LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON LEGAL AFFAIRS

(Reference: appropriate size of the Assembly)

Members:

MR B STEFANIAK (The Chair)
MR J HARGREAVES
MS K TUCKER

TRANSCRIPT OF EVIDENCE

CANBERRA, 10 MAY 2002

The committee met at 2.05 pm.

THE CHAIR: Thank you, ladies and gentlemen, for appearing before the Standing Committee on Legal Affairs. We are, of course, looking into the appropriateness of the size of the Legislative Assembly for the ACT and options for changing the number of members and electorates, and any other related matters. This question was referred to us by the Assembly on 12 December, and we have to report by 27 June.

You should understand that these hearings are legal proceedings of the Legislative Assembly, protected by parliamentary privilege. That gives you certain protections, but also certain responsibilities. It means you are protected from certain legal actions, such as being sued for defamation for what you say at this public hearing. It also means that you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter.

PHILLIP GREEN was called.

THE CHAIR: Thanks very much for attending, Phil.

Mr Green: Thank you. I am Phillip Green, the ACT Electoral Commissioner. I thought I would briefly summarise the submission put forward by the ACT Electoral Commission, and briefly address some of the issues raised by some of the other submissions. Of course, if you wish to ask questions as I go, feel free.

The ACT Electoral Commission took the view that the commission itself would not recommend a change to the number of members in the Assembly. We do not feel that it is within our bailiwick to do that. What we were looking at in our submission was, if there was a decision taken to increase the number of members in the Assembly, what kinds of principles, particularly electoral principles, would be relevant to that decision-making process. Obviously, the number of members affects the number of electorates we have, and the number of members to be elected in each electorate. That is the primary thing that we were looking at in our submission.

The commission tried to identify guiding principles that could be used to come up with an ideal way of drawing electorates and deciding the numbers of members per electorate for the ACT, given that we have a Hare-Clark electoral system. There are two principles that are entrenched by the Proportional Representation (Hare-Clark) Entrenchment Act, one of which is that each electorate must have at least five members, and the second of which is that each electorate must have an odd number of members. The commission supports retaining those two principles.

We also identified two other principles that we thought were desirable. One was that each electorate should return the same number of members, and the other was that the total number of members should be an odd number. Combining that with the requirement to have an odd number of members in each electorate effectively means that you need an odd number of electorates as well.

We also identified relevant factors that we felt should be taken into account, including the proportionality of the options, the impact that the options might have on the stability of the Assembly, and the cost of implementing the options, particularly costs associated with increasing the number of members to be elected in each electorate. We were looking primarily there at the electoral costs, such as the costs of increasing the number of Robson rotations and increasing the size of the ballot papers.

Another factor to take into account is the impact that increasing the number of members to be elected per electorate would have on the Robson rotation system for names on ballot papers. The other relevant factor we identified was the impact that the options might have on the redistribution requirements.

Looking at all of those things, and looking at the various different combinations of numbers of electorates and numbers of members per electorate that would fit those principles, the commission feels that the most desirable option at this time, if there was a decision to increase the Assembly, is to increase the size of the Assembly by having three electorates, each returning seven members, giving a total of 21 members.

We feel that this option satisfies the principles that we have identified, while also providing for appropriate levels of proportionality and stability. We took that view primarily because we felt that a seven-member electorate more directly represents the proportion of votes as seats than does a five-member electorate.

The submission obviously goes into a lot more detail than I can give you now, but the significance of the combination of the quota system with the Hare-Clark system is that the more members you have to be elected in an electorate, the smaller the proportion of votes needed to get a seat. The difference between each iteration of votes needed to get a quota then means that the smaller the quota, the more likely it is that a difference in votes between one party and another party will give you a difference in numbers of seats won.

That then means that the more members have to be elected in an electorate, the smaller the proportion of votes in the quota becomes. However, you have to trade that off against the fact that, as the size of the quota gets smaller in proportional terms, it is easier for minor party candidates and independents to be elected. There has to be a balance between the size of the quota and the number of members to be elected. That trade-off is not really for the commission to decide. It is really for the Assembly to decide what they see as being an appropriate balance between numbers of members and the sizes of the quotas.

While we have recommended three electorates, each returning seven members, giving a total of 21, that is obviously not the only possible solution. We would certainly be prepared to look at the merits, or otherwise, of other options. That briefly summarises our submission.

I wanted to talk about some of the issues raised by other submissions. Some of the submissions suggested returning electorates with even numbers of seats. There is one recommendation for 23 members, with three electorates each returning six members, and one electorate returning five members. One of the principles that is entrenched in the Proportional Representation (Hare-Clark) Entrenchment Act is that electorates should

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have an odd number of members. We feel that that is important to follow, because it means that a party that gets 50 per cent plus one of the votes after preferences in an electorate is going to get 50 per cent plus one of the seats, which is effectively the way Hare-Clark works.

When you have an odd number of seats, 50 per cent plus one will give you four seats in a seven-member seat. If you have an even number of seats, if there are six seats, 50 per cent plus one will give you three seats, but 45 per cent will also give you three seats. A very desirable feature of an electoral system is that it should reward the party that gets more than half of the votes with more than half of the seats. An even number of members in an electorate is not going to do that for you.

In the Pettit review, Professor Pettit did address that issue, and paragraph 99 of his report discussed the issue of there being an even number of members in a seat. He said that he did not attach the same importance to this as others have done, but he did not really address the issue of the desirability of a majority of votes giving a party a majority of seats, and I really think that is a very important consideration.

Some of the other submissions suggested having electorates with different numbers of members to be elected, for example, the model with three electorates returning six, and one electorate returning five. That is one of the things that we focused on in our submission, and we thought that it was very desirable to have the same number of members in each seat.

The current situation, where we have some electorates with five and another electorate with seven members, means that the proportion of votes needed for a quota is different in each type of electorate. While the quotas are the same in absolute numbers, because of the way the boundaries are drawn, the fact that it takes a different proportion of votes to get a seat in a seven-member electorate, compared to a five-member electorate, means that you do not have a level playing field in the electorates.

Another aspect of the problem is the confusing nature of the message that we have to give to voters—the requirement in a five-member seat is to number one to five, and the requirement in a seven-member seat is to number one to seven. That is a very confusing message to get across to people. We see that there are quite a lot of advantages to having electorates of equal size.

Quite a number of the submissions suggest that electoral boundaries be constrained so that district boundaries are not split by electorates. By district we mean Tuggeranong, Belconnen, Woden Valley and so on. My view, and this is also the view represented in the Electoral Act, is that the criterion "one vote, one value" is more important than the community interest criterion. The community interest criterion is subordinate to "one vote, one value". In fact, the "one vote, one value" criterion is set out in the self-government act. It is not something that the Assembly has any control over.

I think the proposal that the boundaries be set up in such a way that they are almost engineered to ensure that districts are not split is something that is fraught with quite a number of problems. One is that you cannot guarantee, as the enrolment numbers fluctuate, that you can always draw the boundaries in such a way that you will meet the enrolment tolerances set out in the self-government act and the Electoral Act by totally

encompassing districts, even if you start tweaking the number of members to be elected in each electorate.

I would very much recommend against compromising the "one vote, one value" principle by trying to come up with a scheme that is not going to split districts. While, on current enrolment, it looks like it is probably possible to come up with boundaries that would not split districts—by having three electorates returning six members and one electorate returning five members—with that scenario one of the suggestions was to put Gungahlin and North Canberra into a five-member seat, Belconnen into a six-member seat, Tuggeranong into a six-member seat, and Woden Valley, South Canberra and Weston Creek into a six-member seat.

The latest enrolment figures for that model show the Gungahlin-North Canberra electorate returning five members being about -9.9 per cent away from the quota. At the other extreme, I think the Belconnen electorate was about 4 per cent above quota. Minus 9.9 per cent under quota two years out from an election means that it might not be possible, depending on how enrolment growth occurs in the Gungahlin area in particular, for Gungahlin's enrolment to increase to the point where it is within the plus or minus five per cent criterion that is set out in the Electoral Act at the moment.

I have my doubts that it would be possible, even with the current enrolment figures, to come up with boundaries that satisfy the enrolment tolerances and avoid splitting districts. Of course, there is no way to guarantee that, in future, the enrolment patterns are going to be such that it will be possible to come up with boundaries that do not split districts.

What I am really saying is that I think the political players around town should accept that there will always be a need to split districts because of the way the ACT is set up, and because of the overriding benefits of having "one vote, one value". While it is ideal to keep district boundaries together in one electorate, it is not always going to be possible because of the overriding consideration of "one vote, one value".

I actually think that we have been quite spoilt in the ACT in that we have been mostly able to keep districts together and suburbs together, as we have done. We are probably the only jurisdiction in Australia that has managed to have such neat electoral boundaries. If you look at electoral boundaries in other jurisdictions, particularly in metropolitan Melbourne and Sydney, you will find that their boundaries go right through suburbs, they go through streets, they cut neighbours off from one another.

We are actually very fortunate in the way that Canberra is designed, with its nice neat suburbs with green spaces around them, so that we have been able to come up with electoral boundaries that are good in the sense that they do not cut off neighbour from neighbour. Even with the splits we have in the Woden suburbs—with Chifley, Pearce and Torrens being in Brindabella, and the other Woden suburbs being in Molonglo—there are still very major four-lane roads around those particular suburbs. It is not as if we are cutting off people who are in adjoining houses.

While there are calls, for example, not to split Gungahlin, if you look at electoral redistributions elsewhere in Australia, you will see that they do a lot more heinous things with regards to dividing community interests with their electoral boundaries.

Finally, I wanted to mention what the impacts might be of having five electorates each returning five members. I have done some modelling of those possibilities, just looking at the current enrolment for each suburb as at the end of February, which are the most recent figures we have. I thought it was worth bringing to your attention that, if we were to have five electorates each returning five members, that would definitely split Belconnen and Tuggeranong, because there are too many electors in Belconnen and Tuggeranong to encompass a five-member electorate.

In fact, if we look at the geography of Tuggeranong we find that, because the two most northern suburbs, Wanniassa and Kambah, are very large suburbs, on current figures it would not even be possible to draw a five-member seat south going north that would avoid splitting probably Wanniassa. Obviously, that is something that is not desirable. We do not really want to split suburbs if we can avoid it.

However, such is the geography of Canberra that, if you were to try to divide the ACT into five seats, not only would you be splitting districts, but there is also a risk that you would be splitting suburbs as well. That is something to bear in mind. As a general rule, the fewer electorates you have, the less chance there will be that you will be splitting suburbs and districts, simply because of the mechanics—the fewer electorates you have, the more you can fit them into nice neat boundaries.

Of course, the opposite side of the argument is that the fewer the electorates you have, the larger they become, and the more districts they encompass: at the moment Molonglo stretches all the way from Weston Creek to Gungahlin. If you were to adopt three electorates of equal size, then obviously Molonglo would be smaller than it is now.

That is the end of my prepared comments. I am very happy to take questions.

THE CHAIR: Thanks very much, Phil. You note some costs. You said that, if we were to go to three electorates of seven, just for the Electoral Office that would cost $90,000 to $120,000. Is that per electorate or is that the total?

Mr Green: That was the total. That was looking particularly at the cost of increasing the number of rotations. The cost of printing the Molonglo ballot paper was much higher than the cost of printing those of Ginninderra and Brindabella at the last election for two reasons. One was that the paper was bigger, and the other was that 420 rotations means that the technology that was used to print those ballot papers cost more. In 2001, they were actually hand-collated. They were printed on great big sheets, and they had people walking around a room hand-collating the things, so the more rotations there are, the higher the cost.

The other cost is the scrutiny cost. As ballot papers are bigger, their data-entry operators take longer to handle them, so you must pay either more data-entry operators, or the same number for longer. As you are increasing the number of members to be elected in an electorate, that increases the number of numbers that voters typically write in a ballot paper, which also means that the time taken for data-entry is longer.

THE CHAIR: According to your submission, we must still obtain the approval of the federal parliament just to have an increase. Is there no way that it can be done just by the ACT?

Mr Green: No, because the self-government act states that the Assembly is limited to 17 members, unless the Commonwealth minister makes regulations under the self-government act.

THE CHAIR: Would any change, for example, if you went to an even-numbered electorate, require not only a two-thirds majority in this Assembly, but also a referendum?

Mr Green: No. The way the entrenchment act works is that you can do something that is at variance with the principles that are entrenched in the entrenchment act either by a two-thirds majority of members of the Assembly, or by a simple majority and a referendum.

THE CHAIR: Yes, thanks for that.

Mr Green: So when the Robson rotation schedule was amended before the last election, that was actually a variation of something that is entrenched in the Proportional Representation (Hare-Clark) Entrenchment Act, so that had to be passed by a two-thirds majority to have effect.

THE CHAIR: Right. You say you cannot recommend any size and I appreciate that. However, you mentioned three seven-member electorates. You also will not comment on the ultimate size after that. In your paper, you seem to state a very strong view that that question should be examined at the time—in other words, do not adopt a formula.

Mr Green: Yes, we looked at the possibility of adopting a formula. We felt that, if the options were to meet all the criteria we identified, that might mean that the jump from, say, three of seven members to perhaps three of nine might be so dramatic that it might be better to consciously adopt such a change at the time, rather than write it into a formula of some kind.

THE CHAIR: Do you have any view about what the ultimate size of the Assembly should be, given the slowly increasing population? Or do you think it is impossible to say, and that we should not speculate?

Mr Green: I suspect that it is not an electoral question. I suggest that the optimum number of members in the Assembly is really a question for the members of the Assembly. It should decide how many members it needs to form governments, backbenches, committees, ministries and so forth. These really are not electoral questions, so I do not think that it is appropriate for the commission to comment on them.

THE CHAIR: Fair comment.

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MR HARGREAVES: Can I just ask a question on that point? When we went to Tasmania, we spoke to Dr Herr who told us about the Papua New Guinea constitution stipulating that the executive shall be no more than 25 per cent of the parliament. That is, I presume, in the country's electoral act as a result of that mention in the constitution. Do you think that is a political question for the Assembly to determine, or do you think there is a role for the commission to comment on that?

Mr Green: I would not have thought that was an electoral question. Again, the question of what size an executive should be really is not an electoral question, but more a parliamentary question.

MS TUCKER: They did not have parties in New Guinea either, so it was slightly different.

MR HARGREAVES: Or had a heap of them.

MS TUCKER: I have a question about your comments about the merits of having three electorates of seven. You said that, in that situation, you would have the capacity for a greater number of members in one electorate, therefore there would be a better chance for minor parties or independents to gain seats, and that that can be perceived as a problem. The question of stability is sometimes raised in that context.

If you have five electorates each with five members, could you argue that the situation might be less stable, in terms of the capacity for the electorate to really determine which major party it prefers? If you look at the results of the last election—I had the figures upstairs, but I did not bring them down—in Ginninderra I think Labor got about 40 per cent of the vote, and the Liberals had about 30 per cent, but obviously they still got two seats each.

If you had five fives, what are your thoughts on what would happen, say, if the major parties had two members each in each electorate, so 10 each for Labor and Liberal? You could argue that you would then have to have three from the crossbench, if it ended up that way. Obviously, it is always up to the community anyway to decide whether they want major parties, minor parties or independents. I guess that could apply in either scenario. However, it does seem to me to be a point that the electorates that only have five members are less able to make voters' preferences for the major parties known.

Mr Green: That is thinking along the lines of why we recommend seven-member electorates, rather than five-member electorates.

MS TUCKER: Yes. You did not talk about that, so I wanted to know if that was part of the reason you have a preference for seven.

Mr Green: Some of the figures we presented in our submission looked at the results over the last three elections with the Hare-Clark system, and how seven-member electorates have tended to produce differences in the major party results, compared to the five-member seats. I think that is largely to do with the historical patterns that have been seen in ACT elections, where both the Liberal and Labor parties tend to get between 30 and 45 per cent of the vote each.

If you look at the table in our submission, you will see that parties getting between 35 and 50 per cent of the vote in the five-member seats each get two seats, but in the seven-member seat one is more likely to get two and the other is more likely to get three. So, you could actually argue that a seven-member seat is more likely to give you—perhaps stability is not the right word—a proportional outcome that is going to differentiate between the major parties. That would be a more accurate reflection of the will of the electorate, in the sense that it would be seen to favour one party over the other.

That accuracy might be better converted into differences in the number of seats with a seven-member seat than with a five-member seat.

MR HARGREAVES: How can you sustain that argument then if, in the last election, there were three Liberals, three Labor and one crossbencher elected in the seven-member electorate? And in Brindabella, three were elected from one party and two from the other?

Mr Green: There are always exceptions that prove rules. The difference between a five-member seat and a seven-member seat really lies in the probabilities.

MS TUCKER: It was only about a 1 per cent difference in Brindabella that took you up.

THE CHAIR: Yes. It was 16 per cent in one and 5 in the other.

MR HARGREAVES: Nonetheless, if we say that there are always exceptions to the rule, and this is the first time that has happened, we can not know whether the next election is going to throw up the same exception.

Mr Green: That is exactly right, but the point is that the smaller the quota as a proportion of the total vote, the greater the possibility that a difference in votes will give you a difference in seats. At the moment, with the five-member seats, the difference is something like 16 per cent or thereabouts. If one party is 16 per cent different from another party, there is therefore still a probability that they will get the same number of seats. That is not possible with a seven-member electorate, where a 16 per cent difference will always give you a difference in the number of seats won by the major parties. It is a matter of probability, rather than a matter of actual numbers.

MR HARGREAVES: How does that probability theory relate to past practice?

Mr Green: If you treat each election that we have had as a separate election in each electorate, we have had six five-member elections, and on only one occasion has that resulted in a difference between the Labor and Liberal outcome in seats. That is the case even with, I think, a difference of about 16 per cent between Labor and Liberal, as there was in one electorate in 2001. However, of the three Molonglo elections we have had to date, only one has resulted in Labor and Liberal having the same number of seats.

MR HARGREAVES: I am interested in the second page of your submission, where you talk about complementary changes to the redistribution provisions that could be adopted, and the boundaries of Commonwealth House of Representatives divisions that must be considered. We saw that, in Tasmania, it worked conveniently for everybody, however, the number in the House of Reps divisions there was determined long ago.

Doesn't that actually work in conflict and contrast to your need to have an odd number of electorates? As it stands at the moment, we would have two electorates and you would have the problem of an odd number of members.

Mr Green: Sorry, we are not recommending that the ACT should adopt the same number of electorates as the Commonwealth. That summary is a bit too brief. If you read the full section later in the report, what we say is, if the number of Commonwealth electorates is changed such that it becomes the same as the number of electorates we decide on for the ACT, then there would be virtue in having the electorates aligned. However, we are not recommending that the ACT align itself with the current two Commonwealth divisions.

THE CHAIR: Wouldn't that be a little difficult as an ongoing proposition, because the number of ACT federal electoral divisions is in fact determined by the population spread around the rest of the country? You may have a convergence in one election, and then all of a sudden the situation may change.

Mr Green: Exactly. The point we make in our submission is that we should not automatically adopt those boundaries for that very reason, that they do tend to oscillate between two and three and might well continue to do so for the foreseeable future. What we have recommended is, rather than automatically adopting their boundaries, putting another provision in our distribution requirements that ensures that the redistribution committee will take account of the Commonwealth boundaries. There would therefore be the option to align them with the Commonwealth boundaries, but not to automatically adopt them.

THE CHAIR: Given that the population will rise at some future stage, and there might well be further demands for, for example, three electorates of seven, what would be the Electoral Commission's point of view on how a logical, sensible increase in the number of electorates could occur, or on the type of system needed to ensure the appropriate number of electorates? It's a bit of crystal ball gazing now, I suppose.

Mr Green: I think the first thing that would be useful to facilitate that process would be to ask the Commonwealth to amend the self-government act so that every time the ACT wants to increase the number of members, it doesn't have to go cap in hand to the Commonwealth. That power has already been given to the Northern Territory parliament, and I would have thought that the same arguments would apply to us.

THE CHAIR: Yes, you mentioned that in your submission.

Mr Green: Yes. What might be appropriate in the future really depends on views about the best size of an electorate. If, for example, the view is taken that seven is really the ideal smallest electorate, then you are constrained by the need to have multiples of seven, so the next most obvious after three of seven might be five of seven, for example.

If it was felt that nine wasn't too destabilising because it lowered the quota, three of nine might be a halfway step between three of seven and five of seven. I would have thought that either five of seven or three of nine would be the two next two most obvious points to move to after three of seven.

MR HARGREAVES: Can I ask a question related to that please, Mr Chairman? As I understand it—I don't know the reason for it, but it may just have been a nice figure at the time—the decision to have 17 members related to the ratio of one member to 10,000 people, give or take a few. If we try to translate that ratio to the current situation, that would give us 22 members. Do you agree that it would be 22 members using that formula?

Would it therefore be a reasonable proposition to talk about any number that is greater than 22, to maintain the same level of representation for constituents per member? We are behind at the moment, and we would be perpetuating that situation if we went to only 21.

Mr Green: The Electoral Commission doesn't really have a view as to whether that is an appropriate way of looking at it. I am not sure whether, at the time when the decision was made to have 17 members, there was any conscious thought about using a ratio between the number of members and the population size. My recollection of the choice of 17 was that it was more a number chosen to be close to the number of members of the old House of Assembly, which I think was 18, but I am not entirely sure about that.

What we have tried to do in our submission is come up with an almost theoretical method for deciding the numbers of members. Obviously, the real world might dictate that 21 is not enough, and you might want to go to something higher than that. What we have tried to do is come up with some principles that could be followed to decide on an appropriate level. If the feeling is that 21 will not be enough then, using the principles we have identified, the next two most obvious models would be either five of five, or three of nine, giving 27.

MR HARGREAVES: Given that you have said that you did not think it was a good idea to entrench a population increase formula—I accept that because there are vagaries involved—does the commission feel that the ratio of the number of members to the population size that has occurred in the past is a valid formula to consider each time?

Mr Green: Certainly, there is no reason why you would not look at things in a formula sense, but I would put to you that it is not really an electoral issue. It is really a representational issue, and so more something for members to look at as representatives rather than an electoral matter.

One thing that we did not mention in the submission but that occurs to me now is, under the self-government act as it currently stands, it might not be within the Assembly's power to provide for an automatic increase in the number of members without the Commonwealth agreeing to each increase as it happens. I do not know whether the self-government act, as it is currently framed, will allow you to provide for an automatic increase without the government making appropriate regulations at the appropriate point in time. That is something you might need to keep in mind.

THE CHAIR: Any further questions, Kerrie?

MS TUCKER: Just one. I do not know if you want to comment on this matter. I noticed it in one of the submissions from Mr Hird. I was just looking at our terms of reference, but I guess this fits into "any related matter". It was about your office and the process for dispute settlement. Do you have a comment on that? Did you see that comment from Mr Hird?

Mr Green: I did.

MS TUCKER: Do you have a comment on that?

Mr Green: The Electoral Commission is currently writing two reports, which will be tabled in the Assembly later in the year. One is on electronic voting and the other is on the conduct of the election. We will be going into the issues raised by Mr Hird in his submission, so the commission as a whole has not formally discussed the issues that he has raised because we saw it as being outside the scope of this particular inquiry.

However, without having consulted the other commission members on the issues that he raised, I will comment to some extent. Mr Hird raised two matters: one was whether the commissioner should sit on the review of a decision to conduct a recount. I think that is probably something we should look at, because that part of the act is separate from the reviewable decisions part, where it is specified that the commissioner shouldn't sit in review of a decision that the commission made originally.

The other point he made was that, rather than appeal to the Supreme Court when challenging election results, he wishes to go to the Administrative Appeals Tribunal, as an alternative. I certainly wouldn't support that approach, because a decision about contesting an election result is something that should be made by a senior court. If you look at jurisdictions all around Australia, I think you will find that they all go to an equivalent court, such as the Supreme Court. I think it's the High Court in the case of the Commonwealth.

What you want to do with an electoral petition is deal with it once in a competent court, and deal with it once only. In fact, the ACT recently petitioned the Commonwealth to change the Federal Court act to be sure that there were no appeals from the ACT Supreme Court—sitting as the Court of Disputed Elections—to the Federal Court, as used to occur.

It's an important principle of electoral petitions that there be certainty in the process, so that certainty is provided by there being only one court of appeal. Certainly, you wouldn't expect the AAT to be the one and only court of appeal for an election petition, so I think there are very strong reasons for keeping the system the way it is.

MR HARGREAVES: Is there justification, then, for creating within our Supreme Court system a court of disputed returns, and empowering it with just that responsibility?

Mr Green: That is there under the Electoral Act at the moment.

THE CHAIR: I have another couple of questions. All the questions so far have been about an increase in the size of the Assembly. A number of our submissions have suggested a decrease. I'm not going to go into the fact that some submissions said that

we shouldn't have self-government—to hell with that. I don't think the Commonwealth is remotely interested in abolishing self-government. However, someone said that in the other submissions there were suggestions that the Assembly actually decrease to 15. Would you care to offer any comment on that from the Electoral Commission's point of view?

Mr Green: Three electorates of five would certainly be feasible. It would be just like having three Ginninderra/Brindabellas, as we currently have them. As we've discussed, a five-member electorate does not produce the same proportion of votes to seats won as a seven-member electorate does, and doesn't tend to give you that differentiation between Labor and Liberal, so that issue would arise with three five-member seats. However, technically there is no reason why that wouldn't be feasible.

THE CHAIR: All right. Mr Green, thank you very much for your submission and also your attendance here today.

MIKO KIRSCHBAUM was called.

THE CHAIR: Miko, thanks very much for attending You were here when I gave the general blurb about these proceedings being under privilege and about giving false or misleading evidence. I am not going to repeat that, nor will I for Mr Clode, who is here as well. I thank you for your submission. You have had an interest in this for some time. I would ask you to speak to your submission and then to answer any questions the committee has.

Dr Kirschbaum: Please feel free to interrupt me at any time. The things I will be talking about have a lot to do with simulations I have done of possible electoral outcomes. If anything is unclear about the process I follow, please do not let me rattle on but interrupt me.

Overall, I am very much in support of an increase in the size of the Assembly. I have seen the workload increase, especially for Kerrie Tucker now that there is only one Green instead of two Greens as in an earlier Assembly. I appreciate very much the enormous amount of work all members of the Assembly do. They are very much reaching the human limit as to what can be done. From a community point of view, I expect that better outcomes can be achieved if that workload is shared by more members. I support an increase on those grounds.

The table in my submission and in the background material compares the size of the ACT and the representation here with other parts of Australia. It bears out very clearly that the representation we have is so much less than what is enjoyed by other parts of Australia. It makes a clear case for an increase in the size of the Assembly.

The final point in my submission draws the attention of the committee to the only indication I know of of what the people in the ACT have said. That is from a *Canberra Times* phone poll. Sixty-five per cent of people who rang in said they supported an increase in the size of the Assembly.

MR HARGREAVES: How many people rang?

Dr Kirschbaum: I do not know that.

MR HARGREAVES: Sixty-five per cent of 10 is only 6½ people.

Dr Kirschbaum: Maybe it was only three, but—

THE CHAIR: Was that a Sunday poll?

Dr Kirschbaum: It was a Sunday poll. They did not publish the number of people who rang.

MR HARGREAVES: We have to believe it in that case.

Dr Kirschbaum: All I know is that it was 61.5 per cent.

MR HARGREAVES: That could mean that 6½ people rang in and said it was fine.

THE CHAIR: We don't know.

Dr Kirschbaum: That's a valid point. The information is not available to me, so I can't answer that. I took the votes received by different parties at the last two elections—the 1998 and 2001 elections—and I ran them through a computer simulation program that used information from scrutineers and the Electoral Commission on the distribution of preferences.

I put all that into the simulation and looked at the likely outcomes with different sized electorates. That forms the most important part of the submission. It confirmed what was just said by Phil Green. Had we had five-member electorates in Molonglo as well as Brindabella and Ginninderra, it would most likely have resulted in a deadlock between the two major parties. As you know, the only exception is Brindabella. It is likely that Molonglo would have been deadlocked, with two members from each of the major parties, in 1998 and in 2001 as well.

MR HARGREAVES: Before you go on, could I just talk about the methodology?. Did you take it booth by booth and then notionally distribute amongst five, or did you take it as an average across the lot?

Dr Kirschbaum: I went on the percentages received as first preferences.

MR HARGREAVES: On the total of the ACT?

Dr Kirschbaum: The total for Brindabella was 42.1 per cent. In the distribution of preferences from the minor parties—the Gungahlin Equity Party or whatever it was— 30 per cent went to Liberals, 20 per cent to Greens, and whatever. For the simulations, I kept the electorate of Brindabella intact. Of course there would have to be some boundary shifts if we were to go to equal size electorates. I did not take that into consideration.

I also did a simulation on five electorates of five members each. For that I had to make artificial new electorates. For those, I used individual booth results as the input percentages.

MR HARGREAVES: The reason why I asked the question—and I'm interested in your view on this—is that the variation we're talking about is between 4 and 5 per cent. For example, in the 2001 election the ALP vote in the five-member electorates was 43 per cent—

Dr Kirschbaum: You are looking at the appendix?

MR HARGREAVES: Your appendix, yes. In table 1 in your submission I see a variation of 4 per cent. The ALP vote in Molonglo was 39 per cent and in Brindabella close to 44 per cent. Is there enough of a difference in that to say you can't take it across Canberra as an average?

Dr Kirschbaum: With the simulations for five-member electorates there are significant uncertainties. If I had divided the ACT differently, then the outcomes would have been somewhat different. I have less confidence in the predictions on five-member electorates than in the other simulations.

The ACT is fairly homogeneous in its voting patterns compared to other parts of Australia, but it nonetheless does have regional differences. I think Brindabella is historically fairly strong for Labor, so it does make a difference that there is a 5 per cent difference between Brindabella and Molonglo.

If you look at the second table in the main part of my submission, you will see that had there been five electorates of five members there is a small possibility that the ALP could have ended up with an absolute majority of seats. I think that is an unlikely outcome, but it is within the range of possibilities. It is possible only because there are regional differences within the ACT. On the subdivisions I did, it was unlikely and was possible only if the AFP did as well as it did in the 1998 election. I think that was the best result the ALP has had in the ACT since self-government. It will be a difficult task for that to be maintained.

MR HARGREAVES: We'll see.

Dr Kirschbaum: It was a very good outcome.

MR HARGREAVES: I thought it was great.

Dr Kirschbaum: It will certainly be very difficult for you to maintain three seats in Brindabella. We will know in three years.

MR HARGREAVES: We're doing our best to make sure of that.

Dr Kirschbaum: I'm sure you will. I hope that answers your question.

MR HARGREAVES: It does. One of the things that struck me with all of the figures from the other submissions is that a couple of per cent makes an enormous difference. Critical to the outcome of an election is where the electoral boundaries are drawn. If, for example, we decided on a five-member system and we split Tuggeranong and put the top end of Tuggeranong—as you put it, the strength of the Labor vote—into Molonglo, that would skew the result.

Dr Kirschbaum: Yes. It clearly would make a difference. When you say that a few per cent makes a difference, we have to keep in mind that the ALP outpolled the Liberal Party by 10 per cent at the last election, and the Liberal Party outpolled the ALP by 10 per cent the election before. That is a very big difference. It comes to the limits of where you think it ought to express itself in the difference in seats won.

In 1998, my most likely outcome for five seats of five is that it would not have made a difference. The most likely outcome would have been 10 ALP and 10 Liberals, despite a 10 per cent difference in votes. In 2001 the most likely outcome would have been a one-seat majority for the ALP, despite a 10 per cent difference in votes. Add another

few per cent on the top of the 10 per cent and it starts to become so overwhelming that it doesn't matter what electoral system you use. You will start to see a difference.

It is important to ask oneself what constitutes a more stable configuration of the Assembly. There is often a perception that the more minor parties there are, the less stable it is. I don't think it is as simplistic as that. Let us look at the total numbers under the different scenarios. In the 1998 election, with three electorates of five members, there would have been six ALP, six Liberals, one Green, Osborne and Rugendyke. With seven-member electorates, there would have been six ALP, nine Liberals, three Greens, Osborne, Rugendyke and Michael Moore. If there had been three electorates of five, either the ALP or the Liberal Party would have needed an additional two seats to get a working majority. So they would have needed the support of two others from the Greens, Osborne and Rugendyke.

With 17 members, the Liberal Party, being the dominant party then, would have needed the support of two votes from three Green candidates, Osborne, Rugendyke and Michael Moore. I think it would have been easier for them to get a working majority with the support of two out of six possible supporters than with the support of two out of three.

MR HARGREAVES: Or one out of two.

Dr Kirschbaum: That would not have been enough in that instance. Two out of three would have been more difficult. Comparing those two situations, the more stable working environment would have been the one based on three electorates of seven members rather than one based on three electorates of five.

MR HARGREAVES: Have you addressed the possibility of five fives?

Dr Kirschbaum: With five and five, it is fairly clear that in 1998 the Greens would have become the absolute power broker. That is the most likely outcome.

MR HARGREAVES: What makes you think they weren't?

Dr Kirschbaum: As far as I recall the situation, that was not the way the last Assembly grouped.

MR HARGREAVES: We're still enjoying that.

Dr Kirschbaum: I'm sure the committee can discuss that at greater length.

THE CHAIR: For the 1998 election, under five and five, you have the quite likely scenario of 10 ALP and 10 Liberal, even though there was a 10 per cent difference in the vote in favour of the Liberal Party, and then you have eight ALP and 12 Liberal as another scenario. That's a possible scenario, is it?

Dr Kirschbaum: Yes.

THE CHAIR: Just like your nine Liberal and 13 ALP if it had been five and five in the 2001 election?

Dr Kirschbaum: Yes. In the appendix I go through the five electorates in detail. In 1998 the one where the Liberal Party could have won a third seat is what I call Central Canberra, where the Liberal Party would have had 41.1 per cent of the vote. In my footnote, I said it was unlikely, because Kate Carnell would have stood as a candidate and would have had so much of the vote in her own name that it would have made it very difficult for the second and third candidates to win a seat. If she had stood in that electorate, it would have made it more difficult for the Liberal Party to win the third seat there.

The one that's more likely is Woden/Weston Creek, where the Liberal Party would have had even more, with 41.7 per cent. These simulations depend a lot on the spread of the vote within the competing parties. If it is evenly spread amongst two or three candidates for Labor or Liberal, it is more likely that three candidates would have been elected. If the vote is very strongly taken up by a leading candidate, then that person gets elected very easily, but it makes it very difficult for the second or third candidates to be elected. Not knowing who the individual candidates would have been in particular electorates makes it difficult to be too certain.

THE CHAIR: Do you have a recommendation on the ideal number of members per electorate?

Dr Kirschbaum: As I said in the beginning, I think there is a strong case for an increase in the size of the Assembly. At the same time, I think changes should not be too drastic. Going to 21 is the natural next step. It has the additional advantages that Phil Green pointed to, such as an evenness of electorates. That is an important consideration. The difference in the size of electorates leads to a significant unfairness for voters in Brindabella and Ginninderra. They find it very difficult to translate their preferences between the major parties into outcomes. That is not a desirable situation.

Seven-member electorates allow that discrimination to take effect. In Molonglo there was a deadlock between Labor and Liberal, but the outcome pretty much reflected what voters wanted. There was not much difference between Labor and Liberal and there was not much support for a second minor party. The Democrats polled only 6 per cent or so, and that's not enough to be deserving of a seat. Voters got what they asked for. That is what electoral systems should do.

Going back to your question, 21 is a sensible next step. With 23 I would feel somewhat uneasy about the untidiness that comes with having to juggle different sized electorates. I disagree somewhat with points made by Phil Green about the disadvantage of even sized electorates. I know the theoretical argument in favour of or against even sized electorates. But look at it more specifically in the context of the ACT. Given that we do have a large non-major party vote in the ACT, and given that no major party has ever come close to reaching 50 per cent of the vote, we need not be so concerned about the notional point that a majority of voter support should translate to a majority of seats. That is not happening anyway. The more important principle is whether the different voter support between Labor and Liberal translates into a different number of seats. With equal electorates, it is likely to translate into a different number of seats.

The 10 per cent difference between Labor and Liberal, under almost all circumstances I looked at, did translate into three from one major party, two of the other major party and one minor party representative. Twenty-three is a possibility, but having all electorates equal is a very important consideration. Twenty-five is an option, but would be a pretty radical change from the way the Assembly is at the moment. I think there would be disadvantages in the representation it is likely we would end up with.

It is likely that we would not see enough discrimination between the major parties, and I don't think it would add stability. It is more likely that we would end up with big power blocs that would find it harder to work together. With a larger number of elected members, it is likely that there would a greater number of players in the Assembly and it would bring stability to finding working majorities within that greater diversity.

MR HARGREAVES: You are saying that with a greater number of players in the Assembly bargaining will give you a greater chance of stability, given that we are unlikely to have majority government as a norm. In the last Assembly we had four crossbench members out of 17. You say that that proportion of representation reflected their share of the vote. At the moment we have two crossbenchers. Which one of the two Assemblies appears to provide the greater stability?

Dr Kirschbaum: The big difference with this Assembly is that the dominant major party is very close to having an absolute majority, so it only needs support from either the Greens or the Democrats to get the numbers, plus there is scope to find common ground on a lot of issues.

In the previous Assembly the government was a long way from having an absolute majority, so it required support from five independents, if you include Trevor Kaine, who left the Liberal Party.

MR HARGREAVES: It needed two out of four.

MS TUCKER: No, it needed Michael Moore.

MR HARGREAVES: He was in it.

MS TUCKER: Some times.

THE CHAIR: Some times.

MR HARGREAVES: We are talking about a coalition government in an academic sense.

Dr Kirschbaum: With the small numbers the Liberal Party had in the last Assembly, it was very difficult to find majority support. Given the smaller base on which they started, it worked in a remarkable stable way. I don't want to comment on the political outcomes, but in terms of stability there was not a major problem. It worked remarkably well. Barring the very first Assembly, the ACT has done remarkably well in terms of stability in dealing with minority governments. By and large, in a constructive way and as a body politic, it has performed well.

THE CHAIR: You have suggested probably three electorates of seven. You have heard Phil Green's comment about not setting a formula in stone but looking at the issue as it crops up. Do you have any comments on a formula for the number of voters per member? Would you agree with the Electoral Commissioner that we should look at that in the future as required rather this committee setting a target for the Assembly?

Dr Kirschbaum: If one accepts the notion that the ACT is divided into fixed defined electorates, then the size of the Assembly is very much tied up with the question of how that number is to be subdivided. I think that militates against having a fixed formula. Twenty-one seems a good neat number and has advantage, but 23 runs into difficulties and runs against the entrenchment provisions and so on.

If one were to treat the ACT as a single electorate, there would be a stronger case for having a fixed formula. I think there is an advantage in taking away the size of the Assembly as a political issue. A fixed formula set in stone would make the decision rather than it being a political football.

But if we do have a subdivision into three electorates, or whatever number, making a decision about when an increase would be appropriate might be the better way to go. A fixed equation for numbers of members and numbers of voters is probably not the best formula, because there are economies of scale in the Assembly. We need only one Speaker, for example. It is appropriate for the number of members per voter to decrease with the size of the ACT. If a formula were chosen, it should reflect that. I don't want to offer a specific suggestion.

MR HARGREAVES: Society is keen on making sure representation is proportional. If a member of the Assembly represents X number of people, and the population grows, isn't there therefore a reason to increase the size of the Assembly by the same proportion as the population has increased?

Dr Kirschbaum: Arguments about proportional representation have never been about the proportionality between the number of members and the number of voters but about the representation of political views within any political body, whatever size it is. I have been the convenor of the Proportional Representation Society for some years. Over that time it has never been an issue we have discussed.

MR HARGREAVES: Wouldn't you agree that if the number of people increases the number involved in the political process should automatically increase as well?

Dr Kirschbaum: No. What is important is to have an Assembly of optimal size. Optimality is not strictly proportional to the size of the electorate. For example, we need only one Chief Minister. It doesn't matter how big the ACT is. The workload does not increase in proportion to the number of people who need to be represented. We need only one Speaker and one committee like this. While you might have more submissions from more people in the ACT, only the same number of issues need to be dealt with.

MR HARGREAVES: In representational terms, as opposed to governance, the relationship between the 17 members and the population in 1999, if they all did the right thing, was quite different from the relationship now. I would argue that my workload in connection with the community is greater now than it was when I was first elected.

Dr Kirschbaum: There are two aspects to being a member. One is dealing with constituent problems. That aspect would go up in proportion with the number of people you represent. The other aspect—sitting on committee's and making laws—does not go up with the number of people you represent. Therefore, I think it is appropriate that the size of the Assembly should increase with the size of the population. But I don't think it should increase in proportion to the size of the population. If you divide your work as a member—half looking after constituent aspects and half looking after making laws—

MR HARGREAVES: I wish.

Dr Kirschbaum: I don't know how you divide it, but you might be able to come up with—

MR HARGREAVES: About 70:30, because of the increase in people.

Dr Kirschbaum: That breakdown of your work provides the basis for a formula to link the size of the Assembly explicitly to the population.

MR HARGREAVES: I hear you saying that it is not the one and only criterion for an increase in the size of the Assembly and that quality of governance should be a reason, so it is a combination of those.

Dr Kirschbaum: Ultimately it is all about the quality of government or the quality of Assembly work. That is the only reason why you have the Assembly. The quality goes down if you're overloaded. I see this happening at the moment, and as a consequence I think an increase in the number of members is appropriate.

THE CHAIR: Some submissions have suggested a decrease. The figure which has been bandied about is 15. Would you care to comment on that? I take it from what you're saying you don't agree with it.

Dr Kirschbaum: I think members are overworked at the moment. They would be more overworked if there were even fewer members. On the simulated outcomes, the difference between Labor and Liberal would not be reflected in the difference in the number of seats they held. I don't think it would be a good political outcome. In my view, that proposal does not have anything to recommend it.

MR HARGREAVES: Quality of governance is what we're all about. Hopefully our recommendations will improve the quality of governance. You talked about the workload of the Assembly, which is divided into constituent representations and governance, split into the executive work and committee work. The size of the ministry is determined by legislation. A lot of your recommendations are based on the results of a mathematical formula being translated into the political process, which is not a bad place to start.

In the interests of good governance, and not the exercising of power by a few, what is your view on insisting that the government backbench be greater in size than the executive?

Dr Kirschbaum: That's interesting.

MR HARGREAVES: Whether Labor, Liberal or the Greens are in power would not matter. The executive at the moment is a maximum of five. With 17 members, I think the chances of any party getting more than eight members is an aberration. Therefore, the executive is always going to be greater in number than the backbench. Therefore the executive view will prevail and the party room will prevail over the Assembly because of the accommodations reached with the crossbench, so in fact we will have rule by a party of—

MS TUCKER: That's not right.

MR HARGREAVES: Yes, it is. We have the possibility of the town being governed by five people.

THE CHAIR: He has just put you in cabinet, Kerrie.

MR HARGREAVES: No, I haven't.

MS TUCKER: You've just discounted the whole opposition and crossbench.

MR HARGREAVES: No, I haven't.

Dr Kirschbaum: That is one specific aspect of where the numbers matter. It gives an overly large importance to that particular comparison of numbers. I don't think what happens in the Assembly as a whole is determined primarily by the interplay between the backbench and the executive. It is important that enough backbenchers be available to work on committees. But I don't think a numerical comparison between backbenchers and the executive is the appropriate comparison to make.

It was hard in the previous Assembly when there was only one government backbencher. That was clearly an insufficient number. It is probably a doable proposition at the moment. I appreciate that you would be able to do the committee work more effectively if there were more backbenchers. But the comparison of voting in the party room is a rather long bow to draw in seeking a basis on which to make a decision about the Assembly.

MR HARGREAVES: If you took the view that it was a reasonable idea to have one member to 10,000 electors, we would go to 22. The next number above 22 that would enable a braking system on the executive before it got to the Assembly would be 23, and probably the best number, to accommodate the committee system as well, would be 25.

Dr Kirschbaum: Numerically that would be correct, but that puts too much emphasis on that particular comparison. Generally the Chief Minister gets his or her way and the numbers otherwise don't matter that much—with some Chief Ministers more than others.

MS TUCKER: The issue in this Assembly is the committee workload for the crossbench, because there are only two crossbench members. I am on four committees. That's a lot. It is similar to the difficulty Harold Hird had.

Dr Kirschbaum: That is partly due to the fact that voters in Molonglo chose to support only one crossbencher.

MS TUCKER: I understand that. There's nothing you can do about that. We're looking at the difficulties in this Assembly. There's still an issue. It's how people vote. We have to work with that. It raises questions for me about how you apply that notion of proportionality to putting people on committees.

It is important to have a crossbench member on a three-person committee. Ros Dundas and I are doing that work. The major parties could say, "The election produced this result, so we won't bother having crossbenchers on all the committees. We will have just Labor and Liberal."

MR HARGREAVES: We could do that under the current numbers.

MS TUCKER: I know. We've made a decision not to do that.

MR HARGREAVES: Exactly. I agree with you, yes.

MS TUCKER: Looking at the proportion of the vote of people other than members of the major parties, you could argue that the committees should be two people instead of three people.

Dr Kirschbaum: The overarching outcome of these simulations is that whether it is five-member electorates or seven-member electorates it doesn't change the situation for the governing party a lot. They're still one or two seats short of an absolute majority. Going from five-member electorates to seven-member electorates generally decreased the numbers in the opposition party and increased representation on the crossbenches. That would make the committee work you talk about easier to handle.

MR HARGREAVES: From that perspective?

Dr Kirschbaum: From that perspective yes. It would be a more desirable outcome, in my view, for the Assembly to have more crossbenchers at the expense of opposition members, because they represent a more important role in society.

MR HARGREAVES: But who said that? Did the people who gave them the votes they got say that, or is that a personal view?

Dr Kirschbaum: There are two things. One has to accept the way people vote. That's fine. If people only want two major parties to be represented, then that's the outcome you would get under any electoral system. The second question is: if people do indicate that they want crossbench representation, then to what extent can that be expressed through an electoral system? A five-member electorate suppresses that voter intent, because it essentially only allows one crossbencher and two from each of the major parties. A five-member electorate in that sense suppresses what the voters say, whereas a seven-member electorate allows a greater reflection of voter support.

MR HARGREAVES: So you're saying the lower the quota, the better chance of minor parties being represented, and that's a great thing?

Dr Kirschbaum: That's one aspect, but it's not the only aspect. It also allows greater discrimination between the two major parties, which is also a very important aspect. It's not just the one aspect that one should look at. Both aspects are equally important.

THE CHAIR: Your figures for seven-member electorates would indicate a larger number of members from major parties.

Dr Kirschbaum: Not as a proportion, though. Going from five to seven keeps the dominant major party just below an absolute majority. In none of the scenarios did the dominant major party achieve an absolute majority in its own right. But it was to the disadvantage of the less dominant of the major parties. There was more crossbench representation at the expense of the opposition party.

I also did a simulation of a 17 and 21-member electorate as a whole, which came out with a result remarkably similar to the representation we have with the current 17 members, which I found a little surprising. On the voting pattern over the last two elections, with one electorate as a whole there would not have been any splinter groups prevented from being elected by the somewhat high quota. That's also an interesting aspect to keep in mind.

THE CHAIR: What percentage of the vote would a major party need to get four out of seven members in a seven-member electorate?

Dr Kirschbaum: Basically 50 per cent, or close enough to it so that with preferences they could stay ahead of whoever else might get the fourth seat. It has to be pretty close to 50 per cent. The ALP had 42 per cent in 2001. About 10 per cent voted for groups and individuals that did not get represented. If one distributes that extra 10 per cent in proportion to all the other groups, that would have brought the ALP up to about 46 per cent, which comes reasonably close to the 50 per cent. In Brindabella the ALP probably would have won four out of seven, just as they won three seats in two electorates, but in neither Molonglo nor Ginninderra would that have been a likely outcome.

THE CHAIR: Thank you very much.

DANIEL HAROLD CLODE was called.

THE CHAIR: Daniel was here when I read out the general blurb on the green sheet to all potential witnesses, so I will not go through that again. Daniel, please give your full name and position for the transcript—and anything you would like to say to address your submission.

Mr Clode: My name is Daniel Harold Clode. I appear for the Liberal Party of Australia, ACT division, in the capacity of director of the division. I will not repeat anything I have said in the submission I have presented. I think that would be a waste of everyone's time. We have made our primary views quite clear, in writing.

Instead, I will elaborate on some specific evidence in support of our submission and provide evidence to fill in some of the gaps in the committee's knowledge. I know it has been on a field trip, so it may have filled in some of these gaps separately from what has been presented in evidence. In the evidence, people made a large number of assumptions and mentioned urban myths, but they have not necessarily filled in the blanks for you. Today I will be giving you five appendices to our submissions which fill in some of those blanks brought about by the urban myths, some of which are true, and some of which ought to be debunked.

Firstly, by way of clarification, there was a *Canberra Times* article that referred to our submission. I will correct a couple of mistakes in that. It says that we supported a 25-seat model involving five electorates of five MLAs. That is not the best summary of our submission.

The article also said we support the adoption of a system of parliamentary secretaries to lighten the workload of cabinet. For the record, we are not calling for black and white, and saying we want a system of parliamentary secretaries. We just make the point that, amongst the professional mechanisms that modern parliaments tend to have in a Westminster system, that is one of the mechanisms that is simply not possible because of the current shortage of MLAs.

The general theme of our submission in my presentation today is basically that, when we look at the aggregate size of the Legislative Assembly and whether it needs to be changed or not, it comes down to one simple question, which sounds a bit simplistic at first glance. That is the question: do you believe in democracy? Do you believe in having a best-practice parliament that has a sufficient economy of scale, or do you believe in a sort of veneer or laminate democracy?

There were some juicy quotes in submissions 12 and 17 to the committee. I recall that both Professor Halligan and Professor Wettenhall referred to a democratic deficit and a capacity deficit. That is one point on which I will shortly be presenting evidence. In submission 17, Mr Frank Alcorta said that parliament has ceded, to a very large and alarming extent, its guardianship of public administration to an unelected group.

The assumption that, if we leave things the same, then all other factors are equal is not true. As the workload of MLAs and the executive gets heavier, that workload is falling upon unelected public servants who have not invited that extra workload. They take over

what ought to be the province of the democratic legislature and not the province of an unelected public service. I will circulate the first appendix.

THE CHAIR: Do you wish these to be added to your submission?

Mr Clode: Yes, I wish these five appendices to be added to our submission. The first one gives the size of parliaments around the world for 178 democracies. People are talking generally, in their submissions, about what is or is not an "appropriate minimum". In the course of this inquiry, it is quite clear that we are all very mindful of the need to keep within the expectations of Canberran voters and keep the number low, whilst reaching a sufficient level for the parliament to do its job adequately.

This comparison of 178 parliaments is a comparison of national parliaments, so they have responsibilities that we do not have. However, the offsetting factor is that our legislature has local government factors added on top of its responsibilities.

Taking the first three countries there, those are all non-democracies. You can have a parliament in a non-democracy. Those first three countries are all Marxist-Communist dictatorships and are therefore invalid for the purpose of comparison.

If you take the remaining 175 countries, you are looking at a range of between 666 seats—down to 14 in Micronesia. The high point is obviously around the 650 mark and the low point is around 15. Some of the submissions alluded to those when they called for a decrease. The norm is about 300 to 100.

If you take those countries that are below the mark of 40, there are only 19 countries with parliaments of less than 40 people. All these either (a) have a very low population; or (b) very low GDP per capita. In fact, most are characterised by both those features. You will see that almost all of those are Caribbean nations such as Jamaica, Antigua, Barbuda, Saint Kitts and Nevis.

Apart from Monaco and Liechtenstein, almost all are Caribbean or African nations. To borrow language from the Labor Party, you might describe them as banana republics. Indeed, they all have climates well suited to banana growing economies. That is the first thing.

I am not saying this is some definitive guide to how parliamentary numbers ought to be worked out, but it gives a rule of thumb as to the norm, in a modern economy with a decent sized budget, in democratic institutions of appropriate scale.

MR HARGREAVES: This is a very useful thing. I notice that Kiribati has 42. I have been there. They have about one member each, as far as I can remember. I would ask, though: where is the relevance of this to a territory or state-sized government when there is no relationship in here between the nature of the level of governments? These are all federal jurisdictional governments. We in the ACT, as you know, have both state and municipal functions but no territory ones. Apart from saying that there is a population and a GDP, what other relevance can we possibly take from this?

Mr Clode: The point of relevance is that there are certain functions in a Westminster system which ensure due process, in that you need your speaker and deputy speaker, and if you are going to have a Westminster executive, you need a certain number. You need an opposition of a certain number, and you need committees of certain numbers to be formed.

Putting to one side the question of responsibilities (when it comes to policy responsibilities), if you take only legislative responsibilities, bear in mind that some of these are parliaments in systems where there are executive governments external to the parliament. This is just one proxy measure of critical mass and one of three that I am about to circulate.

The second one—appendix 2—is more to the point. It is a summation of the size of American state parliaments. Of course, as one submission pointed out, there they have five layers of government, so you would expect their state parliaments not to have as many people. If you take the smaller end of the scale, the point with the United States is that you are looking at a sample of 50 states with diverse electoral arrangements. You are talking about a sufficient sample size to assess what has been regarded as a viable minimum in an advanced democracy. You are talking about a democracy that has about 200 years of democratic experience and experimentation.

Looking at the lower end of the scale, the smallest of their parliaments is Nebraska, a unicameral chamber with 49 MPs. Above that, we see Alaska, 60; Delaware, 62; Nevada, 63; Hawaii, 76; Arizona, 90; Oregon, 90 and Wyoming, 90. Again, this has no direct comparison with the ACT, because we are a territory—we do not regard ourselves as a state. Our population is smaller than any of these, although a couple of the jurisdictions have populations in the hundreds of thousands, which are slightly comparable to the ACT. That is one proxy measure you can add to the first one circulated.

The third one makes a comparison a little closer to home. Before I go to the third one, I will point out that, in public submission No 4, Mr David Bull cobbled together some numbers comparing MPs per head of population in states and territories. That comparison assumed one was looking at a flat-line equation of MPs per head of population, rather than an equation in which there is a minimum effective size. In our submission, we made comparisons only with what we regarded as relevant jurisdictions, being the small ones—Tasmania and the Northern Territory.

In political science, there is the cube root law of assembly sizes—that is, as a very rough rule, the number of seats in an assembly tends to closely resemble the cube root of population of the jurisdiction. In other words, you are not looking at a straight-line equation between population and MPs, you are looking at a curve that links against the graph with a minimum critical capacity. It is a simplistic law, but political scientists have been arguing this one since 1910 or so, and there is a reasonable body of evidence to support it. Slightly different cube ratios apply to the Anglo-Saxon models of democracies versus European ones, but the general rule does apply.

MR HARGREAVES: Daniel, if you apply the cube root to the population of the ACT, what would the number be?

Mr Clode: I knew someone would ask that. I will not say it, so I will not be the one quoted.

MR HARGREAVES: You have just made the point that it is a model.

Mr Clode: Okay—a number much larger than in the contemplation of anyone who has put in a submission.

MR HARGREAVES: What is it?

Mr Clode: It is a very simple equation to work out.

MR HARGREAVES: You have done it. If you are going to sit before this committee with a model, then I would like to ask you what the result of that was.

Mr Clode: I am saying it is a principle. It is not a model that I accept as a legitimate model, so I will not put a number to it.

MR HARGREAVES: Are you telling this committee that you do not know the answer?

THE CHAIR: John, just let him go on, for goodness sake!

Mr Clode: It is on my post-it note, but the book is closed.

MR HARGREAVES: I want to know what the answer is.

Mr Clode: Appendix 3 gives an example a little closer to home. This is the Tasmanian Morling report, which you probably will have come across in your trips down there. This was an independent body. The Morling report was done in much the same manner as the Pettit report. They talk about an obvious minimum number of members, and find several ways to achieve that.

The Tasmanian Liberal Party submission, back in the early days of this debate, said that 25 could be done. This report says that the suggestion of 25 did not receive significant support from any other quarter because it was too minimalist. Twenty-five is regarded as too low in the Tasmanian context. The Morling report states that they believe the Assembly could operate with as few as 30 members. In the main, canvassing the issue of ministries, they said they thought a realistic number might be 10. They pointed out that, at the time this report was published, the average number of portfolios per minister was 2.3.

MR HARGREAVES: I note that, on table 4 of appendix 3 to your submission, there are comparisons but there is no comparison with the ACT. We had a government, and ministers, in 1994. Let the record show that this is a little skewed.

Mr Clode: The point is that I have given you a smorgasbord of three different benchmarks, but I am not saying that I believe any of these are right. They are all off the point, when it comes to a small city-state such as the ACT. So, Mr Hargreaves, I would encourage you not to think I am saying any of these are gospel. I am presenting some proxy measures. No-one else has done the homework and come to this committee and

said, "Here is a complete compendium of the size of national parliaments around the world," or, "Here is a complete compendium of state parliaments within federations around the world."

Had time permitted, I would have given you the data from India, Canada and the United States, but I was able to get only the US data to you today. I spoke to the Canadian High Commission today. They were unable to assist me with Canadian figures in the short time frame, but I have given you a number of proxies.

MR HARGREAVES: Did you give a New Zealand one?

Mr Clode: New Zealand is not a federation, and it never has been. As you can see from this, Tasmania has a higher expectation of what their parliament can do. Perhaps one can say, tongue in cheek, that this is what happens when you let people practise democracy for over 100 years. They have higher expectations than some people of the ACT parliament and the number it ought to have.

In commenting on the backbench, which Mr Hargreaves identified as a problematic question, the Morling report said a six-member backbench government would be required to staff the two estimates committees—and, even with those numbers, a government of 18 members would be working at close to capacity.

I do not think the discussion here is a relevant guide for us, but it is another proxy which shows that people in the ACT are debating very low-end expectations. I think we should keep within the expectations that the local population will wear, yet be mindful of the fact that, if you are too timid, you will be losing perspective on the situation in the modern democratic world.

MR HARGREAVES: If we keep within their low expectations because we think that is a politically sensible thing to do, will we forever sentence ourselves to that low esteem that these people will feel?

Mr Clode: That is a very real problem, and I will be rolling around to that.

The next appendix jumps to a different question altogether. People have spoken, in their submissions and in evidence today, about proportionality. There is a big problem with the way in which people compare proportionality. I am not criticising anyone for being incomplete in their data. However, if you do the analysis, it must be mathematical, and you have to take the mathematical analysis to its fullest extent.

Appendix 5 will at first appear a little bamboozling. This one was made possible by an initiative of Phil Green. I thought it was a quite interesting and helpful addition to the debate. In his data, he came up with what he called a notional after-preference result. In the ACT, people have always taken it that, under Hare-Clarke, it is a little too hard to grapple with the notion of an after-preference result. We always tend to talk about the first preference numbers and make comparisons based on those. However, this is a preferential system and it ought to, in theory, be possible to come up with a proxy after-preference number.

To use Mr Green's exact definition on the after-preference number, he said that the after distribution of preference column shows the high point of votes cast for candidates for that party before surplus or excluded votes, if any were distributed away from that party, at the point where the last candidate in the party was dealt with. That definition does not always show the after-preference vote of a party at its zenith. You can have a party that gets a higher number of votes than i receives before that exclusion point but, by and large, the two are one and the same. The zenith of the party's vote is the same as the votes they get at last cut, if they are elected. So it is only a comparison you can perform if you are looking at a candidate who has been elected.

The mistake people usually fall victim to, when comparing proportionality of systems, is that they take the percentage of votes and compare it with the percentage of seats. That is a fine comparison if you are comparing major party with major party, or minor party with minor party, but it becomes a flawed basis for comparison when you try to compare minor with major. A 3 per cent difference in outcomes for major parties is a minor consequence, whereas for minor ones it can have a dramatic effect.

In political science, the normal way in which you compare seats versus votes—in other words, proportionality—is by calculating an advantage ratio, which is a simple equation. It is just percentage of seats over percentage of votes.

The two columns that matter most in these tables are the far-right columns. The data Mr Green put in his submission can be seen in the previous columns dealing with party after-preference percentages. With his assistance yesterday, I also obtained the numbers for the minor parties that were not included in his major submission. This adds data for Michael Moore, the Greens and the Osbornites, where they have been elected.

People often complain that major parties tend to be over-represented under the current system. When you look at the advantage ratio, it is quite easy to read. It is like looking at a logarithm. It will make your eyes glaze over to start with, but it is simple once you get the gist of it. Basically, a score of one means you have exact proportionality. Above that, you are being well rewarded, you are getting more seats than you ought. Below that, you are not getting sufficient seats according to the number of votes you received.

If someone scores, say, an advantage ratio of two, it means they have double the number of seats to the number of votes. That sort of outcome is regarded as rare in electoral systems, although, as you can see, it is arguably a little more common under Hare-Clarke and definitely more common under proportional systems. Previously, people have just looked at the primaries. There is general criticism of the assumption made—the electoral commissioner stated the general rule—that a larger electorate of, say, seven would produce a more proportional result than an electorate of five.

This data shows that that general hypothesis is borne out. However, it shows that the hypothesis is being overstated. If you take the crude measure people have taken in past primaries, you can see that there has been over-representation in the past for Ms Dundas, Ms Horodny, Mr Rugendyke, Mr Osborne, Mr Moore and Ms Tucker. The scale of over-representation can be just as large in the seven-member electorate as in the five-member electorate, if you look at the columns dealing with ratios on primaries.

The major parties have much less scope to do generously from an electorate of either five or seven. The general tendency is that, when they do particularly well, they will get a score very close to one—in other words, perfect proportionality. Where they do very badly, they will get a score that can be up to 1.4. Of course, the over-representation that some minor parties object to vis-à-vis major parties is not a fair point when you think, for example—I am not picking on the Greens—of the over-representation the Greens have in Molonglo. That has been greater, in 1998 and 1995, than any of the over-representation scores that the major parties have had, if you look at primaries.

Then, if you take an after-preference result—in other words, a much fairer reflection of what voters were trying to achieve—you find that the sevens and the fives are pretty even-steven. The seven has slightly better proportionality, but it is not dramatically better.

The reason for this is simple. When voters go into booths, they know what they are doing. They know that, when they vote for a minor party or a candidate who they consider has slim odds of getting in, they need to start passing preferences on, outside that high-risk candidate. So, at the end of the day, the number of seats won resembles closely, in proportion, the percentage of votes cast. When people exaggerate the problems of proportionality, you need to look at the data—and this is the first time this sort of data has been composited.

As I obtained some of the figures on the after-preference results only yesterday, I cannot be completely sure that one of these numbers with the advantage ratios is not out by one or two points. However, I believe this data puts into perspective the debate over proportionality and puts the debate on a more scientific footing than it has been previously.

I will skip briefly through my main submission. The commissioner canvassed the 25-member option. In his evidence today, the commissioner basically came up with the same conclusion as we did—that you must be mindful that it does divide geographic communities of interest—ironically more so than the current threes do.

Some people say that boundaries are an implementation detail and, if we decide on aggregate numbers, can be left to the Electoral Commissioner to fill in the details. In talking about numbers of members and numbers of seats, then we must be mindful that many of the public submissions here were quite concerned about where the boundaries would fall and whether communities of interest would be split up.

The commissioner came to the same conclusion as we did, that Wanniassa may have to be split in two. If you took Dr Kirschbaum's notional boundaries, his submission split O'Connor. In these exercises you cannot approximate what the commission will do, but it is not that difficult. You either work south-north or north-south and there is not that much variation.

One conclusion in looking at five by five is that it does involve more geographic chopping of natural communities of interest than any other model. North Canberra, Belconnen, Woden and Tuggeranong would all have major parts stripped from them. The only places that would not be touched would be Weston, Gungahlin, and South Canberra.

MR HARGREAVES: Before you get off the five by five, I would like to ask you about one of the other points you have made. First of all, I appreciate the trouble you have gone to with these figures. It is good to have this perspective. Obviously, for the most part, you have a mathematical approach to this. However, I am curious to find out where dot point No 6 came from on page No 6. It seems to me that there is a somewhat objective statement there. It starts with the words: "Because it is possible for future majority". I would like you to explain to me, (1) where is the relevance of that; (2) whether or not the Liberal Party suffers from the same malaise; (3) whether the Greens and Democrats are likely to suffer from the same malaise; and (3) what on earth it has to do with the case you are putting before us. I think I have made my question fairly clear.

Mr Clode: There is a difference between what happens in theory and what happens in reality, when it comes to quotas. The reality is that, to win a majority of seats in a five-member electorate, for example, you need 50 per cent plus one. Indeed, that is exactly the same—

MR HARGREAVES: Maybe I need to focus your thinking a little more closely.. We will ignore the first sentence in that dot point No 6.

MS TUCKER: He is offended!

MR HARGREAVES: I am grossly offended, and I would like you to explain yourself.

MS TUCKER: You said something unkind about the Labor Party!

THE CHAIR: If we want to get political, having looked at the ALP submission, Mr Hargreaves—

MR HARGREAVES: We have not got to that yet. That can be examined at the time.

THE CHAIR: I get somewhat offended about Labor MLAs only being mentioned as being great ministers, compared with ministers in other parliaments, having been one.

MR HARGREAVES: Mr Chairman, with respect, this thing has not been considered—

THE CHAIR: Let us stop the political argy-bargy and get on with it.

MR HARGREAVES: I want to know what relevance this has.

THE CHAIR: The score is probably one-all. It looks as if the Liberal Party submission is having a dig at the ALP—as is the ALP submission.

Mr Clode: Let us just say it is the John Howard principle—I know some people scoff at this—that we govern in the interests of all our citizens, not in the interests of a few.

THE CHAIR: You made a point, in relation to the first part, which I thought was quite relevant.

Mr Clode: We appeal to the whole, not just to our base.

MR HARGREAVES: I am still waiting to hear what on earth that has to do with this.

Mr Clode: It is quite simple. Where the mathematics mean—

MR HARGREAVES: I want that explained. I will not have it in the report without explanation.

Mr Clode: You have asked your questions, and now I will explain it. The mathematics say that you can form a government with less than 50 per cent of the vote, bearing in mind exhaustions—and exhaustion happens far more heavily in a five-member electorate than it does in the others. There is a much greater likelihood that a party will appeal to the policy interests of its base rather than to the interests of the wider community.

MR HARGREAVES: Therefore, can I assume that you could just as easily substitute the Liberal Party for the ALP—or any other party, for that matter—in that comment?

THE CHAIR: Quite likely, just as you could in this one. That is the point I raised.

MR HARGREAVES: We will get to that one in due course.

Mr Clode: The other day, we recruited into the party a member who came from the Labor Party. He said, "I turn up at my first meeting, and the first thing I get is invitations to join factions." It is not necessarily card membership, but that is the problem you have with other parties.

MR HARGREAVES: I might tell you that I got the 1995 Liberal campaign strategy from that.

THE CHAIR: I am going to step in here because this is getting rather silly. You have both had your go. We do not have a huge amount of time. We have other people coming here, so perhaps we can get on with the substance of what we are here for.

Mr Clode: Now 21: one key theme running throughout our submission, despite the fact that I have managed to aggravate Mr Hargreaves, is that through—

MR HARGREAVES: No, you managed to insult Mr Hargreaves. You have just cast doubt on the veracity of the rest of your paper by that silly statement.

THE CHAIR: Let us move on. I could say the same thing about something I have read in the ALP submission.

MR HARGREAVES: You have not said it was considered by the committee.

THE CHAIR: Let us not worry about it though. I am not remotely worried about it, John. Let us move on.

MR HARGREAVES: I am, Mr Chairman—grossly.

THE CHAIR: Maybe they are even. They are party political, they have both made a comment. Let us get on with it. We do not have much time.

MR HARGREAVES: We will see.

THE CHAIR: Please continue, Mr Clode.

Mr Clode: One theme underlying this whole submission is that there is a need for a due sense of proportion in the comparisons of the different options. One problem you can get—people do it subconsciously or consciously—is that someone knows which option will present the greatest advantage for their party. They sift through the evidence in a way that ignores the pros and cons for each option. The key point I make, although it does not help you come to a conclusion in terms of recommendations, is that none of the options has all the virtues, and none has all the devil in it. We have canvassed the pros and cons of 21 and found that, on balance, we could support that as an option.

We came up with 23 simply because of the exercise that happens every time in a redistribution. Community councils write in and complain about suburbs being hived-off from town centres—the natural communities of interest being divided up. We looked at the combinations we could possibly come up with that would produce perfect boundaries based on communities of interest.

There was one that would have worked if you lumped some areas together. A lot of people say, "Let us lump Belconnen and Gungahlin together". We found that, if we did that, they would proportionally have nine MLAs. If you lumped North and South Canberra together, they would have five; if you took Woden and Weston, they would have five, and Tuggeranong would have seven. That sort of arrangement would be awful because of the great disparity in numbers of members between the largest and smallest electorates. It would be a repeat of the problem at the moment, where power is quite heavily concentrated in Molonglo, to the detriment of the other two electorates. So we really had to rule out that option.

There is one other combination, however, that the Pettit review also chanced upon and said could be an option. That was a model of 23. That was one option that would have perfect geographic boundaries. It would have six MLAs in Belconnen, five MLAs in North Canberra and Gungahlin combined, six MLAs in Woden, Weston and Southern Canberra, and six in Tuggeranong.

For all these exercises we have done our own imputation data. However, for reasons of cross-checking, or an independent check on whether our numbers stand up, I have taken the modelling tool that the Gungahlin Equity Party put on their web site and run this proposal through that model.

The elector numbers are very close to the numbers we got for enrolment from the electoral commission in February this year. The variance from quota, taking the boundaries shown on the attached map, are all within the boundaries one would require. Gungahlin, being the growth area, is 6 per cent down, but it is within the 10 per cent initial tolerance that one takes when you start the redistribution process. With population growth, by 2004 there is a likelihood it will be within the 5 per cent tolerance.

We are not saying we propose 23 as our preferred model. We are saying it is an option that ought to be looked at, simply because you have a lot of submissions in this inquiry and because of all the previous redistribution exercises, where community councils have gone on a Holy Grail exercise. They say: we want natural boundaries, based on the ridgelines, we want electorates that are nice and neat without natural communities of interest being hived apart. Can someone come up with this Holy Grail solution? We found that, based on the enrolment figures and population growth, this would be the only such Holy Grail that one could come up with.

MR HARGREAVES: Daniel, in your map—I assume this is correct—you have taken the three additional suburbs of Brindabella and then put them back on the ridgeline as the boundary?

Mr Clode: Yes. I suppose in some way I am pre-empting my conclusion here, but, if you are going to go for this model, which obviously has its cons as well as its pros, most significantly there would be the amendment of an entrenchment clause. So, in weighing the 21 against the 23, the 23 ought not be a goer unless there is a genuine degree of support for it from the community councils. They want the Holy Grail—they want someone to come up with the magic answer. This is the only magic answer we could find, so they would have to carry the can of putting their weight behind it, to some degree. If the community councils want such magic boundaries but are not happy with these boundaries, then there would not be the political grounds to do it.

THE CHAIR: I have two quick questions on that. Firstly, you have heard the Electoral Commissioner, in his evidence, make some comments in terms of ideal sizes. The 23 has even-member electorates, and he saw that as a problem. The second question is, do you have, at this stage, a third model for the committee?

Mr Clode: On the second one, I was saying the 23 model could be a goer, if the community councils were to decide that this is the one they are happy with and want to throw their weight behind it.

Alternatively, 21 MLAs might be a goer. The main problem there which the committee would have to deal with is looking at what mechanism you use for an automatic increase, or some method of arriving at an increase in the future. Twenty-one delivers increases, whereby you are talking about only one MLA per side, on average—one extra Liberal, one extra Labor and a couple of extras on the cross-benches. That is not a significant lightening of the committee workload. It comes back to your first question of what is an optimum number of people for a parliament.

The first three appendices I gave out show that there are different proxy measures you can use. I make no judgment and cast no greater weight on any one of those proxies, as to which gives the better feel for it. Clearly, when it is between 20 and 40, it is a totally subjective field. It comes down to how many you think is an optimal number of government backbenchers. Mr Hargreaves made a powerful point about the ratio of the executive against the backbench within the party's own Caucus or party room—using whichever shibboleth applies in that political party.

We cannot put an exact number on it because it is such a subjective matter. From the current 17, you have to deduct your Speaker and Deputy Speaker, as people in charge of due process—and you have to deduct your executive. Clearly, four is inadequate, so you are better off deducting five or six as a more appropriate minimum for an executive.

You then have the problem of what is an optimal government backbench. At the moment, the minor parties are not as finely stretched as Harold Hird was in his work. However, if they are to represent all issues and all their constituents in the appropriate way, they have to be across all the committees. That is hard to do when you are the only member from your party. Bear in mind, too, that on the crossbenches, Ms Dundas does not speak for the Greens in the committee she sits on, so the optimal number is a fine line. I suppose all the submissions are leaving the ultimate judgment up to this committee, and that is a hard call.

Our submission makes it clear that you have to weigh the pros and cons of each. Twenty-one has something going for it, if there is a clearer mechanism that allows for an increase in the future. The evidence suggests 21 is on the low side. If you look at cost as against outcome, it does not necessarily deliver quite the release on the pressure valve you need.

Above that, it is a very grey area, but the 23 model we propose is one that bears in mind what Gungahlin's population will be in three years time. It also takes account of the fact that Gungahlin is a growth area and there would have to be a second distinct decision by a future parliament—two parliaments hence—about whether that goes up to a seven, or something like that. Transitional problems are factors that have to be dealt with, regardless of which model you choose.

Looking at the three proxy measures I gave out earlier, the hint inherent in each of them is that the ACT debate has been on the low side of what you would need for a modern, best practice parliament that fulfils all the functions expected of it, rather than pretend to—it is hard to find the precise words without being a bit pejorative—

MR HARGREAVES: Contrived.

Mr Clode: In a contrived manner, yes. Our submission was one of the few I found that put the argument about the need for an increase in size, rather than just arguing semantics about size. One of the key factors is that a larger parliament can be proactive about the forward economic agenda and the forward social agenda. The smaller parliament will perform all its functions, but will be utterly reactive to casework issues, crisis issues, et cetera.

MS TUCKER: I do not have any questions. I would make the comment that the public service is also relevant here, for the capacity for policy development and creative, proactive responses.

Mr Clode: It is, but the key concern is—

MS TUCKER: I think you have argued the point for the majority—an increase—very well.

Mr Clode : Your question really went to my conclusion which is: which do you recommend? We have put two models on the table. We think 23 is a goer if community councils come behind it. Bear in mind that no-one has put the Holy Grail to them. No-one has put that model before them, so they have not had a chance to give it due consideration. That may require a small amount of time, or some correspondence between the committee and them.

The 21 model is also a viable option. However, the problem there is that you need to be far more definite about a mechanism for an increase because, in one sense, 21 is just stringing the problem out for a future parliament to deal with. This parliament's grief is a consequence of parliamentarians being too timid in the past.

THE CHAIRMAN: Thank you very much, Mr Clode, for attending.

PHILIP PETTIT and

PETER McCARTHY

were called.

THE CHAIR: As committee chair there is a general blurb I have to read to you in relation to giving evidence before an Assembly committee. You should understand that these hearings are legal proceedings of the Legislative Assembly protected by parliamentary privilege. That gives you certain protections but also certain responsibilities. It means you are protected from certain legal actions, such as being sued for defamation for what you say at this public hearing. It also means you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the parliament as a serious matter. I would hardly expect any of that to be a problem for an inquiry such as this, but I have to say that. Would you both state your name for the benefit of the transcript.

Prof. Pettit: I'm Philip Pettit.

Mr McCarthy: I am Peter McCarthy.

THE CHAIRMAN: Gentlemen, if you'd like to make a few comments in relation to this inquiry and your submissions, we'll then ask you some questions.

Prof. Pettit: In honesty, I don't have a lot to add to what was contained in the report. Mr Power thought that it might be useful if I came along. I'm very happy to explain the reasoning behind my committee's report in regard to these matters. There are some other points to make. Would you like me to make them now?

THE CHAIRMAN: Yes, I think so. The other points would be great.

Prof. Pettit: A number of issues need to be separated out, it seems to me. One is the issue of why there should be a change. Given that this has come up at this point, I take it that that there is at least some feeling within the Legislative Assembly that there indeed is reason for change. Our committee certainly felt very strongly that there was, to support the committee system within the Legislative Assembly, to provide an adequate talent pool for a ministry of five and to serve the community well in the way of political representation.

I have said a number of times to a number of MLAs—rather cheekily as an outsider can, when you're in the slightly protected position of chairing a review and everybody has to be fairly nice to you, or at least civil—that I don't think MLAs traditionally have taken themselves seriously enough. They've wanted to cower, to stay behind the parapet, not to be too visible, as if, so to speak, they were an embarrassment in the sense that if they showed their heads about the parapet too much people might ask, "How much is that costing us?" given the resistance to self-government.

There's a history of that. This body moved into this building in the quiet of night, so far as I can see, back in the late 1980s or the early 1990s, for fear anybody would notice that money had been spent on the building. We discovered that lots of people did not know where the Legislative Assembly was, and many of the MLAs seemed to us to be quite happy about that. I'm sorry, I'm being a bit cheeky in this. That was the impression that came across.

Local councils are sometimes like that. They want to tell everybody that there are very few of them, that they don't cost anything and that they are absolutely indispensable. This is more than a local council. It's a state government combined with local government functions. We felt very strongly that there was an element of that. Members were not prepared to go out there and say, "We've got a really important job to do, and there just ain't enough of us to do it."

I was surprised and disappointed in the response to our report in only one respect. I was fairly happy with the discussion. It seemed to be taken very seriously. But one recommendation we put very strongly was that MLAs should set up a system whereby in each electorate, on each evening of the week, for a given number of hours, maybe from six to seven—it could be as short as that—a local politician or staffer be available to be seen by members of the public. We got so much evidence on that. The report on consultation with the public afterwards that the Legislative Assembly got, which I have seen a copy of, reported that there was huge public support for that. Yet the response of the Legislative Assembly to that proposal was extraordinarily disappointing.

The response said, "We respect the fact that there were a lot of submissions from the public and that the arguments put were good arguments, but we think this is a matter for the individual responsibility of MLAs." That is a cop-out. I know some MLAs work very hard at trying to make contact with the public and are very successful. We got lots of evidence of that. There are very mixed performances, as we all know, however.

There wasn't a sense that people knew where they could go to meet an MLA. If this Assembly is to do its representative job, it is essential that members be out there available at stated times. MLAs said to us, "Everybody knows they can come in here and see me at any time. My office is open." Coming into this building is like breaking into a prison, even today. You go to security and you're treated like this is September 11. Before September 11, it was like that, frankly. You have to establish your identity every time. It is always a challenge to get in and establish your bona fides. Apart from that, we found that lots of people didn't even know where the Assembly was. That is fact. I'd love to see an opinion poll on that. A lot of people told us they did not know where the building was.

It is difficult—we were aware of that—for MLAs to meet that recommendation about having a regular time in each electorate. I know it would be onerous, but it could be done if the number of MLAs were increased. That is the most crucial reason, beyond the number of ministries and the committee system. I think that should be emphasised.

MR HARGREAVES: I'd like to draw your attention to the fact that it has been announced by the government—and I'm sure it's been agreed to by other members—that there will be provision in the budget for doing just that.

Prof. Pettit: Excellent. I confess to ignorance on that. I have been out of the country for the last six weeks. That's very good news to my ears.

MS TUCKER: I didn't know. I have just found out.

MR HARGREAVES: You don't read your *Canberra Times*.

MS TUCKER: That must be it.

Prof. Pettit: I'm relieved at my own embarrassment about my ignorance of the matter. On the issue of why change, I think the arguments are as strong as they ever were. They were strong in 1998 when the report was handed down.

There is a second matter I'd like to say a little on. I don't know that I've got very much to contribute that you won't have thought of anyhow. If you were to go ahead with an increase to 21 members, how will you sell it? That is a not very attractive way of putting it perhaps. There is an issue of cost. Of course it will cost. As far as possible, that should be offset. Having been involved so closely with this, as Peter was as research assistant to the committee, I feel an obligation to remind you that we suggested that the term be extended to four years from three. That would be a serious offset. It would by no means offset all the costs of increasing to 21, but it would cover maybe 1½ MLAs over the relevant period.

If the change is made, there should be a real educational effort and a public commitment by the Assembly, the parties and the individuals involved to ensure that there will be that sort of rota system. This is required by way of servicing that sort of system. You all know the figures—we quoted them in the report—for people consulting with federal representatives from the ACT rather than with MLAs when they should have been going to MLAs. Federal representatives do have a rota system. That is a second point that should be emphasised.

Mr Humphries proposed something that was in line with another proposal in the review—that there be a deliberative opinion poll on increasing the number of members in the Assembly. That's worth considering. A deliberative opinion poll is hazardous from the point of view of the Assembly, because it might come out against an increase. This sort of exercise is not enormously costly.

Mr Humphries said, "We are prepared to fund a deliberative opinion poll of a random sample of Canberra voters seeking their views on the relevant issues, followed by a two-day session in which all sectors of opinion are represented and people meet in committees and so on, much as was done on the republic issue. Then we'll see how that deliberative opinion poll comes out. Now, of course, it won't enjoin us as to what we will do, but it will be important consultative information." I think that is a very important way in which the Assembly might, to use that word again, sell the proposal if you were to go ahead. That's a third point. I don't know if that's of much interest to you. You have probably thought of most of these things.

MS TUCKER: When you conducted your review, do you feel that you had an opportunity to gauge community opinion and give the community an opportunity to put their views to you?

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Prof. Pettit: Again, this is in the review, in the discussion of this recommendation. There's a structural problem with consulting the community on an issue. It could be a parkway or something likely to benefit a lot of people a very little and likely to displease a small number of people a lot.

In consultation, two factors are relevant to whether people go to the trouble of writing back, coming to a committee or whatever. One is how strong the incentive is and the other is how tight the organisation is. The smaller the group, the easier it is to organise. Often members of a small group have a stronger incentive anyhow. They are the people who are going to come forward in consultation. Any consultation is always going to be a bit lopsided, maybe not on a general issue like the one we were talking about but on more specific issues. That wasn't a major problem for us. There's always an issue of who has the time or who reads the newspaper. It's not going to be a random sample of the population, that's for sure.

A deliberative opinion poll is a random sample, but it's a random sample which you inform. Lots of them have been run all over the world. There's great enthusiasm. The people really make a big effort. They feel they have a duty to those they statistically represent to put their minds to what they would support.

That's why I think it's a very good method of consulting the public, versus an open hearing like this. I'm not for one moment denigrating ordinary consultative procedures and certainly not the open hearings of a committee like this, but it's an important supplement you might use in this case.

THE CHAIR: What would you see as the optimum size of the Assembly and optimum the number of members per electorate? Secondly, if you put your mind to your recommendation 6—

Prof. Pettit: There was a time when I wouldn't have needed to look it up.

THE CHAIR: Effectively, we ended up where we started, with a ratio of one member per 10,000 voters. You think that is good rule of thumb in increasing the size of the Assembly. Would you have any comments on any formula which should or should not be put in place for future increases in the size of the Assembly?

Prof. Pettit: You've got a choice. It's a difficult choice. You can go to the federal parliament on a one-off basis each time, as you might do in this case. That doesn't seem very satisfactory because, as we say strongly in the early part of the report, the territory can never have state status. It really ought to have more status than just being at the mercy, so to speak, of the federal government and going cap in hand every time with a request to make this change or that. It is not very satisfactory going to the federal authority each time.

The second option is an algorithm, a mechanical rule such as the 1:10,000. We were looking for this sort of thing, and we wondered where the 17 come from. I suspect that we never could determine this. At some point, someone said, "Well, 1:10,000 sounds like a reasonable sort of proportion." We're not sure about that, but we thought it should be at least that, not necessarily that it was an ideal.

But doing it by an algorithm probably isn't a great idea either because of other considerations we mentioned and everybody supports. It's useful to have an odd number of MLAs rather than an even number. Of course the 1:10,000 could generate an even number result if it were applied mechanically. So that's not very satisfactory.

To use the term used the Legislative Assembly discussions, I am inclined towards "patriating" the decision to the Assembly itself. Ms Dundas raised some objections to that. Her objections were well stated and it is important to consider them, but I didn't feel they were persuasive. If the Assembly did have the power, it would always be loath to exercise it. There would always be an element that said, "Those politicians are trying to feather their own nest." There might be resentment. That would always be a brake. It's not a case of the Assembly being given arbitrary powers to make itself as large as possible. It wouldn't be like that. I think I would favour the power going to the Assembly to determine its own numbers.

THE CHAIR: Do you have an opinion on the optimum size of the Assembly, the number of electorates and the number of members per electorate?

Prof. Pettit: I haven't kept myself as informed as I should about this to give you anything worth hearing. My best bet would be the opinion we came to in the review, when we did think very hard about it and absorbed the figures. I don't think the numbers have changed dramatically since. If I remember correctly, there were 207,000, 208,000 or 209,000 electors—something in that range. I don't think the number has greatly increased, unless the demography has had an effect. The population of Canberra hasn't increased that much since, has it? I suspect it's about the same.

I'd be inclined to support 21. The three sevens seemed quite a good idea to me. I just happened to hear the last proposal, for 23, which sounded to me to be very well worked out and very interesting. My only thought about it is whether six in a constituency would raise a problem in terms of projected representation of parties and independents. You might like to think about that. But I don't have a thought-out opinion.

MS TUCKER: Another point raised by the last speaker is valid. If we go with 21, what do we do next? Twenty-five is more amenable to being there for longer and being increased if the population increases. That's an issue.

Prof. Pettit: Can I just respond very briefly to that? I think the 1:10,000 should be kept as a rule of thumb. As we said, it would still leave the average rate of representation of ACT residents four times worse than that of the average Australian. That's a really bad ratio, but I think we could live with it.

But if you make a change, there'll be a lag. Our thought at the time was that if you make the change to 21, it brings it back to 1:10,000, but no doubt there'll be a drift in numbers. But at a certain stage the drift will get to be such that it is like it was when there were 17. So at that stage going back to 1:10,000 might take the number to 25. If for each 10,000 increase in electors you immediately go to one extra number, it's not going to work, because there's a lag period.

MS TUCKER: That links in with what has sometimes been called the critical mass necessary for efficient or effective working of a parliament. Different numbers have been given to us. People have a different views on that. I'd be interested in your response Mr Hargreaves' point. I think you did respond in your report. Mr Hargreaves raised the idea that you need to have a certain percentage of backbenchers to keep the executive honest.

Prof. Pettit: Within caucus?

MS TUCKER: I'd be interested to hear your response to that one.

Prof. Pettit: I think that is very interesting, and it strikes me as a sound consideration, but he would have a much better sense of that than I would, because he has been in caucus and knows what it's like in that situation.

MR HARGREAVES: It wouldn't matter whether it was a Labor government, a Liberal government or any other government. If there is a nine-member government, a five-member executive has the majority of votes on an issue. Therefore, given cabinet solidarity, whatever comes out of cabinet will rule the day in the party room. The nine government members, with one crossbencher, are the majority in the house, so we have government of the whole jurisdiction by five people.

Admittedly, at least one crossbencher has to come along for the ride. We've heard on a number of occasions today that with 21, 23 or 25 members the party that takes government is likely to be one or two short of a majority. A majority government is probably going to happen once every Pancake Tuesday. In the event of 25 seats, the odds are pretty good that the governing party would have 11 seats. Therefore, the government backbench would be six members. But if you had 23 seats, the odds are pretty good that the government number would be 10. In that case there would be a five-five split between the executive and the backbench. Whenever you have a five-five split, the motion is negatived. So you don't have the possibility of any figure less than 25 if you espouse an odd number of electorates. That's what I was suggesting then.

If you add to that what you were saying about the 1:10,000 being a pretty good place to start, then our population growth gives us an entitlement to 22 members. If we then add those two together, the minimum number you would have to effect good governance would be 25. That was where I was headed, and I wanted to hear people's views on it.

Prof. Pettit: We did think at the time that 25 was the optimum number. I think we say that in the discussion. There was a lot of feeling that it was such a big shift from 17 that it wouldn't wash, and we more or less say that. But we did think that 25 was the optimum number. We haven't discussed that. That's a very interesting line of thought. I know exactly what you mean. Groups progressively form and all you need is a bare majority in each. The smallest group that starts that series is the group that controls the whole lot. So the five in cabinet control the nine and, with the one or two independents, control the 17 or the 21 and have total control of the parliament. Of course, that's a worst case scenario. That won't happen all that often.

MR HARGREAVES: That point was raised with us on our visit to Tasmania. You say that an increase to 25 is such a large increase. A 50 per cent increase is a huge increase, but an increase to 21 is an increase of four, which is four human beings, which is eight eyes divided by two, which is not much when you consider the extra workload that would be picked up by those people. When we talk about a 50 per cent increase, we are talking about eight people. If it goes 3:3:2, which is the probability, we're talking about what Ms Tucker was just talking about—the critical mass which is going to affect the quality of output of the Assembly. How do you feel about an increase of four affecting the quality of output?

Prof. Pettit: I think I would support the 25, frankly. I think that's a very persuasive extra line of thought. I draw your attention to the fact that we did say it should be maintained at or above the modest level of 1:10,000. I realise that this has to be a misprint. What we meant obviously was below that level, so you'd have one to less than 10,000. Our thought was that it should be at better than that level. I don't think you'd be going against the spirit of the report in going to 25.

MR HARGREAVES: Twenty-two will achieve the 1:10,000. So with 21 we would still be behind, according to the recommendation.

Prof. Pettit: There are all sorts of reasons against 22. One that we put explicitly is that you would have a real problem with an even numbered Assembly. The role of the Speaker would become unclear. What would you do? Would he have a casting vote?

MR HARGREAVES: If we take the 1:10,000, which is the recommendation in your report, a good recommendation, we start at 23 and work our way up. We cannot go to 21.

Prof. Pettit: I think you have to stay at an odd number, yes, so it's 21, 23 or 25.

MR HARGREAVES: Anything less than 23 perpetuates the under-representation the people are getting.

MS TUCKER: You don't have to accept the 1:10,000.

THE CHAIR: It's 21½ members, if you go on the population now.

MS TUCKER: I find the argument about the executive and backbenchers interesting. I would have thought the culture of the political party concerned would have to be a key element. If the party does not reward independent thinking and people have ministerial aspirations, it's not going to make any difference. You want more backbenchers to work on committees and so on. I think that's a valid argument, but I'm curious about this position that you will necessarily make the executive more accountable if the majority of members of the governing party are not on the executive. I'm not Labor or Liberal, so I'm not going to say anything unkind. The way it works from my point of view is that there is not a lot of fostering of independent thinking. I think these are real issues.

MR HARGREAVES: We've got that right around the country.

MS TUCKER: Do you disagree with me, John?

MR HARGREAVES: No, I don't. Just to reinforce that, when we went round the country—we went to Brisbane, the Northern Territory and Tasmania—that's what we found.

MS TUCKER: I just don't know whether that's an argument.

THE CHAIR: Especially on the Brisbane City Council.

Prof. Pettit: The worst case scenario is that you could have a party divided, cabinet with a slight majority and control of the party, the party with a slight majority together with one or two fellow travellers from the crossbenches—

MR HARGREAVES: Perhaps it's not as rare as you might think, Professor Pettit. Perhaps it's endemic around the country.

Prof. Pettit: As I said, you know better than I do, because I've never been in the caucus.

MR HARGREAVES: That's the message we got in the states we visited.

Prof. Pettit: Mr McCarthy has some points he would like to make.

Mr McCarthy: There is another point in the process of policy development that we haven't talked about yet: the committee stage. That was the third of the three arguments the report put for increasing the size of the Assembly, in addition to the greater representation of diversity and the possible increase in number of ministers.

It's at the level of committee activity that you are going to get a conjunction of ideas or greater creativity. There's plenty of evidence of that occurring in the ACT Assembly in recent years. Good work is done in the committees, as you will see in any number of Senate committees.

You mentioned that you'd been to Tasmania. I understand—it's second-hand information—that the reduction in the size of the Tasmanian parliament has had consequences for the effectiveness of their committee system.

THE CHAIR: That's what they maintain, yes.

Mr McCarthy: I leave it at that point.

MS TUCKER: It's not just the reduction in the size; it's the number of seats in each electorate as well, which went to five. They ended up with a much less diverse membership of the parliament.

Mr McCarthy: Yes, indeed. I mention that point in particular, because one of the arguments in the review of governance report drew attention to ratios and to the very much higher ratio in Tasmania. That situation has changed, but the fundamental argument has not changed.

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                                                          MR P McCARTHY

I would also like to add to a point Professor Pettit made a moment ago. The Australian National University has conducted quite extensive research into deliberative polling over the last couple of years. I facilitated a poll in Queensland in 2000, and I want to attest to the value of this activity. It's a very effective way of establishing public concerns, and a very effective way of establishing public concerns when people have real information and varying points of view about a political issue.

The people I worked with, working on an environmental issue, were of an enormous range in age, background, level of political interests and so forth, but all of them were enormously energetic in their participation. In my view, it is not a way of establishing the right answer to a political issue. Nevertheless, it seems to me a potentially very useful contribution to public debate on significant issues.

MS TUCKER: It would be interesting to have a fuller briefing on that, perhaps in another committee. I'm very interested in deliberative polling, and I know a little bit about it. It could even be something for the Public Accounts Committee, because sustainability and participation are closely linked to that notion. Perhaps we could ask you to give us a fuller briefing on another occasion.

Mr McCarthy: We'd be most happy to organise that.

MS TUCKER: Thanks.

THE CHAIR: Gentlemen, thank you both very much for your attendance here today and your assistance to the committee.

ROGER LLEWELLYN WETTENHALL and

JOHN ANGUS HALLIGAN

were called.

THE CHAIR: Gentlemen, thank you very much for attending. These are proceedings of the Assembly. They are legal proceedings. They're protected by parliamentary privilege, which means you're protected from any legal actions like defamation, but you also have the responsibility to tell the committee the truth. Giving any false or misleading evidence will be treated by the parliament as a serious matter. As I said earlier, I hardly think an inquiry like this necessitates that sort of warning, but it's a formal warning we need to give. For the transcript, could you state your name and the organisation you represent, if any.

Prof. Wettenhall: I am Roger Llewellyn Wettenhall. We are both from the Centre for Research in Public Sector Management at the University of Canberra.

Prof. Halligan: I am John Angus Halligan.

THE CHAIR: You've both very kindly sent us a submission. Would either or both or you like to address any point in your submission or make any further comment?

Prof. Halligan: Perhaps I can start with one or two very brief comments. Roger and I have been working in this broad area, not so much of the size of assemblies but of governance, for many years. We've both worked on state and local government in different jurisdictions. I've done work on electoral systems at the local government level and in different countries.

We didn't bother putting all that information into this document. We're conscious that with little notice, like our predecessor a moment ago, we haven't been doing recent work specifically on the size of assemblies, though I have done work on parliaments in two countries. My colleagues and I have written a book, to be published later this year, on the Commonwealth parliament and its committee system. So I have looked into the size of legislatures before.

We have been working on the ACT governance issues for some time. This is part of a collaborative arrangement with the Chief Minister's Department. Some of this research was recently published in the latest issue of *Canberra Bulletin of Public Administration*. The articles ranged over public management, purchase/provider, public enterprises and so on. The most relevant to today's deliberation talked about patterns of representation and community government in the city state. In the introduction we talked about three types of questions. One was the combined state/local system, with which you're so familiar, which we regard as a scale or size question. I do not mean the size of the Assembly; I'm talking more broadly. Then there was recognition of sub-territorial functions within the city state, the local government question. Thirdly, there was the focus of representation within three large multi-member constituencies of the territory. While they may not be directly about the size question which you're concerned with, all these things seem to be interrelated to some extent.

THE CHAIR: If we can have a copy of that, that would be handy.

MR HARGREAVES: You've been looking at this academically rather than politically. A lot of submissions are based on people's perceptions of political bias and are not written from a purely academic perspective. You say that we ought to be building the number up from a base, which is basically what we're trying to do. What is governance all about? Build it up, and out of the top will pop the number. You are not saying, "Twenty-five is a great idea. How do we work out what the impact of that is going to be?" Instead, you are saying, "Work it up."

Prof. Halligan: I would agree.

Prof. Wettenhall: John has talked about the research we've done recently. What was new and interesting for me in particular was to look at the community councils we talked to. I was involved when we talked to you about that, Kerrie.

Prof. Halligan: We talked to two of you, yes.

Prof. Wettenhall: We were trying to answer the question: what goes on at the level of a suburb or a group of suburbs in the absence of a local government system? There are structures like community councils, residents associations and the LAPACs. It was very interesting to find out about them. I knew very little about them before. That is not to say that we need a local government system, but it makes you realise that the task you have in this Legislative Assembly is a more all-embracing one than in any of the other Australian sub-national parliaments. You're doing both the local government and state-type things at the same time. That doesn't seem to me to be said very much or well understood in the community. It seems to me to be a strong argument for saying that there is a need for an increase in the number of members. How many? That's another question, of course. That is what was new and novel to me in this work.

Prof. Halligan: Our submission alludes to the idea of deficits. We talked about a democratic deficit, based on what we saw as some weaknesses in the representational system. That is not meant to be a reflection on individuals or members collectively but refers to weaknesses systemically. We also believe there is a capacity deficit, which again is directly relevant to your interests.

THE CHAIR: In your last paragraph you say that in order to remedy the democratic and capacity deficit a greater increase is required. You favour a rearrangement which provides for three seven-member electorates, bringing the total complement of the Assembly to 21, and you recommend accordingly.

Prof. Halligan: That's right.

MR HARGREAVES: Do you think four more members will fix that capability deficit?

Prof. Halligan: I'm probably more inclined towards a larger number than 21. We said 21 at the time, because we assumed the debate was still going to be around that figure. We realise that things have broadened considerably. I would by far prefer a figure in the mid-20s. I think you can start to be serious about it only when you get to about 25.

MS TUCKER: We have discussed 25, with five electorates of five members. But then the proportionality of the electorates changes, because you need a higher quota, and it becomes more likely that the major parties will be hung at 10:10 or whatever. If you think we should move further than 21, what's your response to the concerns about five-member electorates?

Prof. Wettenhall: I see things not to do, rather than having an answer to that. You need uneven numbers in each electorate. You don't want four or six in each electorate; you want five or seven. I believe in the smaller parties having a good chance to be elected.

THE CHAIR: Do you have a view on the number of members per electorate?

Prof. Wettenhall: That's rather a new thing. I haven't really wrestled with that.

THE CHAIR: For example, are five and seven all right but not nine or three?

Prof. Wettenhall: Having three electorates now with uneven numbers returned from each is troublesome and unsatisfactory. I would like to see that evened out. Three sevens will give you 21. Five fives will give you 25. I hadn't thought beyond 21. I was quite close to the Pettit review. I thought most of Professor Pettit's arguments in the review were good arguments, and I supported them. But that led me to think all the time of 21. It's only very recently that anything more has arisen.

THE CHAIR: Do you have a view on a formula the Assembly could use down the track to further increase its size if needs be? Various views have been expressed today about the desirability or undesirability of formulas.

Prof. Halligan: I think we should go for a reasonably substantial increase, which would assume that you wouldn't have to review the size again for some time, until there was a substantial change in the population.

THE CHAIR: Should there be a formula which kicks in, or should we get a decent size now and at some stage in the future look at it again?

Prof. Halligan: I think it's a little more complex than just basing it on population. That seems to be picking on one dimension, which Philip seemed to be concentrating on. It doesn't pick up the capacity dimension. To get back to your original question, I think you should be looking fairly carefully at the representational side and the capacity side and then drawing some conclusions on the basis of that rather than, as other people have been doing, pulling numbers out of hats and operating at that level. I think you need to sustain a solid argument for governance in the future.

I think you've picked up on the fundamental tension. I don't think there is sufficient areal representation here. The electorates are too large. On the other hand, your concern is about proportionality. I can't identify with Belconnen. It's hopeless as an entity, and I don't think the other two are any better. I can't identify with that or with members who are part of a constituency which I vote in. I find that very difficult. For that reason, I'm drawn to the idea of small areas. On the other hand, I'm torn between that and the idea of proportionality, which is probably better served by seven-member electorates. We

suggest you might need to have four electorates of seven, which would be an intriguing proposition that would certainly sort out the capacity question.

MS TUCKER: But it would give an even number.

Prof. Halligan: You can't have an even number? I thought you couldn't have an even number within each electorate.

MS TUCKER: We are unusual in that we have local council responsibilities but we are also a unicameral parliament, so proportionality is important. If we reduce the capacity for diverse voices in a unicameral system, we need to be aware that we're doing that and understand its impact on the democratic process.

Prof. Halligan: There is a question of whether you want to pick up on the duality of your system more. While you may feel alarmed about this, with these options it may be worth alluding to. Some electoral systems are two-tiered. You have people by area; you have people at large. You'd have a broad proportionality.

MS TUCKER: What does that mean?

Prof. Halligan: As a local government, you might have some people elected in wards, and you might have some members elected across the whole area.

MS TUCKER: I see.

MR HARGREAVES: Like New Zealand.

Prof. Halligan: That's an example. This happens in many municipalities, particularly large ones. It would be another option to pick up on area and proportionality at the same time. It needn't be rejected. It's used elsewhere. You have to think creatively.

MS TUCKER: That hasn't been suggested before.

Prof. Halligan: I am suggesting it now.

MS TUCKER: I know New Zealand does it, but we haven't had that discussion in the Assembly.

Prof. Halligan: That is another way to balance your concerns. It is quite viable.

MS TUCKER: It's an interesting point you make.

Prof. Wettenhall: A small state that has interested me for a long time is Jersey. I think it has that system. Mind you, they've got a legislature of 50 or more for about 90,000 people. We're not talking about those sorts of numbers. They have that duality within their system.

MR HARGREAVES: Proportionality is better looked after the lower the quota. Proportionality is better in a seven-member electorate than in a five-member electorate. I would like you to comment on the quality of representation when an individual with

a problem seeks assistance from an elected representative in a bigger geographic area with a bigger choice of members. Are the bigger area and the bigger choice more beneficial to the person with the problem than a smaller area and a smaller choice?

Prof. Halligan: I was hoping there might be a way of having more electorates.

MR HARGREAVES: That is the five by five proposal.

Prof. Halligan: That's assuming that that's the only option for that. I think that's highly desirable.

MR HARGREAVES: I heard twice on our trip that the optimum size is 35, with five electorates of seven. That happened in Tasmania and they came down. There's no way in the world we are going to increase the parliament by 100 per cent.

Prof. Halligan: What is Tasmania down to now?

MR HARGREAVES: Twenty-five.

THE CHAIR: Twenty-five in the lower house and 15 in the upper.

MR HARGREAVES: Five electorates of five.

Prof. Halligan: They still have a two-tier system.

THE CHAIR: They do.

MR HARGREAVES: And a strong local council as well. They have three tiers of government. We are responsible for all those tiers under our unicameral system. They have 15 in the upper house and 25 in the lower house, so they have 40 people to do part of the job we do.

As a member in a five-member electorate under the Hare-Clark system, you represent X number of people, but you don't know which X number of your lot they are, so you have to provide a service for the lot, not just your 10,000 or 12,000. I think this increases the quality of representation of the people.

In a seven-member electorate—I'm sure Ms Tucker has this problem—I would have to provide a service to a greater number of the people, because the other six members in the electorate would be incidental to me. They would matter not. My job is to provide a service for the whole electorate such that they think I'm doing a good enough job for them to re-elect me.

MS TUCKER: I respond to constituents right across Canberra, because I'm the only Greens member.

MR HARGREAVES: So do I.

PROF. RL WETTENHALL
PROF. JA HALLIGAN

MS TUCKER: The people you support are the people who are more likely to think you're presenting their policy view. It's not just about having a bunch of people here who help everyone. Some people probably don't like you and don't like your policies.

THE CHAIR: It's your job to help them regardless. I thought that is what being a politician was about.

MS TUCKER: I don't follow that argument. You will never know exactly who the people are. Making the number smaller isn't going to change that. In Darwin one member said that her electorate was so small, about 4,000, that she could visit everyone.

MR HARGREAVES: No, only half of them, so she could have them all round for a barbecue.

MS TUCKER: She knew what they wanted and she would have personal contact. That's what she would do to get herself re-elected. That's not a system which encourages a politician to consider the overall community good. There's even an argument against that, because it's too easy for people to know every single constituent. That's what people say in Darwin. People know every single person. They know how to buy them a beer or whatever and they get re-elected. Too bad about the broad community interests and long-term planning or anything else. Long-term planning and the electoral cycles are a problem anyway.

THE CHAIR: You could do both. There's nothing wrong with knowing everyone in the electorate. However, we're digressing.

MR HARGREAVES: If we follow your view to its conclusion, we'll have one electorate.

Prof. Halligan: The absence of areal representation makes the ACT quite unlike most other systems. What was clear from our interviews with members of the Assembly was that some were more state issue oriented. You may be one of those. I'm not making generalisations. Others are more locally oriented and perhaps more focused on people in their broader area or region rather than across ACT. It seems to me both sides need to be fulfilled.

MS TUCKER: I agree.

Prof. Halligan: The problem is that they're not being properly fulfilled at the moment. That's the fundamental tension that needs to be resolved. The local government side is missing out too much.

THE CHAIR: That's a good point.

MS TUCKER: It's an interesting discussion.

THE CHAIR: Thank you very much.

The committee adjourned at 5.16 pm.

PROF. RL WETTENHALL
PROF. JA HALLIGAN