

Statement by the Augmented ACT Electoral Commission of its reasons for its redistribution of the ACT Legislative Assembly electoral boundaries

This statement by the Augmented ACT Electoral Commission sets out the results of the Augmented Commission's investigation of the objections against the Augmented Commission's proposal under section 52 of the *Electoral Act 1992* and sets out the reasons for the Augmented Commission's redistribution of the ACT Legislative Assembly electoral boundaries under section 35 of the Electoral Act.

Summary of the redistribution determined by the Augmented ACT Electoral Commission

After considering the 4 written objections to the electoral boundaries proposed by the Augmented Commission on 25 July 2007, the Augmented Commission decided to adopt the boundaries proposed by the Augmented Commission. The Augmented Commission proposed that the existing boundaries should be altered by transferring the suburb of Farrer from the electorate of Molonglo to the electorate of Brindabella.

Therefore the Augmented Commission intends to determine, in accordance with section 35 of the Electoral Act, that the ACT is to be divided into three electorates as follows:

BRINDABELLA, a five member electorate comprising the district of Tuggeranong (excluding the suburb of Hume), the Woden Valley suburbs of Chifley, Farrer, Pearce and Torrens and the districts of Booth, Coree, Cotter River, Paddys River, Rendezvous Creek, Tennent and Mount Clear;

GINNINDERRA, a five member electorate comprising the districts of Belconnen and Hall (including the entire Village of Hall) and the Gungahlin suburb of Nicholls; and

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

The Augmented Commission comprises the members of the ACT Electoral Commission (Chairperson, Mr Roger Beale AO; Electoral Commissioner, Mr Phillip Green; and Commission Member, Dr Christabel Young) and members of the Redistribution Committee (the Chief Planning Executive, ACT Planning and Land Authority (Mr Neil Savery), the acting Commissioner for Surveys (Mr Bill Hirst) and a person appointed by the ACT Electoral Commission, the Regional Director, ACT Office, Australian Bureau of Statistics (Ms Karen Macdonald)). (Ms Macdonald was on leave and unavailable to attend the final meeting of the Augmented Commission.)

Objections to the Augmented Commission's proposal

The Augmented Commission met on 28 August 2007 to investigate 4 objections made in accordance with section 52 of the Electoral Act to the Augmented Commission's proposed redistribution of the ACT Legislative Assembly's electoral boundaries dated 25 July 2007. The objections were made by:

Ian Ruecroft, Palmerston

Bogey Musidlak, Convenor, Proportional Representation Society of Australia (ACT Branch)

David Menzel, Chair, Woden Valley Community Council

Mathew Cossey, ACT Secretary, Australian Labor Party

Summaries of objections

A brief summary of each of the 4 objections follows.

Ian Ruecroft, Palmerston

This resident of Palmerston follows up his comment submitted to the Redistribution Committee and his objection to the Redistribution Committee's proposal with a further objection to the Augmented Commission's proposed boundaries. Mr Ruecroft states that he believes the Augmented Commission's proposal is a considerable improvement to the option proposed by the Redistribution Committee. However, he restates his view that Gungahlin should not be split between two electorates and indicates that Nicholls should be transferred from Ginninderra to Molonglo. Mr Ruecroft states that "The ACT Electoral Commission has many options that could be explored to provide flexibility for future growth within electorates". Mr Ruecroft does not offer a specific alternative to the proposed boundaries.

Bogey Musidlak, Convenor, Proportional Representation Society of Australia (ACT Branch)

This objection reiterates the view expressed by the Convenor of the Proportional Representation Society (ACT Branch) in his suggestion to the Redistribution Committee and in his objection to the Redistribution Committee's proposal: that there should be no change to the present boundaries.

The objection applauds the Augmented Commission's proposal to retain Palmerston in Molonglo, but argues that the further information provided by the Augmented Commission about past redistribution projections supports the Society's view that Farrer should not be transferred from Molonglo.

The objection argues that variations between past redistribution projections compared to actual enrolments on polling day have tended to understate the election day enrolments of Brindabella and Ginninderra, and overstate the election day enrolment of Molonglo. The only case in which the Molonglo election day variation from the enrolment quota exceeded the projected variation was in 1998, when Molonglo's quota was only 0.10% higher than the quota projected during the redistribution process. The objection argues that this trend for Molonglo to be generally overstated "assuages fears about Molonglo's likely status in October 2008."

The objection urges the Augmented Commission to explore whether this trend is likely to continue and recommends that Farrer should remain in Molonglo.

David Menzel, Chair, Woden Valley Community Council

This objection from the Chair of the Woden Valley Community Council follows his objection to the Redistribution Committee's proposal, which did not specifically object to the proposal to transfer Farrer from Molonglo to Brindabella. This further objection notes that at its 1 August 2007 meeting, the Council "expressed strong opposition to this proposal and very considerable disappointment that the continuing bifurcation of Woden appears to be preferred to a number of other options which maintain the integrity of communities of interest. In addition our meeting also strongly expressed the hope that the Augmented Commission might see fit to recommend options that would restore the integrity of Woden's other three suburbs into one electorate."

The objection agreed with earlier objections made by Mr Reynolds, the Gungahlin Community Council and Mr Davenport.

The objection does not put forward any specific alternative boundaries to those proposed by the Augmented Commission.

Matthew Cossey, ACT Secretary, Australian Labor Party

This objection from the ACT Secretary of the Australian Labor Party states that the Augmented Commission erred in its conclusion and that the original proposal of the Redistribution Committee should stand.

The objection notes that the original Redistribution Committee proposal was in accordance with Mr Cossey's suggestion to the Redistribution Committee, which argued that the redistribution should aim to protect the principle of one-vote, one-value and accordingly minimise the variances from quota of all electorates.

Mr Cossey notes that, while ACT Labor has stated that it would be ideal if all Gungahlin suburbs were in one electorate, he is of the view that, if all Gungahlin suburbs cannot be accommodated in one electorate, there should be a more even spread of Gungahlin suburbs between the electorates of Molonglo and Ginninderra. He argues that Gungahlin would have greater representation if there were a critical mass of electors in both electorates.

Mr Cossey states that, while he prefers both Palmerston and Farrer to be transferred as originally proposed, if only one suburb was to be transferred, it should be Palmerston. He notes that "The total accumulated variance from quota for all three electorates by moving Farrer into Brindabella is 6.49%, however it is only 5.73% for the Palmerston into Ginninderra option." He argues that moving Palmerston only would therefore better protect one-vote, one-value than moving Farrer only.

Consideration of the objections

Whether to hold another public hearing

The first matter related to the objections considered by the Augmented Commission was whether it was required to hold a public hearing in accordance with section 49(2) of the Electoral Act. That section provides:

- (2) For the purpose of investigating an objection, the augmented commission shall hold a public hearing, unless it is of the opinion that—
 - (a) the matters raised in the objection (or substantially the same matters) were raised in suggestions or comments given to the redistribution committee in accordance with the notice under section 41 (1) (Suggestions and comments about redistribution); and
 - (b) the objection is frivolous or vexatious.

Section 52 of the Electoral Act provides that section 49 applies to the investigation of objections to the Augmented Commission's proposal as if the investigation were an investigation under that section. The Augmented Commission takes the application of section 49 by section 52 to allow it to take account of matters raised in objections made to the Redistribution Committee's proposal.

The Augmented Commission noted that section 49(2), by the use of the word "and" at the end of paragraph (a), appeared to require that both paragraphs (a) and (b) had to be satisfied if a public hearing was not to be required. Taken literally, this would require a public hearing to be held into all objections that were not frivolous or vexatious, regardless of whether they had raised new matters or not. However, the Augmented Commission was advised by the Electoral Commissioner that the use of the word "and" in this context was the result of a drafting error made by the *Legislation (Consequential Amendments) Act 2001*, which was a machinery amendment that unintentionally changed the meaning of this clause, which previously and correctly used the word "or". The Augmented Commission noted that the Electoral Legislation Amendment Bill 2007 presented in the Legislative Assembly on 23 August 2007 contained an amendment to correct this mistake.

The Augmented Commission concluded that it was appropriate to give effect to the legislative intent of this provision and that the test to be applied to the objections on hand was whether the matters raised (or substantially the same matters) were raised in suggestions, comments or objections related to the Redistribution Committee's proposal.

For the reasons given below, the Augmented Commission decided that the 4 objections to its proposal did not raise matters that were substantially different from the matters raised by the various suggestions, comments and objections previously made. As a result, the Augmented Commission decided that it was not required to hold a public hearing into the objections. In making this decision, the Augmented Commission was mindful that a public hearing into the Redistribution Committee's proposal had been held, and that the general issues raised in the latest objections were canvassed at that public hearing.

Consideration of Mr Ruecroft's objection

The Augmented Commission considered that Mr Ruecroft's objection, which was essentially to the inclusion of Nicholls in Ginninderra, did not raise any substantial new matters. The Augmented Commission noted that the splitting of Gungahlin between 2 electorates was one of the key matters canvassed in all the submissions and addressed by both the Redistribution Committee and the Augmented Commission in their proposals.

The Augmented Commission noted that Mr Ruecroft did not suggest any alternative boundaries that would satisfy the criteria in the Electoral Act that would have avoided splitting Gungahlin between electorates.

The Augmented Commission also noted that it had endeavoured to minimise the division of Gungahlin between electorates by rejecting the Redistribution Committee's proposal to transfer Palmerston from Molonglo to Ginninderra.

For these reasons the Augmented Commission did not consider it could uphold Mr Ruecroft's objection.

Consideration of Mr Musidlak's objection

The Augmented Commission considered that Mr Musidlak's objection, which argued in favour of retaining the existing boundaries, did not raise any substantial new matters. In particular, the Augmented Commission noted that Mr Musidlak had raised similar objections to the Redistribution Committee's proposal.

Mr Musidlak's objection argued that variations between past redistribution projections compared to actual enrolments on polling day have tended to understate the election day enrolments of Brindabella and Ginninderra, and overstate the election day enrolment of Molonglo. The Augmented Commission was not persuaded that the past examples cited by Mr Musidlak enabled the Augmented Commission to be confident that Molonglo would not exceed the permitted 5% variation from the quota at the 2008 election if no changes were made to the boundaries.

The Augmented Commission noted the arguments it put forward in its previous statement: that population projections are not predictions or forecasts, but are simply illustrations of growth and change that might occur if certain assumptions were to prevail; and that estimates of future enrolment levels made using population projections were subject to a range of uncertainties. The Augmented Commission considered that there were a range of relevant factors that indicated that the identified past trends may not be repeated in 2008. These included: the fact that the projections used by the Australian Bureau of Statistics for the redistribution were based on 2001 Census data, as 2006 Census data were not available when the projections were prepared; that the electoral roll could change significantly in the near future because of the activity generated by the forthcoming federal election; and that most of the growth expected in the period between the present and the 2008 election was expected to be in the Molonglo electorate. In any case, the Augmented Commission considered that the projected enrolment for Molonglo, being only 201 electors short of the permitted maximum, was too close for it to be confident that a variation of less than 5% from the quota would be met.

Given these arguments, the Augmented Commission remained of the view that it is necessary to reduce the size of Molonglo in order to meet the statutory requirement in section 36(b) of the Electoral Act to 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.

For these reasons the Augmented Commission did not consider it could uphold Mr Musidlak's objection.

Consideration of Mr Menzel's objection

The Augmented Commission considered that Mr Menzel's objection, which was essentially to the splitting of Woden Valley between the electorates of Molonglo and Brindabella, did not raise any substantial new matters. The Augmented Commission noted that the splitting of Woden Valley between 2 electorates was another of the key matters canvassed in several of the submissions and addressed by both the Redistribution Committee and the Augmented Commission in their proposals.

The Augmented Commission noted that the substantial changes to the boundaries needed to include all of Woden Valley in one electorate – including the suggestion that Brindabella be made the 7 member electorate – had been examined by the Augmented Commission and rejected on the basis that they would violate the requirement in section 36(c)(iv) of the Electoral Act requiring the Augmented Commission to duly consider the existing boundaries.

For these reasons the Augmented Commission did not consider it could uphold Mr Menzel's objection.

Consideration of Mr Cossey's objection

The Augmented Commission considered that Mr Cossey's objection, which argued in favour of retaining the Redistribution Committee's proposed changes, did not raise any substantial new matters. The Augmented Commission noted that the requirement to meet the 5% variation from the quota and the splitting of Gungahlin were addressed by both the Redistribution Committee and the Augmented Commission in their proposals.

The Augmented Commission noted Mr Cossey's comments regarding one-vote, one-value. The Augmented Commission noted that the Electoral Act did not explicitly refer to one-vote, one-value. Rather, it implicitly sought to meet the desirability of achieving one-vote, one-value through the mechanism of requiring each electorate to be within 5% of the quota at the time of the next election. The Augmented Commission did not consider that this requirement extended to providing that each electorate had to be as close to the quota as possible. The Augmented Commission took the view that its principal aim was to ensure that each electorate was within the required 5% of the quota and, provided that this was met, then the provisions of section 36(c), requiring consideration of range of issues such as community of interests and boundaries of existing electorates, provide guidance for the Augmented Commission in selecting the best option.

On this basis, the Augmented Commission considered that its proposal to transfer only the suburb of Farrer from Molonglo to Brindabella best satisfied both the requirement to ensure each electorate was within 5% of the quota and the requirements of section 36(c), particularly the requirement to duly consider existing boundaries.

The Augmented Commission did not accept that Mr Cossey's suggestion, that Gungahlin residents would have greater representation if there were a critical mass of electors in both electorates, was relevant to the redistribution criteria. The Augmented Commission noted that while the criteria related to community of interests tended to support keeping whole districts together, none of the criteria related explicitly to maximising representation.

With regard to Mr Cossey's alternative position, that if only one suburb was to be transferred it should be Palmerston, not Farrer, the Augmented Commission considered that the arguments it put forward in its proposal in favour of transferring Farrer only still stood. The Augmented Commission considered that there was no requirement to minimise the variations from the quotas in the electorates, provided that each electorate was projected to be within 5% of the quota at the time of the next election.

For these reasons the Augmented Commission did not consider it could uphold Mr Cossey's objection.

Conclusion

For the reasons given above, the Augmented Commission did not uphold any of the objections to its proposal to transfer the suburb of Farrer from the electorate of Molonglo to the electorate of Brindabella.

As a result, for the reasons given by the Augmented Commission in its statement dated 25 July 2007, the Augmented Commission has decided to adopt the Augmented Commission's proposal as the final boundaries for the ACT Legislative Assembly.

Next stage of the redistribution process

The Augmented Commission will formally complete the redistribution process by publication of a notifiable instrument of determination under section 35 of the Electoral Act and publication of a report concerning the redistribution under section 53 of the Electoral Act.

Augmented ACT Electoral Commission
Roger Beale AO — Phillip Green — Christabel Young
Neil Savery — Bill Hirst

31 August 2007