committee on the Transition to Territorial Government: Issues relating to Self Government, February 1985. Report No. 3.

[60] Media Statement, 21 February 1990.

**National Area**

7.8 The Committee believes that the extent of open space land reserved for national purposes, the "National Area", must be defined through negotiations. These negotiations should also include financial considerations.

7.9 The Canadian Government pays full general rates to the Ottawa local government. These rates reflect the loss of its resources if Crown exemption were to continue. In the case of Washington D.C. the local authority also receives compensation for the loss through National Capital planning controls of development rights.

7.10 What the Commonwealth does in the rest of the ACT outside the National Area must be on much the same basis as what happens in other areas of Australia. This requirement arises out of general territorial government responsibilities for functions and services, or out of Federal powers available to the Commonwealth with respect to the whole of Australia.

**National Capital Plan**

7.11 Section 5 of the *Australian Capital Territory (Planning and Land Management) Act* 1988 establishes the National Capital Planning Authority (NCPA). Section 6 lists the functions of the authority and these include the preparation and administration of a National Capital Plan.

7.12 Section 9 of that Act provides that:

> *The object of the Plan is to ensure that Canberra and the Territory are planned and developed in accordance with their national significance.*

7.13 The Committee is concerned that the term 'national significance' is not defined in the Act and may be accorded a wide interpretation. In the Committee's view it must not be accorded an open-ended interpretation.

7.14 Section 10 of the Act sets out the guidelines for the preparation of the Plan and provides the National Capital Planning Authority with a measure of discretion in the achievement of that task.

7.15 Under the Act the NCPA therefore retains considerable power for the planning, funding, developing and construction of the National Capital, which is currently identified as coterminus with the Australian Capital Territory boundary and which therefore impinges on the effectiveness of territorial government.

7.16 The Committee is also concerned that in developing Volume 2 of the National Capital Plan, the NCPA has not fully recognised the role ascribed to it by the *Australian Capital Territory (Planning and Land Management) Act* 1988.

7.17 The Committee is also concerned with the lack of provisions for consultation with the Legislative Assembly on planning issues. Section 15 (2) (b) of this Act requires that the NCPA consult with the Territory Planning Authority about the draft Plan and have regard to any views expressed by it. However, it was suggested that this does not provide a role in the consultation process for the ACT Legislative Assembly or the ACT Government.

7.18 Section 16(3) of this Act states that if the NCPA reports under subsection (1) that the Territory Planning Authority objects to the certification of the draft Plan, the Minister shall not act under subsection (2) except after consultation with the Executive of the ACT Government. The Territory Planning Authority's statutory status means it is not required to put before the NCPA the position of the ACT Government during the consultation process.

7.19 Of particular importance is Section 25(2) which states:

> *The object of the Plan is to ensure in a manner not inconsistent with the National Capital Plan, the planning and development of the Territory to provide the people of the Territory with an attractive, safe and efficient environment in which to live and work and have their recreation.*

7.20 Mr C Holding MP, the Minister for Arts and Territories said in the House of Representatives on 19 October 1988:

> *the National Capital Plan should define the policies, aesthetic principles and any development requirements required under to maintain and enhance the character of the National Capital. The ACT will be responsible for the normal range of State type planning and development matters.*[61]

7.21 Further the Minister stated:

> *The purpose of the Plan is to ensure that the Commonwealth national interests in the Territory are fully protected, without otherwise involving the Commonwealth in matters that should be the prerogative of the Canberra Community.*[62]

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[61] H of R, Hansard, 19 October 1988 p. 1929.

[62] Ibid, p. 1929.

7.22 The Minister concluded by saying that a new arrangement contained in the Bill would:

> *...allow the people of the Territory to control the day-today planning and development of their home.*[63]

**Planning and Development in the ACT**

7.23 The vast majority of decisions on day to day planning and development should be left to the locally elected representatives.

7.24 The Chief Minister, Mr T Kaine MLA, said on 22 February 1990 that the Government's planning legislation package will address the needs of the community, protect our environment and heritage and will be efficient, accessible and responsive.[64]

7.25 The Chief Minister went on to say that:

> *the Planning Bill establishes an ACT Planning Authority and sets down procedures for the making of the Territory Plan. This gives effect to provisions in the ACT (Planning and Land Management) Act 1988 which requires that the ACT establish, by legislation, a Territory Planning Authority with responsibility for the preparation and maintenance of a Territory Plan.*[65]

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[63] Ibid, p. 1930.

[64] Legislative Assembly, Hansard, 21 February 1990, p 458.

[65] Ibid p 458.

7.26 The Chief Minister emphasised that:

> *while the Territory plan must not be inconsistent with the National Capital Plan, its object and purpose is quite distinct and different from the National Capital Development Plan, which focuses on the national significance of Canberra. As such, my Government is strongly resisting attempts by the NCPA to encroach into those matters which are properly the concern of the Territory Planning Authority.*[66]

7.27 The Committee does not accept that the legitimate national concerns of the Commonwealth Government extend to controlling the local concerns of Canberra's citizens. However, the Committee accepts that the decision making authority might rest solely with the Commonwealth on certain matters, however, this must be shared with the Territorial Government on matters where no clear distinction between national and local concerns appears feasible or desirable.

**Economic Development**

7.28 On 3 November 1988 Mr R Braithwaite MP, Member for Dawson, expressed the concern that:

> *the residual powers reserved to the Commonwealth will stifle the economic development of the ACT as it tries to take its rightful place within our nation. There has been a tremendous anchor on the economic progress of the Northern Territory because of the powers retained by the Commonwealth.*[67]

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[66] Legislative Assembly, Hansard, 21 February 1990, p 458.

[67] H of R, Hansard, 3 November 1988 p 2438.

7.29 It is the Committee's view that these functions are fundamental to the advantages that must flow from an integrated and centrally coordinated development of Canberra and its subsequent economic management. As Canberra expands, development is becoming more a matter for local concern and has little impact on the national objectives and planning strategy of the city. In matters other than those of a national interest, planning and establishment of priorities of construction should be subject to the control of the Territorial Government.

7.30 ACT House of Assembly Report No. 2 quoted Mr Everingham as saying:

> *that it was essential that the ACT administration have control of land. The incoming NT government following self-government had 'overnight' changed the leasehold land system into freehold, with some developmental leases being maintained as leasehold to ensure performance. Planning was simpler and more effective with freehold as lease covenants, the only means of control under the leasehold system, quickly fell out of date.*[68]

7.31 That Report also quoted Mr J Pinney as having said:

> *the control of land is absolutely critical in self-government context. In the NT experience the Minister of Lands was both local and locally responsible; the system had benefited from the electoral access, the public service access and the local knowledge.*[69]

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[68] Australian Capital Territory House of Assembly Report No 2 of the Standing Committee on the Transition to Territorial Government. September 1984 Appendix VI

[69] Ibid. Appendix VI

**Conclusions**

7.32 The Committee concluded that the intent of the *Australian Capital Territory (Planning and Land Management) Act* 1988 was to provide the new ACT Government with the responsibility for and control over land development unless it was a matter of 'national significance.'

**7.33 The Committee recommends that:**

- **the Chief Minister request the responsible Commonwealth Minister amend the Australian Capital Territory (Planning and Land Management) Act 1988 to provide a mutually agreeable definition of the term 'national significance'.**

7.34 The Committee also concluded that the control over land which is not defined as being of 'national significance' and therefore 'designated land' or land identified as 'national land' should rest with the ACT Government.

**7.35 The Committee recommends that:**

- **the Chief Minister request the responsible Commonwealth Minister amend the Australian Capital Territory (Planning and Land Management) Act 1988 to include provisions for consultation between the National Capital Planning Authority and the ACT Legislative Assembly on planning issues.**

# PART 4

# FINANCES

## CHAPTER 8

## FINANCIAL AGREEMENT

### Australian Capital Territory (Self-Government) Act 1988

8.1 Sub-Section 59(1) of the *Australian Capital Territory (Self-Government) Act* 1988 provides the basis on which financial relations between the ACT and the Commonwealth are to be conducted:

> *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.*

8.2 It is the exclusions that relate to the national capital and seat of government that are of particular interest to the ACT community and the Committee.

8.3 Under Sub-Section 59(2) of that Act the Territory is not liable to bear the cost or any part of the cost of matters specifically excluded from Territory law making powers under section 23 of the Act, administering a law or a provision of a law that did not become an enactment of the Act following self-government (specified in a schedule to the Act) or any other power of the Commonwealth or of a Commonwealth authority relating to the Territory.

**Transitional arrangements**

8.4 During the second reading speech for the Australian Capital Territory (Self-Government) Bill 1988, the Minister for Arts and Territories, Mr C Holding MP, stated that the ACT will be treated by the Commonwealth on the same financial basis as the states and the Northern Territory and that fairness and equity would be assured.[70]

8.5 He continued:

> *The ACT will be given protections consistent with those given the States and the Northern Territory, whilst the impact of the location of the nation's capital within its boundaries will be recognised. ... Commonwealth funding to the ACT will fully recognise the effects of Canberra's role as the national capital and seat of Commonwealth government on such things as the standards and costs of works and services. This Bill explicitly provides that these circumstances be taken into account.*[71]

8.6 In addition, the following commitments were given by the Minister:

- Commonwealth funding to the ACT will be guaranteed in real terms for the first two years of self-government. This guarantee also applied to the 1988-89 Budget to maintain base level funding in the lead up to self-government
- funds in the 1988-89 Budget to cover the additional recurrent costs to run the ACT Government and the first Assembly election

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[70] H of R, Hansard, 19 October 1988 p 1923

[71] Ibid p 1923

- consideration of a grant to cover necessary establishment costs, such as those needed for a parliamentary library, a Treasury computer system and a building to house the Assembly and the Executive
- following the guarantee period, funding will be the subject of negotiations to smooth the transition to processes consistent with Commonwealth, State and local government financial processes.[72]

8.7 The Minister also stated that the Bill would not involve additional Commonwealth expenditures other than the one-off establishment assistance and that savings would accrue to the Commonwealth through separation of responsibilities of the ACT administration from the Commonwealth system.[73]

**Transitional period**

8.8 As stated above, one of the commitments given prior to self-government was to a transitional period of guaranteed funding at real terms for two years, i.e. 1989-90 and 1990-91.

8.9 The Committee notes with considerable concern that following the Premiers Conference in May 1989 the Commonwealth Government did not fully meet this commitment.

8.10 The Commonwealth, as part of its guarantee package, placed some $22.7m in a Commonwealth Trust Account. These funds can be utilized by the ACT, following negotiations with the Commonwealth, for projects to assist the ACT in achieving longer term efficiencies and state-type funding arrangements.

8.11 The Committee believes that the financial assistance should have been made directly available to the ACT Government without the need to negotiate for funds to be made available.

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[72] Ibid p 1924.

[73] H of R, Hansard, 19 October 1988 p 1924.

8.12 In addition, as a result of the delay in the formation of the ACT Government following passage of the self-government legislation, the Committee believes that the ACT Government has not had the full benefit of the originally proposed guarantee period.

**8.13 The Committee recommends that:**

- **the Chief Minister continue negotiations with the Commonwealth Government to seek an extension of the period of guaranteed funding from the Commonwealth by at least one year and that period to be followed by the two year transition period: and**
- **those negotiations should seek to ensure that the extension of the guarantee period shall not lead to lengthening the period of operation of the Trust Account established following the 1990 Premiers Conference.**

**Current funding arrangements**

8.14 The basic principle underlying financial assistance by the Commonwealth to the States and the Northern Territory is one of fiscal equalisation, the intention of which is to ensure that each State and the Northern Territory can provide services at a broadly similar standard provided similar efforts are made in revenue raising.

8.15 The State or Territory is not, however, bound to raise the same level of revenue or match the expenditure levels as the standard States. If, for example, the ACT's raises revenue in excess of (or below) the standard revenue effort, it retains the advantage (or bears the cost) of its action.

8.16 The Committee agrees with this approach as a basis for determining fair and equitable financial assistance from the Commonwealth. However, the Committee is concerned to ensure that factors peculiar to the ACT are not neglected in future

determinations of financial assistance. These will be discussed later in this chapter.

8.17 Advice provided by the Government Law Office to the Assembly's Estimates Committee in November 1989 stated that the provisions of the self-government legislation refer to the manner of the conduct of the Commonwealth's financial relations with the ACT rather than the level of financial assistance to be provided to the ACT.

8.18 Following self-government the ACT is able to attend Premiers Conferences on the same basis as the States and the Northern Territory. The ACT attended its first Premiers Conference in May 1989. The ACT, like the Northern Territory, is not a member of the Loans Council but semi government borrowings by the ACT may be undertaken within an identified share of the global limit allocated for the Commonwealth. The amount is determined by negotiation between the ACT and Commonwealth Governments.

**Special circumstances relating to the ACT**

8.19 Major concerns of the Canberra community, both prior to and since self-government, have been that self-government should not cost ACT citizens more than costs of no self-government, or that the community would bear a reduction in services compared to those previously enjoyed under Commonwealth administration.

8.20 The Committee did not examine, nor compare pre self-government funding with post self-government funding. The Committee believes that the Commonwealth Grants Commission is the mechanism for such an assessment.

8.21 A number of concerns relating to special circumstances that exist in the ACT were raised by the Follett Government in its submission to the inquiry. A number relate to issues unresolved between the ACT Administration and Commonwealth Government at the time of self-government including:

- undertakings given by the Commonwealth associated with establishment assistance;
- principles outlined in self-government legislation covering the financial responsibility for costs associated with Canberra's status as the national capital and treatment of national capital planning influences;
- financial adjustments between the Commonwealth and ACT Governments for liabilities transferred but for which funding capacity was not transferred, for example, insurance and long service leave;
- budget structural changes needed to place ACT finances in a stronger State-like context, particularly in relation to superannuation and debt servicing;
- past Commonwealth decisions that require renegotiation following self-government; and
- special transitional assistance required to achieve longer term parity with State funding arrangements.

8.22 The Committee notes that the then Chief Minister wrote to the Prime Minister concerning these and a number of other issues in detail in August 1989.

8.23 Following the change of Government in December 1989, the Chief Minister, Mr T Kaine wrote to the Commonwealth Government supporting the previous Government's initiatives. The Chief Minister emphasised his commitment to the alignment of ACT financial arrangements within the framework of Commonwealth/State financial relations and the fiscal discipline this entails.

8.24 The Chief Minister also sought recognition of the establishment and transitional assistance required to achieve this objective and the achievement of an equitable resolution of outstanding financial issues. The Chief Minister also sought from the Commonwealth the extension of the financial guarantee period for a further year.

8.25 The Committee believes that these issues are of great importance to the future financial well-being of the ACT. Some are of a one-off nature e.g. establishment assistance. Others such as costs associated with Canberra's status as a national capital and treatment of national capital planning influences, however, have important long term implications for the ACT.

8.26 These latter issues were raised by the majority of witnesses to the inquiry. Witnesses considered that as all decisions relating to the ACT taken prior to 11 May 1989 were the responsibility of the Commonwealth with no input from local representatives, the Commonwealth should be prepared to accept a share of the financial responsibility that otherwise may not have arisen.

8.27 In particular, ACT has enjoyed a number of facilities e.g. roads, parks and gardens, underground electricity lines that have resulted in a pleasant, open space environment. The widespread plan of Canberra also is a major contributing factor to the ACT environs. All these factors can be identified as being parts of the national capital ethos and have been included in the draft certified National Capital Plan.

8.28 A wide range of planning issues related to the city as the national capital are also involved which are still are under consideration by the ACT Legislative Assembly and the ACT Government.

8.29 The Committee believes that the Commonwealth Government should assist the ACT through special funding for such facilities that would not exist other than as a result of the Commonwealth's decisions and the fact that Canberra is the seat of government.

8.30 However, the Committee strongly believes that the unresolved planning matters be finalised as soon as possible to ensure a complete and continuing financial agreement can be concluded with the Commonwealth.

**Formal financial agreement**

8.31 In general, Commonwealth/State financial arrangements are not subject to formal, written agreements. Whilst the Commonwealth Grants Commission provides independent advice on an equitable distribution of general purpose grants between the States and Territories, the total level of grants paid to the States is determined by the Commonwealth in its annual budgetary context.

8.32 However, a precedent for a formal agreement exists. As part of the self-government negotiations between the Commonwealth and the then Northern Territory Executive, a Memorandum of Understanding was developed. The memorandum was developed prior to the transfer of financial responsibility to the Northern Territory.

8.33 The Northern Territory Memorandum set out the general principles and financial relations to apply between the two governments and provided the basis for general and special financial assistance, a transitional period for transfer of administrative responsibilities and the treatment of certain assets transferred to the Northern Territory. Special provisions relating to matters such as semi-government borrowings, superannuation, debt servicing and agency arrangements.

8.34 The legal standing of the Memorandum was queried by the Commonwealth Grants Commission and legal opinion was that the provisions were not legally binding.

8.35 The Committee was advised by ACT Treasury that the worth of such an agreement lies, not in the legal status of the document, but in the establishment of a clear basis for future discussion on financial matters and the provision of a degree of certainty.[74]

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[74] Evidence, S 75.

8.36 The Committee strongly believes that, just as there were special circumstances applying in the Northern Territory at the time that Territory gained self-government, there are also special circumstances applying in the ACT.

8.37 When writing to the Prime Minister in August 1989, the then Chief Minister suggested that once a settlement had been reached on the matters unresolved at the time of self-government, a formal Commonwealth/ACT agreement on financial arrangements would be appropriate to minimise uncertainty until the ACT Government is fully integrated into the normal pattern of Commonwealth/State financial arrangements.

8.38 The Committee strongly supports this view and the Committee believes that this document should formally record the agreed outcome on the length of the guarantee period.

8.39 The Committee notes that such an agreement would take time to finalise and the ACT will be even further into the guarantee period. The Northern Territory was, by virtue of having a body of elected representatives which was able to negotiate a formal Memorandum of Understanding prior to self-government, in a far better position than the ACT is now in attempting to negotiate an agreement.

8.40 However, despite the length of the guarantee period remaining at the finalisation of a formal agreement, the Committee is strongly of the view that an agreement will clarify and formalise a number of long term issues.

**8.41 The Committee recommends that:**

- **the Chief Minister continue negotiations with the Commonwealth Government to develop a formal financial agreement between the ACT and Commonwealth Governments.**

# PART 5

# ELECTORAL SYSTEMS

## CHAPTER 9

## ELECTORAL MATTERS

### Introduction

9.1 The choice of electoral system is one for the ACT community to make. This is a fundamental principle of self-government and therefore should be a matter for the Legislative Assembly. The Committee therefore considers that this issue is so important to the future of Self Government that action should be taken immediately to implement the following recommendation.

9.2 **The Committee recommends that:**

- **the Chief Minister request the responsible Commonwealth Minister amend all relevant sections of Australian Capital Territory Self Government legislation necessary to give the ACT Legislative Assembly full control over the electoral system for the Territory; and**
- **the Chief Minister prepare an ACT Electoral Bill.**

**Requirements of an Electoral System**

9.3 There is no universal electoral system which can be considered optimal for all countries in all circumstances. No single system satisfies all the requirements but an appropriate electoral system should perform a range of tasks reasonably well in a specific context.

9.4 Historically the electoral system adopted in most countries appears to depend more on the countries political history than the relative merit of the electoral systems. The ACT community should be given the choice of systems with which they are familiar and that are widely understood.

9.5 The choice of the best electoral system should be based on a system that:

- translates the will of the electorate into seats in the legislature;
- produces an Assembly and government that is workable;
- balances local issues against territorial concerns; and
- has a requirement that equity of opportunity be ensured in one vote one value, the exercise of a meaningful vote, the recording of that vote, nomination for election and campaigning and in other aspects of the electoral system.

9.6 Not all of these will be present in any individual system. The electoral system should, however, ensure that any significantly large minority view would have reasonable chance of representation in the parliament although the possibility of a minority vote resulting in a majority of seats be prevented. There should be opportunity for change to another party if the Government is rejected by the electorate.

**Types of Electoral Systems**

9.7 One of the greatest barriers to an effective government is if the people feel that they do not understand that government or how it works.

9.8 The Committee was impressed by the overwhelming objection to further experiments with the electoral system. The introduction of another new system would rekindle all the problems of unfamiliarity and, if relatively, complex could cause considerable dissatisfaction. The Committee therefore paid particular attention to the alternatives currently available within Australia.

9.9 Two broad categories of electoral systems are used in Australia. The descriptions given below are based on the paper by Gerard Newman.[75]

**Majoritarian: Alternative Vote**

9.10 Majoritarian systems require that the winning candidate achieve a majority of the vote to gain election. The majority can be attained by the distribution of preferences.

9.11 Alternative vote is a form of Majoritarian electoral system which is familiar to all Australians where members are elected by an absolute majority. This system is used to elect members to the House of Representatives and the lower houses in all States except Tasmania.

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[75] The Parliament of the Commonwealth of Australia. Electoral Systems. Current Issues Paper No. 3 1989-1990. Legislative Research Service. September 1989.

9.12 The alternative vote system is easy to understand, can produce relatively speedy results and produces working majorities and thus provides a stable government. However, this system does not achieve the same degree of proportionality as the proportional representation systems and may therefore not reflect the wishes of the electorate. It does not ensure that the majority of votes will win the majority of seats because it is dependent on the geographical support of the party and the mix of parties contesting the election.

9.13 Since 1981, this system has been modified in New South Wales Legislative Assembly elections to include optional preferential voting to overcome the disadvantage of forcing voters to express additional preferences where the voter may not wish to do so.

9.14 Voters are required to number candidates in order of preference. Votes of the least favoured candidate are distributed in turn until one candidate receives a majority. This system is usually restricted to single member electorates and can be referred to as a preferential system.

9.15 Although it was used for the Senate elections prior to 1949, the alternative vote system does not work well when applied to multimember constituencies because of the propensity of the system to return members of the same party in all positions.

9.16 Seats under an alternative vote system for a multi member electorate are allocated in the following fashion. Candidates are eliminated until one candidate has a majority. The votes of the first candidate are then distributed (all votes being used again) and if no candidate receives a majority then the process of elimination starts over again. The process continues until all vacancies are filled.

9.17 The system can result in the election of members from the one party to fill all positions as the votes used to fill the first will be used again to fill the second and subsequent members. This electoral system resulted in grossly unequal representation in the Senate in the 1925,1934 and 1943 elections. The system was changed in 1949 to the current single transferable vote form of proportional representation.

**Proportional Representation: Single Transferrable Vote**

9.18 Proportional representation systems are widely used in Europe and in Australia for upper houses, Legislative Council in New South Wales, South Australia and Western Australia and in the Senate.

9.19 This category includes a variety of electoral systems designed to ensure that seats of the legislature are allocated as near as practicable in proportion to the votes received. This system is usually only used for multimember constituencies.

9.20 The single transferrable vote refers to a preferential form of a proportional representation electoral system for multimember constituencies. Electors are required to number candidates in order of preference. Candidates receiving a Droop quota[76] are elected. Any surplus of votes are distributed to the second preferences and if any seats remain unfilled then the candidate with the lowest number of votes are progressively eliminated until all seats are filled.

9.21 The question of which votes are used to elect the candidate and which votes are considered surplus can be done by sampling or by conducting a full count to determine the proportions favouring particular candidates. The advantage of this system is that if a candidate is so popular or so unpopular that they do not need the vote then the vote is not wasted but is distributed to the voters second choice.

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[76] The Droop Quota is the minimum number of votes required to ensure the election of one representative. The total number of valid votes divided by one more than the number of seats, and one added to the quotient.

9.22 The majority of submissions to the Inquiry approved of a proportional representation system, either the Senate or the Hare-Clark system with multimember electorates. The advantages of these electoral systems include an acceptable speed of counting, they permit a change in government when electoral support falls below a reasonable level, they are familiar to the electors, translate the wishes of the voters into seats in the Assembly and ensures the Government reflects a suitable range of electoral opinion.

**Senate System**

9.23 The Senate System has been looked at by parliamentary committees that have made recommendations on how it should work. While Australians know that the Senate is elected on a proportional representation basis the majority do not fully understand the mechanics of how the count operates.

9.24 If this system was to be used in the ACT it would be acknowledged by people in other parts of Australia as being reasonable, because it seems to operate well. However, objections could be raised as the Senate is a house of review and governments are not formed in the Senate. When there are a large number of candidates, the Senate System can also take a long time to count.

9.25 Mr C Holding MP, Minister for Arts and Territories, said during the second reading speech on the Australian Capital Territory (Electoral ) Bill 1988 that the Senate System had been rejected because:

*in the last Senate election, a candidate with 1.5 percent of the primary vote was elected yet others with more than double this primary vote were not thus creating the possibility that minor parties could be elected in this manner creating instability in the House if such members were to hold the balance of power.*[77]

9.26 In his evidence to the Committee Mr Evans of the Australian Democrats said that he calculated that:

*at one stage the Deputy Leader of the Government in the Senate got 0.002 per cent of the vote in his electorate.*[78]

**Hare-Clark System**

9.27 The other version of proportional representation operating in Australia prior to the introduction of the modified d'Hondt in the ACT Legislative Assembly was the Hare-Clark system in the Tasmanian House of Assembly.

9.28 The basic concept of the Hare-Clark is the same as the Senate System however some differences are evident. It utilises multimember constituencies and each constituency returns the same number of representatives. Voting and counting employ the single transferable vote method.

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[77] H of R, Hansard, 19 October 1988, p. 1927.

[78] Evidence, p. 266.

9.29 Beyond these features there are many other details that are variable:

- the Hare-Clark system can use the Droop Quota not the Hare Quota.[79] The Droop quota represents the smallest number of votes that will ensure election.
- The single transferable vote can be exhaustive, optional or limited optional voting.
- Candidates from the one party can be grouped or ungrouped; the party affiliation included or omitted.
- Names can be rotated on the ballot paper, partially or completely; or there can be random drawing of the order of candidates.

9.30 Apart from the basic necessity of proportional representation with multimember constituencies elected through single transferable vote, a feature of the Tasmania's electoral system is the equal sized electorates, both on an electors and a representatives basis.

9.31 The Joint Standing Committee on Electoral Matters summarised the views of the opponents of Hare-Clark as follows:

> - *they do not permit the voters to vote for the government of their choice as they might for example in a choice between government and opposition candidates in a single member electorate system;*
> - *they can allow the election of candidates from parties which have exceedingly low levels of electoral support;*

[79] The Hare Quota is the total number of valid votes divided by the number of seats.

. *they are less likely to result in winning a majority of seats to form a stable government;*

. *they are complex and slow to count; and*

. *they do not offer the best form of local support.*[80]

9.32 Mr C Holding MP, said in the House of Representatives on 19 October 1988 that the Hare-Clark system had been rejected because:

> *The Hare-Clark system is designed for a House of Review. Under its rules, seats may be literally decided by chance on the preferences of voters who may well have had no wish that their votes would elect particular candidates.*[81]

9.33 The Committee does not accept this view as the Hare Clark system has operated effectively in selecting the Government in Tasmania.

9.34 The differences between the Senate System and the Hare-Clark System are:

. the treatment of transferred votes from candidates elected on the first count and candidates eliminated. These are technical differences in the scrutiny process and do not represent significant conceptual differences;[82]

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[80] The Parliament of the Commonwealth of Australia Inquiry into the ACT Election and Electoral System Report No 5 of the Joint Standing Committee on Electoral Matters. November 1989.

[81] H of R, Hansard, 19 October 1988, p. 1926.

[82] In his evidence to the Committee, Mr Green of the Australian Electoral Commission pointed out that these technical differences might change the result in something like 1 in 10,000 cases from one candidate being elected to another candidate being elected.

- the Senate System allows for ticket voting according to the registered party ticket; under Hare-Clark the voters must express preferences for individual candidates;
- the Hare-Clark System may include the Robson Rotation in which individual's name may appear at the top of the list the same number of times while under the Senate System the order of the names on the ballot paper is determined by the party; and
- under the Hare-Clark System casual vacancies are filled by a recount of the ballot papers while under the Senate System the vacancy is filled by nomination.

**Modified d'Hondt**

9.35 The modified d'Hondt system involves d'Hondt divisors to determine the number of seats won by each party and the single transferable vote system to determine election of individual candidates. This system also uses a Droop quota as a threshold and a flexible list. The single transferable vote system (Senate System) is used to determine the individual candidates elected.

9.36 The main criticism of list systems is that they rely on party lists to elect individual candidates rather than the voters choice.

9.37 The d'Hondt system has been used for many years in Austria, Belgium, Finland, West Germany and the Netherlands, all of which enjoy the reputation of being democratic, stable and prosperous states.[83]

[83] H of R, Hansard, 19 October 1988, p. 1927.

9.38 The d'Hondt system provides for direct proportional representation. Mr C Holding MP, Minister for Arts and Territories stated in the House of Representatives on 19 October 1988:

> *the hallmark of this system is that it is concerned with both democracy and stable government. The objective of any electoral system is that it accurately reflects the electoral wishes of the people in the composition of their government and to provide for stable government.*[84]

9.39 Mr Holding also said:

> *the system is completely neutral between contestants and satisfied the stability side of the equation by ensuring that the party or parties with a majority of votes will command the majority of seats. A very simple mathematical equation ensures the direct and accurate reflection of the voters' intention in the composition of the house. It is immune from gerrymander. Every vote has equal value and it is the most direct system of proportional representation that one can get. The d'Hondt system enables electors to vote for an independent candidate to vote for a predetermined list of party candidates or indicate the order in which they wish candidates in the party of their choice to be elected.*[85]

9.40 The Committee considers that the d'Hondt system given to the ACT people by the Federal Parliament did not measure up to the expectation or rhetoric of the second reading speeches.

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[84] Ibid, p. 1927

[85] H of R, Hansard, 19 October 1988 p. 1927

9.41 Geoffrey Goode, President of the Proportional Representation Society of Australia, presented an article in the Canberra Times on 22 November 1988 which said that:

> *the 'consolidated' d'Hondt system being foisted on the ACT discriminates blatantly against independent candidates or small parties by excluding them from the count if they do not reach a quota as first preference i.e. they are not allowed to interchange preferences to build up a quota for one of them but their votes are arbitrarily directed to one of the much lower preferences. Just as outrageous is the proposal that surplus votes received by an independent or a party are to be disregarded. All this legislatively-prescribed disregarding of votes can readily enable votes to become a "majority" of "approved" votes, i.e. those votes not disregarded. Such a "majority" then elects a real majority of Assembly Members.*[86]

9.42 Nonetheless Senator McMullan, (ACT) said in the Senate on 23 November 1988:

> *the d'Hondt system is design specifically to adapt proportional representation to the needs of the Westminster government and to the needs of producing stable majorities. This system has the advantage that the ballot paper will not be complex.*[87]

9.43 Much of the criticism of proportional representation systems is based on the proliferation of minor parties in legislatures which can result in unstable governments and in minor parties being in balance of power situations.

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[86] Canberra Times, 22 November 1988

[87] Senate Hansard, 23 November 1988 p. 2605

9.44 A further criticism of the proportional representation system is that they involve large multimember electorates and the electorate based work may be undermined by a lack of identification by the representative with a defined area. Their allegiance may be with the central party more than the local community.

9.45 Other problems depend on the type of proportional representation used e.g. complicated voting and scrutiny procedures, delays in counting, lack of community understanding of the procedures.

9.46 Senator Macklin, Deputy Leader of the Australian Democrats made the comment:

> *this is certainly a novel system to be used on the Australian electoral scene.*[88]

9.47 Senator Richardson described d'Hondt as the *'end product of....exhaustive negotiations'.*[89] He pointed out that it was the Government's third choice, the first two being a House of Representative style single member constituencies and the second being a mixed system partly of members chosen in proportional, Senate style election for the one electorate.

9.48 It is interesting to note that in the Joint Standing Committee's summary of the advantages and disadvantages of the Hare-Clark, Senate and d'Hondt systems there are no universally accepted pros or cons.[90] There was complete agreement however that the existing modified d'Hondt is not acceptable and that some of the amendments must be removed or altered if the system is to be retained for the ACT.

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[88] Senate Hansard, 24 November 1988 p. 2828

[89] Senate Hansard, 23 November 1988 p. 2726

[90] The Parliament of the Commonwealth of Australia Inquiry into the ACT Election and Electoral System Report No 5 of the Joint Standing Committee on Electoral Matters. November 1989.

## CHAPTER 10

## MODIFIED D'HONDT SYSTEM

10.1 On 13 April 1988 Mr G Punch MP, Minister for Arts, Tourism and Territories, announced that the draft proposal for the ACT self-government included an electoral system based on the d'Hondt system widely used throughout Western Europe. This proposal described an almost 'pure' d'Hondt electoral system with a single electorate. This system was modified, however, to allow voters to cast a single vote for an independent or party and parties would select the order of their candidates.[91]

### The Legislation

10.2 In his evidence to the Joint Standing Committee on Electoral Matters Mr Whitley (ACT Administration) told the inquiry:

> *The legislation was drafted without any formal comment from Dr Hughes (Australian Electoral Commissioner) at Dr Hughes request as he did not see it as his role to provide policy advice for the Government.*[92]

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[91] Described in the ACT Administration's discussion paper 'Election of Members'. April 1988.

[92] The Parliament of the Commonwealth of Australia Inquiry into the ACT Election and Electoral System Report No 5 of the Joint Standing Committee on Electoral Matters. November 1989.

10.3 The Australian Capital Territory (Electoral) Bill 1988 was introduced in the House of Representative on 19 October 1988 by Mr C Holding MP, Minister for Arts and Territories. Mr Holding admitted that the system was one of compromise but claimed that:

> *the hallmark of the system is a concern for both democracy and stable government ... and that it would ... accurately reflect the electoral wishes of the people in the composition of their Government ... by making sure as closely as mathematically possible each and every member in the House is supported by the same number of voters.*[93]

10.4 Mr Holding also claimed that:

> *the system was immune to gerrymander, every vote has equal value and it is the most direct system of proportional representation that one can get.*[94]

10.5 The system proposed in the original Bill differed from the party list d'Hondt electoral system in that voters could either vote for an independent candidate (treated as a party) or for members of a party by preferential listing.

**Some Doubts Raised**

10.6 Dr Hughes wrote to the ACT Administration on 31 October 1988, twelve days after tabling the Bill, raising concerns about the proposed amendments to the Electoral Bill. The major concern was that if the amendments proceeded the character of d'Hondt system would be distorted beyond recognition with undesirable consequences. He concluded that:

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[93] H of R, Hansard, 19 October 1988 p. 1927.

[94] Ibid, p. 1927.

*If there is any suggestion made publicly that consolidated d'Hondt has the Commission's approval, we will be obliged to repudiate it.*[95]

10.7 When received the letter was forwarded to the relevant Commonwealth Minister as the matter was then before the House.

10.8 A subsequent letter of 18 November 1988 from Mr Cirulis (Deputy Electoral Commissioner) expressing further concerns was also forwarded to the Commonwealth Minister.[96]

**Debate in the House of Representatives**

10.9 At the second reading in the House of Representatives on 3 November 1988, the Opposition spokesman, Hon Neil Brown, said that they would not support the Bill as:

*it does not provide for a proper and effective system of preferential voting or for distribution of the proper effect of preferences cast by voters.*[97]

10.10 Mr Holding put forward a series of further amendments:

- to enable optional cross preferential voting;
- to insert a Droop quota threshold for participation in the allocation of seats;

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[95] Evidence p S147.

[96] Evidence, p S145.

[97] H of R, Hansard, 3 November 1988, p. 2426.

- providing deeming rules for interpreting the next available preference where the same number had been repeated by the voter;
- providing for the registration and display in polling booths of party voting tickets;
- providing that where no next available preference was recorded by the voter, preference would be deemed to be in accordance with the registered party ticket.

10.11 On 7 November 1988 the Bill with its amendments was agreed by the House and was transmitted to the Senate.

**Debate in the Senate**

10.12 On 23 November 1988, Senator Hill, Opposition spokesman on the ACT, listed further amendments:

- the transfer of preferences from small parties or independents excluded by the threshold;
- the counting of preferences for candidates within parties; and

one 'expression of preference' for individual candidates across party lines.[98]

10.13 Senator Jenkin's, Australian Democrat spokesperson on ACT matters was very critical:

[98] Senate Hansard, 23 November 1988, p. 2595.

*the Government has proposed the only obnoxious form of proportional representation that I have ever heard of.*[99]

10.14 Senator Jenkins also claimed that the proposed system contravened Resolution No. 32 of the Labor Party's Platform Resolution and Rules of 1988 because it was not a system in which all votes remained valid while the voters intention was clear.[100]

10.15 Senator Macklin, Deputy Leader of the Australian Democrats, considered that the Bill was poorly drafted because it could not guarantee the election of the requisite number of Assembly Members.[101]

**The Final Version of d'Hondt**

10.16 On 24 November 1988 the amended Bill was passed and returned to the House of Representatives. On 29 November 1988 the Senate amendments were approved by the House of Representatives and the Bill was passed.

10.17 The final version of the modified d'Hondt electoral system is a proportional representation hybrid of party list and single transferrable vote systems. The type of party list system on which it was based is a highest average system which uses the d'Hondt formula to allocate seats amongst parties. The modified d'Hondt treats independent candidates as parties and counts votes for a party up until the final stages of the count.

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[99] Senate Hansard, 23 November 1988 p 2597

[100] Ibid p. 2598.

[101] Senate Hansard, 24 November 1988, p. 2831.

**The Quota**

10.18 Senator Macklin was also critical of the quota:

> *there is a real possibility of excluding at this level people who receive a higher percentage of votes than people who a later point will win seats. This points to the arbitrariness of the exercise.*[102]

10.19 Mr Green, Australian Electoral Commission, in evidence to the Committee confirmed that the cut off quota had acted to exclude candidates who had more primary votes than candidates who were ultimately elected after preferences were distributed.[103]

10.20 In pure d'Hondt there is no quota and preferences are not allocated therefore this situation does not arise.

10.21 In evidence to the Joint Standing Committee on Electoral Matters the Australian Electoral Commission said:

> *it is possible in some circumstances for a candidate to be elected according to the d'Hondt formula with only one vote. Any choice of quota therefore must involve arbitrary assumptions about the patterns of voting which will occur (and if patterns of voting could be known in advance it would seem pointless to hold elections.*[104]

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[102] Senate Hansard, 24 November 1988, p. 2829.

[103] Evidence p. 375.

[104] The Parliament of the Commonwealth of Australia Inquiry into the ACT Election and Electoral System Report No 5 of the Joint Standing Committee on Electoral Matters, November 1989.

10.22 The threshold chosen for the modified d'Hondt was the Droop Quota, the same type used for the Senate and Hare-Clark systems. For 17 vacancies the quota is approximately 5.56 percent of the total first preferences. Its effect on the modified d'Hondt is, however, quite different from its effect in the Senate and Hare-Clark systems which allow quotas to be accumulated from the distribution of surplus votes as well as the transfer of votes from the successive exclusions of low polling candidates. The modified d'Hondt system excludes parties or independents who fail to achieve the threshold. The result of this was that not all elected candidates achieved more votes than candidates who were excluded by the threshold and were thus unsuccessful.

10.23 Mr Musidlak of the Proportional Representation Society told the Committee that:

> *independents and groups of candidates failing to obtain just over one eighteenth of the first preferences were to be excluded ....if Party A received 30 percent of first preferences and Party B received 20 percent and the rest less than the exclusion quota then 50 percent of the voters would secure 17 representatives .... there would be a massive wastage of voter support among groups with 5 percent or less of the first preferences.*[105]

10.24 The Fair Elections Coalition in their evidence to the Joint Standing Committee on Electoral Matters stated that:

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[105] Evidence p S392

*the short comings of the system are thus the disproportionate importance given to parties achieving more than 5.56 percent of first preference votes and the absence of any distribution of surplus votes. By allowing the election of parties that obtained more than the cutoff percentage, the Residents Rally was allowed to win 4 seats while all the parties that won just less than 5.56 percent were left without representation.*[106]

10.25 The Australian Labor Party in their submission to the inquiry said that:

*... the unfair and arbitrary nature of the "cut-off quota", which resulted in the elimination of four candidates at the last election who would have been elected if "pure d'Hondt (with independents)" had applied.*[107]

10.26 In evidence to the Joint Standing Committee on Electoral Matters the Residents Rally for Canberra in favoured 5 percent:

*if only to ensure that a candidate or independent candidate is not elected with a small first preference vote. It is preferable for candidates from larger parties with small numbers of first preferences to have the benefit of the party vote as this more adequately reflects the intentions of voters when they allocate their first preferences.*[108]

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[106] The Parliament of the Commonwealth of Australia Inquiry into the ACT Election and Electoral System. Report No 5 of the Joint Standing Committee on Electoral Matters. November 1989.

[107] Evidence p S113

[108] The Parliament of the Commonwealth of Australia. Inquiry into the ACT Election and Electoral System. Report No. 5

10.27 The Residents Rally for Canberra however added the disclaimer that:

> *this position does not mean that the Residents Rally is trying to stop well supported independents from being elected.*[109]

10.28 Mr Donohue, President of the Residents Rally for Canberra, told the ACT Legislative Assembly inquiry that:

> *those people who got a very low percentage of the number one vote would probably not pick up a great deal on their preferences and would be excluded. The quota should be 5 percent or lower.*[110]

10.29 Mr Evans, Australian Democrats, in evidence to the Committee said that:

> *it is absolutely outrageous beyond belief .... the initial exclusion when all parties below the quota were excluded at once .... I support the exclusion one by one. There are already large chunks of preferential determination built into various stages of the scrutiny anyway.*[111]

10.30 Much of the criticism of the modified d'Hondt resulted because the threshold disenfranchised voters who did not follow the major parties. Senator Jenkins, Australian Democrat spokesperson on ACT matters, moved an amendment that the lowest polling candidate would be excluded first and the votes from that candidate would be transferred prior to the next exclusion but this was defeated.[112]

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[108] Cont. of the Joint Standing Committee on Electoral Matters. November 1989.

[109] Ibid.

[110] Evidence p. 349.

[111] Evidence p. 265.

[112] Senate Hansard, 24 November 1988, p. 2847

10.31 The Proportional Representation Society in their submission pointed out that:

> *just under two-thirds (66.3%) of first preferences were for the five groups who survived the exclusion barrier. With a preferential component to the scrutiny one voter in three would have been abruptly disenfranchised.*[113]

10.32 In evidence to the Joint Standing Committee the Fair Elections Coalition examined the effect of the threshold from the viewpoint of the voter:

> *this system does not explicitly disenfranchise voters. However, many voters who voted for candidates in groups that failed to gain 5.56 percent of the first preference vote ended up not participating at all in the final distribution of seats. 8.9 percent of votes were exhausted after the initial round of exclusions.*[114]

10.33 In his evidence to the Joint Standing Committee on Electoral Matters Mr Lundberg took issue with this type of system because:

> *...this conveniently ignores the fact that many candidates for the parties or groups who remain in contention get precisely that benefit from preference distributions. By contrast, none of the candidates eliminated after the counting of the first preferences is permitted to accumulate support, as they could under Senate rules.*[115]

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[113] Evidence p S388

[114] The Parliament of the Commonwealth of Australia. Inquiry into the ACT Election and Electoral System. Report No. 5 of the Joint Standing Committee on Electoral Matters. November 1989.

[115] Ibid.

10.34 In their submission to the inquiry, the Proportional Representation Society said that:

> *The Residents Rally (for Canberra) obtaining four representatives from their base of 13,647 first preferences, or one for each 3,412 string supporters. On the other hand five groups and one independent polled more first preferences but were excluded at the third stage of the scrutiny.*[116]

10.35 Some of comments on the quota were positive. The Australian Labor Party in their evidence to the Joint Standing Committee on Electoral Matters said that although the cutoff point was arbitrary it is vastly lower than that for single member electorates and excluding candidates with very small primary votes from winning seats furnishes a measure of stability.[117]

10.36 The No Self Government Party also supported the retention of the 5.56 per cent quota

> *It seems to be a fair and valid premise. If a party or candidate can't cut the mustard and obtain that level of first preference support it seems unfair that they should be eligible to win a seat.*[118]

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[116] Evidence p S387.

[117] The Parliament of the Commonwealth of Australia. Inquiry into the ACT Electiona nd Electoral System. Report No. 5 of the Joint Standing Committee on Electoral Matters. November 1989.

[118] Evidence p S295.

10.37 Mr Wedgwood, Secretary, Australian Labor Party ACT Branch, considered the existing quota is the only one with mathematical logic.[119] The Proportional Representation Society in their submission said that they thought it should be low.[120] Mr M Mackerras favoured 5 per cent[121] and the National Party suggested a 4 percent cutoff.[122]

10.38 The Australian Electoral Commission in its submission to the inquiry said that it was not aware of any fundamental principle of democracy which implies that a candidate or party with 5.56 percent or more of the vote deserves to win a seat, but the party with fewer votes does not. In the absence of such a principle the choice of 5.56 percent would have to be regarded as misconceived or purely arbitrary. The Commission therefore considered that it would have an adverse effect on the legitimacy of the election result.[123]

**Filling of Positions**

10.39 Under the modified d'Hondt the votes for all parties or independents failing to achieve the threshold are excluded in bulk. It is therefore theoretically possible that so many candidates may be excluded that insufficient candidates remained to fill all vacancies.

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[119] Evidence p 283.

[120] Evidence p S388.

[121] The Parliament of the Commonwealth of Australia. Inquiry into the ACT Election and the Electoral System. Report No. 5 of the Joint Standing Committee on Electoral Matters. November 1989.

[122] Ibid.

[123] Evidence p S175.

10.40 Commenting on this Senator Richardson said:

> *If the threshold excluded too many candidates then a supplementary election would have to be held to fill the remaining vacancies.*[124]

**Proportionality**

10.41 Several witnesses told the Committee that one of the effects of the threshold was to destroy proportionality and to cause an imbalance in the votes per seat ratio amongst parties.

10.42 The Fair Election Coalition pointed out that the votes per seat range from 3412 for the Residents Rally to 10641 for the Abolish Self Government Party. This divergence was the result of the application of the threshold and the absence of any distribution of surplus votes.[125]

10.43 The modified d'Hondt system does not allow for the distribution of surplus votes. At the provisional election stage, the system allowed the transfer of votes to candidates who had already been elected. In his evidence Mr Musidlak gave the example of an independent who received 20 percent of the vote, meaning that the remaining 16 members would be elected on 80 percent of the total vote.[126]

10.44 Mr Musidlak also said that the wasted votes can be over a range of parties and there can be up to 40 per cent of voters preferences wasted. This would result in a Legislature that may not necessarily reflect the wishes of the people.[127]

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[124] Senate Hansard, 24 November 1988, p.2831.

[125] Evidence p S387.

[126] Evidence p 501.

[127] Evidence p 500.

**Deeming Rules**

10.45 Deeming rules are used to interpret a voter's intention when the intention is not absolutely clear. Deeming rules are applied so that votes are not wasted as informal or exhausted. The deeming provisions of the modified d'Hondt are elaborate and some have attracted considerable criticism as going beyond what is inferred from the ballot paper.

10.46 The Committee was advised that the rationale behind the implementation of the deeming rules was to reduce vote wastage to a minimum. However, these rules were devised by the ACT Administration in consultation with the Australian Electoral Commission under the assumption that the electoral system was primarily a party list system therefore deeming rules were to resolve inconsistencies by reference to registered party voting tickets.

10.47 The Committee also believes that the interpretation and implementation of the voters intention must be as accurate as possible to ensure their basic democratic rights. The Committee was told that some of the deeming rules applied in the modified d'Hondt do not satisfy this criterion.

10.48 The Report of the Joint Standing Committee on Electoral Matters gives details of the problems associated with a number of deeming rules. These in particular caused a great deal of concern:

- a nonconsecutive but increasing and unrepeated sequence of numbers is taken to indicate successive preferences e.g. a '1' next one candidate and '10,000' next to another candidate, if there were no other markings on the ballot paper then the latter was deemed to be the second preference;
- if numbers were duplicated and one was above the line and one below then this was deemed to be the party vote above the line;

. where preference marks occur above and below the line the markings below the line are ignored; and

. ballot papers which show a '1' beside the name of an excluded party and no other mark were deemed to have the next available preference in accordance with the registered party voting ticket of that party.[128]

10.49 The Australian Electoral Commission stated in their submission that they considered that these rules led to interpretation of voting patterns that were not necessarily the intention of the voter. The Commission also commented that these rules were poorly understood prior to the election and several parties distributed how-to-vote material which advocated placing preference votes above and below the ballot line for the same party.[129]

10.50 The Committee does not accept the recommendation of the Joint Standing Committee on Electoral Matters that the deeming provisions of the Senate system would provide a reasonable alternative for those used with the current system even though modified to :

> *where appropriate the Senate formality rules and deeming provisions serve as a model for the formality rules and provisions of the ACT electoral System.*[130]

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[128] The Parliament of the Commonwealth of Australia. Inquiry into the ACT Election and Electoral System. Report No. 5 of the Joint Standing Committee on Electoral Matters. November 1989.

[129] Evidence p S170

[130] The Parliament of the Commonwealth of Australia. Inquiry into the ACT Election and Electoral System, Report No. 5 of the Joint Standing Committee on Electoral Matters. November 1989.

10.51 The Committee believes that it is essential that if the modified d'Hondt is to be retained that there should be a comprehensive revision of the deeming provisions. Each of these should be taken on merit and changed appropriately. The Committee also believes that the attempt to improvise a system that complied with the existing systems was where many of the problems with the modified d'Hondt arose.

**Support for Modified d'Hondt**

10.52 The proposal put forward by Mr C Holding MP, Minister for Arts and Territories, did not receive universal condemnation.

10.53 Senator R Hill thought the system would be satisfactory although he admitted that it was *'much compromised'*.[131]

10.54 Malcolm Mackerras, political commentator, was enthusiastic about the modified d'Hondt system in his description of it in the Canberra Times on 11 November 1988 in an article entitled *'ACT to have the fairest vote of all'*. Mr Mackerras said:

> *I am happy to count myself a supporter of the ACT's electoral system. You see, I know that there will be a stampede soon in its support so I want to get in ahead of the rest.*[132]

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[131] Senate, Hansard, 1988, p.2596

[132] Canberra Times, 11 November 1988.

10.55 In another article in the Canberra Times on 15 February 1989 Mr Mackerras said:

> *the puzzling feature of the d'Hondt electoral system is that it should be so unpopular. When you know it quite well as I do, you realise that it is really quite sensible.*[133]

**Criticism of the Modified d'Hondt**

10.56 After the election had tested the new electoral system, however, Mr Mackerras joined the ranks of the discontented. In his submission to the inquiry he said:

> *what is the logic behind modified d'Hondt. The answer is that there is no logic.*[134]

10.57 Mr J Langmore MP, Member for Fraser, told the Joint Standing Committee on Electoral Matters that:

> *the modified d'Hondt system is extremely convoluted and unsatisfactory. It is time wasting, poorly understood and unpopular.*[135]

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[133] Canberra Times, 15 February 1989.

[134] Evidence p S13

[135] Ibid.

10.58 Mr H Hird told the ACT Legislative Assembly Committee that:

> *the modified d'Hondt could be seen as being totally opposed to existing Commonwealth Legislation. I refer to the Human Rights and Equal Opportunities Commission of 1986 whereby the political aspirations of one group or one individual was denied the same opportunities or equal opportunities as other candidates in that situation. The election conducted on 4 March 1989 was biased against single candidates. This system of voting is contrary to the United Nations arrangements for the rights of individuals.*[136]

10.59 Mr Wedgwood, Australian Labor Party, in his evidence to the Committee said that:

> *the outcome of the last election properly reflected comparatively well the votes of the people who actually cast ballots at the election - it is certainly not an extremely accurate representation of the voters expressed view. The major problem with d'Hondt is that it is not understood, it is not accepted in the community and therefore I think we have to look at alternatives.*[137]

10.60 The Joint Standing Committee on Electoral Matters concluded that it could not come up with changes to the modified d'Hondt system which it considered would be acceptable. The report listed the major problems to be the size of the ballot paper, the length of the count and the near impossibility of understanding how to cast an effective vote.[138] All of these comments reflect the view of the Australian Electoral Commission.[139]

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[136] Evidence p 316.

[137] Evidence p 286

[138] The Parliament of the Commonwealth of Australia. Inquiry into the ACT Election and Electoral System. Report No. 5 of the Joint Standing Committee on Electoral Matters. November 1989.

[139] Evidence p S194

10.61 In their submission to the Committee the Australian Electoral Commission described the modified d'Hondt System in very critical terms:

> *it was rather arrived at through a series of hasty and probably inadequately considered political compromises. The absence of a consistent guiding principle is the greatest defect of the system not only because it causes it to be riddled with paradoxes but also because it substantially diminishes the legitimacy of the election of successful candidates. If the voting system distorts preferences expressed by the voters attributes to voters preferences which they did not in fact express and enhances the relative influence of some electors' votes for no good reason, the very basis for the legislatures right to govern is called into question. The modified d'Hondt does all of these things.*[140]

**Revisions to the modified d'Hondt system**

10.62 The Committee does not accept the view that the modified d'Hondt system cannot be amended to be a fair and equitable system.

10.63 The Committee believes that some of the modifications made to the pure d'Hondt system during the passage of the *Australian Capital Territory (Electoral) Act 1988* resulted in the difficulties experienced by the community and the candidates in the first ACT election. The lack of confidence in the d'Hondt system in general is misplaced, but understandable, following the recent experience with the modified d'Hondt system.

10.64 A number of witnesses supported the pure d'Hondt system, or that system with some amendment, as being appropriate to the ACT.

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[140] Evidence p S194

**Conclusions**

10.65 Mr C Duby of the No Self-Government Party said in his evidence to the Joint Standing Committee on Electoral Matters that:

> *The pure d'Hondt is without a doubt the fairest electoral system available for use with a multimember electoral system.*[141]

10.66 However, the pure d'Hondt system does not include independents or the allocation of preferences. The Committee believes that, in Australia, independent candidates and preferences are integral and important to the democratic process.

10.67 **The Committee recommends that:**

**If a form of d'Hondt is used for future elections:**

- **the Chief Minister request the responsible Commonwealth Minister amend the Australian Capital Territory (Electoral) Act 1988 to provide the pure d'Hondt system with amendments only to provide for independents and the allocation of preferences; or**
- **if the ACT Legislative Assembly has responsibility for its own electoral system it should provide for the pure d'Hondt system with amendments only to provide for independents and the allocation of preferences.**

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[141] The Parliament of the Commonwealth of Australia. Inquiry into the ACT Election and Electoral System. Report No. 5 of the Joint Standing Committee on Electoral Matters. November 1989.

## CHAPTER 11

## THE ROLE OF THE AUSTRALIAN ELECTORAL COMMISSION

### Introduction

11.1 The Australian Electoral Commission has received criticism by those who considered that the length of the count for the d'Hondt System was excessive. The Committee was therefore prompted to look at this aspect.

11.2 In his evidence to the Joint Standing Committee on Electoral Matters Mr Whitley, ACT Administration, told the inquiry that:

> *the legislation was drafted without any formal comment from Dr Hughes, Australian Electoral Commissioner, at Dr Hughes request as he did not see it as his role to provide policy advice to the Government.*[142]

11.3 Section 12(b) of the *Australian Capital Territory (Electoral) Act* 1988 defines the function of the Commission to:

> *promote public awareness of matters relating to general elections and matters relating to the Assembly by means of the conduct of education and information programs and by other means.*

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142 The Parliament of the Commonwealth of Australia. Inquiry into the ACT Election and Electoral System. Report No. 5 of the Joint Standing Committee on Electoral Matters. November 1989.

11.4 Subsequent to the tabling of that Bill the Australian Electoral Commissioner wrote to the ACT Administration saying that:

> *we are also, however bound to exercise due economy and for that reason I would have to say that we would be disinclined to spend money on a campaign to justify or even explain "consolidated" d'Hondt because of the impossibility of achieving the goal.*[143]

11.5 The Joint Standing Committee on Electoral Matters also reported that a meeting between the Commission and the ACT Administration on 1 December 1988 agreed that the Commission's role vis a vis public information would be *'limited to answering questions about the conduct of the election and the responsibility of the electors'* and would not include *'any explanation or defence of the electoral system'*.[144]

11.6 On page 81 of the Joint Standing Committee Report on Electoral Matters the Committee states that:

> *only the Australian Electoral Commission and individuals who cared to consult it, appear to have appreciated how complex and unpredictable the modified d'Hondt system was.*[145]

11.7 In evidence to the Committee in reply to the question as to what modifications to the pure d'Hondt or the ACT version of d'Hondt would you propose or would you recommend, Mr Green of the Australian Electoral Commission said that he *'would not recommend any'*[146] . The Committee considers that this was of

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[143] Evidence p S146

[144] The Parliament of the Commonwealth of Australia. Inquiry into the ACT Election and Electoral System. Report No. 5 of the Joint Standing Committee on Electoral Matters. November 1989.

[145] Ibid.

[146] Evidence p 373

little assistance in their investigation of all possible options for an electoral system for the ACT.

11.8 The Committee therefore considers that it is essential that the ACT Government establish a separate electoral office to fill the void created by the Australian Electoral Commissions refusal in 1989 to:

- provide policy advice to the Government;
- conduct education and information campaigns to promote public awareness of matters relating to Assembly elections.
- administer the Australian Capital Territory Electoral Act.

11.9 The Committee believes that the Canberra community did not fully understand the implications of some of the aspects of the d'Hondt system and for this reason the electoral system received a lot of adverse publicity.

**11.10 The Committee recommends that:**

- **the Chief Minister examine the feasibility of establishing a separate Electoral Office in the ACT to:**
  - **administer the proposed Australian Capital Territory Electoral Act.**
  - **provide policy advice to the Government; and**
  - **conduct education and information campaigns to promote public awareness of matters relating to Assembly elections.**

**Public Education Campaign**

11.11 The Committee heard criticism of the Commission's publication entitled *'The Electoral System for the Australian Capital Territory Legislative Assembly - Brief Description'* distributed on 2 December 1988. This booklet gave a description of the system and how it worked. The Committee was not convinced, however, that this criticism was justified. The d'Hondt system is more complicated than other electoral systems and needed to be explained in considerable detail as the Canberra community was not familiar with this system. The Committee was therefore satisfied that a document of this length and detail was necessary for that purpose.

11.12 The Australian Electoral Commission also released the Candidates and Scrutineers Handbooks on 21 December 1988 and a Scrutiny Procedures Handbook on 24 January 1989.

11.13 On 28 February 1989, a pamphlet on *'This is how to do it'* was distributed to the ACT electors by the Australian electoral Commission. It gave polling details, a sample ballot paper and instructions on how to cast a formal vote. The pamphlet gave only a very succinct description of the electoral system which the Joint Standing Committee on Electoral Matters stated *"was as a result of its agreement with the Administration"*[147].

11.14 The Australian Electoral Commission also released a fact sheet entitled *'The Voting System for the ACT Legislative Assembly Election'* which discussed the origin of the system, the ballot paper, ballot line and gave instructions for casting a formal vote. It also gave a brief outline of the scrutiny and stated that it would take some weeks before a final result was known.

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[147] The Parliament of the Commonwealth of Australia. Inquiry into the ACT Election and Electoral System Report No. 5 of the Joint Standing Committee on Electoral Matters. November 1989.

11.15 The ACT Administration concurrently released a pamphlet called *'The New ACT Government: Your Questions Answered'* which also covered some aspects of the electoral system and referred to the Australian Electoral Commission Fact Sheet.

11.16 The Australian Electoral Commission also set up a display at the Royal Canberra Show at the weekend prior to polling day. The Australian Electoral Commission staff provided briefing sessions for representatives of the media, party workers and candidates.

11.17 In all, the Australian Electoral Commission spent $179,000 on the ACT Election Campaign. This included an advertising campaign in the local media to inform electors of the close of rolls and polling day arrangements.[148]

11.18 The Joint Standing Committee on Electoral Matters Report in 1989 stated that:

> *the fact that many political parties and other participants in the Electoral campaign placed electoral advertisements in the newspapers and distributed how to vote cards which were at odds with the ACT electoral legislation suggests that there were shortcomings in the dissemination of public information.*[149]

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[148] The Parliament of the Commonwealth of Australia. Inquiry into the ACT Election and Electoral System. Report No. 5 of the Joint Standing Committee on Electoral Matters. November 1989.

[149] Ibid.

11.19 This was also the belief of the Australian Electoral Commission which stated in its submission to the inquiry that:

> *the extent to which an electoral system is understood by the electorate is a measure of the legitimacy of that system.....it is apparent that there was widespread misunderstanding and confusion over the modified d'Hondt system.*[150]

11.20 The Joint Standing Committee on Electoral Matters therefore concluded that:

> *the ACT Administration was remiss in not adequately drawing the attention of voters to a unique nature of the system and that the pamphlet issued by the ACT Administration was deficient in its failure to explain several important features of the system.*[151]

11.21 Mr Whitley defended the ACT Administration in evidence to the Joint Standing Committee on Electoral Matters :

> *educating the public and the conduct of the electoral campaign are clearly matters for the Australian Electoral Commissioner and it was up to his judgement as to what activity he undertook in those areas.*[152]

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[150] Evidence p S177

[151] The Parliament of the Commonwealth of Australia . Inquiry into the ACT Election and Electoral System. Report No. 5 of the Joint Standing Committee on Electoral Matters. November 1989.

[152] Ibid

11.22 The Committee concludes that the attitude of the Australian Electoral Commission to its role in the education process for the election may have been coloured by its dislike for the modified d'Hondt system. This attitude would appear to stem from the Commission's concern that the system was too complicated and unknown to the ACT voter.

11.23 The Committee concludes that both the Australian Electoral Commission and the ACT Administration must share the blame for failing to ensure that the voters of the ACT were adequately prepared for the election.

**The Scrutiny**

11.24 Mr G Marles, Australian Capital Territory Electoral Officer, told the Joint Standing Committee on Electoral Matters that he considered that the conduct of the scrutiny was adequate[153].

11.25 The Australian Electoral Commission pointed out a number of similarities between the scrutiny for the modified d'Hondt system and a Senate scrutiny, commencing with the devotion of the first two weeks to checking declaration votes, counting postal, absentees and section votes and other post election checking.

11.26 The Australian Electoral Commission said in their submission that it was not until the recheck commenced, that the procedure for the modified d'Hondt system became much more complicated. There were 150,421 ballot papers with 139 boxes which were sorted into 209 different categories.[154]

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[153] The Parliament of the Commonwealth of Australia. Inquiry into the ACT Electiona and Electoral System. The Joint Standing Committee on Electoral Matters. November 1989.

[154] Evidence p S161

**The Conduct of Staff during the Count**

11.27 Mr Gazlay, Labor Party, also made the comment to the Joint Standing Committee on Electoral Matters that he thought that some officials could have been more helpful and that the process could have been speeded up by *'getting everybody to understand what the process is, when you have a problem'*.[155]

11.28 The Committee did not receive any complaints relating to the performance of the staff during the count. Most witnesses appearing before the Joint Standing Committee on Electoral Matters inquiry also considered the people operating on the floor were very diligent and helpful.[156]

**Reasons for the Delay**

11.29 Several witnesses pointed out that the counting of votes generally takes longer to complete in proportional voting systems than in single member electorate systems e.g. New South Wales Senate election in 1984, with 41 candidates took 2 months.

**Complexity**

11.30 In their submission the Australian Electoral Commission also pointed out three features of the modified d'Hondt system which is more complex to count than the Senate.

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[155] The Parliament of the Commonwealth of Australia. Inquiry into the ACT Election and Electoral System. Report No 5 of the Joint Standing Committee on Electoral Matters. November 1989.

[156] Ibid

1. there were 209 categories compared with 140 categories with Senate system.

2. the formality rules allow valid preferences above and below the line

3. in the Senate elections, 80 - 90% of ballot papers would normally be marked above the ballot line of ACT election 60% followed 'no consistent pattern'.[157]

**The Number of Staff Employed**

11.31 Mr Treharne, Liberal Party, in evidence to the Joint Standing Committee on Electoral Matters said that he considered that:

> *the Commission could have speeded up the process by training more staff to complete and the recheck stage which he estimated took about 90 percent of time.*[158]

11.32 Ms F Hemmings representing the Labor Party at the Joint Standing Committee inquiry said that:

> *it was obvious that the Electoral Commission management did not address the aspect of adequate staffing. That would seem to me to be a primary way of facilitating a better election count in the future.*[159]

11.33 In its submission to the Committee the Liberal Party suggested that one method of doing this would be to use staggered

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[157] Evidence p S194

[158] The Parliament of the Commonwealth of Australia. Inquiry into the ACT Election and Electoral System. Report No. 5 of the Joint Standing Committee on Electoral Matters. November 1989.

[159] Ibid

shift for workers and this would address many of the issues raised by the Australian Electoral Commission in their justification of employing limited numbers of staff.[160]

[160] Evidence p S264

11.34 In answer to these comments Mr Green, Australian Electoral Commission, said that:

> *staff were not required to work weekends or public holidays. This was in accordance with normal Senate Count practice. We had anticipated that the scrutiny would take two months to complete. We took the decision that to expect casual and full time staff to work nonstop for two months would be totally unreasonable. It would be counterproductive because if people did not have adequate rest and a break from scrutinising nonstop for long hours everyday that what would happen would be that people would slow down, people would make mistakes.*[161]

11.35 Mr Green also explained that:

> *We decided on the optimal number of staff who could do the scrutiny and have the scrutiny maintained at a manageable size. The limitation on the number of staff was not a matter of cost, it was a matter of how many staff we could employ who would be experienced and who could be kept under management control. Each team could not usefully employ more people or they would have been getting ahead of each other and they would have been waiting around for one another to finish, they would have been getting in each others way. Most important as a scrutiny supervisor I had to be aware of everything that was going on. We maintain that if there had been more staff and more teams then it would have been counterproductive.*[162]

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[161] *Evidence p 380*

[162] Evidence p382

11.36 The Committee also was told that work on the first two stages did not commence until checking of the declaration and postal votes had been completed because the available permanent staff were fully committed during this period.

11.37 Mr Green told the Committee that:

> *That the recount did not commence until after postal votes were processed and counted because there are only a certain number of full-time divisional staff and they were fully involved in the preliminary scrutiny of postal, absent and sectional votes.*[163]

11.38 Mr Green further explained that:

> *the modified d'Hondt was such that to bring people in from interstate who did not understand the system would not have been of any benefit.*[164]

11.39 The Committee does not accept this reason as there are many similarities between the Senate and modified d'Hondt especially in respect to the processing of postal votes. Further, Mr Green also told the Committee in response to a question as to whether anyone could be taught the new system:

> *they could have but there was an optimum number of people who could be usefully employed.*[165]

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[163] Ibid p 387

[164] Evidence p387

[165] Evidence p 389

11.40 When pressed further Mr Green also told the Committee that:

> *at the beginning of each stage we had to tell our own staff to forget what you've just learnt and learn a completely different set of rules.*[166]

11.41 The Committee does not therefore accept that delay in counting the votes could be attributed in anyway to the lack of experienced or trained staff. On at least one occasion during the long counting period the Federal Minister, Mr C Holding MP, indicated that the provision of funds for additional staff for the count was not an issue.[167]

**Venue for Scrutiny**

11.42 The initial choice of venue for the scrutiny the Department of Administrative Services Conference Centre at Woden where the Australian Electoral Commission had previously conducted the ACT Senate scrutiny, was made before the number of candidates was known.[168]

11.43 In their evidence the Australian Electoral Commission said that:

> *It was not until we started counting postal votes and absent votes that we realised that facility was far too small.*[169]

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[166] Evidence p 388.

[167] The Canberra Times 5 April 1989 p. 3.

[168] The Parliament of the Commonwealth of Australia. Inquiry into the ACT Election and Electoral System. Report No. 5 of the Joint Standing Committee on Electoral Matters. November 1989.

[169] Ibid.

11.44 The operation was moved to the Woden Valley High School assembly hall, the largest venue available, which was still not quite large enough to permit easy handling of the large number of bundles of metre-long ballot papers.[170]

**Some of the Reasons for the Delay**

11.45 In its submission the Australian Electoral Commission gave as the reasons for the problems:

- they did not have sufficient experienced casual staff to run extra teams
- the premises were not big enough to have more teams sorting ballot papers
- scrutineers had to be accommodated
- operation had to be kept to a manageable level to ensure effective control and accuracy.[171]

11.46 Mr Colin Ball (Tasmanian Chief Electoral Officer) said that:

> *the operation of a scrutiny of ballot papers where exactness, accuracy and precision are required at all times and where an error in miss-sorting or the labelling or placement of ballot papers can result in many hours of lost time then the concept of more people, less time is stupid and is generally only voiced by those with little or no understanding or experience of the procedures involved.*[172]

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[170] Ibid

[171] Evidence p S194

[172] The Parliament of the Commonwealth of Australia. Inquiry into the ACT Election and Electoral System. Report No. 5 of the Joint Standing Committee on Electoral Matters. November 1989.

11.47 In their submission the Australian Electoral Commission also said:

> *that if the exact same number of people stood at the next election and all of the same factors applied it would take exactly the same time to count the vote.*[173]

11.48 The Joint Standing Committee on Electoral Matters concluded that:

> *it would not have been productive for the Commission to have employed additional staff under the circumstances.*[174]

11.49 The Joint Standing Committee also concluded that:

> *criticism of the Commission's performance was largely ill informed and that allegations that the Commission indulged in a 'go-slow' campaign to fulfil its prophecy that finalising the election would take over two months, were without substance. The time taken was the same as that for the NSW Senate elections in 1984 with less than half the number of candidates and a much more straight forward system.*[175]

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[173] Evidence p S156

[174] The Parliament of the Commonwealth of Australia. Inquiry into the ACT Election and Electoral System. Report No. 5 of the Joint Standing Committee on Electoral Matters. November 1989.

[175] Ibid

11.50 The Committee does not accept these conclusions. It acknowledges that the count was always going to be slow and difficult. The concerns expressed by the Commonwealth Electoral Officer in the correspondence of 31 October and 18 November 1988 to the ACT Administration indicate that the Commissioner was alert to these problems and should have planned to overcome them. These comments by Mr Green in evidence to the Committee (see paragraph 11.34) clearly shows that the Commission had decided that the count would take two months and they did not propose to take steps to speed up the count.

11.51 Mr Green explained to the Committee how other States attained this. For example in the New South Wales Senate elections votes are rechecked by divisional officers so that each of the 51 divisions do a recheck and all the ticket voting ballot papers are set aside in the divisional offices. It is only the non-ticket voting ballot papers which are typically 10-15 percent of ballot papers go to the central scrutineer.[176]

11.51 The Committee considers that:

- it was possible to train or import sufficient experienced staff to run extra teams;
- additional scrutiny supervisors could be trained to enable the counting to be conducted in more than one centre if necessary;
- the scrutineers could be ably accommodated under these arrangements; and
- effective control and accuracy should be able to be attained with a substantially larger operation as there will be more time to train staff at the managerial and operational levels.

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[176] Evidence p 381.

# CHAPTER 12

# THE NUMBER OF ELECTORATES

## Introduction

12.1 The Committee received submissions advocating a variety of options in relation to the number of electorates for the ACT. The advantages and disadvantages of each of these proposals were considered by the Committee and the arguments for and against are summarised below.

## Multimember Electorates

12.2 The advantages and disadvantages of multimember electorates depends largely on the number of members for each of those electorates. There are however some features which are common to all multimember electorates.

12.3 People may not like a party or independent or feel comfortable going to the member in single member electorates because they disagree with their policies overall. With multimember electorates, one would usually be assured of at least 2 parties so the people would have a choice.

12.4 It is also very difficult for Ministers to adequately service their electorates as well as undertake their ministerial duties. If there are others representing that electorate, they could be left to do more of the day to day electorate work freeing Ministers for the business of governing the Territory as a whole. This is considered particularly significant in the ACT with a four member Executive.

12.5 Mr W Lawrence, representing the Canberra Association for Regional Development, in evidence to the Committee said:

> *that the larger the number of members in each electorate then the smaller the quota for election and the more chance that you get an extremist with a very small percentage of votes getting into the Assembly.*[177]

12.6 Dr Kirschbaum from the Fair Elections Coalition however saw this as a positive feature. He considered that when the quota is lower it makes it easier for the whole range of different views and opinions to be expressed in the Assembly.[178]

12.7 Arguments were presented that a system which allows many diverse interest groups to be represented may not always be democratic. If a particular interest group holds the balance of power between two major political parties, that group is able to exercise power out of all proportion to its real level of support in the community and in areas unrelated to its original platform.

**One Large Electorate**

12.8 Whereas members elected for a small electorate may have some parochial interests to pursue, members elected in the single electorate systems are generally freed from these pressures.

12.9 It was claimed that a one party majority would be difficult as the very low quotas for election enable candidates with only minor electoral support to be elected. As a result a large number of independents and small party representatives may be elected.

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[177] Evidence, p 327.

[178] Ibid. ,p 429.

12.10 If there are too many minority groups represented, there is a possibility that the Assembly would lack co-ordinated policies and decision making because of unstable alignments. This could make the performance of executive functions difficult and could lead to a lack of public confidence in the Assembly.

12.11 Mr Dunne of the Liberal Party pointed out to the Committee some of the problems associated with very low quotas:

> *we have seen on a national level in the Senate where persons have been elected on a very small proportion of the primary vote because of the flow of preferences. In the ACT this situation would be exacerbated because the population is significantly smaller than any state and the number of persons that we would be electing is significantly larger than a full Senate election for any state.*[179]

12.12 Although a single electorate is flexible in that it allows for any number of members, any change in the number of members would significantly change the outcome of elections by reducing the quota for election thus altering the basic complexion of the legislature. Any increase in population or any other recognised need to increase size of legislature would therefore only occur with a fundamental change in structure and outcome.

12.13 Mr Hird in evidence to the Committee also pointed out a further problem could arise if all the elected Members came from Tuggeranong then the people of Belconnen will not have anyone to identify with.[180]

12.14 The Committee also heard that large multimember electorates allow less accountability of members to their electorates and may provide a less satisfactory relationship between community interests and the elected representatives. However, candidates would be competing for votes from all parts

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[179] Evidence p 358

[180] Ibid, p 321

of the ACT and may emphasise territorial policies and exclude more local issues.

12.15 A single electorate may reduce pressures on Members to approach Assembly business from the parochial viewpoint of their electorate.

12.16 The Committee was also told that voters could not reasonably be expected to know 17 candidates sufficiently well to be able to list them preferentially when voting.

12.17 However, Mr Donohue, President of the Residents Rally for Canberra pointed out that:

> *a single multimember electorate has the advantage that a candidate with a degree of expertise and reputation in a particular subject matter which is known across the ACT may have a particular percentage acceptance where as in a small electorate that person may not have the same acceptance and the effect of that may be to deprive the Assembly of those particular skills.*[181]

12.18 Another claimed advantage of having a single electorate is that there are no boundaries hence there is no need for a boundaries commission. There would also be no need for any built-in boundaries mechanism allowing for changing circumstances, such as population increase.

**Two Electorates**

12.19 This option could use the existing federal boundaries and would therefore also have the advantage that it would not be necessary to draw new electoral boundaries. There would again be no need for a boundaries commission.

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[181] Evidence, p 344

12.20 Dr Kirschbaum of the Fair Elections Coalition told the Committee that he considered that:

> *two electorates are such large units you might as well go for the single electorate.*[182]

12.21 The Committee also heard that with only two electorates some voters may not know enough about the candidates to be able to effectively preferentially list 8 and 9 in order.

12.22 The Committee was also told that having two large electorates would lead to a very small quota and the disadvantages previously discussed under a single multimember electorate system. There is however a greater chance of getting a majority government than there was with a single electorate.

12.23 Although the Committee does not accept that it is necessarily a problem, a Legislature with an even number of members could be overcome by giving the larger number of members to the electorate with the larger number of people or to give the Speaker a casting vote only.

12.24 However, the problem is that the Division of Fraser has 82829 voters and the Division of Canberra has 82827 voters. It would therefore be unfair to have one division with one more member than the other.

12.25 The Committee considers that the establishment of two electorates in the ACT would be an interim measure. There is an in-built need to expand or adapt when ACT's entitlement increases to three.

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[182] Evidence p 435

**Three Electorates**

12.26 Mr Craig in his evidence to the Committee said that he considered:

> *three electorates is regarded as being enough to stop parochialism and yet large enough to create integration.*[183]

12.27 The Australian Electoral Commission in correspondence with the Task Force on the Implementation of ACT Self Government in February 1984 said that:

> *the proposal to use three electorates will require that boundaries be redrawn. Provisions of the Commonwealth Electoral Act for the redistribution of House of Representative Divisions of the ACT could be fairly readily modified to apply to the determination of the House of Assembly boundaries.*[184]

12.28 Mr Green, Australian Electoral Commission, brought to the attention of the Committee recent changes in the Commonwealth Electoral Act:

> *to provide that the ACT will automatically increase its number of seats when the proportion of electors in the ACT increases so that the ACT is entitled to a third seat.*[185]

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[183] Evidence p 133

[184] Evidence p S442

[185] Ibid p 377

12.29 Mr Dunne, Liberal Party, pointed out to the Committee that:

> *Hare-Clark in Tasmania has five electorates each returning 7 members and we have about 60 percent of their population so three electorates would be in about proportion. It could return an odd number of members which would get away from the problems associated with tied votes.*[186]

12.30 The Electoral Commission had also obtained information from the Australian Bureau of Statistics as to what the anticipated populations for the various States and Territories will be in June 1991 and it concluded that on that basis the ACT will not get a third seat in the life of the next parliament.[187]

12.31 Mr Old, Liberal Party, suggested that it would be administratively easier if the boundaries were the same as the Commonwealth.[188] However, Mr Green of the Australian Electoral Commission did not see this as a problem as these could be sorted on the basis of postcodes.[189]

12.32 Mr Dunne, Liberal Party, told the Committee that:

> *I think in a geographically concentrated electorate with a relatively educated population I do not think it is unreasonable to expect people to be able to vote for seven individuals.*[190]

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[186] Ibid p 358

[187] Evidence p378

[188] Ibid p 364

[189] Ibid p 377

[190] Evidence p 364

12.33 With three electorates there will be a high degree of probability that a majority vote will gain a majority of seats. Therefore a single party government or two or three party coalition or alliance will be the norm and voters will almost always have a member of their own party choice to represent them.

12.34 The Committee was told that three electorates will provide a balance between the rights of the voters exercising their choice and the reality of the need for political parties.

**Four or More Electorates**

12.35 The problems of drawing boundaries would be exacerbated because of the need for a larger number of electorates to achieve a viable legislature in terms of size.

12.36 The Committee was told that the quota would be high and that this would almost guarantee the exclusion of independents and smaller parties from the Assembly. For example, if there are seven electorates then there will be a maximum of three members elected from each electorate. This would almost surely end in the exclusion of independents and minority groups if the major parties win one each and throw preferences to one another.

**Single Member Electorates**

12.37 Mr Langmore stated to the House of Representatives on 3 November 1988:

> *I would prefer to have single member electorates, because they are best attuned to the needs of the individual voters. They provide voters with an identifiable member to whom they can go and they make the member directly accountable to the people who elect him or her.*[191]

12.38 Mr Wedgwood, Secretary of the Australian Labor Party ACT Branch, advocated a system of single member constituencies because they are used in every lower house on the mainland and the upper house in Tasmania. As a result it is familiar to all other Australians and is a system which is used for the making of governments everywhere else in mainland Australia and in the Federal Parliament.[192]

12.39 A commonly accepted view within the community was that if Canberra had single member electorates then the Labor Party would have a landslide victory. In response to questions Mr Wedgwood opposed this strongly saying that:

> *the history of the ACT Assembly or its predecessors bodies show that in fact the ACT electorate is quite prepared to vote for a party other than the Labor party on a majority basis and it is prepared to give very high votes to nonparty candidates such that in certain circumstances it would be quite possibly for those people to win single member constituencies.*[193]

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[191] H of R, Hansard, 3 November 1988 p 2428

[192] Evidence p 282

[193] Evidence p 287

12.40 Mr Wedgwood went on to explain that:

> *it has happened in the Northern Territory which would have constituencies which are probably a quarter of those that would be established in the ACT. It has happened in NSW which has the largest electorate size of any state parliament and in South Australia where independents hold the balance of power. It is not uncommon for independents to win seats in single member electorates. It is not uncommon for states to consistently return one political party in the federal sphere and to return a different political party in state sphere.*[194]

12.41 Mr Wedgwood also added that:

> *there are segments of the ACT ....where independents in the past have had a much stronger showing in those electorates than they have done in terms of the rest of the Electorate. A number of rock solid liberal and Labor seats went to independents in the last NSW election. The proportion of swinging voters in the Australian electorate is increasing...and the ACT consists of more swinging voters demographically than anywhere else in Australia.*[195]

12.42 Mr Wedgwood also told the Committee that there would be a number of advantages in having single member constituencies:

> *if a member has a small electorate then they can door knock every house, your supporters can staff every polling booth and can be outside postal voting booths at all times prior to the election. You can address the specific concerns of the electorates.*[196]

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[194] Ibid p 287

[195] Evidence p 288

[196] Evidence p 291

12.43 A poll conducted by The Canberra Times showed that the majority expressed support for the single member constituency system. Mr Wedgwood considered that the reason for this was that:

> *the majority of Canberra people come from elsewhere - from states where single member constituencies were used to elect their State Legislature. It is a situation that people clearly understand that person is responsible to that electorate.*[197]

12.44 Not all of the witnesses were convinced of the overwhelming virtues of this system supported by Mr Wedgwood. Dr Kirschbaum from the Fair Elections Coalition pointed out that:

> *although the identification with a local member is important it is also important that there is a representation of views and opinions held in the population.*[198]

12.45 Mr Dunne, Liberal Party, strongly opposed the system saying that single member electorates would be the single worst option for the ACT electoral system. The Senate system has a strong incentive to use above the line voting and elects people almost at chance basis for the last positions.[199]

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[197] Evidence p 291

[198] Evidence p 428

[199] Evidence p 350

12.46 Mr Dunne went on to explain that:

> *the problem with single member electorates is that they entrench complete control over which candidates are elected from which parties in the hands of the party machines so that if someone was voting Liberal Party, in a single member electorate he would have no choice as to which Liberal candidate was elected. He would have to take the one on offer or none.*[200]

12.47 Mr Dunne pointed out that there is another problem in that:

> *in a place like the ACT, which is relatively homogeneous is that they tend to have the effect of exaggerating the advantage of the party with the greatest support - one party with as little as 30% of the vote could virtually scoop the pool in a single member electorate. In other parts of Australia there have been significant differences between rural and country, rural and urban electorates and really between rich and poor suburbs. The access to one member is not a problem in a Territory the size of the ACT.*[201]

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[200] Evidence p 357

[201] Evidence p 357

12.48 Mr Musidlak of the Proportional Representation Society told the Committee that:

> *in single member electorates you need more than 50% of the formal votes. You may also get distortions in election outcomes. The first election in the Northern Territory the Labor Party got in the mid 30's of first preferences and won no seats. Qld 1974 Labor got 38% and got 13% of seats. Federal Election 1975 Labor got 40% and got 30% of seats.*[202]

12.49 Mr Musidlak went on to explain that:

> *the opposition is therefore consigned to irrelevance because the numbers are not there in the chamber, not there to do the committee work, the digging and the probing and so the government can become arrogant.*[203]

12.50 Electorates with one representative may allow greater flexibility in determining electoral boundaries to arrive at an appropriate size for the Assembly.

12.51 Single member electorates would provide the greatest scope for stable majority government. However, with single member constituencies there is the possibility that one party could dominate the Territory's political life for considerable periods without the benefit of strong opposition or articulate alternatives in the legislature proved a major obstacle to the acceptability of a single member constituency system.

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[202] Evidence p 501

[203] Evidence p 501

12.52 Mr Craig in evidence to the Committee said that he considered that:

> *having electorates which are too small will lead to parochialism and creating an extraordinary set of pressures because people will argue too finely but if you want to preserve a relationship between the community and the elected body, there should be some sort of physical relationship between them.*[204]

12.53 Mrs R Kelly MP, Member for Canberra, last year made a public call for the introduction of single member electorates on the ground that it would provide an element of stability.[205]

12.54 However, the Committee was told that in single member electorates with very small populations there is also an inherent danger of "pork barrelling" where there is pressure to pander to the local interest and not necessarily the wider interest of the community.

12.55 Other submissions to the Joint Standing Committee on Electoral Matters point out that even if there was a large initial landslide in favour of a major party, it would not necessarily be repeated in subsequent elections unless the party candidates continued to attract the support of the electorate. Candidates would be judged on their own merits and on their response to local issues.

12.56 Another advantage is that it allows the result to be known very quickly.

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[204] Evidence p 133

[205] The Canberra Times 25 November 1989 p 1.

12.57 Mr Mason told the Committee that:

> *in single member electorates you need 50% plus one vote to win and of course a lot of those preferences may be second, third or fourth which are not genuine but forced because we have compulsory preferential voting. There are therefore 50% less one that can be disenfranchised and have not effect on the outcome.*[206]

12.58 Mr Mason also pointed out that when you have 17 electorates then you have one person on your side and a potential 16 against it. In single member electorates you also have no choice of member to go to.[207]

12.59 Mr Musidlak, Proportional Representation Society, said that with single member electorates then 2/3,3/4, or 4/5 of seats are geographically safe seats which confine vigorous political activity. There are no safe seats in Tasmania because of the Robson Rotation.[208]

**Combination of Single and Multi member electorates**

12.60 A further suggested option would be to have about half of the representatives elected from single constituencies and the other half from the ACT as one electorate on a proportional basis.

12.61 Other Western European countries use similar systems but allow for greater small party representation and do not utilise single constituencies. Such systems, if applied to the

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[206] Evidence p 438

[207] Evidence p 439

[208] Evidence p 501

ACT, may bring with them certain disadvantages not noticeable elsewhere.

12.62 Because of the smallness of the legislature, the split between the single constituencies and the large electorate members may produce a very stark division. The single member constituencies would be quite large and the members would have their community's representation as their prime capacity. The members from the large electorate could be seen to be in a different category and having different functions.

12.63 Theoretically, however, members of the government could all come from the single constituencies while the opposition could be members from the large electorate.

12.64 Balancing the number of single constituency members against the numbers of members from the large electorate would be a critical task and one likely to be highly controversial.

12.65 Mr Green, Australian Electoral Commission, pointed out a further disadvantage to the Committee in that:

> *if you had some elected at large and some from smaller electorates then you will need to have two ballot papers for each voter which will increase the formality and increase the number of scrutineers.*[209]

**Electoral Boundaries**

12.66 The setting of boundaries can be controversial and divisive with parties potentially being disadvantaged both by changes in the location of boundaries and the size of the electorate.

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[209] Evidence p 390

12.67 Mr Evans of the Australian Democrats also said that:

> *electorate boundaries are drawn with a surprising amount of artificiality in order to satisfy the absolutely fundamental principle which is one vote one value.. The alternative is to have multimember electorates, the boundaries of which are drawn to make sense to the people in the street and the number of people elected can be adjusted to preserve the one vote one value principle. Electoral boundaries should be based on peoples day to day experience, the visual evidence they see. There are significant differences and characteristics between the townships and the problems and opportunities that townships have to make it appropriate for those townships to be discrete communities.*[210]

12.68 In determining the boundaries the Committee considers that in addition to the population sizes in each area other factors should be taken into account, for example, the central areas of Woden-Weston Creek and Canberra Central are relatively static in terms of population growth while the marginal areas of Belconnen and Tuggeranong are still developing.

12.69 The physical planning of Canberra has given particularly sharp and clear opportunities to draw sensible electoral boundaries because in most instances those townships are separated by areas of bushland and farmland.

12.70 Mr Evans of the Australian Democrats explained to the Committee that the development of electoral rolls is extremely cheap as it merely involved instructing the computer to sort according to post codes.

12.71 The costs involved in printing additional rolls may not be cheap but are usually sold and therefore the cost is largely recoverable. They are relatively small in terms of the cost of Government.

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[210] Evidence p 270

12.72 While the job of a boundaries commission would not be extensive, nevertheless one would have to exist in order to fulfil the requirements of even minimal boundary drawing. However, it is more likely that the ACT would use the existing data base and expertise of the Australian Electoral Commission to draw up and provide the electoral rolls. The Committee expects that this service would be provided on a cost recovery basis.

12.73 No one option about the number of electorates emerges as superior to the others. A democratic Parliament can be elected and operate successfully in all of the options examined.

12.74 Although the majority of the Committee considers that any of these three systems would be suitable for the ACT, the Committee's preference is:

1 a single electorate with the revised d'Hondt as discussed in Chapter 10;

2 three multimember electorates using the Tasmanian Hare-Clark System; or

3 single member electorates with the House of Representatives voting system.

## CHAPTER 13

## THE REFERENDUM

13.1 The Joint Standing Committee have recommended that a referendum be held to establish which of the following two electoral system would be preferred by the majority of voters:

> . *a system of single member electorates using the House of Representatives voting system*
>
> . *a system of proportional representation with multimember electorates modelled on the Tasmanian Hare-Clark voting system.*[211]

13.2 The ACT Legislative Assembly Committee does not oppose the holding of a referendum, however, this support is conditional on a number of basic requirements.

### Format of Referendum

13.3 The Committee does not support the format for the referendum proposed by the Joint Standing Committee. The Committee considers that it is essential that the alternatives presented be in sufficient detail as to leave no doubt as which form of electoral system would be implemented and that a revised d'Hondt System be included as another option.

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[211] The Parliament of the Commonwealth of Australia. Inquiry into the ACT Election and Electoral System. Report No. 5 of the Joint Parliamentary Committee on Electoral Matters. November 1989.

**13.4 The Committee recommends that:**

- **the alternatives listed on the referendum paper contain sufficient detail as to leave no doubt as to the type and form of electoral system to be implemented.**

13.5 The Committee considers that the most appropriate electoral system for several multi-member electorates is the existing Tasmanian Hare-Clark System. Although the single member electorate alternative is self explanatory, Hare-Clark is not clear. The Committee considers that the Hare-Clark alternative should involve three electorates with six, six and five members respectively based on the population numbers.

13.6 The Committee considers that a referendum should not be held until a constructive revision of the modified d'Hondt, as discussed in Chapter 10, is conducted in order to settle the form of d'Hondt to be used in the next election, if that is the choice of the people of the ACT.

**13.7 The Committee recommends that:**

- **an option of the revised d'Hondt system as proposed in Chapter 10 be included in the referendum questions.**

**Implementation of Referendum Results**

**13.8** The Committee is aware however of the result of the last referendum on self-government for the ACT.

**13.9 If a referendum is held the Committee supports the recommendation of the Joint Standing Committee on Electoral Matters that:**

- **all parties should agree to introduce at the earliest opportunity whichever of the electoral systems is preferred by a majority of ACT voters.**

13.10 If circumstances develop where no new system can be agreed, the Committee urges that the revisions to the modified d'Hondt discussed in Chapter 10 be made to make the system more effective and acceptable to the people of the ACT.

**13.11 The Committee recommends that:**

- **if an alternative system to the modified d'Hondt cannot be agreed upon, then the revisions to the system, as outlined in Chapter 10, should be made to make that system more effective.**

**Funding of the Referendum**

**13.12 If a referendum is held the Committee also supports the Joint Standing Committee on Electoral Matters recommendation that:**

- **the Commonwealth provide funds for the Australian Electoral Commission to conduct the referendum.**

**Public Information**

13.13 The Committee feels that this is essential as many of the problems occurring in the last election have been attributed to the lack of knowledge of the voters. The Australian Electoral Commission has clearly demonstrated their reluctance to *'conduct education and information campaigns to promote public awareness of matters relating to Assembly elections.'* The Committee therefore considers that voters in the ACT are at a disadvantage to electors in the States and the Northern Territory.

**13.14 The Committee recommends that:**

- **the Chief Minister request the Commonwealth Government to provide funds for the establishment of an Australian Capital Territory Electoral Office.**

**Rotation of Alternatives**

13.15 Further, the Committee does not support Mr Mackerras' statement that it does not matter which alternative is listed first on the referendum paper.[212]

**13.16 The Committee recommends that:**

- **the alternative electoral systems be rotated on the referendum paper so that each appears in each position on an equal number of referendum papers.**

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[212] Evidence p 400

## CHAPTER 14

## OTHER ELECTORAL MATTERS

### Filling of Casual Vacancies for Multimember Electorates

14.1 Under Section 68 of the *Australian Capital Territory (Self Government) Act* 1988 the ACT Legislative Assembly is the only lower house in Australia to allow political parties to appoint members of the body.

14.2 The Committee believes that the position should be advertised and any candidates in the previous election can apply for appointment on a countback. This could be filled on a count back of votes within the vacated member's party list or the independent grouping where the vacancy occurs, or a count back of the votes of the person vacating the position in the same manner currently used in Tasmania.

**14.3 The Committee recommends that:**

- **If the next ACT election is not conducted using single member electorates:**
  - **the Chief Minister request the relevant Commonwealth Minister amend the Australian Capital Territory (Electoral) Act 1988 to require that vacated positions within the ACT Legislative Assembly be filled by the count back of votes; or**
  - **if the ACT Legislative Assembly has resposibility for its own electoral legislation that this should include a requirement that vacated positions within the ACT Legislative Assembly be filled by a count back of votes.**

**Optional Voting**

14.4 Optional preferential voting has been used in the New South Wales Legislative Assembly elections since 1981 and the ACT Legislative Assembly.

14.5 The alternative vote system has been criticised because it requires voters to express a preference for candidates where the voter may not wish to do so. This can be overcome by voters having the option of not expressing preferences.

14.6 List voting is another option that has been used in the form of above line voting in the Senate and the modified d'Hondt. This option would not be possible if the Robson rotation were to be used.

14.7 The Committee believes that there should not be a minimum number of squares which a voter must number. There is no reason why a voter should state preferences for other candidates in order to have a few genuine preferences recorded. When there is a system of compulsory voting the effect is that voters number squares at random, or at least for candidates who they do not really prefer, in order to preserve the formality of their votes. One of the advantages of optional preferential voting is that it reduces informality.

14.8 The Committee believes that it is essential that optional preferential voting be retained.

**Compulsory Voting and Enrolment**

14.9 Mr Green of the Australian Electoral Commission told the Committee that:

> *it would be a duplication of effort to maintain a separate roll. We have a joint roll arrangement with all States except Queensland. Electors can be flagged as state only or Commonwealth only if there is a difference in qualifications can the same data base can be used.*[213]

14.10 The Committee does not believe there should be a separate Territory electoral roll or the ACT should differ from the Commonwealth in respect to compulsory enrolment.

**Registration of Parties**

14.11 There is no requirement under the *Australian Capital Territory (Electoral) Act* 1988 for political parties to satisfy minimum membership requirements for registration. The party need comprise no more than the registered officer who is required to sign the nomination form of any party candidate.

14.12 There is nothing in the Act to prevent the registered officer and the party candidate from being the same individual. By contrast, independent candidates must be nominated by two qualified electors.

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[213] Evidence p 377

**Nominations**

14.13 The Committee is aware however that the question of finding ways to reduce the number of frivolous candidates may not have arisen if the election count had been completed quickly. The Committee does not therefore consider than a large number of candidates is necessarily disadvantageous and that care must be taken not to prevent true democracy in allowing members of the community to stand as candidates.

14.14 Mr Green, Australian Electoral Commission, told the Committee that he thought that:

> *members of the ACT Legislative Assembly should be able to register a party without membership requirements in the same way that it applies to the Commonwealth but all parties that are non-parliamentary should be required to demonstrate a membership. Under the Commonwealth they do not have to have a different number membership they merely had to have demonstrate a membership. Effectively they could use one membership to register 6 or 7 parties.*[214]

14.15 Mr Green also explained that:

> *it would be administratively very difficult to ensure that the hundred members were not the same 100 members that were registered for another party.*[215]

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[214] Evidence p 392

[215] Evidence p 393

14.16 Mr Green in his discussion with the Committee also added that:

> *the use of computers is covered by the Commonwealth Privacy Act and therefore the data could not be held until the next election. The ASIO Act can also override the Commonwealth Privacy Act. Political parties would be reluctant to provide lists that would be kept on a permanent data base.*[216]

14.17 The Committee does not consider it necessary or practical to keep a list of party membership from one election to the next. It is highly likely that some of those members will change parties in the intervening years.

14.18 The submission and evidence to the Committee suggested that there should be between 20 and 200 nominees. These figures were considered to indicate a reasonable level of community support, without which a party could not claim to represent any significant views within the community and removes the opportunity for people to treat the whole election as a joke.

14.19 The Committee also heard that the minimum number should not be so high as to discourage the emergence of new or the continuation of minor political parties.

14.20 The Committee does however see a need for a standard to be set. It is not acceptable that by registering as a party an individual has less stringent requirements than if they stand as an independent.

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[216] Evidence p 393

**14.21 The Committee recommends that:**

- **the Chief Minister request the reponsible Commonwealth Minister amend the Australian Capital Territory (Electoral) Act 1988 to require that the number of members of a political party and the number of nominees for independents be twenty; or**

- **if the ACT Legislative Assembly has responsibility for its own electoral legislation that this should include a requirement that the number of members of a political party and the number of nominees for independents be twenty.**

**Deposits**

14.22 Currently under the *Australian Capital Territory (Electoral) Act* 1988 candidates must pay $100 deposit which is refundable if the independent candidate or the candidates party gains 4 percent of the total formal vote. The deposit in the ACT is much less than that required for State Parliaments except Western Australia or for Federal elections.

14.23 The Committee received submissions suggesting deposits ranging from zero to $10,000.

14.24 The deposit dates from the days when candidate were required to prove they were "men of substance". The Committee considers that there is no justification for attempting to place a financial barrier in the way of the nomination of candidates.

14.25 Mr Henry for the No Self-Government Party suggested that perhaps the deposit fee should be greater but it should be easier to get it back therefore there should be a change from 4% to 2%. There must be some self imposed penalty to discourage frivolity.[217]

14.26 Mr Dunne from the Liberal Party put forward the view that:

> *the rights of someone who cannot get together $500 for a campaign, then realistically therefore probably has very little chance of being elected, have to come second to the right of the ACT community to have a workable electoral system. They can borrow the money if they have the electoral support. If you use nominees the Electoral Commission has to verify that those people are electors and that is their signature.*[218]

14.27 The Joint Standing Committee on Electoral Matters Report said:

> *the purpose of requiring election candidates to pay a deposit, refundable upon election or upon securing a specified minimum percentage vote is to discourage those who are not 'genuine' from nominating.*[219]

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[217] Evidence p 313

[218] Evidence p 367

[219] The Parliament of the Commonwealth of Australia. Inquiry into the ACT Election and Electoral System. Report No. 5 of the Joint Standing Committee on Electoral Matters. November 1989.

14.28 The Joint Standing Committee on Electoral Matters recommended that the deposit be increased to $250.[220]

14.29 Mr Hird considered that:

> *everyone should have the right to stand as a candidate because this is a democracy.... Leave it at $100.... Lets not have a change for the sake of change.... If we have people who make fun of the seriousness of an election that is their right... the electorate will judge them at the time. I would accept that there was no deposit at all but require a number of signatures indicating the level of support.*[221]

**14.30 The Committee recommend that either:**

- **the Chief Minister request the responsible Commonwealth Minister amend the Australian Capital Territory (Electoral) Act 1988 to increase the required deposit for candidates to $250.; or**
- **if the ACT Legislative Assembly has responsibility for its own electoral legislation that this require a deposit for candidates of $250.**

**Additional Changes to Legislation**

14.31 The Committee considers it appropriate that restriction be introduced so that the same individual could register only one political party and be the registered officer of only political party.

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[220] Ibid

[221] Evidence p 321

14.32 Mr Wedgwood representing the Australian Labor Party discussed with the Committee the anomaly in the ACT system that one individual can register a political party and can then nominate themselves whereas a genuine independent requires at least two other voters to nominate them.[222] If a member loses their seat and then seeks re-registration or a continuation of registration they have to produce the same number of members as anyone else.

**14.33 The Committee recommends that either:**

- **the Chief Minister request the relevant Commonwealth Minister amend the Australian Capital Territory (Electoral) Act 1988 according to prevent the same individual from:**
  - **being the registered officer for more than one political party or independent in the ACT at any one election; and**
  - **being able to register as a candidate for more than one party at any one election; or**
- **if the ACT Legislative Assembly has responsibility for its own electoral legislation then that should include provision to prevent the same individual from:**
  - **being the registered officer for more than one political party or independent in the ACT at any one election; and**
  - **being able to register as a candidate for more than one party at any one election.**

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[222] Evidence p 297

**Postal Votes**

14.34 There was a specific timing problem in the last ACT election which was related to the counting of postal votes. The Committee does not think that it is necessary to have such a long delay.

14.35 The delay in declaring results could be reduced by providing that only those ballot papers inserted in the ballot boxes, or received by the Electoral Officer prior to the close of voting, may be accepted as valid votes.

14.36 The Committee heard that the reason for the two week delay was to enable overseas people to cast a vote. The *Australian Capital Territory (Electoral) Act* 1988 however requires that the length of term is fixed. Therefore the Committee considers that residents who are overseas will have ample warning of the next election and will be able to vote accordingly. Recent changes to electoral legislation has made it much easier for voters to cast a pre-poll vote prior to election day.

14.37 **The Committee recommends that either:**

- **the Chief Minister request the responsible Commonwealth Minister amend the Australian Capital Territory (Electoral) Act 1988 to require that the closing date for the receipt of postal votes is the date of the election; or**
- **if the ACT Legislative Assembly has responsibility for its own electoral legislation that this should include a requirement that the closing date for the receipt of postal votes is the date of the election.**

**Ballot Papers**

14.38 In the last election there were 117 candidates nominated resulting in a 1 x 0.35 metre ballot paper.

14.39 Ballot papers are divided by a ballot line. The names of registered parties contesting the election appear above the line to the left; the names of independent candidates appear above the line to the right of the parties. The names of party candidates appear below the ballot line, grouped in columns under the respective parties.

14.40 The Committee considers that the separation of independent to the right of the paper is acceptable as it is the practice throughout Australia. The voter expects to find an independent in that section of the paper and therefore the Committee does not consider that this would disadvantage independents in any way. This method of identifying independent candidates operates successfully in Tasmania with the Hare-Clark system.

**Robson Rotation**

14.41 The Robson Rotation is defined in the *Electoral Amendment Act* 1979 in the Tasmanian House of Assembly.

14.42 Any party or candidate placed at the head of the ballot paper has an advantage which would be eliminated to some extent by adopting a rotating ballot.

14.43 Mr M Mackerras strongly supported Robson rotation. He stated:

> *every candidate goes in with as equal access to a first preference vote as every often candidate.*[223]

14.44 Mr Donohue of the Residents Rally for Canberra said that:

> *Robson rotation is a desirable point and it gives the opportunity to the electors themselves to order the ballot paper in the way they want rather than what might be the outcome of a particular party machine type allocation of seats.*[224]

**14.45 The Committee recommends that either:**

- **the Chief Minister request the responsible Commonwealth Minister amend the Australian Capital Territory (Electoral) Act 1988 to include the Robson Rotation if the Hare-Clark System is implemented in the ACT; or**
- **if the ACT Legislative Assembly has responsibility for its own electoral legislation that this should include the Robson rotation if the Hare-Clark system is implemented in the ACT.**

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[223] Evidence p. 412.

[224] Evidence p 345

**Party Voting Tickets**

14.46 Under the current *Australian Capital Territory (Electoral) Act* 1988, independent candidates did not enjoy the privilege of lodging a registered voting ticket

14.47 The Committee believes that parties should be treated the same as independents so that either both should be able to lodge registered party tickets or that party tickets should be banned.

14.48 The distribution of electors preferences should be left to the elector. In some cases the elector will have a preference for a particular party alone and if that party should fail they may not wish to have their preferences flow else where.

14.49 If the Robson rotation were to be introduced then the necessity for party tickets would be eliminated.

14.50 Mr Wedgwood, Secretary to the Labor Party, told the Committee that:

> *in the history of Australian politics no person has ever been elected out of order. There is a technical possibility that it could be done but it never has. The registration of party voting tickets was the result of an analysis by the Federal Parliament over the increasing number of informal votes in the Federal Parliamentary elections.*[225]

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[225] Evidence p 295

14.51 The problem is that the effect of the existing party ticket registration system in the ACT is entirely different from any system else where. It was mandatory for the Australian Electoral Commission to distribute the preferences in accordance with that registered party ticket. There is a need to amend the Act so that only those votes above the line are deemed to be an application of the party voting system. This problem will be removed with the replacement of the modified d'Hondt and the introduction of the Robson Amendment.

14.52 The Joint Standing Committee on Electoral Matters said that if independent candidates were permitted to lodge registered party votes there would be nothing to prevent persons from standing with the primary purpose of benefiting a particular party through the distribution of their preferences.

14.53 However this applies equally to registered party tickets.

**14.54 The Committee recommends that either:**

- **if an electoral system other than Hare-Clark with Robson rotation is introduced, the Chief Minister request the responsible Commonwealth Minister amend the Australian Capital Territory (Electoral) Act 1988 to make provision whereby independent candidates are permitted to lodge the equivalent of a registered party voting ticket; or**

- **if the ACT Legislative Assembly has responsibility for its own electoral legislation that it should include provision whereby independent candidates are permitted to lodge the equivalent of a registered party voting ticket.**

14.55 Mr Donohue, President of the Residents Rally for Canberra, also suggested that ballot papers and how to vote cards should be printed on recycled paper.[226] The Committee strongly supports this recommendation. However, it should be noted that if the Hare-Clark system with Robson rotation is used, how to vote cards would not be required. This would be a considerable saving of paper and funds needed for an election by candidates.

**Horizontal Listing of Independent Candidates**

14.56 The current ACT electoral legislation provides that independent candidates should be listed horizontally above the ballot line. The Joint Standing Committee on Electoral Matters pointed out that this requirement, which contributed substantially to the length of the ballot paper, arises because under the modified d'Hondt system independents are treated as parties.[227]

14.57 The Joint Standing Committee on Electoral Matters therefore recommended that:

> *in order to make the ballot paper a manageable size independent candidates should be grouped.*[228]

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[226] Evidence p S278

[227] The Parliament of the Commonwealth of Australia. Inquiry into the ACT Election and Electoral System. The Joint Standing Committee on Electoral Matters. November 1989.

[228] Ibid

14.58 Mr Musidlak of the Proportional Representation Society, told the Committee that:

> *If you have too many independent candidates then may need to use rows there are other ways of doing this than listing vertically.*[229]

14.59 The Committee supports the recommendation of the Joint Standing Committee on Electoral Matters that the independent candidates should be grouped and listed vertically purely for convenience.

**14.60 The Committee recommends that either:**

- **the Chief Minister request the responsible Commonwealth Minister amend the Australian Capital Territory (Electoral) Act 1988 to require that independents should be listed vertically to the right of the ballot paper; or**

- **if the ACT Legislative Assembly has responsibility for its own electoral legislation that this should include a requirement that independents should be listed vertically to the right of the ballot paper.**

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[229] Evidence p 506

# CHAPTER 15

## COMPUTERISATION

15.1 Mr Shaw demonstrated to the Committee his computer program for deriving successful parties and candidates. This program showed that a commercially available database package could perform the tasks involved using PC type equipment and the practicality of such a program to undertake ACT elections based on the d'Hondt method.

### Australian Electoral Commission's View

15.2 When asked what was the likelihood of the next election being counted by computer Mr Green of the Australian Electoral Commission said *'None whatsoever'*.[230]

15.3 Mr Green went on to explain:

> *it is impossible using current technology to have the electors actually mark something that could be read by computer. If the voters vote in the traditional way there are problems with verification.*[231]

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[230] Evidence p 373

[231] Ibid. p 374

**Verification of Results**

15.4 Mr Green also considered that:

> *the time taken to verify what goes into the computer would be just as long as doing it manually. Particularly the key punching and data entry forms, even when verifying like that, they still make mistakes because the way ballot papers are designed in columns. If an operator makes a typical mistake of skipping to the top of the next column when they should go to the bottom of the column they are on and putting a number in the wrong box, that sort of error is systemic in the ballot paper design and another operator will do exactly the same thing. So that even if you have two operators doing the same ballot paper independently they can still make the same mistakes which will not be picked up by that process.*[232]

15.5 Mr Green summarised the Australian Electoral Commission's view in his statement that:

> *computers can not be trusted to that degree when we are talking about the election of a parliament.*[233]

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[232] Evidence p 374

[233] Evidence p 375

15.6 In the Australian Electoral Commission submission to the inquiry they state that:

> *the amalgamation team conducted spot checks on the counting and sorting carried out by the other teams in the course of the amalgamation. These checks showed that a significant number of ballot papers had been missorted and miscounted. One percent of ballot papers were found to be missorted. As the Fair Elections Coalition was short of the cutoff quota by only 0.08 percent, even an error rate of less than one percent was unacceptable.*[234]

**The Opposite View**

15.7 Mr Shaw discussed with the Committee a number of methods of verifying the computer input data. These included:

- operator can check on the screen against the ballot paper
- check the printout to the ballot paper
- data could be entered by two different operators[235]

15.8 Mr Shaw also expressed a desire for the Australian Electoral Commission too allow an approved authority or person test all the programs and examine the programs to see whether, in fact they conform to particular rules.[236]

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[234] Ibid p S 159

[235] Evidence p 465

[236] Evidence p 468

**Advantages of Computers**

15.9 Mr Shaw also said that computers have the advantage that they can fill in the blank boxes whereas the scrutineers have to do this mentally and that it could be used for educating the public and could be used for training new staff.[237]

15.10 If a computer system was used, Mr Shaw did not consider that it would be much quicker for single member electorates. However with multimember electorates a number could be run in parallel and it would be much faster. The training time for scrutineers would be eliminated and the recounting of votes could be performed very quickly.[238]

**Possibilities for Computer Use**

15.11 Mr Shaw said that the system he demonstrated was designed for d'Hondt but could equally be applied to Senate or the Hare-Clark systems with some modifications.[239] The Hare-Clark is much simpler than the Senate system when using computers. The cost of developing a program for the Hare-Clark would be about half that for d'Hondt or the Senate. The use of computers for the count back system would also be a fairly simple process.[240]

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[237] Evidence p 466

[238] Evidence p 480

[239] Evidence p 461

[240] Evidence p 461

**Possible Problems**

15.12 Mr Shaw did however caution the Committee that:

> *there is always the possibility of a logical error lurking in the computer system and I think the legislation would have to include a provision of no retrospectivity once the poll is declared that is it. If you make an error handling a paper no one will ever know. If a computer makes a mistake it will probably be apparent to everyone.*[241]

**Conclusions**

15.13 The Committee is aware that there is considerable costs involved in developing a computer system, however, there would be considerable savings in subsequent elections in the cost of staff and of the time taken to do the count. Mr Shaw has clearly demonstrated the feasibility of the option.

15.14 **The Committee recommends that either:**

- **the Chief Minister request the responsible Commonwealth Minister to investigate the use of computers for election counting; or**
- **if the ACT has its own Electoral Office, then request the ACT Electoral Officer to investigate the use of computers for election counting.**

**NORM JENSEN MLA**
**Chairman**

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[241] Evidence p 481.