Submission to the Standing Committee on Legal Affairs

ACT Legislative Assembly

Inquiry into the appropriateness of the size of the Legislative Assembly for the ACT and options for changing the number of members, electorates and any other related matter

ACT Electoral Commission

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Executive summary

This submission identifies principles for determining the appropriate size of the Legislative Assembly that will satisfy the dual requirements of proportionality of election results and stability of the legislature. The current size of the Assembly and its constituent electorates is examined and compared with a range of alternative options.

The ACT Electoral Commission considers that, while the present structure of the Legislative Assembly satisfies many of the principles identified, if a decision was made to increase the size of the Legislative Assembly, then a persuasive case can be made for increasing the size of the Legislative Assembly to allow for the introduction of electorates of equal size.

The Commission recommends that the most desirable option at this time would be to increase the size of the Legislative Assembly to 3 electorates each returning 7 Members, giving a total of 21 Members. This option satisfies all of the principles listed below, while also providing for appropriate levels of proportionality and stability.

The options available for increasing the size of the Assembly are limited by the principles of the ACT's electoral system entrenched by the *Proportional Representation (Hare-Clark) Entrenchment Act 1994* (the Entrenchment Act). The relevant entrenched provisions are:

- Each electorate must have at least 5 Members; and

- Each electorate must have an odd number of Members.

While these entrenched principles can be altered by a 2/3 majority of the Assembly or by referendum, the Commission supports the retention of these principles.

In addition to these entrenched principles, the Commission is of the view that adoption of the following two principles would further enhance the ACT's electoral system:

- Electorates should each return the same number of Members; and

- The total number of Members should be an odd number – accordingly there should be an odd number of electorates.

Other factors that should be taken into account include:

- The proportionality of the outcome, recognising that the greater the number of Members to be elected in an electorate, the more proportional is the ratio of the number of seats won by a party to the number of votes won by a party;

- The impact that any change may have on the stability of the Legislative Assembly, recognising that the greater the number of Members to be elected in an electorate, the lower is the quota in percentage terms, potentially making it easier for minor party candidates and independents to be elected;

- The cost of increasing the number of Members to be elected, recognising that the cost of printing and counting Robson rotated ballot papers increases as the number of Members to be elected increases (the Commission estimates the extra cost of elections resulting from the adoption of 3 electorates each electing 7 Members to be around $90,000 – $120,000);

- The impact that increasing the number of Members to be elected per electorate would have on the Robson rotation of names on ballot papers; and

- The impact of any change to the number of Members to be elected on the redistribution process, recognising that a redistribution of the current electorates is due to commence in late 2002.

Complementary changes to the redistribution provisions that could be adopted include:

- Requiring the boundaries of Commonwealth House of Representatives Divisions to be considered, where the number of those Divisions is the same as the number of Legislative Assembly electorates; and

- Avoiding the need to conduct an automatic redistribution process where population projections indicate no need for a boundary change.

The Commission also suggests that the ACT Government approach the Commonwealth Government and ask it to amend the *Australian Capital Territory (Self-Government) Act 1988* (the Self-Government Act) to give the ACT Legislative Assembly the power to set its own number of Members.

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Legislative Background

Set out below are the relevant extracts of the pieces of Commonwealth and ACT legislation that provide for the current division of the ACT into 3 electorates, 2 returning 5 Members and 1 returning 7 Members, giving a total of 17 Members in the Legislative Assembly.

The number of Members of the Legislative Assembly is currently specified in section 8 of the Self-Government Act, which sets out:

8   Legislative Assembly

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

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

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

The division of the ACT into 3 electorates is specified in section 34 of the *Electoral Act 1992*, which provides:

34   Multimember electorates

(1)   The Territory shall be divided into 3 separate electorates.

(2)   Seven members of the Legislative Assembly shall be elected from 1 electorate.

(3)   Five members of the Legislative Assembly shall be elected from each of the other 2 electorates.

The boundaries of the ACT electorates are reviewed through a redistribution process, set out in Part 4 of the Electoral Act. Redistributed boundaries are determined by an independent statutory authority, the augmented Electoral Commission, consisting of the 3 members of the ACT Electoral Commission, the ACT Planning Authority, the ACT Chief Surveyor and another person appointed by the Electoral Commission. The next redistribution of the ACT electorates is due to commence as soon as practicable after 19 October 2002 (see section 37(2) of the Electoral Act).

A series of quota calculations are undertaken to ensure that electorates returning different numbers of Members are constructed to deliver one-vote one value, by requiring the number of electors enrolled in each electorate to be proportionate to the number of Members to be elected in that electorate. Note that the quotas used for redistribution purposes are different from the quotas for election discussed below.

Section 67D of the Self-Government Act provides for the calculation of the quotas and provides that electorates should contain a specified number of electors immediately after the commencement of a redistribution:

67D Territory electorates

(1)   In this section:

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

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

where:

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

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

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

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

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

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

Section 36 of the Electoral Act further specifies factors to be taken into account when electorates are redistributed:

36   Factors relevant to redistribution

In making a redistribution of electorates, the augmented commission shall—

(a)   ensure that the number of electors in an electorate immediately after the redistribution is within the range permitted by the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), section 67D (2); and

(b)   endeavour to ensure, as far as practicable, that the number of electors in an electorate at the time of the next general election of members of the Legislative Assembly will not be greater than 105%, or less than 95%, of the expected quota for the electorate at that time ascertained in accordance with the formula set out in the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), section 67D (1); and

(c)   duly consider—

(i)   the community of interests within each proposed electorate, including economic, social and regional interests; and

(ii)   the means of communication and travel within each proposed electorate; and

(iii)   the physical features and area of each proposed electorate; and

(iv)   the boundaries of existing electorates; and

(v)   the boundaries of divisions and sections fixed under the *Districts Act 1966*.

The Entrenchment Act entrenches various principles of the ACT's electoral system as set out in the Electoral Act. Principles that are entrenched can only be amended or repealed either by passage by a majority of Members of the Legislative Assembly and passage of a referendum by a majority of electors, or by at least a 2/3 majority of the Members of the Legislative Assembly.

Two aspects of the ACT's electoral system that are relevant to the issue of the size of the Assembly are entrenched under section 4(1) of the Entrenchment Act. Section 4(2) of the Entrenchment Act also entrenches the power to make laws with respect to the number of Members of the Assembly, should the Assembly be given that power by the Commonwealth. The relevant provisions are:

> **4   Entrenchment of electoral system**
>
> (1)   This Act applies to any law that is inconsistent with any of the following principles of the proportional representation (Hare-Clark) electoral system:
>
> (a)   at a general election, an odd number of members of the Legislative Assembly shall be elected from each electorate;
>
> (b)   at a general election, at least 5 members of the Legislative Assembly shall be elected from each electorate;
>
> . . .
>
> (2)   This Act applies to any law made pursuant to a power at any time vested in the Legislative Assembly to make a law with respect to the number of members of the Legislative Assembly.

History of redistributions of electoral boundaries in the ACT

The first two elections for the ACT Legislative Assembly, held in 1989 and 1992, were held using the modified d'Hondt electoral system provided for by the Commonwealth *Australian Capital Territory (Electoral) Act 1988*. These elections saw the Legislative Assembly elected in the ACT at large, with no division of the ACT into electorates. While the modified d'Hondt system did not use a quota for election in the same way as the quota for election is used under the Hare-Clark system, a "cut-off" for election of 1/18, or roughly 5.56%, can be likened to the quota for election used by Hare-Clark.

After the 1992 election, the Self-Government Act was amended to give the Legislative Assembly the power to enact its own electoral laws and to administer its own elections. As a result, the Legislative Assembly enacted the Electoral Act in 1992. This Act created the ACT Electoral Commission and provided for the redistribution of the ACT into 3 electorates, 2 returning 5 Members and 1 returning 7 Members.

The first redistribution, held in 1993, saw the ACT divided into 3 electorates:

- **BRINDABELLA**, a 5 Member electorate comprising the district of Tuggeranong, the Woden Valley suburbs of Chifley, Pearce and Torrens, and the southern remainder of the ACT;

- **GINNINDERRA**, a 5 Member electorate comprising the districts of Belconnen and Hall; and

- **MOLONGLO**, a 7 Member electorate comprising the districts of Gungahlin, Canberra Central, Weston Creek, Woden Valley (excluding the suburbs of Chifley, Pearce and Torrens), Jerrabomberra, Kowen, Majura and Stromlo.

The second redistribution, held in 1996, did not change the names or the boundaries of the electorates as the current and projected enrolment statistics used by the augmented Electoral Commission for the existing electorates fell within the allowed variations from quota permitted under the Self-Government Act and the Electoral Act.

The third redistribution, held in 2000, altered the boundaries to take account of a relative increase in the size of the Molonglo electorate and a relative decrease in the size of the Ginninderra electorate. The Gungahlin suburb of Nicholls was moved from Molonglo to Ginninderra, and all of the suburb of Hume was included in Molonglo and all of the village of Hall was included in Ginninderra.

The ACT electorates as they are currently comprised following the 2000 redistribution are:

- **BRINDABELLA**, a 5 Member electorate comprising the district of Tuggeranong (excluding the suburb of Hume), the Woden Valley suburbs of Chifley, Pearce and Torrens and the southern remainder of the ACT;

- **GINNINDERRA**, a 5 Member electorate comprising the districts of Belconnen and Hall (including the entire Village of Hall) and the Gungahlin suburb of Nicholls; and

- **MOLONGLO**, a 7 Member electorate comprising the districts of Gungahlin (excluding the suburb of Nicholls), Canberra Central, Weston Creek, Woden Valley (excluding the suburbs of Chifley, Pearce and Torrens), Jerrabomberra (including the entire suburb of Hume), Kowen, Majura and Stromlo.

Proportional representation in the ACT

The ACT's Hare-Clark electoral system is a proportional representation system. That is, it is a mechanism for translating numbers of votes into numbers of seats won, so that candidates and political parties win seats in proportion to their voting support. As with all electoral systems, exactly how this is achieved involves a "trade-off" between competing principles.

In the ACT's case, the competing principles are the need to provide for proportional results, and the need to provide for a Legislative Assembly that is relatively stable, in the sense that it is capable of electing a Chief Minister who has the confidence of a majority of Assembly Members and who is able to govern.

The key issue in the balance of these competing principles is the size of the quotas in the electorates, expressed as a proportion of the votes.

Under the ACT's Hare-Clark system, a quota of votes is the number of votes needed for a candidate to be certain of election. A quota is calculated using the following formula:

$$\frac{\textbf{Total number of valid votes}}{\textbf{Number of vacancies} + \textbf{1}} + \textbf{1}$$

The quota can be expressed as a percentage of the total votes counted, or as an absolute number. For the purposes of this submission, the term "quota" is primarily referred to in percentage terms.

A very small quota (in percentage terms) will give a high degree of proportionality, as it will tend to give a more accurate ratio of seats won to votes won. A small quota (in percentage terms) will also make it easier for minor party and independent candidates to be elected. If significant numbers of such candidates are elected, this could tend to make the Assembly more unstable, as coalitions may need to be constructed of several different political groupings and/or independents in order to elect a Chief Minister and to enable the Chief Minister to govern.

Conversely, a larger quota (in percentage terms) tends to give less proportional results, as it is less effective in providing for an accurate ratio of seats won to votes won. The larger the quota (in percentage terms), the harder it is for minor party and independent candidates to be elected. Therefore a larger quota is more likely to promote stability in the Assembly by reducing the need to form unwieldy coalitions in order to elect a Chief Minister and to enable the Chief Minister to govern.

Accordingly, the size of the quota (in percentage terms) needs to be at a point that allows for an acceptable level of both proportionality and stability.

The current Assembly, made up of 2 electorates each returning 5 members and 1 electorate returning 7 Members, provides for an acceptable level of the percentage quota to satisfy the dual requirements of proportionality and stability. However, in looking at options for the number of Members to be elected in each electorate and possibly altering the size of the Assembly, it is desirable to examine the effectiveness of the current electorate sizes and to consider electorates of other sizes.

With Hare-Clark and other similar single transferable vote systems, the proportionality of the outcome is related to the size of the quota (in percentage terms). As the number of vacancies in an electorate rises, the size of the quota in percentage terms decreases. As the size of the quota (in percentage terms) decreases, the likelihood that a difference in the proportion of votes received by parties will result in a difference in the number of seats won increases.

Therefore, as a general rule, the higher the number of Members to be elected in an electorate, the higher the proportionality.

As the history of elections in the ACT has shown, both 5 and 7 Member electorates give a reasonable level of proportionality. However, a 7 Member electorate can be expected to give higher proportionality than a 5 Member electorate.

Further, as the size of the quota (in percentage terms) decreases, the chances of the election of minor party and independent candidates increase.

Electorates returning 9, 11 or more Members would have a higher proportionality than for 5 or 7 Member electorates. However, the lower quota in percentage terms under these options (roughly 10% for 9 Member electorates and 8.3% for 11 Member electorates) would tend to make it easier for minor party and independent candidates to be elected, thereby increasing the risk of instability in the make-up of the Legislative Assembly.

The following table illustrates the relative degrees of proportionality of a range of options. The table looks at the proportion of seats that would be won by a party that won 50% plus 1 of the votes in each electorate. The figures are calculated on the basis that, if a party wins 50% plus 1 of the votes, then, in a 3 Member electorate, that party would win 2 seats, in a 5 Member electorate, that party would win 3 seats, in a 7 Member electorate, that party would win 4 seats, and so on.

An option could be said to be more "proportional" where the percentage of seats won with 50% plus 1 of the votes is closer to 50%.

The table also shows the percentage of the votes needed to achieve a quota of votes. The lower the quota in percentage terms, the higher the chances of the election of minor party and independent candidates.

The table shows that the greatest improvement in proportionality occurs when there is an increase from 3 Member to 5 Member electorates. The improvement in proportionality from 5 to 7 and then from 7 to 9 and above becomes progressively smaller. For a given number of seats per electorate, changing the number of electorates does not change the proportionality. However, for a given total number of seats, the smaller the number of electorates and the higher the number of seats per electorate, the greater the proportionality.

No. of electorates	No. of seats per electorate	Total no. of seats	No. of seats won with 50% + 1 of the votes	% of seats won with 50% + 1 of the votes	% of votes needed for a quota
3	5 (X 2) 7 (X 1)	17	10	58.8%	16.7% (X 2) 12.5%(X 1)
3	3	9	6	66.7%	25.0%
3	5	15	9	60.0%	16.7%
3	7	21	12	57.1%	12.5%
3	9	27	15	55.6%	10.0%
3	11	33	18	54.5%	8.3%
5	3	15	10	66.7%	25.0%
5	5	25	15	60.0%	16.7%
5	7	35	20	57.1%	12.5%
5	9	45	25	55.6%	10.0%
7	3	21	14	66.7%	25.0%
7	5	35	21	60.0%	16.7%
9	3	27	18	66.7%	25.0%
11	3	33	22	66.7%	25.0%
1	17	17	9	52.9%	5.6%
1	21	21	11	52.3%	4.5%
1	23	23	12	52.2%	4.2%
1	25	25	13	52.0%	3.8%
1	27	27	14	51.9%	3.6%

The factors discussed in this section are relevant to the discussion of the various options that follows.

Consequences of having electorates of different size

Currently, the ACT Legislative Assembly is comprised of 2 electorates each returning 5 Members, and 1 electorate returning 7 Members.

Looking at the quota for election as a proportion of the votes, the quotas for the 2 different size electorates are a different proportion of the votes. In the 5 Member electorates, the quota is 1/6 plus 1, or roughly 16.67%. In the 7 Member electorate, the quota is 1/8 plus 1, or roughly 12.5%.

Looking at the quota for election as an absolute number of votes, the redistribution criteria related to the different sizes of the redistribution quotas means that the absolute number of votes calculated as the quota for election tends to remain roughly the same for the 5 Member and 7 Member electorates. In 2001, for example, the quotas for election were: Brindabella – 9435 votes; Ginninderra – 9285 votes; and Molonglo – 9817 votes. This feature of the current system is intended to provide for one-vote, one-value.

While the quota for election is roughly the same absolute number of votes in the 5 Member and 7 Member electorates, the fact that the proportion of votes needed for election is different means that it is easier for candidates to achieve a quota of votes in the 7 Member electorate compared to the 5 Member electorates (assuming that it is easier for a candidate to obtain 1 vote out of 8 voters than it is to get 1 vote out of 6 voters).

This aspect of the ACT electoral system is reflected in the tendency for more candidates and more groups to stand in Molonglo. The following 2 tables set out the numbers of candidates and groups standing for the 3 electorates for the 1995, 1998 and 2001 elections.

Number of groups *			
Election	**Brindabella**	**Ginninderra**	**Molonglo**
1995	7	7	9
1998	7	9	12
2001	9	9	12
Total	**23**	**25**	**33**

*Note – In each case, the number of groups included 1 "ungrouped" column, except for Molonglo in 1998, which had 2 ungrouped columns, and Molonglo in 2001, which did not have any ungrouped candidates.

Number of candidates			
Election	**Brindabella**	**Ginninderra**	**Molonglo**
1995	23	20	31
1998	28	31	49
2001	27	26	41
Total	**78**	**77**	**121**

The following table shows the approximate proportions of votes needed to win seats under 5 and 7 Member electorates. The table also shows the numbers of votes that were needed to win quotas in the 3 electorates in 2001.

% needed to win:	5 Member electorate	7 Member electorate	Votes Brindabella 2001	Votes Ginninderra 2001	Votes Molonglo 2001
1 seat	16.67%	12.50%	9435	9285	9817
2 seats	33.33%	25.00%	18870	18570	19634
3 seats	50.00%	37.50%	28305	27855	29451
4 seats	66.67%	50.00%	37740	37140	39268
5 seats	83.33%	62.50%	47175	46425	49085
6 seats		75.00%			58902
7 seats		87.50%			68719

The following table shows the votes obtained and the seats won by the Australian Labor Party and the Liberal Party at the 1995, 1998 and 2001 elections in each electorate.

Brindabella

	Votes: 1st preferences	% 1st preferences	Votes after dist'n of preferences	% after dist'n of preferences	Seats won
ALP 1995	15758	31.58%	16664	33.40%	2
Lib 1995	18494	37.06%	18507	37.09%	2
Total 1995	49897		49897		
ALP 1998	15463	28.50%	18612	34.31%	2
Lib 1998	20110	37.07%	19844	36.58%	2
Total 1998	54251		54251		
ALP 2001	24891	43.97%	29829	52.70%	3
Lib 2001	18035	31.86%	19797	34.97%	2
Total 2001	56604		56604		

Ginninderra

	Votes: 1st preferences	% 1st preferences	Votes after dist'n of preferences	% after dist'n of preferences	Seats won
ALP 1995	15693	32.74%	16473	34.36%	2
Lib 1995	19507	40.69%	20578	42.93%	2
Total 1995	47939		47939		
ALP 1998	14931	29.61%	18113	35.91%	2
Lib 1998	16741	33.19%	17198	34.10%	2
Total 1998	50433		50433		
ALP 2001	23852	42.82%	26526	47.62%	2
Lib 2001	15552	27.92%	18689	33.55%	2
Total 2001	55708		55708		

Molonglo

	Votes: 1st preferences	% 1st preferences	Votes after dist'n of preferences	% after dist'n of preferences	Seats won
ALP 1995	20825	30.88%	21171	31.40%	2
Lib 1995	28894	42.85%	28583	42.39%	3
Total 1995	67434		67434		
ALP 1998	19404	25.64%	20422	26.99%	2
Lib 1998	31370	41.46%	30285	40.02%	3
Total 1998	75666		75666		
ALP 2001	30873	39.31%	33911	43.18%	3
Lib 2001	26803	34.13%	28366	36.12%	3
Total 2001	78528		78528		

Treating each election in each electorate as a separate "election", the above table shows that only once in 6 elections in a 5 Member electorate has a difference in votes been translated into a difference in seats won between the 2 major parties. By contrast, on 2 out of 3 occasions, a difference in votes has led to a difference in seats won in Molonglo. While this result is partly a reflection of the voting patterns, particularly the popularity of former Chief Minister, Mrs Carnell in Molonglo in 1995 and 1998, it also indicates that it is potentially more difficult for one major party to win more seats than the other in the 5 Member electorates, even where there is a 14% difference between their votes, as there was in Ginninderra in 2001.

The above analysis looks primarily at the proportions of votes received by parties and candidates. It is recognised that the absolute number of votes needed to win seats is roughly the same in the 5 Member and the 7 Member seats. It is also recognised that some parties and candidates may have support concentrated in particular geographic locations. However, the main point to be made is that, if voting support were evenly spread, the number of seats won by parties and independents could vary depending on the size of the electorate. This is a direct result of the fact that the quota for election is a different proportion of the votes in the different size electorates.

Any inconsistencies of this type that might occur would be eliminated by providing for electorates of the same size.

Another advantage in having electorates of equal size would be the simplification of the instructions to voters. At present, the Electoral Commission's message to voters is: "if you live in a 5 Member electorate, you should number preferences for at least 5 candidates, and if you live in a 7 Member electorate, you should number preferences for at least 7 candidates". This is a relatively complex instruction, and it could be greatly simplified if all electorates were the same size.

The impact of having 3 electorates of different size on the redistribution process

The fact that the ACT is currently divided into 2 electorates each electing 5 Members and 1 electorate returning 7 Members also has some significance for the redistribution process. A key decision that must be made in every redistribution under the current regime is "where should the 7 Member electorate be?".

While "the boundaries of existing electorates" is one of the criteria to be taken into account when conducting a redistribution, this does not of itself dictate that the central electorate of Molonglo should always remain the 7 Member electorate. It may be that boundaries may for example better fit the redistribution criteria if Molonglo was not made the 7 Member electorate. Indeed, several suggestions to the 2000 redistribution process recommended making Ginninderra the 7 Member electorate.

This arrangement creates a level of uncertainty in the redistribution process, and has the potential to affect the dynamics of Legislative Assembly elections. This could be avoided by providing for electorates of the same size.

The total number of Members to be elected

Another principle that the Commission considers ought to be followed is that the total number of Members in the Legislative Assembly should be an odd number. In order for there to be an odd number of total Members, there has to be an odd number of electorates (where all electorates return an odd number of Members). Therefore, this principle automatically also requires an odd number of electorates.

Following this principle would prevent deadlocks in votes in the Assembly.

Principles entrenched by the Proportional Representation (Hare-Clark) Entrenchment Act

Under the Entrenchment Act, each electorate has to return an odd number of Members, and electorates have to elect at least 5 Members. While these two requirements could be overridden by a 2/3 majority of Assembly Members or by a referendum, the Commission considers that there are good reasons to abide by these 2 principles.

The requirement that an odd number of Members be elected to an electorate under the Hare-Clark system guarantees that, where a party wins more than 50% of the vote in an electorate, after preferences, that party will gain more than half of the seats. If an even number of Members is to be returned, it is possible that one party could win more than 50% of the votes after preferences but only get the same number of seats as another party receiving less than 50% of the votes.

Having a minimum of 5 Members per electorate is also desirable, as (keeping an odd number of Members to be elected) a 3 Member electorate would not provide good proportionality between votes and seats. Having 3 Member seats could conceivably lead to deadlocks in cases where neither major party wins a majority of votes after preferences, where the 3 seats in each electorate are won respectively by the ALP, the Liberal Party and a minor party or independent, leading to a hung parliament. Conversely, where 1 major party significantly out-polls the other, having 3 Member seats could lead to 1 major party securing a majority of seats in the Assembly by winning 2 of the seats in each electorate, possibly leading to a disproportionate result compared to the more proportional result that might be obtained with more seats per electorate.

The impact of increasing the number of Members to be elected in each electorate on Robson rotation

Increasing the number of Members to be elected in an electorate above 7 would make it difficult to implement the ACT's system of printing ballot papers using Robson rotation.

Currently, 60 rotations are needed for 5 Member electorates, and 420 rotations are needed for 7 Member electorates. These different rotations were adopted before the 2001 election in order to provide equal distributions of linear votes at all stages of the distribution of preferences.

If the same Robson rotation principles were adopted for larger electorates, 2,520 rotations would be needed for 9 Member electorates, and 27,720 rotations would be needed for 11 Member electorates. It would probably be impossible to achieve these numbers of rotations using current printing technology and a limited budget. If these size electorates were to be considered, it might be necessary to compromise the Robson rotation principles in order to arrive at a manageable number of rotations.

What size should the electorates be?

The principles to be followed and the factors to take into account identified above in this submission limit the options available to determine what size the electorates should be, and how many electorates there should be.

The principles identified by the Commission are:

- Each electorate must have at least 5 Members;

- Each electorate must have an odd number of Members;

- Electorates must each return the same number of Members; and

- The total number of Members must be an odd number and accordingly there must be an odd number of electorates.

Relevant factors that also should be taken into account include:

- The proportionality of the options;

- The impact that the options may have on the stability of the Legislative Assembly;

- The cost of implementing the options, particularly the costs associated with increasing the numbers of Members to be elected in each electorate;

- The impact that increasing the number of Members to be elected per electorate would have on the Robson rotation of names on ballot papers; and

- The impact of options on the redistribution requirements.

The following options would fit these principles while keeping the total number of Members between 15 and 35:

- 3 electorates each returning 5 Members, giving a total of 15 Members;

- 3 electorates each returning 7 Members, giving a total of 21 Members;

- 5 electorates each returning 5 Members, giving a total of 25 Members;

- 3 electorates each returning 9 Members, giving a total of 27 Members;

- 3 electorates each returning 11 Members, giving a total of 33 Members;

- 5 electorates each returning 7 Members, giving a total of 35 Members;

- 7 electorates each returning 5 Members, giving a total of 35 Members.

In considering the above options, the Commission considers that this range of options can be narrowed.

The 15 Member option would reduce the size of the Assembly, currently at 17 Members. This would only be a realistic option if there was a desire to reduce the size of the Assembly.

The 21 Member option would allow for a modest increase in the size of the Assembly, allowing for 4 extra Members, and would allow for the greater proportionality of 7 Member electorates. This is a feasible option.

The 25 Member option would increase the size of the Assembly by 8 Members, with 5 Member seats. The lesser level of proportionality inherent in 5 Member electorates is not as attractive as the 7 Member electorates option. With 5 electorates, this option would not be compatible with the Federal electorates if the ACT was to be allocated 3 Federal seats. If 5 Member seats are considered acceptable, this would also be a feasible option.

The 27 Member option would involve a drastic increase in the size of the Assembly of 10 Members. It would also lower the quota needed for election to 1/10 plus 1, or around 10%. This would increase the chances of the election of more minor party candidates and independents. With 9 Member electorates, this option would also increase the number of Robson rotations needed, or require the Robson rotation principles to be compromised. This option is not as attractive as the 21 Member option.

The 33 Member and 35 Member options would involve roughly doubling the size of the Assembly. These are not considered to be realistic options at this time.

Another series of options not canvassed above would be to adopt an odd number of Members elected from 1 electorate. Options could include 19, 21, 23, 25, 27, 29 or 31 Members elected from the ACT as a whole.

While these options are technically feasible and would satisfy some of the principles described above, adoption of elections at large would significantly change the nature of ACT elections. Adopting say a 23 Member Assembly elected at large would require the quota for election to be set at 4.17%. This could lead to a significant increase in the number of minor party and independent candidates elected, possibly leading to instability and uncertainty in the Assembly. The ballot paper would have to be much larger, and parties would need to run large slates of candidates. Voters would be instructed (under the current Hare-Clark regime) to number a minimum of 23 preferences. A large number of Robson rotation variations would also be needed to reduce the impact of linear votes, however it would not be possible to use the enhanced Robson rotation system recently adopted.

Removing local electorates and adopting elections at large might also serve to put distance between Members of the Assembly and their local communities.

For these reasons, the Commission suggests that making the ACT 1 electorate would not be appropriate.

In the Commission's view, the most appropriate option at this time is to increase the size of the Assembly to 21 Members, with 3 electorates each returning 7 Members.

Mechanisms for future increases in the number of Members

Given the constraints on the ideal configuration of the number of electorates and the number of Members to be elected in each electorate referred to above, the number of options available for increasing the size of the Assembly in future above 21 Members is limited. If it is accepted that the ideal number of Members to be elected in an electorate should be greater than 5 and less than 11, and that there must be an odd number of Members elected in total, this means the next available options above 21 are 27 Members, with 3 electorates each electing 9 Members, and 35 Members, with 5 electorates each electing 7 Members.

If 5 Member seats are acceptable, then a 25 Member Assembly is a possibility, with 5 electorates each electing 5 Members.

An increase from 21 to 27 or 35 Members would be a relatively dramatic one. The Commission suggests that a decision to move from 21 Members to 27 or 35 Members is one that should be taken deliberately, rather than provide for an automatic increase tied to population or electoral enrolment. The 9 Member per electorate option may also be undesirable because of the lower quota and the likely need to compromise the Robson rotation principles.

If it is not accepted that all electorates should return the same number of Members, thereby allowing other options to be considered, the Commission would still caution against providing for an automatic increase in the size of the Assembly. Given the possible permutations of sizes and numbers of electorates, it would appear to be desirable to consciously adopt change rather than attempt to make change automatic according to a formula.

The Commission would also caution against the destabilising effect of altering the number of electorates.

Rather than attempt to provide for automatic increases in the size of the Assembly, it might be desirable to seek to simplify the process of changing the number of Members in the Assembly. At this time, a change to the size of the Assembly would, under section 8 of the Self-Government Act, require a resolution of the Assembly, agreement by the Commonwealth Government (because the relevant Commonwealth Minister must make regulations) and agreement by the Commonwealth Parliament (as it could move to disallow the regulations). Once these conditions had been met, the Assembly would still have to amend the ACT's own Electoral Act.

It might be appropriate for the ACT Government to approach the Commonwealth Government and ask it to amend the Self-Government Act to give the ACT Legislative Assembly the power to set its own number of Members. This power has been given to (and exercised by) the Northern Territory Legislative Assembly.

Note that, if this power is given to the Assembly, it would automatically be entrenched by section 4(2) of the Entrenchment Act.

The impact of changing the number of Members on the redistribution provisions in the Electoral Act

If the number of Members to be elected to the Assembly is altered, this will impact on the redistribution requirements set out in the Electoral Act. In particular, given that the next redistribution is due to commence as soon as practicable after 19 October 2002, it is very desirable that any change to the number of Members is made effective before that date. Otherwise the Electoral Commission may be legally required to start a redistribution under the current provisions requiring 2 electorates returning 5 Members and 1 electorate returning 7 Members.

If it is not possible to effect a change to the number of Members before the redistribution is due to commence (keeping in mind the need for the Commonwealth to make regulations), it would be desirable if the Assembly could pass an amendment to the Electoral Act delaying the commencement of the 2002/2003 redistribution until the necessary changes have been made.

If the Assembly was to move to adopting 3 electorates of equal size, this could lead to the situation (hitherto not possible) where the ACT could be divided into 3 equal electorates both at the ACT and at the Commonwealth level, should the ACT in future be entitled to 3 House of Representatives seats.

In Tasmania, where there are 5 electorates for both the House of Assembly and for the House of Representatives, the Tasmanian Assembly has adopted the Commonwealth boundaries without going through a separate redistribution process. This option would be open to the ACT Legislative Assembly also.

The problem the Commission sees with automatically adopting the Commonwealth boundaries is the uncertainty inherent in the ACT's entitlement to House of Representatives seats. Tasmania is guaranteed 5 House of Representatives seats under the Constitution. In the ACT, the number of House of Representatives seats is tied to relative population size, which has seen the ACT entitlement oscillate from 2 seats, to 3 seats, and back to 2 seats currently. Changes to the Commonwealth entitlement for the ACT could make it difficult to automatically adopt Commonwealth boundaries for ACT purposes.

Rather than automatically adopt the Commonwealth boundaries, the Commission suggests adding another criterion to the redistribution criteria set out in section 36 of the Electoral Act, requiring the augmented Commission to duly consider the boundaries of Commonwealth House of Representatives Divisions, where the number of those Divisions is the same as the number of Legislative Assembly electorates. This would serve to encourage the augmented Commission to align the ACT boundaries with the Commonwealth boundaries where they fit the ACT redistribution criteria, but would also permit variation where there appeared to be good reason for it.

For example, the Commonwealth criteria for redistributions uses different time periods for enrolment projections and different tolerances for variations from quota, so it is possible that the Commonwealth boundaries would not be drawn so as to fit the ACT criteria.

While there would be a small saving if the ACT was not to conduct its own redistributions, relying instead on adopting the Commonwealth boundaries, the saving would not be great. The 2000 redistribution cost around $15,500. Of greater benefit would be the reduction in public confusion by the adoption of common Commonwealth/Territory boundaries.

An incidental change could be made to the redistribution provisions to reduce the cost of redistributions. As the 1996 redistribution proved, it is possible that the existing boundaries could still meet the redistribution criteria without any need for change. Consequently, a mechanism could be adopted to prevent a redistribution process from taking place if the current and projected enrolment figures indicated that the current boundaries did not need to be changed.

This could work by providing that, before a redistribution committee invites public suggestions and comments, the committee must determine the current and projected enrolment figures for the current boundaries. If those figures indicated that no change was needed, the Redistribution Committee could simply report that fact to the augmented Commission, which could review the figures being used and, if satisfied, it could determine that the boundaries would remain unchanged. This would avoid the need for the public consultation phase currently automatically applied after every election. Given that the boundaries would have been drawn following a public consultation phase, there would appear to be no need to have another round of public consultation leading to no tangible change, as happened in 1996, when most public suggestions recommended leaving the boundaries unchanged.

The cost of increasing the size of the Legislative Assembly

It should be noted that increasing the number of Members to be elected to the Legislative Assembly will lead to increased costs of elections. Adoption of 3 electorates each returning 7 Members, for example, would involve increased costs in printing larger ballot papers for Brindabella and Ginninderra, as well as additional data-entry and counting costs for dealing with larger ballot papers with more preferences required to be completed by voters.

A significant component of the cost of larger ballot papers is the need for more Robson rotations to be printed. At present, there are 60 rotations required for 5 Member electorates, and 420 rotations required for 7 Member electorates. If all electorates are to be 7 Member electorates, the complexity of the printing process increases significantly.

The Commission estimates that the extra cost of moving to 3 electorates each returning 7 Members would be in the order of $90,000 - $120,000 per election.

Further information

The ACT Electoral Commission would be pleased to supplement this submission with further information or by attending a Committee hearing, if the Committee wishes.

ACT Electoral Commission

30 April 2002