

**Submission to the Standing Committee on Legal Affairs**

**ACT Legislative Assembly**

**Inquiry into changing the term of office for Members of the  
ACT Legislative Assembly from 3 years to 4 years**

**ACT Electoral Commission**

**26 September 2003**

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#### **ACT Electoral Commission**

##### **Executive summary**

When considering the frequency of elections, two competing interests can be identified: the democratic process and the governmental process. It could be argued that the democratic process would best be served by holding frequent elections, while the governmental process may best be served by holding elections less often.

Where to draw the line is a matter for judgement. In the other Australian jurisdictions, 6 have 4 year terms (3 of which also have fixed terms) and 2 have 3 year terms. The ACT has fixed 3 year terms at present.

Whether 3 year or 4 year terms are more appropriate for the ACT Legislative Assembly is a matter for the Legislative Assembly to decide.

This submission outlines the changes to the *Electoral Act 1992* that would be needed to implement 4 year terms for the Assembly. A simple amendment to the Electoral Act will be required to increase the terms of the Assembly. Some minor consequential amendments are recommended to increase the time periods applicable to some disclosure provisions that are tied to the term of the Assembly.

This submission also outlines the budgetary implications for the Electoral Commission in moving from 3 year terms to 4 year terms. Moving to 4 year terms would save on average around \$125,000 per year, on 2003/04 figures. Putting this another way, introducing 4 year terms would save the cost of holding one election every 12 years, estimated at around \$1.5 million in 2003/04 terms.

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## The frequency of elections

The Committee's terms of reference in regard to this inquiry are to:

Inquire into and report on the matter of changing the term of office for Members of the ACT Legislative Assembly from 3 years to 4 years.

This inquiry is essentially considering how frequent elections for the ACT Legislative Assembly should be.

When considering the frequency of elections, two competing interests can be identified: the democratic process and the governmental process. It could be argued that the democratic process would be better served by having more frequent elections in the interest of allowing voters more opportunities to pass judgement on their elected representatives. At the same time, it can be argued that the governmental process could be better served by having fewer elections, in the interest of stability, by allowing more time for planning and implementing government programs.

Where to draw the line is a matter for judgement. In the other Australian jurisdictions, 6 have 4 year terms and 2 have 3 year terms. The following table sets out the position in each Australian jurisdiction.

Jurisdiction	Term	Fixed election date?
Commonwealth	3 years	No
New South Wales	4 years	Yes
Victoria	4 years	Yes
Queensland	3 years	No
Western Australia	4 years	No
South Australia	4 years	Yes
Tasmania	4 years	No
ACT	3 years	Yes
Northern Territory	4 years	No

Whether 3 year or 4 year terms are more appropriate for the ACT Legislative Assembly is a matter for the Legislative Assembly to decide.

## Legislative Background

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

Section 67B(a) of the Commonwealth *Australian Capital Territory (Self-Government) Act 1988* (the Self-Government Act) provides that an enactment of the ACT Legislative Assembly is to provide for the times of general elections of the Assembly.

The Self-Government Act does not provide any further guidance as to the length of the term of the Assembly, except in section 67B(d) which provides that:

*An electoral enactment is to provide, among other things: ... if the electoral enactment provides for the distribution of the Territory into electorates — that a redistribution of the Territory into electorates is to commence not later than 6 years after the previous distribution or redistribution.*

Section 67B(d) could be taken to imply that elections should be held at least every 6 years. However, given that 3 year terms were the norm when section 67B(d) was enacted, it is more likely that the intention behind the requirement to conduct a redistribution every 6 years was that this would require a redistribution to be conducted at a minimum after every second election. (By comparison, under the *Commonwealth Electoral Act 1918*, a redistribution in a State or Territory must be held at least every 7 years.)

As the ACT's Electoral Act requires a redistribution to be held automatically after every general election, moving to 4 year terms would not be in conflict with section 67B(d) of the Self-Government Act.

However, moving to 4 year terms would prevent the ACT from conducting redistributions after every second election (as has been suggested in the past during the redistribution process) unless the Self-Government Act was amended to allow redistributions to be conducted up to 8 years apart.

Notwithstanding the requirement to conduct a redistribution every 6 years, on the face of it the Self-Government Act does not place any limit on the length of the term of the Legislative Assembly, and without any reservation gives the power to determine the length of the term to a simple majority of the Assembly.

#### Electoral Act 1992

The length of the term of the Legislative Assembly is currently prescribed in section 100 of the Electoral Act, which states in full:

#### **100 Ordinary elections**

- (1) A general election under this Act must be held on the 3rd Saturday in October in the 3rd year after the year when the last ordinary election was held.
- (2) If, apart from this subsection, an election in accordance with subsection (1) would be held on the day an election of Senators, or a general election of members of the House of Representatives, would be held, the election shall be held on the 1st Saturday in December in the year when it would, apart from this subsection, be held.
- (3) If an extraordinary general election has been held in the 6 months before the day when an election in accordance with subsection (1) or (2) would, apart from this subsection, have been held—
  - (a) the election shall not be held; and
  - (b) this section applies in relation to subsequent ordinary elections as if the election had been held.

The last general election was held on 20 October 2001. The next election is scheduled to be held on 16 October 2004.

In order to introduce 4 year terms for the Legislative Assembly, the only amendment necessary would be to change “3rd year” to “4th year” in section 100(1). It is suggested that it would be appropriate to provide that this amendment should not commence until after the scheduled 2004 election, so that the first 4 year term would commence after that election.

It should be noted that, should the special circumstances referred to in sections 100(2) and 100(3) occur, the term of a particular Assembly may be greater than 4 years. For example, if a federal election is called for a day scheduled as the polling day for an ACT election, the term of that Assembly would be extended by 6 or 7 weeks to the 1st Saturday in December. Similarly, if an extraordinary general election has been held in the 6 months before the day when an election was scheduled to be held, the scheduled election would not be held and the next election would be held up to 4 years and 6 months after the extraordinary election.

The circumstances for the holding of extraordinary elections are set out in section 101 of the Electoral Act. In brief, an extraordinary election can be called under the Self-Government Act if the Governor-General dissolves the Assembly or if the Assembly passes a resolution of no-confidence in the Chief Minister and fails to elect a new Chief Minister within 30 days. Under the Electoral Act, an extraordinary election can be held if an election fails to elect a sufficient number of candidates or if the Court of Disputed Elections declares an election void and requires a new election to be held.

Given the low probability of an extraordinary election being called, it is suggested that the possibility that an Assembly's term could extend up to 4 years and 6 months would not be a cause of concern.

While a simple amendment to section 100(1) would be sufficient to introduce 4 year terms, there are some time periods set out in the Electoral Act that the Commission suggests should be amended as a consequence of the increase in the term.

For the purposes of the disclosure provisions, section 201(2)(a) of the Electoral Act sets out the disclosure period applicable to candidates contesting two general elections in a row. It states that –for a candidate in the current election who was a candidate in an election the polling day for which was within 4 years before polling day for the current election – the disclosure period begins on the 31st day after polling day for the last election. The “4 years” specified in section 201(2) is intended to cover the possibility that an extraordinary election might have extended the term of the Assembly to greater than 3 years, as well as the more likely possibility that two polling days may be a week or so longer than 3 years apart.

It is suggested that, if 4 year terms are introduced, the “4 years” specified in section 201(2)(a) be extended to “5 years” to cover the same possibilities under 4 year terms.

Section 236(6) of the Electoral Act states that a prosecution in relation to an offence of failing to give the Electoral Commissioner a disclosure return may be begun at any time within 3 years after the offence was committed. This 3 year period allows the Commissioner to conduct audits of disclosure returns once every 3 year election cycle and to launch prosecutions if necessary up to 3 years after the date of the offence. If 4 year terms are introduced, it would be appropriate to increase this period to 4 years also, to allow the Commissioner the ability to align disclosure audits with the parliamentary term.

Section 239(1) of the Electoral Act provides that persons who are or could be required to provide disclosure returns in relation to an election are required to keep records related to such disclosure returns for not less than 3 years after polling day for the election. Section 239(2) of the Electoral Act provides that parties, ballot groups, associated entities and MLAs are required to keep records related to disclosure returns for not less than 3 years after the last day on which such returns are due to be provided. These requirements are related to the ability to initiate prosecutions in relation to disclosure returns under section 236(6) up to 3 years after the date of the offence. Again, to enable audits of disclosure returns to be aligned with the parliamentary term, these requirements should be extended to 4 years, if 4 year terms are introduced.

While it would be appropriate to increase the audit timetable to bring it into line with the election term and allow audits and prosecutions up to 4 years after the relevant date, the Assembly may wish to consider increasing this timetable to 7 years. This would bring the audit provisions into line with similar audit standards applied, for example, to taxation audits.

### ***Recommendation 1***

*If the Legislative Assembly wishes to adopt 4 year terms, the Electoral Commission recommends that the Electoral Act be amended as follows (with the amendments to commence after the 16 October 2004 election has been held):*

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

### **Budget implications of 4 year terms**

At present, with 3 year terms, the Electoral Commission works on a cyclical budget pattern that repeats every 3 years.

The Commission’s budget varies depending on whether or not a Legislative Assembly election is being held. In a “non-election year”, the Commission’s budget is around \$1 million in 2003/04 terms. This budget includes the salaries of the full-time staff and the part-time Commission members, the cost of maintaining the Commission’s office, the cost of maintaining the Commission’s ongoing functions such as its electoral education and advisory functions, maintaining the party register and the disclosure scheme, the ACT’s contribution to the joint electoral roll and costs associated with holding Legislative Assembly elections such as non-voter follow-up, contracting, and research and development.

In an "election year", the Commission's budget is around \$2.5 million in 2003/04 terms. This includes the Commission's ongoing cost of around \$1 million, with the additional \$1.5 million constituting the funding needed to run a Legislative Assembly election. This cost includes temporary management staff, polling officials, training, hiring and equipping polling places and counting centres, ballot papers, printing and scanning electoral rolls, electronic voting and counting, computers, a public information campaign, the tally room, public funding of candidates and political parties, non-voter follow-up, and so on.

In order to calculate the budget implications of 4 year terms, it is necessary to compare like with like. Moving to 4 year terms would mean that there would be one fewer election held every 12 year period. The following table shows, using 2003/04 costs, the estimated overall cost of holding 4 elections over a 12 year period with 3 year terms, compared to the cost of holding 3 elections over a 12 year period with 4 year terms.

Note the costs shown here are indicative and will change over time because of, for example, inflation, population growth, wage increases and technological advances.

<b>3 year terms</b>	
4 election years @ \$2.5 million	\$10 million
8 non-election years @ \$1.0 million	\$8 million
Total over 12 years	\$18 million
Average per year	\$1.5 million
<b>4 year terms</b>	
3 election years @ \$2.5 million	\$7.5 million
9 non-election years @ \$1.0 million	\$9 million
Total over 12 years	\$16 million
Average per year	\$1.375 million

It can be seen that the saving per year, on average, of introducing 4 year terms would be around \$125,000 per year, on 2003/04 figures. Putting this another way, introducing 4 year terms would save the cost of holding one election every 12 years, estimated at around \$1.5 million in 2003/04 terms.

### **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**

**26 September 2003**