

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**STANDING COMMITTEE ON LEGAL AFFAIRS**

**(Reference: changing length of term of members)**

**Members:**

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

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**TUESDAY, 30 SEPTEMBER 2003**

**Secretary to the committee:  
Ms J Henderson (Ph: 6205 0199)**

**By authority of the Legislative Assembly for the Australian Capital Territory**

Submissions, answers to questions on notice and other documents relevant to this inquiry which have been authorised for publication by the committee may be obtained from the committee office of the Legislative Assembly (Ph: 6205 0127).

**The committee met at 1.35 pm.**

**MALCOLM HUGH MACKERRAS** was called.

**THE CHAIR:** This public hearing of the Legal Affairs Committee, looking into the notion of four-year terms, is duly commenced. Thank you, Associate Professor Mackerras, for appearing. I have to read this to all witnesses who appear 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 that you are protected from certain legal action, 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.

I hope, for a hearing such as this, that that hardly applies but we do have to give that warning to everyone. You understand that, no doubt. Would you state your full name and the capacity in which you appear in front of this committee?

**Assoc Prof Mackerras:** I am Malcolm Hugh Mackerras and I am a private citizen.

**THE CHAIR:** Professor Mackerras, you have made a submission to the committee. Is there anything you wish to say in addition to that submission?

**Assoc Prof Mackerras:** Not really. I think I will just sit here and answer any questions you or your colleagues may have.

**THE CHAIR:** Right. First, I understand you lecture in politics at ADFA. Is it correct to say that, apart from the ACT and Queensland, all the other states and territories have four-year terms at present?

**Assoc Prof Mackerras:** That is correct, yes.

**THE CHAIR:** Queensland still has a three-year term, as indeed does the Commonwealth.

**Assoc Prof Mackerras:** Yes, and they cannot change that, except by asking the people to change it.

**THE CHAIR:** Right. In your submission, your position is that you support three-year terms, but you think the matter should be put to a referendum.

**Assoc Prof Mackerras:** Yes, that's right.

**THE CHAIR:** Why is that?

**Assoc Prof Mackerras:** That's democracy. The fact of the matter is that, as you correctly point out, Queensland and the Commonwealth have three-year terms for the simple reason that the legislative provisions in those two jurisdictions require that the

term cannot be extended to four years, or any other term but three, except by consulting the people. The people, on both occasions, in both jurisdictions, have said no. That is also the case in New Zealand where, on two occasions when the people were asked the simple question, “Do you favour a three-year or a four-year term for the House of Representatives?”, they favoured the three-year term by a two to one majority.

It seems to me, therefore, reasonable to infer that, if you invite the people to give their opinion, they will see it for what it is: essentially, it is a reduction in the power of ordinary citizens and an increase in the power of politicians. That is what it actually is because, instead of having the right once every three years to throw the rascals out, the people are then only given the right once every four years to throw the rascals out. That is clearly a reduction in the power of the ordinary voter. Ordinary voters understand that, which is why, on four out of five occasions when the question has been tested, they have voted to retain their existing power and not give more power to the politicians.

**MR HARGREAVES:** Mr Chairman, can I ask a question?

**THE CHAIR:** I only have a couple more, John, and then you can go ahead. You are aware, I take it, of the terms of the ACT Self-Government Act in which there are other mechanisms whereby, say, a four-year term can proceed, as opposed to a referendum?

**Assoc Prof Mackerras:** Yes, I am aware that you, the Assembly, can, by a simple majority, give yourselves the extra power, which is what I am sure you will do, and the people will not protest because most people do not care really. I am aware that that is the legal position and that is why I actually expect you to do that. I don't expect you actually to take any notice of anything I think. However, I thought there was no harm in my presenting my thoughts, even though I do not expect that there is any possibility that you will take any notice of them.

**MR HARGREAVES:** I think you will find out very shortly that we have taken a bit of notice of what you say.

**Assoc Prof Mackerras:** Yes, good. I am surprised, but delighted to hear it.

**THE CHAIR:** You mentioned the interesting point that people may not particularly care. The Assembly, when it went from a February election to an October election, in the last Assembly, actually went for some three years and eight months. I do not think there was any comment on that. Actually, did you comment on that yourself?

**Assoc Prof Mackerras:** No, I didn't write anything about it because I was persuaded, not very strongly, by Phil Green that probably October would be a better month for having an ACT election than February. I thought, “Why not have it in October?”

The only reservation I did express about it in private conversation was that it seemed to me that the possibility of continually having clashing federal and ACT elections was likely to be greater as a consequence of that decision. I would not be at all surprised if, at the next 2004 election, you have a situation where the ACT and the Commonwealth elections are one week apart. In 1996, the Tasmanian and Commonwealth elections were one week apart and I would not be particularly surprised if that happens next time.

**THE CHAIR:** Thank you, I have nothing further.

**MR HARGREAVES:** I have a number of questions on what you have written and what you have said. I have to say that, in five and a half years in this place, I have not seen a more offensive submission.

**Assoc Prof Mackerras:** Is that right?

**MR HARGREAVES:** Yes. I want to see whether you still want to persist with the arguments you have proposed in it. The first one you have on page 1 is: “The arguments seem to me to have been mere assertions made by people who want politicians...That usually means the politicians themselves.” You go on later to say, “at present we, the people, have the power once every three years to throw you, the politicians, out of office.” You also use the term “rascals”. I suggest to you that those are a couple of rather offensive phrases.

**Assoc Prof Mackerras:** With great respect, I disagree with you completely. That is simply standard—

**MR HARGREAVES:** Do I hear you saying therefore, if you disagree with me, that you believe that we are a bunch of rascals?

**THE CHAIR:** Let him finish, John.

**Assoc Prof Mackerras:** No, I believe that there is a phrase common in democracies, and the phrase is “to throw the rascals out”. In the American case, they often say “to throw the bums out”. I prefer to use the expression “to throw the rascals out”. It is not a particular reflection against you or anyone in Australia.

**MR HARGREAVES:** Professor Mackerras, can you show me where it is written that that phrase is in common usage, other than by people such as yourself?

**Assoc Prof Mackerras:** It is so standard. I can’t actually, but it would not be very difficult for me to find examples.

**MR HARGREAVES:** I would be grateful if you would find a couple of references for me. One of the issues that was raised at a conference in the Northern Territory not that long ago was that the image of the body politic is so poor that people should start thinking of ways in which it can be improved. This sort of thing does not improve it one bit. You use the phrase—

**Assoc Prof Mackerras:** You mean repeating a standard phrase which your sensitivity dislikes.

**MR HARGREAVES:** Yes. You use the phrase, “We the politicians”—that was my phrase—“give ourselves extra power”.

**Assoc Prof Mackerras:** That is right, of course. Obviously, you have greater power if the people only get the chance once every four years to throw you out as compared to the present situation, where they have the chance once every three years.

**MR HARGREAVES:** Both the other two jurisdictions that you have mentioned, and also New Zealand, have two houses of parliament, do they not?

**Assoc Prof Mackerras:** No. New Zealand and Queensland have unicameral parliaments.

**MR HARGREAVES:** All right, I take your point.

**Assoc Prof Mackerras:** In the case of New Zealand and Queensland, the question was not in any way complicated by the question relating to what you would do with Senate terms. It was a simple straight-out question in New Zealand twice, and in Queensland once, with single houses of parliament: “Do you, the electors, prefer three years or do you prefer four years?” When the question was put, on all three occasions the people favoured the retention of a three-year term.

**MR HARGREAVES:** But those jurisdictions are in the minority in this country, are they not?

**Assoc Prof Mackerras:** In Victoria, South Australia, Western Australia, Tasmania and the Northern Territory the politicians simply voted for the change themselves because there was no requirement that it be put to the referendum.

**MR HARGREAVES:** Can I suggest to you that the representatives of the people put that position to the parliament?

**Assoc Prof Mackerras:** If you dislike the term “politician” as a description of your occupation.

**MR HARGREAVES:** I do.

**Assoc Prof Mackerras:** You dislike that?

**MR HARGREAVES:** Yes, I do, very sincerely.

**Assoc Prof Mackerras:** What an extraordinarily sensitive man you are.

**MR HARGREAVES:** Yes, indeed. Obviously, you are not.

**Assoc Prof Mackerras:** How incredibly sensitive; I had not realised that a person could be elected and be as sensitive as you are.

**MR HARGREAVES:** Can I also ask you to tell me in which of those jurisdictions, of the four you mentioned, minority governments apply?

**Assoc Prof Mackerras:** There are minority governments at the moment in New Zealand and South Australia.

**MR HARGREAVES:** And South Australia has—

**Assoc Prof Mackerras:** A minority government.

**MR HARGREAVES:** And it has a four-year term?

**Assoc Prof Mackerras:** Yes. Victoria had a minority government in the last parliament, too.

**MR HARGREAVES:** Within the context of the minority government situation in the ACT, would you agree that it is a fairly delicate balance within the Assembly, that it has been since 1989, and that the opportunity to hold the government to account has been exercised very frequently, to the tune of a couple of chief ministers leaving the system and then, very shortly thereafter, a change of government occurring?

**Assoc Prof Mackerras:** I don't dispute that.

**MR HARGREAVES:** One of the things you did say is that the people don't care.

**Assoc Prof Mackerras:** That is true. Sorry, that is my assessment. My assessment is that people do not really care.

**MR HARGREAVES:** Therefore, going to a four-year from a three-year term would not bother them either?

**Assoc Prof Mackerras:** It would not bother anybody, no.

**MR HARGREAVES:** All right. Am I hearing you correctly when I understand you to say that it would not bother you?

**Assoc Prof Mackerras:** Of course it would not bother me.

**MR HARGREAVES:** I wonder, therefore, why you went to the trouble of saying that it does.

**Assoc Prof Mackerras:** The reason I wrote the submission was the same as the reason I wrote the submission in relation to the territory's representation to the Commonwealth parliament's electoral matters committee. I thought, "It is obvious what these politicians are going to do, but at least I can put in a submission opposing what they are obviously going to do in both cases."

In the case of that representation, they are obviously going to pass a piece of legislation that simply says, "The ACT and the Northern Territory shall each have two members." Although it is obvious they are going to do that, and that I cannot stop them, it is still sensible for me to put in a submission objecting to it, purely so that the record shows somebody objecting to what they are obviously going to do.

**MR HARGREAVES:** Can I ask you about your position on the coincidence of elections, which you just mentioned? You said that, if we have an election in October—as opposed to a March election—the likelihood of it clashing with the federal elections is heightened. I think this is one of the things about which we do agree.

**Assoc Prof Mackerras:** I did say that in private conversation about this question of extending to October. I did say, “It probably will have the effect of increasing the number of times you have elections for the ACT and the Commonwealth fairly close to each other,” and I think that is true.

**MR HARGREAVES:** I do agree with you, and in fact we ran the very real risk last elections of it happening on the same day. All sorts of hassles would have occurred as a result of that. Would you therefore agree that, with the fixed term, the chance of having elections clashing is not something that we manage, it is something within the purview of the Prime Minister? It is not something that we have a control over. Further, do you agree that having a three-year term for the Commonwealth and a four-year term for the ACT will mean the probability of that clash will be less?

**Assoc Prof Mackerras:** Actually, I agree with you. You have actually given me an argument for extending the term to four years. I had not thought that there was one, but you have actually given me an argument for that. I agree, that is actually an argument.

**MR HARGREAVES:** Thank you. I do agree with you that a referendum, other than an election itself, is the ultimate opportunity for the community at large to be made to have a say, to shock people out of their apathy and make them do it. However, this issue has been on the agenda, as it were, for many, many years. It has almost been on every year since I have been here. I think it started with Professor Pettit, who recommended we go to four-year terms.

As this committee is, in fact, in the process of trying to engage the community in having its say, wouldn't you think that the consultation process, over the years, has been fairly extensive compared with, say, that for other issues that have come forward?

**Assoc Prof Mackerras:** I don't know that I would say that. I would say that the consultation process on this subject has been rather like the consultation process on becoming a republic. You can have consultation going on for a long, long period of time, but not necessarily finish up with the people agreeing to the proposal which is constantly mentioned as one of the standard reforms wanted by the reformers.

**MR HARGREAVES:** On that issue, when you talk about referenda—and the constitutional referendum is a very good example—given the history of the success of referenda in the country—and you would know far more about those numbers than I do—would you not agree that the likelihood of any referendum in this town getting up is less than 50 per cent?

**Assoc Prof Mackerras:** Funnily enough, I would not agree with that, and I will tell you why I would not agree with that. Take the eight federal referendum votes that I have cast as my point. I have only ever cast eight referendum votes for the simple reason that I could not vote in 1967 on the two questions, in 1973 on the two questions, in 1974 on the fourth question and in 1977 on the four questions. I have only been able to vote eight times.

You may be interested to know that, although the result was no on eight occasions, the ACT recorded a yes vote on four occasions. Yes, that is a fact. The result, overall, Australia-wide, was no eight times. The ACT, however, recorded a yes vote four times.

Therefore, the probability of the people of the ACT voting yes is, I would say without doubt, the highest probability of that in any of the jurisdictions, because no other jurisdiction has voted yes four times out of eight, as the ACT did.

In fact, on the so-called “fair elections” proposal, the ACT was the only one to say yes. On the republic, the ACT was the only one voting yes. When the result of no occurred nationally, with the ACT voting yes four out of eight times, that is another way of saying that—and my guess is, for what it’s worth—if you had a referendum, you probably would get a yes vote. I do not think it is a certainty by any means, but I think the probability is that you would get a yes vote. In fact, for that reason I would actually be inclined to advise you to have the referendum because it then legitimates the extension to four years.

I don’t think you will do that, for the simple reason that there is a risk that the result will be no. I still think there would be about a 60 per cent probability of a yes vote. I am not impressed by people quoting the no voting habits of the Australian people at federal referendums. As I was saying, if four out of eight yes votes occurred in the ACT when zero out of eight yes votes occurred Australia-wide, that seems to me to indicate that your chance of getting the four-year term established would be the probability. It would not be a very strong probability, but there would be a probability of yes being the winner.

**MR HARGREAVES:** I heard you say sixty-forty would be a good—

**Assoc Prof Mackerras:** A sixty-forty probability.

**MR HARGREAVES:** So what you are saying is that, as you said earlier on, notwithstanding the fact that people do not really care, if we force them to say yes or no, then in your opinion the people of the ACT would be in favour of a four-year term?

**Assoc Prof Mackerras:** All I can tell you is what I have just told you: eight noes Australia-wide, with four yeses and four noes in the ACT.

**MR HARGREAVES:** But you also said, did you not, that the probability of a result in the referendum, in your opinion, is the way the community would react, which would be in favour of it by about 60 per cent to 40 per cent?

**Assoc Prof Mackerras:** No, I did not say that. I said it was a sixty-forty probability. I did not say the vote would be 60 per cent yes. I think the odds would be that you would get your proposal accepted. For that reason, it seems to me your dilemma, if that is the right word, is that, on the one hand, you want to risk the people saying no and, on the other hand, you would like the legitimacy given to your decision by an actual referendum vote favouring your decision.

**MR HARGREAVES:** Does that suggest that a vote from the Assembly, even one with a simple majority, lacks legitimacy?

**Assoc Prof Mackerras:** I would say it does, yes.

**THE CHAIR:** In 1988, the ACT was the only state or territory which actually went for four-year terms in the federal parliament. Am I correct on that?



**Assoc Prof Mackerras:** No, the ACT voted no. The question about which the ACT did vote yes was the so-called “fair elections” question. I called it “so-called fair elections” because I voted no myself, but it was called “fair elections” and the ACT was the only jurisdiction to vote yes. The ACT voted no on the extension of the term of federal parliament to four years.

**MS TUCKER:** Thank you, and thank you for your submission. I do not know if you want to talk about this, but you say that you do not find the arguments for extending the term to four years persuasive.

**Assoc Prof Mackerras:** No.

**MS TUCKER:** I understand that, but I am interested to know if you could elaborate a little on, for example, one of the main arguments that seems to be made for extending the term to four years—that it gives the government of the day more time to do the work, that the first year is spent in settling in, if it’s a new government, and that the last year is about being re-elected. What are your comments on that?

**Assoc Prof Mackerras:** On your second point, I would argue that most elections see the re-election of an existing government and therefore I do not accept the arguments that are commonly used about wasting the first year because you are getting used to government. Sorry, what was your first point?

**MS TUCKER:** The arguments that are generally put for the four-year terms are that it gives the government more time to do the work and that the last year is wasted in some ways because it becomes an election campaign year. While I am on that, you might comment on this, too: one of the concerns about our having the election date in October was that the February date actually required, in some ways, a fairly short and snappy election because people are away for Christmas when the campaign happened, whereas, with October, some people feel it is a little less distinct and so it has become a longer period. It is almost starting now—next year is the beginning of an election year.

Do you have a comment on that as well? Generally, the argument has been put forward by other submitters that that extra year would allow you an extra year to do the work, basically.

**Assoc Prof Mackerras:** I know this is commonly said. The way I would describe it is to take as an example the last federal parliamentary term. I would say that, since the first year, was the re-election of an existing government. I do not accept the arguments about the first year. I would say that from April to November the politicians were in election mode but, for the first full two years and the first, say, four months of the year 2001, the politicians were governing, and in the last seven months they were in election mode.

The question, I think, is whether it is a bad thing that politicians are in election mode. My basic position is this: Australia and New Zealand are two of the very best governed countries in the world. I cannot, in all honesty, think of any country better governed than either Australia or New Zealand, yet they are the countries with a three-year term. For me, the position really is simply this: you have to demonstrate that we are badly governed before you justify a change like this. When you demonstrate that we are badly

governed, you then have to demonstrate that the bad government that we suffer is the consequence of having these short terms.

I am not convinced we are badly governed. I am not convinced that the Commonwealth is more badly governed than the states that have four-year terms. I think, therefore, that basically it is up to the politicians to justify the change they want, rather than a conservative like me who instinctively reacts conservatively on these questions. I admit that I am rather conservative on this kind of question.

I do not make any secret of the fact that these eight votes that I have cast at referendums were no, no, no and no. I have not yet voted yes at a federal referendum. If you want me to explain why I voted no to each of these eight questions, I would be perfectly happy to explain it to you. I just say that it is up to the people who want to change things to justify the change. The people who want to retain the existing order need do no more than simply say, “We are well governed now. Why do we have to change?”

**MS TUCKER:** Regarding your proposal to have a referendum, is it your view that, in fact, that would bring about that informed discussion? You are saying that the people who are promoting this have to justify it and explain why, and you are also arguing for a referendum, and I am interested to know if you think the two go together at all.

**Assoc Prof Mackerras:** I think the two do go together. I think you could actually be proud of yourselves if you had a referendum and it was carried. You could then be justifiably proud of yourselves because you could say, “Ours is the only case of a four-year term in which the people were consulted.” Sorry, that would not be true because, in New South Wales, the people of New South Wales voted to extend the term from three years to four years. They were required to vote, you see.

However, what I am driving at is you would then become the only collection of “parliamentarians”, if you insist, who volunteered to do something that you did not actually have to volunteer to do, and had your judgment supported by the people. You would be in a unique position. Can I put that proposition to you? Do you see what I mean?

**MS TUCKER:** Yes, I understand that.

**Assoc Prof Mackerras:** You would be in a unique position of having the parliamentary term extended when you voluntarily put the question to the people, as distinct from the New South Wales case, where they were required to put it to the people and the people did agree to it.

**MS TUCKER:** It is just that, when I look at the example of arguments that were in favour—I don’t know if you gave us these, but they are in the submission—

**Assoc Prof Mackerras:** Yes, that is mine.

**MS TUCKER:** They came from you, did they? Okay. You have that summary of arguments. They are really very brief and so I guess you must think that, with a referendum, a much fuller debate would have to accompany this. We are all familiar with the statements that are made in favour of four-year terms. The arguments against those

that you have made, for example, are important in that discussion and I am interested to know whether you think a referendum in itself is a way to get informed debate.

**Assoc Prof Mackerras:** I do think that, yes.

**MS TUCKER:** You can compare that, say, to a deliberative poll or whatever as a form of consultation, in a way. What is your view?

**Assoc Prof Mackerras:** I do think that. It is almost always desirable to put questions to the people if you can. I am not saying we should go in continually with referendums, the way California does, with recalls and all that sort of thing. However, given that we have had two general elections in the ACT—on 15 February 1992 and 18 February 1995—accompanied by one referendum in each case, there can be no difficulty about it and I think it would be highly desirable to do that.

I think that, if you did that, you would finish up being pretty tickled pink with yourselves, because you would be able to say, as I have already said, we were the only parliamentarians who voluntarily made this decision, and the people backed our judgment. You could be pretty tickled pink with yourselves if you did that.

**MS TUCKER:** I know we have to wrap up but do you see a relationship between this question and the nature of the Assembly? For example, you know we have had the debate about whether we should have more members in the Assembly, and the accompanying debates about how electorates should be arranged so, if you have an arrangement, say, with a greater capacity for independents or minor parties to win seats—in other words, less likelihood of a majority government—one could argue that there is then more capacity for keeping the government of the day accountable. Would you see a relationship between that and extending the term?

**Assoc Prof Mackerras:** The answer to your question is yes, I do see a relationship but, for what it is worth, I will give you my prediction on the question of the increase in the size of the parliament. You can just think about that, agree with me or not. I will give you my prediction. This outrageous bill currently before the parliament over there, which I oppose vigorously, will give the ACT and the Northern Territory a guaranteed two seats. That is so grotesquely inequitable that, when there is next a federal Labor government, that Labor government will simply change two to three for the ACT. It will just make a change, which it can do, and justify it in terms of equity and the Constitution.

Once they do that, once you have three guaranteed House of Representatives divisions, which you will have at the first general election after a federal Labor government comes in, I think you will then automatically have 21 members here, because you will have seven by three and it will simply automatically increase from the current 17 to 21. The probability of a majority government from that point on would be quite low. It would be much lower than is likely under the present 17-member arrangement because Labor can quite easily win three out of five, as we saw in the Brindabella division.

I think there is a relationship. As to whether it argues one way or the other, essentially, I leave that to your judgment. It may be a powerful argument for you to present as your yes case.

**MS TUCKER:** That you have to accompany any extension of the term with greater accountabilities through changing electorates?

**Assoc Prof Mackerras:** People would have to consider how likely it is that the number of members is going to be increased, and how likely it is that majority government will become less likely, and that is something—

**MS TUCKER:** It could just be argued that you do not extend the term. I have heard that argued.

**Assoc Prof Mackerras:** Yes.

**MS TUCKER:** You do not extend the term until you have more confidence in the numbers in the Assembly, so there is the likelihood of a majority government. Some people are making that connection, basically, and I was interested in your comment on that.

**Assoc Prof Mackerras:** That is my position.

**MS TUCKER:** Okay, thank you.

**THE CHAIR:** Thank you very much.

**Assoc Prof Mackerras:** Thank you.

**HAROLD HIRD** was called.

**THE CHAIR:** Please give your full name and the capacity in which you are appearing in front of this committee.

**Mr Hird:** Thank you, Mr Chairman. Harold Hird, concerned citizen. And I'm delighted to be invited before this committee.

**THE CHAIR:** You should understand that these hearings are legal proceedings of the Legislative Assembly and they are protected by parliamentary privilege. That gives you certain protections and also certain responsibilities. You are protected from certain legal action such as defamation for what you say at the hearing. It also means you have a responsibility to tell the committee the truth because giving false or misleading evidence will be treated by the Assembly as a serious matter.

Mr Hird, what would you like to say? You've made a submission. Thank you very much for that.

**Mr Hird:** I would like to add to my submission by saying that the only major countries that have a three-year term for their parliaments are Sweden, New Zealand and Australia for its federal parliament. Most other parliamentary democracies have their parliament elected for a four or five-year term.

My submission goes back to the establishment, in 1974, of the Legislative Assembly. The Legislative Assembly in 1974 extended its term to four years and eight months. That first house of Assembly served three years, and the second house of Assembly served four years. It was prorogued on 30 June 1986, the point being that there was no public outcry in the ACT at that time.

Indeed, on the introduction of self-government, there were a number of committee reports from 1982, and all those reports identified a four-year term. Indeed, when the self-government bill went from the House of Representatives to the Senate it was a four-year term. It was changed by the Senate back to three years, and the membership of the new legislature was also changed. It's important to bear that out.

I want to comment on an earlier witness, Mr Mackerras. Mr Mackerras was talking about a referendum that was conducted by the Commonwealth. I have known Mr Mackerras for many years, and I know he's a champion of democracy. What he failed to indicate in 1998 about the referendum conducted under the Hawke government was that all parties in the parliament—the lower parliament—agreed to the four-year term.

In the referendum, the issue of the four-year term was clouded because the question of whether the Senate should be under the same parliamentary arrangements as the House of Representatives was also brought into it. When it went out under the Constitution, 69 per cent of voters wanted a change to four-year terms. However, the majority of states didn't agree with that.

That should be put into the context of the fact that, if you are a champion of democracy, democracy should rule and we should have four-year terms in the federal arena, and that's not the case. I will leave it there and now take questions, Mr Chairman.

**THE CHAIR:** Thanks, Mr Hird. Are you sure about those figures? I just saw Mr Mackerras shaking his head.

**Mr Hird:** I will table the documents here.

**THE CHAIR:** Tabling those documents will help explain what you're saying there.

**Mr Hird:** I'll table those documents for you, Mr Chair.

**MR HARGREAVES:** Good afternoon, Mr Hird.

**Mr Hird:** Mr Hargreaves.

**MR HARGREAVES:** Lovely to see you.

**Mr Hird:** It's always a pleasure to talk to you, Mr Hargreaves.

**MR HARGREAVES:** One thing that I believe you did in your term here was become an expert in the committee system.

**Mr Hird:** And I note that you are also developing that piece of expertise.

**MR HARGREAVES:** Following in your very large footsteps. One of the arguments put forward for four years is that, following committee considerations, reports are provided to the Assembly but there is insufficient time to follow up those reports in the three-year term scenario. One of the reasons why reports tend to gather dust is that they tend to repeat themselves each three-year term. Do you think having a four-year term will increase/decrease that likelihood? Would you like to comment on that?

**Mr Hird:** Yes, I would. As the committee knows, I chaired the standing committees on urban services, and planning and the environment. It was very clear that, because of the requirements in the ACT for draft variations to the Territory Plan, which is a lengthy process that can take up to two years—even plus—it would be desirable to have the extra 12 months to finish off some of the inquiries and get through the business of running the territory much better.

I'm not a believer in the argument that extending the term by 12 months would give a government, or a particular member, more advantage. But I do believe it would make it that much better for the committee system, which is something I have some knowledge of. I'm sure your colleague on this committee Ms Tucker would also acknowledge that fact from her work in the social policy area, when we went from the Fourth to the Fifth Assembly. It made it very difficult to bridge that inquiry.

**MR HARGREAVES:** There have only been four Assemblies since 1989, but it seems as though there has been a 30 per cent turnover of members. How much do you think that turnover contributes to the fact that members don't have the opportunity to

familiarise themselves with their electorate—or the electorates with their members—or to get some runs on the board before they're subjected to the guillotine?

**Mr Hird:** This argument was put when New South Wales undertook its referendum, which it has to under its constitution. Yes, it would be desirable for the local member to make himself or herself more accessible to his or her constituents. But there are financial benefits in the fact of making a decision, and that's what you people were elected for. You were elected by the voters of the ACT to make decisions.

If you want to shirk your responsibilities and say, "Let's put it out to referendum," that will cost nearly \$1 million over a three-year period—because you're not going to introduce a four-year term. So there would be another three years, because I imagine you hold a referendum at the same time as you hold an election. It will come up to around about \$1 million—\$775,000 to be precise—and there are other costs on top of that.

If you want to shirk your responsibilities and say, "We won't make a decision," maybe we need to say that all legislation—bill of rights, child legislation, legislation to do with policing in the ACT or the courts—should be put to referendum. That is very costly, and you're shirking your responsibilities. Members are elected by the electorate to make decisions, and this decision was made many years ago many times, with the reports and the arguments that have been put forward by a number of elected bodies and by a number of prominent citizens in this territory.

**MR HARGREAVES:** Ms Tucker?

**MS TUCKER:** I'll start with that last point; my question would be there. You could argue that this is different from general decision-making around policing or the children act in that in this decision there can be a perception of a conflict of interest for politicians. As Mr Mackerras articulated, there is a perception in some areas of our community that, because we are making a decision about our own jobs, there is conflict of interest. For that reason we take electoral matters to referendum. I realise that it isn't required in this instance, but the argument is that it would be appropriate for that reason. Do you have a response to that argument?

**Mr Hird:** Yes, I do, actually. When you put the rates up in the ACT, you put it out on your argument alone.

**MS TUCKER:** It's not my argument; I'm putting argument.

**Mr Hird:** I understand that but, on that argument, would you put any increase in rates to referenda because you're a rates payer?

**MS TUCKER:** Yes, that's correct. That takes that particular argument to the nth degree. Obviously, because we're citizens and our families are citizens of the ACT, we all are concerned with policing. We are all affected by the laws of the ACT. Because this particular decision is specifically about our work, the argument is put that it would therefore be more appropriate if this was given to the people to decide.

**Mr Hird:** So you'd spend nearly \$1 million, when you ought to be making a decision in respect of this matter. Even the extension by one year, from three to four years, of being

in this place, is not going to affect your employment because the electorate would know that you are there for four years. If you're saying that it does affect your employment and you want to go to referendum, taking that to the nth degree, you would then be arguing for an extension of the existing arrangements to a four-year term. Then there is a conflict of interest. But, if you are arguing, which I know you are now, that a four-year term come in after the next election, how does that affect your employment?

**MS TUCKER:** Well, it's more a long-term concern. If you change the term of an Assembly, once that's done, it's unlikely to be brought back to three years. It's an important decision for the community. I understand the cost argument that's put in favour of increasing the term, but the counter argument put to that is: what price democracy? As I understand it, the main argument for not extending the term is about democracy.

Even the Proportional Representation Society of Australia's submission says:

We do not have particularly strong views on this matter, recognising that in the context of having a *fixed* three-year term already, cogent arguments can be mounted for or against an extension. In keeping with Hare-Clark principles of voter empowerment, our inclination is always towards *increasing* rather than *reducing* voter involvement in determining the destiny of the ACT.

The main arguments against extending are the arguments of democracy. The argument that you're putting and other submitters have put is about the costs you would save.

**Mr Hird:** That's one of the arguments.

**MS TUCKER:** I understand that; it's the argument that you put. But I'm interested in your response to that argument about democracy. You heard me ask this question of Professor Mackerras: do you see a relationship between the nature of the Assembly and extending the term? If people who don't want to see the term extended are concerned about having a bad government there for an extra year, that's the bottom line. "Three years is better than four because, if they're bad, we're glad they're only there for three," is a reasonable argument. Would you then see a relationship between the composition of the Assembly in terms of the electorates—and there being less likelihood of having majority government—and extending the term to four years?

**Mr Hird:** I agree with Professor Mackerras that Australia and New Zealand have the best governments in the world. I also acknowledge that the ACT has good government and that, since 1982, a number of submissions have been put forward by elected bodies and representatives of the community that argued for a four-year fixed term.

If you were to change that fixed term during this current Assembly and extend it by 12 months, that would be interfering with democracy because you are feathering your own nest by extending your term of office, and you would have a conflict of interest. If you go to the voters and say that there is to be a four-year term at the next election, the voters will vote according to their beliefs in the policies or the arguments that are put to them. That will give them the determination to exercise their democratic right and vote.



**MR HARGREAVES:** I mentioned before that about 30 per cent of the Assembly turns over. I presume that's because the voters scrutinise the performance of those people and consider whether they want a good or a bad member for the next three years. Do you think that having a four-year term is going to make the voters scrutinise the performance of MLAs even more closely?

**Mr Hird:** I don't believe it will make any difference to the average voter. The average voter watches their Assembly, and they watch it very carefully. The best you could say is that a member may spend another 12 months there. But you'll find that, if you talk to the average person in the street, they will argue that there are too many elections. In my submission, I identify the problem about which Professor Mackerras agreed with you, Mr Hargreaves—that the federal election was held within months. That in itself, because of the parallel term in office, is a good argument for the ACT to move to four years.

**MR HARGREAVES:** On that point, I'd be interested in your view as a former member. The two elections are fairly close together, even it's a matter of months. What do you think of the idea that there is confusion in the mind of the voters as to which are federal issues and which are local issues and that separating them means that people are going to concentrate on their local issues.

**Mr Hird:** There is no doubt about that. The election of 2001 identified those problems. You and I were candidates at that time. Because of other activities, the average person mixed up federal and the territory issues. That was very clear.

**MS TUCKER:** I would like you to clarify what you're saying about the conflict of interest. Mr Hargreaves said that there's a 30 per cent turnover. I'm not quite clear about why you don't think there is a perception of conflict of interest because a large percentage of the people in the Assembly do stay.

Are you saying that, if this Assembly decided to not extend the term until after this current term, there would not be a perception of conflict of interest? You seem to be arguing that, despite the fact that a large percentage are likely to be the same, because it was being extended within this term, that perception of conflict of interest wouldn't be there? I need to understand if that's what you're arguing.

**Mr Hird:** I don't believe it, because the electorate and the electors know that it's a four-year term. Talking democracy, I wanted to bring in New South Wales. The average elector in the New South Wales state elections wouldn't realise that the upper house is elected for eight years. It doesn't take away from the community's democratic right to extend it by 12 months.

If, when you go to the polls, you say it is a three-year period and you extend it by another year while you're in office, that will deny democratic rights to the voters. You are feathering your own nest, as I said earlier, and there is a conflict of interest. However, when you go to the voters and say, "This is the term of office," whether it be two years, three years or four years, they will be fully aware of what they are voting for. As a matter of fact, the voters in the ACT are better educated than most voters in Australia. Democracy is alive and well, provided you do not extend the term of office while in office. I would be against extending a term while you are in office.

The Commonwealth may well come in if there is some belief that this is undemocratic. The Commonwealth, under the 1988 self-government act and the federal Constitution, can come in and override it. I don't believe they would. The current Prime Minister is in favour of a four-year term, Mr Hawke was in favour of a four-year term and the Leader of the Opposition was in favour of a four-year term.

It says in the papers I tabled that a percentage of people throughout Australia believed that, but the majority of states didn't, and it's a fact. They are trying to get a four-year term. When addressing this matter, I thought Queensland had also moved to four years. They haven't; they have a three-year term. The ACT has been a trailblazer, inasmuch as we were the first to introduce fixed-year terms. The other states have either looked at that with a view to implementing it or have implemented fixed-year terms.

I was not astute enough in 1998, when we were talking about moving the time of elections from February to October because of the budget, although I would have realised that in New South Wales they have a fixed term, which is around the first or second Saturday in March, and they bring their budget in at around the same time. They didn't see a problem with it.

**MS TUCKER:** In your submission, you say that in the jurisdictions that have adopted the four-year term, there have been benefits for the stability of governance. What do you perceive the benefits to be—apart from the money?

**Mr Hird:** Through the committee system and through the fact that a member has got four years for meeting his or her obligations as a member of parliament. It also shines out in those jurisdictions that have gone from three years to four years.

**MS TUCKER:** In what way does it shine out?

**Mr Hird:** Well, it shines out. New South Wales, which went to a referendum, clearly indicated that they wanted four years. That in itself gave good governance because of this continuity over another 12 months.

**MR HARGREAVES:** What about the concept that having four years provides greater stability in decision-making for business? You're a small-business person.

**Mr Hird:** I would say that the ACT Chamber of Commerce would welcome a four-year term, and I would think that the opposition would welcome a four-year term because it would give them stability and you continuity. At the same time, you could ask: if that is the case, why aren't you going longer term—say, five or six years—as is the case in Europe?

I think that would be going against democracy. You would then have to ask whether a government is becoming stale or inactive. A four-year term is a good balance. It has been identified in those states that have moved to the four-year term and a fixed term. It must also be remembered that the Commonwealth can intervene anyway in the ACT, so you have a city-state arrangement.

**THE CHAIR:** Thank you very much, Mr Hird.

**Mr Hird:** It's been delightful, Mr Chairman, as always.

**THE CHAIR:** Unfortunately, I have to go to another committee, so I'll pass over to the Deputy Chair, John Hargreaves.

**JONATHON SHAW REYNOLDS** was called.

**THE DEPUTY CHAIR:** Thank you very much Mr Reynolds for coming to give evidence before the committee. I am obliged to read you the contents of this card. 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 that you are protected from certain legal action, 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.

Thanks again for your submission. I will invite you to make an opening statement and we will take questions from there.

**Mr Reynolds:** In comparison to a number of other submissions that our party has previously lodged, this is a somewhat brief submission. The essence of it is that we are ambivalent either way as to whether it should be a three or a four-year term for the term of office for members. However, what we are rather concerned with is how that is actually determined and we firmly believe that it should be determined by referenda; and it should not be a decision that is made solely by the current members of the Assembly but a decision that is actually put out to the general populace or the electors.

The basis for arguing that is that it reinforces the concept of open and transparent government, the underlying democratic principles, and it most definitely instils confidence with electors that they still retain control of their government—that the government is not running away from them, that they actually control what their government does to a large extent.

I have to thank the committee office for providing a copy of your speech in the chamber. Unfortunately it was not available on the *Hansard* up on the web. But some of the arguments that you made in the chamber, that the cost of a referenda far outweighs any potential saving, we don't believe is supportable on the basis that you can also take numerous other questions of importance to the electors at that time, which would lessen the cost of asking that particular question.

Other issues which may be of importance, even though they are likely to have gone through by that time, would be the bill of rights, as one particular issue, and any other questions which may be of importance to electors at that particular time.

You seem to imply in here, Mr Hargreaves, that a three-year term is insufficient to actually deliver on the government's policies. We would argue that no matter how long a term you give a government, it will always be insufficient in that the government will argue that they haven't had enough time to actually deliver on those policies.

The other thing which actually concerned us in there is that you implied that the first year is finding your feet, the second year is actually doing and the third year is electioneering or, if we were to be crass, pork-barrelling, depending on how you want to put it. If you were a government coming in for a second term, the first year should be

continuing to do what you have done before so there is no need to actually extend the term.

What it boils down to is the government has got to have the ticker—I think that is the term used often politically—or the wherewithal to actually make hard decisions and make them efficiently rather than sit there and procrastinate and say, “Well, we’ve got to look into these issues more and more and more.” Just go ahead and make the decisions.

The other factor is you made a comparison between the ACT and other bodies politic. I think we have seen numerous times that the ACT is rather unique in its nature and its composition. Attempting to compare us to other states is somewhat misleading. With regard to federal and territorial elections, I don’t think we have boats that were sinking in Lake Burley Griffin in terms of foreign policy-type issues that could really be compared on that basis.

We have local issues that we tackle. We don’t tackle issues of national significance in that sense of foreign policy, of national health, national taxation. We have issues that are very, very specifically local and I don’t think there is a large degree of confusion if people sit down and think about what they are electing and who they are electing at that time. That, in summary, is the basis of our submission.

**THE DEPUTY CHAIR:** So if I can work it out right, essentially you are saying that you are not really committed one way or the other.

**Mr Reynolds:** So long as it’s determined by the people.

**THE DEPUTY CHAIR:** But you believe that it should go to a referendum. And you challenge a statement of the costs. Fine. I’m not going to argue with you, I’m just sort of stating. You talked about the comparison of the states. Do you draw any sort of similarity between the way in which the lower house of the Tasmanian parliament works and the ACT, as opposed to the other jurisdictions?

**Mr Reynolds:** Tasmania is a unicameral system as well, is it not?

**THE DEPUTY CHAIR:** No.

**Mr Reynolds:** It’s not—it’s got two houses. Well, our upper house is effectively the federal parliament.

**THE DEPUTY CHAIR:** Well, it’s got Hare-Clark—therein lies the similarity.

**Mr Reynolds:** Yes, but that’s only in terms of the way that they actually elect the members and the multi-member electorate-type concept. We are a single-cameral, city/state, as Mr Hird indicated. Our upper house is effectively up on the hill at Parliament House. Whether we like it or not, that’s our house of review. They can overrule on anything we do locally at any time.

**THE DEPUTY CHAIR:** So there is a similarity in a sense between ourselves and the Northern Territory parliament, for example—unicameral, the Commonwealth government can step in—and they have had a four-year term since inception. Is there

a problem with that?

**Mr Reynolds:** There is not a problem with actually having a four-year term. There is a problem with the perception, as Ms Tucker discussed with Mr Hird, of a conflict of interest in that the parliamentarians or the members are determining how long they are going to be in. For argument's sake, would the—I'm not sure whether this is a private member's bill that you're proposing or—

**THE DEPUTY CHAIR:** There is no bill yet.

**Mr Reynolds:** Okay. If, for argument's sake, the ALP were in a less fortunate situation where they were not polling as well compared to the opposition, would this be tabled? That's a question that really needs to be asked.

**THE DEPUTY CHAIR:** I would like to answer your question. The answer is yes, because it was going to be part of the whole size of the Assembly four-year term scenario. But I would be interested in your view on what Mr Hird was saying—if I can interpret what he was saying—that if the next term is made a four-year term, the people who will be voting at the next election will make up their mind on whether or not individual members or parties have got a conflict of interest. They will make their voices known fairly ready then, yes or no?

**Mr Reynolds:** I believe that's a fair assumption, but then again you are changing the legislation on something which I don't believe personally, nor does the party, the currently elected members have the jurisdiction to actually do. You are playing with the political system, and the people themselves should be allowed to determine how the political system works.

**THE DEPUTY CHAIR:** So you would be recommending a change to the Electoral Act to remove the right of the Assembly to determine the length of term and insert that this be done by referendum?

**Mr Reynolds:** No, that isn't what I said.

**THE DEPUTY CHAIR:** You said that we didn't have the jurisdiction, and yet the jurisdiction exists under the Electoral Act.

**Mr Reynolds:** The jurisdiction exists under legislation, but again you are playing somewhat with fire in terms of playing with the democratic system.

**THE DEPUTY CHAIR:** In what way?

**Mr Reynolds:** In that if you decide, because you have the numbers this time round, that you want a four-year term, what is stopping you at some point in time saying, "Well, we don't think four years is enough. We need a five-year, six-year, or anything up to an eight-year term"?

**THE DEPUTY CHAIR:** With the concept of minority government, as it exists today, as opposed to after the next election, if you believe the polls, we could have a majority government next time—but if you don't believe the polls, who knows? But at the

moment the government doesn't have a majority. How can you sort of put the point that it's a use of numbers, if you like? I can understand it in a majority government perspective—if it was a majority government under the existing legislation they could just do it—but now it is a minority government and it has to have a majority of members.

**Mr Reynolds:** Well, even more reason to actually put it to a referenda in that, regardless of the composition of the elected government and opposition and crossbenchers at that time, it is very much an issue that really does need to be determined by the people. The people might very well turn around, if you have done your research and you believe in a four-year term, and say “Yes, let's have four-year terms,” in which case there is no problem with that. But the people may turn around and say “No, we like the ability to keep the government highly accountable with a three-year term,” and therefore they would reject it on that basis.

There has been no deliberative polling that I am aware of in terms of testing the motion that you have put there for a four-year term. I don't believe that has been tested with the public as a whole recently.

**THE DEPUTY CHAIR:** The public hearings, when the Pettit report was considered, opened up that issue. There have been a number of occasions between now and then when the issue has been opened up and put into the media, and there has, by my reading anyway, been a singular lack of interest.

**Mr Reynolds:** But there is generally a lack of interest in a lot of issues political until it's too late. That's the nature of our community. People generally don't get involved until it affects them directly, and once it affects them directly it's often too late to get involved.

**MS TUCKER:** I actually should have put this to Professor Mackerras but I'll put it to you. One of the arguments against referenda on these sorts of issues is that because there isn't a very full engagement in the conversation, if you like, community members will not necessarily have an understanding of what the reality is of the parliament, and working in a parliament. I don't know what your party's position was on a referendum on the size of the Assembly. Did you have a position on that?

**Mr Reynolds:** We were pushing to three by seven, I think.

**MS TUCKER:** Yes. So did you want it to go to referendum?

**Mr Reynolds:** We were quite happy for it—in fact I think in our submission we said it needs to be determined by the people, and the people have to understand the benefits and the costs involved by any solution that comes out from it.

**MS TUCKER:** On the size of the Assembly?

**Mr Reynolds:** Yes.

**THE DEPUTY CHAIR:** Did you actually put in your submission on that—whether it should go to referendum?

**Mr Reynolds:** I don't think it was in those words. I have got to be honest: I'd have to pull the actual submission, but I'm pretty sure—

**THE DEPUTY CHAIR:** We can do that, I think. Those submissions will still be there.

**MS TUCKER:** What I am trying to understand here is your thinking on this. I have just explained one of the arguments that can be put against this. Now that was put pretty clearly for the size of the Assembly. We had a couple of reviews or inquiries—one was an Assembly one, we had the Pettit review, and I think there was another one as well—which did bring together people who took the time to understand how a parliament works and who came out in support of an increase in the size of the Assembly. The argument against putting that to referendum is that there can be a sort of gut reaction which particularly could be stimulated by politician-bashing interests in the community, which is a reality that we work in. I am not making a judgement about that either—it is quite justified in some ways and not justified in others, in my view, but depending on how extreme it is. But generally there was agreement that it probably was something that the Assembly could do without going to referendum.

You could argue that this question of extending the term is not as complex in some ways, because it doesn't involve the full understanding of the work—what it actually means to work here and what it's like having 17 members with the committee load and so on. There are some arguments being put by some people here today that, for example, committees would be better with four years. That is an argument that's been put.

**Mr Reynolds:** But conversely, if a committee starts its hearings or its investigations in the last year, what difference is there?

**MS TUCKER:** Okay, so there is an argument against that, and I think there are arguments against that but it's not my job to argue at this time. But, yes, there are arguments that you could put against that—arguments around the committees. But do you think that the question of four years is something that could go to referendum because it is less complex than the size of the Assembly? The counter argument might be that that is not consistent. Increasing the size of the Assembly is certainly an electoral matter, so if your argument is you should go to referendum for this, you should also, to be consistent, be arguing it for the other question, or do you think they are different?

**Mr Reynolds:** They are very similar. They are altering the way the people elect the officials—I'm trying to put some words around it. Both issues are issues which should be determined by the electors because it's the electors determining the way they are governed, as against the policy and the outcomes that the government will implement. So people may determine that they want more members and they want better representation. You probably are well aware of my community involvement: I have been very strongly lobbying for Gungahlin in the sense that I believe more members and a different split of the electorates will actually give better representation for the Gungahlin region, as an example.

It's up to the people themselves to determine what they want. It's not up to the 17 people who have been elected to say, "Well, we reckon we should have an extra year." You gave in your speech, Mr Hargreaves, the example of an extra eight months. I believe, from what I know of the situation, that was for a very valid reason—it was to move the



election away from the bringing down of the budget; it wasn't for any other purpose than to separate the two processes.

**THE DEPUTY CHAIR:** Would you then accept—or not, as you will—the argument that a valid reason for doing it is to distance the two elections, the federal election and the state election, in terms of disruption to people? Or you don't see a problem with having two a year?

**Mr Reynolds:** No, because we are on a fixed term and we will always have an election three years from the date of the previous election, under the Electoral Act. With the federal election, yes they are elected for a three-year term, but they can call an early election at any point due to any number of triggers. So there's no guarantee that moving it out that extra year is going to keep it out of sync and out of phase.

**THE DEPUTY CHAIR:** Well, won't it actually lessen the likelihood, in the sense that, in terms of the cycle as we know it at the moment, it is probable that the election for both will happen in the same 12-month period, the same calendar year.

**Mr Reynolds:** Is that a problem?

**THE DEPUTY CHAIR:** Well, that's a question for you.

**Mr Reynolds:** Is it a problem? Already, within our Electoral Act—and I'm sure the Electoral Commissioner can confirm the actual details, because I can't do so off the top of my head—if the dates for the election conflict, I believe we bump it out to early December. So we already have mechanisms to cope for clashes. I do believe that the issues that we cover locally are significantly different to those that we cover federally.

**THE DEPUTY CHAIR:** You were involved in the 2001 election?

**Mr Reynolds:** Yes. I didn't have people coming up to me asking about issues of taxation; I didn't have people coming up to me asking about the *Tampa*; I didn't have issues with people coming—

**MS TUCKER:** I did.

**THE DEPUTY CHAIR:** Well, I did. And I would suggest for the record that about 60 per cent of the queries I got were on federal issues. You didn't experience that sort of—

**Mr Reynolds:** This could have been because we were highly focused on what we were doing. Both of you are representatives of major political parties in this country as against a local party, which we don't resile from.

**THE DEPUTY CHAIR:** Okay.

**MS TUCKER:** And I'm just interested in the fact that—this is my understanding—you and your party don't have a position at all on the terms.

**Mr Reynolds:** So long as it's determined by the people.

**MS TUCKER:** All right.

**THE DEPUTY CHAIR:** If it did go to referendum, what would your party be putting to the referendum? What position would you be putting, in terms of political parties having the responsibility to advise voters on what they should consider?

**MS TUCKER:** What do you stand for?

**Mr Reynolds:** Our argument would be—and, again, we haven't sat down and formed policy on this, which makes it very difficult—

**MS TUCKER:** Well, that's a fair enough answer. You get to work it out later—that's fine—but you would have to have a position on it, surely?

**Mr Reynolds:** I am sure we would have a position. I will just give you an idea of what our policy was for preferences, to just give you an idea of the cuff. Our policy on preferences was vote one for us and move your preferences to the people who you believe will do the job best for you.

Off the cuff, it may be that if you believe that the accountability is you are satisfied with what you're getting on a three-year term, vote for a three-year term; if you believe that it would have a better outcome from a four-year term, vote for a four-year term. Without sitting down and doing proper policy analysis and putting it to our members, I'm sorry, I can't give you a—

**THE DEPUTY CHAIR:** That's okay.

**MS TUCKER:** Fine. Fair enough.

**Mr Reynolds:** The other issue—and Ms Tucker has brought it up several times—was conflict of interest. That's a very important perception issue in that quite often parliamentarians are criticised for voting themselves their pay rises whenever that process comes around. This is a similar issue. By putting it to referenda you can avoid the criticism that you have determined your own destiny and your own outcomes.

**THE DEPUTY CHAIR:** How much do you think the people of the ACT are aware that members of the Legislative Assembly have no say whatever in the determination of their pay?

**Mr Reynolds:** As far as I'm aware, they approve it, do they not?

**THE DEPUTY CHAIR:** No.

**Mr Reynolds:** It's actually determined externally, is it? I apologise for that.

**THE DEPUTY CHAIR:** No need for an apology, because the point that I actually raise with you is a perceptual one. And so it's a case of ACT parliamentarians being belted regardless of the fact. I take the point about the perception of a conflict of interests—I think it is a very valid one to make. But I just wonder whether it would make any

difference. I think the point was made about having it for the 2007 election, for example. The same thing, in my view from what I've gathered today, would apply anyway because those people who believe that they are going to be elected forever could stand accused of considering their own futures.

**Mr Reynolds:** There is no such thing as certainty in politics.

**THE DEPUTY CHAIR:** Yes. And indeed, with 30 per cent of the place being turned over—we think 30 per cent—it is actually almost five or six members out of a parliament of 17. They don't know which one they are going to be.

**Mr Reynolds:** Obviously you are both longstanding members, and so is Mr Stefaniak who is not here. Is that not a reflection of the way that those particular members operate in that a member who is doing their job well will get re-elected because they continue to do their job well and a member who does their job but doesn't excel in it can't necessarily be expected to be re-elected.

**THE DEPUTY CHAIR:** Could I just extend your comment then?

**Mr Reynolds:** Yes.

**THE DEPUTY CHAIR:** I ask you again: whether it is a three or four-year term, the voters at, say, the 2004 election are going to vote on the quality as they see it of the members for whom they are voting. And so whether it is three or four is not going to enter in their minds particularly. They are going to say, "The person is doing the job and I'm happy with them" or "They're not doing the job and I'm not happy with them" and then, bang, they will have lost their job. So that is the relevance again. I guess it's a bit of the apathy bit.

**Mr Reynolds:** Well, the other question then is: if the change is made, how is it going to be made very aware to the voters that they are in fact voting on a four-year term as against the three-year term? The Labor government is very big on community consultation. Effectively what you need to do here is engage the voters rather than consult with them, and make them aware of what they're actually doing. And that's a sort of engagement that you don't get through consultation.

**THE DEPUTY CHAIR:** Okay.

**MS TUCKER:** Just to clarify one matter: I think it needs to be put on the record that the remuneration for ACT politicians and public office holders is determined by the Remuneration Tribunal. However, in the Commonwealth there is a capacity for it to be brought to the parliament for debate. I have raised in this place that we could change our own legislation. I can't remember the mechanism that would be used, but basically we could do as the Commonwealth does and allow it to be brought to the Assembly for debate. But that was rejected by the majority of the Assembly. The arguments put against that were mainly that it politicises an issue that is uncomfortable. So we don't have a say but it would be possible to have—

**Mr Reynolds:** I apologise for that.

**MS TUCKER:** No. What Mr Hargreaves said wasn't the full picture either. We could have a say—I have said I think we should, in fact, but that wasn't supported by the majority of members—if we chose to do so, and that is obviously difficult because there is a tendency, which is unfortunate to some degree, I believe, to always just try to bash politicians, who on the whole are working pretty hard et cetera, et cetera. And so that makes politicians feel vulnerable and that's why they want an external arbiter on the salaries, which is a reasonable argument too. But then the other argument against it is it is an issue for the society and so the politician shouldn't be afraid of that debate, and that's the conversation that occurred at that time. But it is one that comes up now and again.

**Mr Reynolds:** I think my confusion actually stems from the announcements being actually tabled within the chamber and that's where I—

**MS TUCKER:** They are tabled, yes, and we don't at this point have the capacity to reject. So whatever comes from the Remuneration Tribunal comes to members and they do what they will with it—you know, they can give some away or whatever if they want to if they are not comfortable with it, but basically that's what happens now. But that's not the case in the federal government.

**THE DEPUTY CHAIR:** Thanks very much for your submission and your comments. We appreciate it.

**MS TUCKER:** Thank you.

**LLEWELLYN REYNDERS** and

**LYNNE GRIMSEY**

were called.

**THE DEPUTY CHAIR:** Thank you for appearing, Ms Grimsey and Mr Reynders. You should understand that these hearings are legal proceedings of the Legislative Assembly, protected by parliamentary privilege. It 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. Thank you again for your submission. Unfortunately, in a way, it has come in only very recently so we have had very little time to look at it. But my understanding of it, quickly, is that essentially you are opposed to the extension to four years and in favour of it going to a referendum.

**Mr Reynders:** That's correct.

**THE DEPUTY CHAIR:** Can I invite you to make an opening statement on this?

**Mr Reynders:** Sure. My name is Llewellyn Reynders. I am a member of the ACT Division Executive of the Australian Democrats, and I would like to make it clear that that I am appearing in that capacity here today, not on behalf of my employer.

**Ms Grimsey:** My name is Lynne Grimsey and I am the President of the ACT Division of the Australian Democrats.

**THE DEPUTY CHAIR:** Welcome.

**Mr Reynders:** A lot of the arguments in our submission have been put before you today and in other submissions. I think what I wanted to focus on briefly was something that Mr Reynolds brought up previously. That is that the ACT is a very different jurisdiction to other states and territories.

I would draw the committee's attention to the fact that we don't have a separate level of local government. In other jurisdictions they separate state level responsibilities from local level responsibilities and allow the electorate to vote separately on those two different levels of government.

That means that people in other jurisdictions not only are allowed more elections—and they participate more in developing public policy in that sense—but also are able to disassociate different levels of government and the particular policy of those levels.

So the ACT has a weakness in comparison to that, in that we have to firstly mould those two levels of government together, as well as the fact that we don't have elections separately to consider those different issues. So every other jurisdiction already has more

frequent elections than the ACT, if you include all three levels of government in those jurisdictions. And, secondly, the ability for the ACT government to develop policy across the whole sphere leads to an argument that people should have the right to keep a closer eye on what's going on, simply because of the breadth of the responsibility of the ACT government, which other governments don't have to cover.

I also did a quick look around at different parliaments and how long their terms were over the past four terms of the Assembly, and I noted that there's a big difference between a four-year term where the government can call an election, such as in Tasmania, and a four-year fixed term.

Certainly over the last four full terms, South Australia's is the only parliament which has actually had four-year terms on average, whereas in all the other jurisdictions terms have actually been shorter than four years. And I note that the term in Tasmania, whose lower house shares our system of government, is actually less than two months, on average, longer than the ACT's.

So the argument that every other jurisdiction has four-year terms so we should too isn't necessarily the case if you look at the historical length of those terms, because governments often call early elections and so the terms don't end up being four years.

**THE DEPUTY CHAIR:** While you are on that point, do you think the governments of those jurisdictions would be improved if they all went to fixed terms?

**Mr Reynders:** Certainly, although whether the term should be fixed at three years or fixed at four years is another argument.

**THE DEPUTY CHAIR:** So could we assume from that that your submission is actually in favour of retaining the three years—going to referendum, but it should be a fixed term, whatever that is?

**Mr Reynders:** Yes. I'll also note that the Legislative Assembly performs the functions of a local government so it's also useful to compare the terms of local governments across Australia. Certainly in three other jurisdictions it's three-year fixed terms. Tasmania and Western Australia have two-yearly elections, but they're half elections, so their members have four-year terms. New South Wales—

**THE DEPUTY CHAIR:** Sorry, did you say that they're two-yearly elections but the members have four-year terms?

**Mr Reynders:** Yes, they're half elections, like the Senate.

**THE DEPUTY CHAIR:** And how many jurisdictions did you say have three?

**Mr Reynders:** Queensland, South Australia and Victoria; that is my understanding.

**THE DEPUTY CHAIR:** All right. So that's three, so the other five have four?

**Mr Reynders:** Well, Tasmania and Western Australia—

**THE DEPUTY CHAIR:** Excluding ourselves, obviously, because we haven't got one.

**Mr Reynders:** New South Wales has four. In the Northern Territory, it depends on the particular local council. Some of them are as short as one; others are up to four. And, as I said, Tasmania and Western Australia have two-yearly elections, so in a sense the composition of the council will be changed every two years, but they are half elections, like in the Australian Senate and various upper houses around the country, so that the members themselves have four-year terms.

The other point I really wanted to impress is that the Democrats in particular are very supportive of the concept of elections and the concept of referenda, and I guess I was a little worried about some people with the idea that elections impede democracy, in a sense—that elections cause governments to misbehave or make bad decisions, and therefore having fewer elections makes governments better, and I actually—

**THE DEPUTY CHAIR:** Before you go on, Mr Reynders, I noticed you made that point in your submission, but I confess that's the first I've heard of that sort of view. Can you tell me where you got that view from?

**Mr Reynders:** I think there's an idea that near to elections governments are unable to govern effectively—I think that's more the argument. "Bad" is a particular idea that some people might put on it, but certainly there's an idea that when governments first take up government they are separated from the workings of government, and when they get to an election they pull back from—

**MS TUCKER:** They're busy campaigning. It's not so much bad, but you know that argument.

**Mr Reynders:** Yes. It is the idea that governments do good government work only in the middle of their terms. I guess that's an idea that I don't think is a useful one. The Democrats would submit that elections are a really good part of the democratic process, in that they actually engage the people in public policy debate, and they actually allow a focus of both the media and the community on what the political system does and how it functions.

Having elections closer together allows people to remember what happened at the last one, and assess the government on what they remember it promising. Having elections closer together allows a better continuity from Assembly to Assembly, and certainly a better continuity of issues in the minds of voters, than spacing them further and further apart.

**THE DEPUTY CHAIR:** And you actually believe that even that short period that you are talking about is sufficient for members, either in their constituent role or in their policy delivering mode, to actually allow them to deliver the goods before they have to face the judgment day?

**Mr Reynders:** I think it does, and certainly there are many examples across the country of three-year term governments. I do think that three years is enough for people to make an impact and be able to communicate to the electorate what they're doing. If you look at the flip side of that, there are a lot of people who would like to be members who stand as

candidates in an election who don't have three years behind them to exemplify their record. They have only a few months in order to communicate what they stand for in the election.

So the fact that you've already been in for three years, and you've had three years to let everyone know how wonderful a member you are, gives you an automatic advantage against the rest of field when it comes to an election. If you hold up the democratic ideal of an election, where voters are informed about all the candidates and all the policies, then surely the more closely and equally they know the candidates in an election the better—and the more informed a decision they can make.

**MS TUCKER:** I am interested in your position on the size of the Assembly. Did you want that to go to a referendum?

**Mr Reynders:** I don't recall us making that point at the time, when that debate happened, but I don't believe that the Democrats would oppose that going to a referendum. I was thinking about that when you asked that question.

**MS TUCKER:** Yes, I am wondering if you see them as different questions; that's all.

**Mr Reynders:** There is certainly a difference in that, according to my understanding of the self-government act, the Assembly actually does not by itself have the power to change the number of members of the Assembly. And I also understood that the Legislative Assembly couldn't hold a referendum on issues that it doesn't have the power to change. So I guess we could probably have a plebiscite on the issue, but I understood that it was not within the power of the Assembly to have a referendum.

**MS TUCKER:** No, you'd have to first ask the federal government to give the Assembly the power, but once the Assembly had the power, this question would arise. I am just interested to know if you see them as the same question or different. Obviously they cannot be the same question but, in their complexity or the nature of them, are they decisions that would warrant a different response, in that on one you would respond well to the question of a referendum and on the other you wouldn't because of the nature of the question? If you haven't got a position, that's fine. I just wondered if you could help with that.

**Mr Reynders:** I don't think that matter has been discussed in any depth by the division, but the Democrats are generally in favour of putting questions to the people. That would be my general response to that question.

**MS TUCKER:** Okay, thanks.

**THE DEPUTY CHAIR:** Thank you very much for your submission and for the evidence that you've presented to us. I appreciate the time. Thank you very much.

**Mr Reynders:** Thank you.

**Ms Grimsey:** Thanks

**The committee adjourned at 3.12 pm.**