

1992

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

ELECTORAL BILL 1992

EXPLANATORY MEMORANDUM

Circulated by authority of
Rosemary Follett, Chief Minister

OUTLINE

The Electoral Bill 1992 establishes the A.C.T. Electoral Commission and sets out a procedure for determining electoral boundaries for Legislative Assembly elections.

The A.C.T. Commission will be a three person body, comprising a Chairperson, the Electoral Commissioner and another member. The terms and conditions of these officers are largely set out in the Bill although the Chief Minister is able to determine others.

Earlier this year the *Australian Capital Territory (Self-Government) Act 1988* was amended to give the Legislative Assembly power to pass A.C.T. electoral legislation.

Section 67B of the *Self-Government Act* states that an A.C.T. electoral enactment is to provide, among other things, for the times of general elections, a roll of the electors of the Territory, compulsory enrolment and that any electoral boundaries that are created are to be reviewed at least once every six years. There will be other matters that will need to be included in the A.C.T. legislation in particular, provisions detailing the votes counting mechanism. These matters will involve detailed examination and will result in lengthy and complex legislation.

The development of the A.C.T. electoral system must occur within the parameters set by the Commonwealth's *Self-Government Act* and *Australian Capital Territory (Electoral) Act*. Some elements of the A.C.T. legislation are dictated by the Commonwealth legislation and others are only guided by it. For example, the A.C.T. is bound by the quota formula set out in section 67D of the *Self-Government Act* and the list of topics that the substantive electoral legislation will need to cover, as set out above.

In order to commence development of the A.C.T.'s electoral system a two stage process will be adopted. The first stage involves the establishment of the A.C.T. Electoral Commission and includes the mechanism for establishing electoral boundaries. This Bill gives effect to stage one.

The second stage of the process will involve the development of legislation governing all other matters necessary for a separate A.C.T. electoral system.

The Bill is largely modelled on the Commonwealth *Electoral Act 1918*.

The process for drawing electoral boundaries is designed to be independent and allow community involvement.

Briefly, the process involves the following steps.

A Redistribution Committee advertises that it is going to do a redistribution of electoral boundaries and invites suggestions. Opportunity is also provided for comments to be made on any suggestions received.

After consideration of any comments or suggestions received as a result of the invitation the Redistribution Committee makes an initial proposed redistribution, which is made available for public inspection. Objections to the proposed redistribution may be lodged with the Electoral Commission. The Commission will consider any such objections, and will hold public hearings unless, in the Commission's opinion, the objections raise matters which are frivolous or vexatious or raise the same matters as the suggestions or comments received in the initial advertising phase. On completion of any investigation of objections lodged against the Redistribution Committee's proposal the Commission will then announce any proposed redistribution. If in the opinion of the Electoral Commission the proposed redistribution is significantly different from that of the Redistribution Committee further objections can be lodged.

Having considered any further objections, and holding public hearings, the Electoral Commission will determine the electoral boundaries, names of the electorates and specify how many members will be elected by each electorate. The Electoral Commission must submit a report on the redistribution process to the Chief Minister for tabling in the Assembly.

FINANCIAL IMPLICATIONS

The cost associated with the full range of functions of the Australian Capital Territory Electoral Commission will be considered in the Budget context in conjunction with the development of the substantive electoral legislation. In the interim, however, the costs of establishing the Electoral Commission for the purpose of determining electorates will be kept to a minimum. For example, it is envisaged that the members will be remunerated by way of sitting fees only, the Commission will not have the power to employ staff at this stage but will be assisted by public servants as necessary, and the office facilities will be kept to a minimum.

DETAILED EXPLANATION

AUSTRALIAN CAPITAL TERRITORY ELECTORAL COMMISSION

Part 2 establishes the A.C.T.'s Electoral Commission. The Commission will be a three person body appointed by the Executive (Clauses 6 and 11). One of the members will be the Electoral Commissioner (Clause 6). The Chairperson will be a current or retired Judge, a retired Commonwealth Departmental Secretary, a retired administrative head of an A.C.T. Department or a former member of an electoral authority of the Commonwealth, a State or a Territory (Clause 11(2)).

The Electoral Commission will, in addition to exercising statutory powers, be required to consider, and report to the Chief Minister on, electoral matters referred to it by the Chief Minister and any other electoral matters it thinks fit (Clause 7). The Commission's functions will be limited at this stage but the substantive electoral legislation to be developed as stage two of the implementation of the 1992 referendum result will expand this role.

The Commission has power to do things that are necessary or convenient to its functions (Clause 8).

Clause 9 requires the Commission to submit annual reports to the Chief Minister at the end of each financial year.

TERMS AND CONDITIONS

The members of the Commission will be appointed for a period not exceeding 5 years, although members will be eligible for re-appointment (Clause 12). The terms and conditions not specified in the Bill will be as determined by the Chief Minister (Clause 12(2)).

Members will be entitled to such remuneration and allowances as provided for by the Regulations - although this will be subject to any current Remuneration Tribunal determinations. (Clause 13).

The Chief Minister will be able to grant members leave of absence (Clause 14).

Provision is made in clause 15 to allow members of the Commission to resign by notice in writing to the Chief Minister.

Clause 16 of the Bill provides that members of the Commission may have their appointment terminated for misbehaviour, or physical or mental incapacity. In addition it provides the Executive shall terminate the appointment of a member if the member contravenes the disclosure of interest provision or is convicted of an offence punishable by imprisonment for 12 months or longer.

ACTING MEMBERS

Clause 17 enables the Executive to appoint acting members, although a person appointed to act as Chairperson must a person from the same group of persons as the substantive Chairperson is selected from.

MEETINGS

The Chairperson is responsible for convening meetings. If the Chairperson is not available the Electoral Commissioner shall preside at meetings. The Commission regulates the conduct of its meetings. A quorum is two members. However, if there are only two members present and there is disagreement on an issue the matter has to be deferred for consideration by the full meeting. Obviously this will not apply if the matter on which there is disagreement relates to a disclosure of interest matter resulting in the absence of the third member. (Clause 18).

Clause 19 requires a member to disclose an interest in a matter being considered by the Commission and in the normal course of events the member will not be a party to any consideration or voting on this matter. An interest in a matter is something other than being entitled to vote in an Assembly election. A disclosure of interest shall be recorded in the minutes of the meeting and, unless the Commission otherwise determines, the member with the interest shall not take part in any decision relating to the interest.

ELECTORAL COMMISSIONER

The office of Electoral Commissioner is provided for in Part III of the Bill. The Electoral Commissioner is also appointed by the Executive. The terms and conditions of the Electoral Commissioner are the same as for members of the Commission. (See clauses 20-27, and earlier discussion of clauses 12-16).

ELECTORATES

BACKGROUND

The referendum held in the A.C.T. in February 1992 asked voters to nominate a preference between two electoral systems. The choices put to voters were the proportional representation (Hare-Clark) system and single member electorates. The result of the referendum indicated support for the proportional representation (Hare-Clark) system.

NUMBER OF ELECTORATES

The Hare-Clark system, which is also used in Tasmania, as explained to voters at the referendum, involves drawing the A.C.T. into 3 electorates. One electorate will elect 7 members to the Legislative Assembly and two electorates will elect 5 members each to the Legislative Assembly. This framework is provided for in clause 28 of the Bill.

DETERMINING ELECTORATES

The Bill goes on to set out a mechanism for drawing the boundaries of the electorates and determining the names of, and numbers of members to be elected from, each electorate. The Electoral Commission is required to decide these matters. (clause 29).

Clause 30 of the Bill sets out what matters have to be taken into account in deciding a redistribution. The Commission has to comply with section 67D of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth. This section defines a formula for determining the optimum number of electors for each electorate and a redistribution must come with a 10% range of that quota. In addition, however, a number of other matters must be considered. These matters are:

1. the community of interests within each proposed electorate, including economic, social and regional interests;
2. the means of communication and travel within each proposed electorate;
3. the physical features and area of each proposed electorate;
4. the boundaries of each existing electorate; and
5. the boundaries of divisions, sections and blocks fixed under the *Districts Act 1966*.

The options description sheet distributed to voters before the election suggested that the criteria for determining boundaries be, as nearly as practicable, the same as those used for determining House of Representatives Electoral Divisions as set out in Part IV of the Commonwealth *Electoral Act 1918*. The matters set out in the Bill are the same as the Commonwealth criteria with the addition of number 5, which refers to local boundaries in the Territory. Given that the boundaries of divisions, sections and blocks, are set in the A.C.T. under the *Districts Act 1966* they should be considered in the determining of electoral boundaries for Assembly elections.

Over and above these matters the Bill requires the Commission, and also the Committee, to consider demographic trends in the

Territory. It does this by requiring the Commission to attempt to foreshadow the numbers of electors in each electorate at the time of the next election and endeavour to ensure that the numbers of electors in each electorate is within a 2% range of the quota defined in section 67D of the Self-Government Act. The Commonwealth *Electoral Act* has built into it a similar process based on average divisional enrolments. This concept does not apply to the A.C.T. electoral system as the electorates will not be the same size. However, the same criteria as for House of Representatives elections are used, with appropriate local modifications.

TIMING OF REDISTRIBUTION

The first determination of electorates has to be made as soon as practicable after the Bill commences. Later revisions of the electorates will have to be carried out within 12 months after a general election. (clause 31). This suggestion as to timing was put to voters at the referendum as part of the options description sheet of the Hare-Clark model set out in the *Australian Capital Territory (Electoral) Amendment Act 1991* of the Commonwealth. Clause 3 of the Bill defines redistribution to include the initial distribution.

REDISTRIBUTION COMMITTEE

In order to commence the process of determination of boundaries a Redistribution Committee is convened (clause 32).

The Committee membership is as follows:

- the Electoral Commissioner,
- the Chief Planner,
- the Chief Surveyor,
- another person appointed by the Electoral Commission (clause 32).

The fourth member will be a person with qualifications or experience relevant to the criterion used in determining electorates. This person is appointed on such terms and conditions as are determined by the Commission, but in deciding on these terms and conditions the Commission must consult the Chief Minister (clause 32(4)).

Meetings of the Committee are commenced and chaired by the Electoral Commissioner. If the Electoral Commissioner is not present the other members will elect a Chairperson for the meeting. Three members will be a quorum. These matters are set out in clause 33, it goes on to provide that the Committee will regulate the conduct of its meetings as it thinks fit.

The Committee is entitled to inform itself on matters relevant to its functions and, in particular, the Commission is required to assist the Committee with any information it requires to develop a boundaries proposal. (clauses 33(8) and (9)).

THE REDISTRIBUTION
COMMITTEE'S PROPOSED REDISTRIBUTION

Under clause 34 the Committee will be required to invite suggestions from the public on the redistribution of electorates and also invite comments on any suggestions received. This invitation will appear in the Gazette, primarily for evidentiary reasons, and this will be followed by a public notice in the newspaper.

Clause 35 of the Bill enables the Redistribution Committee to make an outline of its proposal public at any time.

Having considered any suggestions or comments received in response to the public invitation outlined above the Committee will make a proposed redistribution of electorates. In deciding on a proposed redistribution the Committee is required to consider the same range of matters that the Commission is required to consider when making a final

determination (see clause 36). These matters are set out in clause 30. The Committee shall give reasons in writing for a proposed redistribution.

After the Committee decides on a proposed redistribution it must make maps showing the proposed redistribution, a description of the proposed redistribution, copies of any suggestions/comments, a statement of reasons for the proposed redistribution and any written dissent to be made available for public inspection at the office of the Electoral Commission. (clause 37). This provision goes on to require that a notice (inviting public inspection of the maps and documents) be published in the Gazette and the newspaper. In addition, maps outlining the proposed redistribution will also be published in the newspaper. The notices in the Gazette and the newspaper must state that written objections can be lodged with the Electoral Commission within 28 days of the notice appearing in the Gazette. (clause 37(2)).

After the Committee publishes the above notices clause 38, by its operation, dissolves the Committee.

OBJECTIONS

Clause 39 states that objections must be in writing and lodged with the Electoral Commission.

The Electoral Commission must consider all objections received (clause 40(1)).

The Commission has an obligation to hold public hearings into any objections unless an objection raises matters similar to these raised by any suggestions/comments received under clause 34 or if, the Commission believes an objection is frivolous or vexatious. This is set out in clause 40(2). The conduct of public hearings is at the Commission's discretion (clause 40(6)). For example, the manner in which submissions are made and by whom (clause 40(7)). However, only those people who have contributed to the public consultation process

can make submissions to the Commission. The Commission is not bound by the rules of evidence (clause 40(6)) although it must consider all submissions put to it (clause 40(5)).

THE ELECTORAL COMMISSION'S PROPOSED REDISTRIBUTION

Clause 41 of the Bill states that the Commission shall make a proposed redistribution as soon as possible after it considers objections.

After the Commission has made a proposed redistribution of electorates clause 42 of the Bill provides that the Commission will make a public announcement setting out its findings about the Redistribution Committee's proposal and any objections, the particulars of the Commission's proposal, a statement as to whether the Commission believes its proposal is significantly different from that to the Committee and if the Commission believes its proposal is significantly different, a statement that further objections can be lodged with the Commission within 28 days. If the Commission is going to allow further objections it will also publish a notice to this effect in the Gazette. (clause 42(3)).

FURTHER OBJECTIONS

The Commission has a discretion as to what is "significantly different", and therefore whether further objections will be allowed. The significance of a revised redistribution may not necessarily equate with changing the boundaries radically from those proposed by the Redistribution Committee but may come from an alteration by a few streets if, for example, this were to result in dividing a suburb. This concept will develop over time but to assist in assessing what is significantly different the Commission could have regard to Commonwealth practice as a similar discretion is built into the Commonwealth process.

This provision does depart from the Commonwealth model in that it allows further objections from anyone. The Commonwealth *Electoral Act* provides that further objections can only be made by persons or organisations who have previously objected or who put in initial suggestions/comments. The Government is of the view that it is not appropriate to limit the range of people who can object to a proposal that is significantly different to that proposed by the Redistribution Committee. To impose such a limitation would deny people who may have agreed with the Committee's proposal an opportunity to object to a vastly different proposal developed by the Commission. This seems inappropriate, particularly given the Territory's population and geography.

Clause 43 provides for the lodgement and consideration of further objections.

DETERMINATION OF ELECTORATES

Clause 29 of the Bill requires the Commission to determine the electorates for the A.C.T. by notice in the Gazette.

Clause 44 of the Bill requires the Commission to prepare a report about the redistribution process and make a public announcement about the substance of its findings and its determination. The report is to provide details of all stages of the process.

REPORT TO CHIEF MINISTER

Clause 44 of the Bill requires the Commission to send its report to the Chief Minister. This report will be tabled in the Assembly by the Chief Minister on the next sitting day (clause 45).

MISCELLANEOUS

Clause 46 of the Bill excludes from judicial review any decisions taken under Part IV by either the Electoral Commission or the Redistribution Committee. The Commonwealth *Electoral Act* also excludes from judicial review decisions relating to the redistribution process under that Act. Both this Bill and the Commonwealth Act provide for consideration of objections by a body separate to the Redistribution Committee. The nature of the process leading to the determination of electorates and the significance of the decisions are such that it is felt that the ACT should follow the Commonwealth lead and exclude judicial review.

Clause 47 of the Bill specifies that no decision of the Commission or the Committee will be invalid because there has been a failure to comply with the statutory process.

It is an offence under clause 48 to improperly influence a member of the Commission or the Committee.

Clause 49 of the Bill provides that the Executive may make Regulations for the purposes of this legislation.

Clause 50 amends the *Administrative Decisions (Judicial Review) Act 1989* to provide that the Act does not apply to decisions relating to redistributions.