

ACT Labor Submission to Expert Reference Group on the Size of the Assembly

To the Members of the Expert Reference Group

Mr Phillip Green, ACT Electoral Commissioner (chair)
Ms Anne Cahill Lambert,
AM Emeritus Professor Meredith Edwards,
AM Mr John Hindmarsh
Ms Louise Taylor

This submission is supportive of previous submissions made on this important issue. ACT Labor welcomes the opportunity for mature, forward-thinking debate about democratic representation which this Review into the size of the ACT Assembly provides.

We seek to reassert previous arguments for a larger ACT Assembly outlined in 2002 and believe the benefits to governance and community representation of an increased number of democratically-elected representatives is clear.

The people of the ACT currently benefit from the smallest and most efficient state or territory government in Australia as well as the efficiencies derived from a small city-state structure. The fact that this efficient system of government also delivers a relatively high standard of municipal services belies the common interstate misperception of “government in Canberra”. Canberra residents enjoy a closer relationship and better accessibility to municipal services and state/territory services than the vast majority of Australians.

Despite these proud facts it is now nearly 24 years since self-government was imposed on the ACT and time that the successful experiment of the Assembly created through the Commonwealth Australian Capital Territory Self-Government Act 1988 was updated. We have an opportunity now, provided by an imminent amendment to the Act, for systemic reform that restructures our electorates to better represent local communities as well increase access and accountability in our local Government.

Like most Canberrans we are proud of the city our predecessors have built and how our lives currently bind us together in prosperity and common welfare. Many Canberra families now represent generations of investment and pride in their city and our unique lifestyle. Canberra is the most community-minded capital city in Australia. At the centre of that community are our elected representatives and the parliament they occupy, which is the vehicle for the leadership they provide. It is our sincere hope that this submission answers part of the question of how do we make Canberra’s community spirit and investment in our city’s future even stronger?

As well as this submission ACT Labor will also gladly participate in any forums or further discussions on this important issue which the Expert Reference Group may provide.

Regards,

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Branch Secretary
On behalf of ACT Labor

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In beginning this submission it is appropriate to quote from the relevant section of the ACT Labor Platform (Machinery of Government – Principles, Objectives and Strategies; ACT Assembly – Principles, Objectives and Strategies within the ACT Electoral System).

ACT Labor Platform: Machinery of Government

Principles

The fundamental role for Government is not confined solely to economic management of a balance sheet. Rather Government must also ensure the full equal participation of all members of the community to achieve equitable outcomes.

Labor in the ACT Legislative Assembly is committed to raising the standards of Territory Government to ensure that all members of the ACT community are able to obtain social justice through responsible, responsive and accountable Government.

In Government, Labor will organise the machinery of government to put our platform into action.

Objectives - Labor will deliver:

1. Responsibility - to the community for our commitments and our actions to those ends;
2. Integrity - ensuring our actions attend to our aims and accord with our principles;
3. Openness - so that all members of the community can participate in and understand government programs and policies; and
4. Quality - making the best use of the resources the community places in our trust to provide equity for all residents of the ACT.

Strategies - Labor will:

1. Continue our discussions with the community and include them in formal decision-making through consultative bodies and other forums;
2. Adopt an integrated and coherent approach to planning in all areas of policy;
3. Make public our plans for the short and long term, especially leading up to the annual Budget; and
4. Seek fair and balanced courses of action, acting promptly where necessary, carefully weighing social and economic benefits in the short and long term.

ACT Labor Platform: AUSTRALIAN CAPITAL TERRITORY GOVERNMENT

Principles - Labor is committed to democratic and open government for the citizens of the ACT.

The fundamental principle underlying the governing of the ACT should be the development of the highest degree of community participation in the decision making process as possible. It is a basic right of all ACT citizens to be involved in making decisions, which affect them.

Objectives Labor aims to:

1. Establish mechanisms to ensure that citizens of the ACT are able to fully participate in the democratic processes.
2. Ensure the political sovereignty of the ACT Legislative Assembly so that the power of the Commonwealth to override Territory laws is not available for laws involving the exercise only of Territorial responsibilities, but is limited to matters where there is the possibility of overlapping Commonwealth responsibilities.
3. Maintain a viable, efficient and responsible ACT Public Service.
4. Ensure the independence of judicial officers and the separation of powers including entrenchment of the Supreme Court as the judicial arm of the Government.
5. Provide means for public scrutiny of government operations and challenging decisions of government.
6. Maintain public assets in public control to the extent necessary to protect those assets from indiscriminate sale.

Strategies Labor will:

1. Support the Hare-Clark electoral system.
2. Divide the Territory into a number of multi-member electorates that are small enough to allow effective representation of the community.
3. Require each electorate to be as nearly as practicable the same size, and to elect the same number of representatives.
4. Investigate, and (where appropriate) introduce, measures to enhance community understanding of the Hare-Clark system.
5. Support compulsory voting and consider allowing people between 16 and 18 years of age to vote.
6. Maintain a system of public funding for ACT Legislative Assembly elections.
7. Not require public servants who nominate for ACT Legislative Assembly elections to resign prior to nominating, but entitle them to leave without pay for a period of up to five years from the time of nomination.

References to previous ACT Labor Submission in 2002

We will now reassert some of the important points made in ACT Labor's Submission to the '2002 Inquiry into the appropriate size of the Legislative Assembly for the ACT (Legislative Assembly Standing Committee on Legal Affairs)'.

ACT Labor supports the current system associated with the establishment of the ACT executive government with the Chief Minister and Members of the Cabinet being drawn from members elected to the Assembly. Although alternative systems, such as voters directly electing a Chief Minister, have been canvassed previously the ACT Branch believes that the alternatives pose a greater risk of creating conflict between the Assembly and the executive, as well as diminishing the system of parliamentary democracy practised in all other Australian States, the Northern Territory and federally.

It is paramount that the electoral and parliamentary system is one that allows the executive to be held accountable to the people of the ACT through the parliament. Further, the structure and operation of the ACT Assembly should conform to the Westminster model.

The ACT Self-Government Act should ensure, to the greatest extent possible, the political sovereignty of the ACT Legislative Assembly so that the power of the Commonwealth to override Territory laws is not available for laws involving only the exercise of Territorial responsibilities. Intervention by the Commonwealth Parliament should only be on the grounds that the legitimate interests of the Commonwealth require such action. The Assembly should also be assigned similar powers to those enjoyed by a State parliament to alter arrangements for the normal processes of government, including the ability to determine its own size, systems and structure.

These existing power and autonomy limitations undermine the standing of the Legislative Assembly. They imply that members of the Assembly are considered inferior to their federal counterparts and that ACT residents are not to be afforded the same democratic rights as citizens in the States.

These matters should be corrected and are relevant to why the ACT Legislative Assembly should be of a size appropriate to conduct the business of the ACT for the ACT.

In this submission there are four key arguments that will be made for a larger ACT Assembly: the mathematical argument, improvements to the 'community of interest' of each electorate, the ideal electorate size (not three or seven, but five representatives per electorate), and finally, the more challenging political argument for more representatives and community advocates.

The first three arguments are overwhelming.

Mathematical argument for a larger Assembly

ACT Labor's 2002 submission explained that the citizens of the ACT are severely under-represented in their political systems. In light of the responsibilities of the ACT Legislative Assembly, the most appropriate ratio to use as a comparison is ratio of voters per State/Territory and also local government elected representatives. In 2002 the ratio for the ACT of 12,934 voters to one elected representative, compared to 1,012:1 and 1,556:1 for Tasmania and the Northern Territory respectively, highlights the dramatic disparity between the ACT and comparable jurisdictions. This clearly indicates that the constituent workload of ACT MLAs is significantly greater than other similar jurisdictions. The ACT has the lowest level of elected political representation compared with all

other Australian States and Territories. The Pettit Report noted that, in 1997, the Australian average of elected representative to head of population was one per 2,250 with the ACT having a ratio of one per 14,500.

As a reference point, it is also noteworthy that the voter to elected representative ratio in 1989 for the ACT (when the 17 member Legislative Assembly commenced) was approximately 10,000:1. This indicates that the ACT has experienced significant deterioration in representation ratio since that time.

With an Assembly of 25 MLAs our parliament would still be equal-smallest in Australia. In years ahead the ACT will have an equivalent population to Tasmania. Even with an Assembly of equal size (25 members) the ACT will still have far fewer politicians due to a lack of an upper house, much fewer federal representatives and separate local governments.

There is a good argument to be made on increasing the assembly size due to the natural growth of the population. The Legislative Assembly commenced with 17 Members when the ACT was granted self-government in 1989 and has remained that size. The ACT's population has increased from around 275,000 in 1989 to 375,000 in 2012, 36% increase in the size of the population. A 36% increase applied to the original 17 MLAs would see an extra 6 MLAs (i.e 23). The ACT population is still one of the fastest growing in Australia, so a 25 member Assembly will soon be equivalent to the original representative ratio from 1989.

The ACT Assembly is without comparison the most efficient form of Government in Australia. As described in the Expert Reference Group's Discussion Paper: "The Assembly has two distinct and unique roles, unlike other Australian parliaments: it is responsible for the usual State-Territory activities such as health, education, law and order, and industrial relations. It also has responsibility for local government activities such as rates, roads and collection of rubbish."

Such a unique construction has meant that there are examples of where the ACT Assembly is able to successfully implement reform and innovation where larger, more fractured jurisdictions have failed or could not even contemplate.

The Discussion Paper also explains that when the Assembly was established, the driving principles behind its size were that it should: be large enough to provide for adequate and fair representation of the ACT community; function as a workable legislature; and have the capacity for adequate scrutiny of the executive government. These principles are undermined by the small relative size of the Assembly and effectively disadvantage the community by restricting access, communication and representation.

In 2002 the Assembly's Standing Committee on Legal Affairs considered "that the present size of the Legislative Assembly makes it difficult for the Assembly to perform its function as a legislative body."

In 2011 Professor John Halligan stated "The Legislative Assembly needs to have its numbers substantially increased as soon as possible. ... A Ministry of only 5 confounds the basic tenets of effective cabinet government, and raises questions about whether the ACT should continue to operate this type of system without an increase in its size. Given the complexities of running both a city and a state government the span of Ministers' portfolio responsibilities is immense."

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Professor Halligan also stated “The number of ACT government Ministers is fixed at five As a consequence each ACT Minister is responsible for a number of portfolios plus having COAG roles. The evidence from previous reviews and from the reactions of those working within ACT governance is that this number is grossly inadequate for the complexities of state and local government in the 21st century.”

ACT Labor’s 2002 submission highlighted the importance of Committee work in the Legislative Assembly. With a unicameral parliamentary system, committees of the parliament have increased responsibility. This is because the primary role of vetting and assessing proposed legislation falls to them and not an upper house or house of review. The committee system is one of the primary mechanisms by which experts and stakeholders in the community can directly interact with its parliament and vice versa on issues of importance. Therefore it is crucial that the ACT Legislative Assembly’s committee system is strong and rigorous.

Committees comprising of three members, and each member having multiple committee responsibilities, seriously compromises the Assembly’s ability to consistently maintain high standards in the legislation that it passes. This in turn directly impacts on the effective functioning of the Assembly as a whole. The fact that Ministers do not, and should not, hold committee membership reduces the ability of the Government to fully contribute to the committee process. Again, this undermines the effectiveness of committees by reducing the number of MLAs available to undertake committee work.

In 2002 ACT Labor considered the pros and cons of an Assembly with 21, 23, 35 and 25 members. Of all these options an Assembly of 25 members, comprised of five electorates with five representatives each, seemed to promise the greatest stability, simplicity and long-term benefits. Looking at Table 3 of the current Discussion paper it is clear that even with an Assembly of 35 members, the ACT would still have significantly less representatives per population than every other state or territory in Australia.

An increase to 25 members in the ACT Assembly would have significant and lasting benefits to the functioning of the Assembly and its committee system, the formation of the executive government and their accountability to the parliament and in addressing the current and future workloads of MLAs. Such an increase would also result in a much more reasonable voter to elected representative ratio for the ACT.

ACT Labor believes that 25 members would be a critical mass for the Legislative Assembly enabling it to cope with population growth for many decades irrespective of the voter to MLA ratio. This option would also ensure electorate fairness with electoral quotas being exactly the same throughout the ACT while at the same time having electorates of a size that do not compromise ‘local’ representation. It is important to note that with such an increase the ratio of voter to elected representative would still remain one of, if not the highest, ratios in the country.

Investing in each local “Community of Interest”

A slightly larger Assembly could provide more capacity for scrutiny, analysis and innovation. For example a Minister with a smaller number of portfolios to manage could spend more time on crucial reforms that required closer community and stakeholder consultation.

It can be argued that the most important consultation for any member to undertake, including Ministers, is consultation with their local community. It is in community consultation and community representation that smaller electorates have a distinct advantage for voters and result in better local representation.

The concept of “community of interest” is widely applied in democratic processes and an important consideration in electorate-based democracy. In the ACT “community of interest” arguments are most prevalent during regular electorate redistributions, the next one due in 2014. The current debate regarding Assembly size is a once-in-a-generation opportunity to establish a community-of-interest framework that can have a lasting positive impact on our representative democracy.

Canberra’s suburban structure can be defined within a framework of 5-7 local townships with reasonably clear economic, social and regional interests as well as transport and physical features. These local communities would be the best basis for local electorates in a larger ACT Assembly.

The ACT’s local communities are based on the “town centres” developed by the former National Capital Development Commission (NCDC): North and South Canberra is the original ‘Burley Griffin’ Canberra or what would be called inner city in other cities. Of the new towns Woden was first in the 1960s, followed by Belconnen and Weston Creek in the 1970s, then Tuggeranong in the late 1970s to 1980s. Gungahlin is the most recent dating from the 1990s.

Ideal electorate size: five representatives is better than seven

Democratic representation works best when there are strong lines of communication and “communities of interest” which bind elected representatives to their constituents.

Smaller electorates work best for access and direct constituent feedback but there is a limit to what is appropriate and affordable. A very large number of elected representatives in a legislature can be expensive and impractical.

The accepted principals of our Hare Clark system make the obvious choice of five or seven representatives per electorate. Notwithstanding the skill and work ethic of the current Molonglo representatives, there can be no credible argument made for a seven-member electorate on the basis that it could provide better local knowledge and access than a five member electorate. Five representatives will be more individually accessible and accountable across an electorate than seven. Also, as Molonglo is a large electorate, having a large body of water divide an electorate is unusual and there do not seem to be natural social or economic ties between suburbs as diverse as Weston and Gungahlin. The strange design of the Molonglo electorate is also a good argument that seven-member electorates are demonstrably incompatible with strong “communities of interest”. Evolving to five electorates that more closely resemble the original “town centres” is more logical and would be popular as well.

The threat of predictable political whim and opportunism in conservative ranks

Good government must make tough, sometimes seemingly unpopular, decisions and we have to see past political opportunism masquerading in negative argument. We have seen in the past meritorious arguments for better representation and more community advocates in parliaments undermined by simplistic arguments against “more politicians”.

The conservatives in the ACT may be tempted once again to revert to cheap political point-scoring and argue a case for “less politicians” to undermine the public debate around a larger, more representative Assembly. It’s an easy argument to make if you appeal to the lowest common stereotypes and media-driven cynicism about politicians. But Canberrans are more astute political analysts than most Australians. Most Canberrans, due to their familiarity with the public service, know that politicians can be like police: you don’t realise how important they are until you need one urgently!

Let us avoid appealing to the lowest common denominator and instead invest in Canberra’s long-term democratic, community and representative interests.

Conclusion

ACT Labor’s 2002 submission noted when assessing an appropriate size for the Assembly to use the Brisbane City Council as a benchmark, which has 26 members in a unicameral chamber and a cabinet of six. The size of the Council’s constituency, budget and issues for which it has responsibility are similar in many ways to that of the ACT Assembly. There are also clear examples in Tasmania (bicameral Hare Clark - five electorates of five MPs each) and the Northern Territory (unicameral, 25 single-member electorates) which demonstrate the benefits of 25 over 17 in a Westminster system.

ACT Labor believes a large majority of the ACT community recognises the benefits of such an increase and although 17 to 25 may seem like a significant increase to some, most accept that eventually the Assembly will need to total 25 members.

ACT Labor supports the smallest increase possible in numbers to achieve the improvements in government and representative outcomes expected by the ACT electorate.

ACT Labor believes that it is important that on issues such as these there needs to be as broad agreement as possible and hope that the ACT Liberals will place Canberra’s long-term community interest ahead of short-term political obstruction and opportunism.

An increase in the total number of Members of the Legislative Assembly must be of a magnitude that will establish a reasonable voter to MLA ratio, improve proportional representative outcomes, achieve better ‘community- of-interest’ electorates, establish an Assembly that will cope with Canberra’s growth for the next several decades and deliver efficient and effective executive government that is directly accountable to our city’s local communities.