

**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, 7 OCTOBER 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 3.00 pm.

PETER CONWAY was called.

THE CHAIR: Thank you very much, Mr Conway, for attending this inquiry on four-year terms. I have to read this statement to each witness before the Assembly, but I hardly think it is necessary for something like this. 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. So just be aware of that.

Mr Conway: I'm fully aware of that, Mr Chairman, thank you.

THE CHAIR: What would you like to say?

Mr Conway: The association believes that there is a desperate need for change from the current three-year process. We believe that a change to four years would lead to a major cultural change in the planning arrangements, which this association is very interested in. With the current situation, with the three-year period, six months out from the election or even nine months we find that the bureaucracy goes into a caretaker period, as I've mentioned in my comments here.

There have been times when chief executives have said to me, "Look, we can't possibly approve this or even put a suggestion forward to our minister. We're on term contracts. It's an issue for another time that we wouldn't dare suggest in the lead-up to an election." I've had senior members of the executive in previous governments, both Liberal and Labor, say to me, when the association has gone along, "Look, it's six months out from an election. There's no way known we'd dare approve that."

We're fully cognisant of the Hare-Clark system and the problems that politics brings, but we do find in a practical sense that it comes up on a regular basis. We find with the planning process currently that we have a three-year term, but the process really is truncated to two years. Six to nine months preceding an election, we go into caretaker mode and, with the incoming government, by the time the planning committee is made conversant with the new laws, we have a 12-month hiatus.

If I can give some practical examples. In your electorate, Mr Chairman, draft variation 202 is the Jamison master plan. That planning process, which was formally notified and gazetted last Saturday in the *Canberra Times*, has taken some 2½ parliaments to come to fruition, yet we still have to go out to another round of public consultation, which we are terribly disappointed about and will be taking up with the new head of the planning department.

That was put on hold prior to the last election, some nine months out, when the then planning committee were not prepared to advance any hearings, given an election was coming up and the members of the Assembly based in that electorate were worried about

some potential kickback from local electors. It then took us, the association, some six months to nine months after the election to get draft variation 202 back formally on the agenda.

With the Jamison master plan we're looking at a project worth \$250 million to \$300 million for the revitalisation of a major shopping centre that I think everybody would agree is run down. The previous government targeted it as one of the shopping centres that needed to be upgraded. We believe if there was a four-year term, we could greatly enhance that opportunity to meet with the new members of the planning committee and avoid what I call a protracted caretaker period. We also believe that it would bring a culture to the bureaucracy that needs to be greatly addressed.

We would also like to see the planning committee, if we went to four years, meet on weekends. Given the nature of the planning and property arrangements, we'd also like to see the planning department, ACTPLA, move, especially in the earlier part of the year, to a six-day working week, especially in the planning area. Of course, we understand that that would be at a cost and we would be advocating a 15 per cent loading for staff that work on a Saturday. We believe, from a budgetary point of view, there are sufficient funds in the major surplus that's coming out of stamp duty and the huge GST rebate that is about to come from the Commonwealth.

We believe a four-year period would greatly enhance a lot of the planning projects that many of our members are now working on. For example, we are about to have preapplication meeting on major draft variation projects—one in the seat of Molonglo and one in Ginninderra—and we've already been advised that, with the Christmas holidays coming up, ACTPLA will not accept any HQSD or preapplication meetings post 1 November. That would mean 1 November till 1 February. We would then go into what I call informal caretaker. So, once again, we've got a month before we can proceed with some major projects. The one in Deakin is a \$150 million project and the Jamison one looks like being caught up in this process again.

MR HARGREAVES: Are you saying, therefore, that that's a reason why it ought to be introduced immediately instead of waiting for the 2007 election?

Mr Conway: Most definitely. If we have to wait for a round of public consultation or any suggestion of a referendum or going out to community groups, whether it's having a bay window built in your backyard or a major \$300 million development, we just can't afford that in this community, with the moneys that that brings into the ACT Treasury and the jobs it creates.

THE CHAIR: We've had some huge problems highlighted in the media recently in relation to our planning regime.

Mr Conway: Yes. I know that it may be for another time and place, but the head of the CFMEU and other people in the building industry are very concerned about the delay. We really do believe that part of that delay is the Hare-Clark system, and we know that it is not going to be moved, but it's the length and the style of the three-year term that is currently in place.

It is a mixture of the work and the time spent by the planning committee. I know that you don't have enough members to do a lot of other issues, but we really do believe that a lot of our planning processes are being truncated and we're not able to get on and do proper planning. Hence, if we're not careful, once the current boom, so-called, ceases, we could find ourselves in real difficulties in the 2006-07 financial year and onwards.

MR HARGREAVES: I wish to pick up on one thing you've said. You're talking about a downturn in activity and you have mentioned that, essentially, you've got three months of inactivity at the end of this year, and that would presumably be considerably worsened in an election year. Is it made any worse by the possible convergence of federal elections and ACT elections?

Mr Conway: Once there's a hint of a federal election, the people go on hold, whether it be the tax industry or the building industry. If we had a double whammy here, say, next October of a federal election and an ACT election at the same time, we would see a dramatic downturn in business activity in the nation's capital.

MR HARGREAVES: Therefore, to have them, as practically as one can, at least a year apart would actually assist in the process.

Mr Conway: Dramatically, especially in Canberra, where we have really three planning regimes. We've got Finance and Administration releasing land on the Commonwealth's behest, and we don't know when they're going to do that; we've got the National Capital Authority, which is responsible for planning in designated Commonwealth land; and ACTPLA. The three of them, for whatever reason, I don't believe or the association doesn't believe are talking constructively together.

Once there is a suggestion that there will be an election on at the same time, the NCA are going to close down. They're not going to call for tenders in the parliamentary triangle. DOFA aren't going to put out for tenders for Anzac east or west, whatever they're going to do with that site. Carillon upgrades would cease immediately, tenders would go on hold. At the same time that was happening federally, locally we would be in caretaker mode, tenders wouldn't be leased, we'd be waiting to see who was going to form the new government, we'd be waiting to see who was going to be on the new planning committee. We'd be stymied; business would go on hold. We need a major break.

MR HARGREAVES: When there is the potential of convergence like we had in 2001, industry goes into chaos for a period.

Mr Conway: There is a six to nine months hiatus. People aren't sure what the views of the incoming government, either federally or locally, may or may not be on a whole range of issues.

MR HARGREAVES: What is the recovery like? Once they do know, presumably it doesn't kick in straightaway; it then needs a gearing-up period at the other end, I would imagine.

Mr Conway: Given the present planning arrangements with ACTPLA, there's an 18 month delay, so you've got a nine months hiatus and you've got another 18 months. By the time you try to get people back into the arena you are looking at a two-year or

a 2½-year drop. That's disastrous, whether it be for the local candlestick maker, the local baker or the local brickie. I also think it's one of the reasons why we have such a surge in current prices, apart from the fire, and we're now getting through that. People want to make their money when they can, so prices go up. They feel there's a need to move quickly now and that's one of the reasons why building costs in Canberra are well above the CPI. There needs to be a break in that nexus. Once we go on hold, there is just a complete hiatus.

MR HARGREAVES: One of the things that have been said to the committee is that three years at least allows people a more frequent opportunity to terminate the term of an unsatisfactory government. I suppose it depends on the position from which you look at whether they're unsatisfactory. But, in terms of property owners, which is more important to them—having the certainty of a building regime or the ability to take part in changing that regime?

Mr Conway: Political regimes come and go. As I said earlier, we know the make-up, we understand the Hare-Clark system, and regimes come and go. But in business, what the Property Owners Association members need is a clear understanding that, if they put in proposals now, 18 months down the track, regardless of the government of the day, there will be a regime of certainty that we know who we can talk to and we can get on with the job. We don't want to go onto, as I called them, extended caretaker holidays. They are bad for industry, they are bad for government, and they are bad for the region.

THE CHAIR: Is there anything you want to add, Mr Conway?

Mr Conway: I'd just like to thank the committee for the opportunity to be here today. We sincerely hope that the four-year regime will get introduced and as quickly as possible. But I would also like to highlight what we believe is a need for the planning committee under such a regime to meet outside the normal Monday to Friday regime of the Assembly and we would like to see, as I said, the planning department on a six-day working rotation, with special allowances to assist.

THE CHAIR: Thanks for those additional points, which we probably should pass on to the planning committee, being the most appropriate body for your additional helpful comments. Thank you for your attendance and for your magnificent officiating at the World Cup game yesterday.

MR HARGREAVES: Thanks for suggesting that I work on a Saturday.

Mr Conway: That's okay. Also, can I get it into *Hansard* that he's offside all the time in lineouts.

THE CHAIR: Absolutely. Probably not only lineouts.

Mr Conway: Thank you, Mr Chair.

PHILLIP GREEN was called.

THE CHAIR: For the purposes of this inquiry, Mr Green, please give your full name and the capacity in which you appear before this committee.

Mr Green: Phillip Green. I am the electoral commissioner with the ACT Electoral Commission.

THE CHAIR: I have to read this statement to any witness. I hardly think it is necessary for an inquiry like this, but I will do so anyway. You should understand that these hearings are legal proceedings of the 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, because giving false or misleading evidence will be treated by the Assembly as a serious matter. Do you understand that?

Mr Green: Yes, I do.

THE CHAIR: I hardly expect you to be slagging off at anyone to need that, but we have to read it to every witness. Mr Green, I thank you for appearing. What would you like to say to the committee?

Mr Green: Thank you for asking me along. I have a few opening remarks and also some information for you in response to some of the things that were raised at the hearing last week. You obviously have my submission. Would you like me to briefly summarise the submission or do you want to take it as read?

THE CHAIR: It might be handy just for the transcript, yes.

Mr Green: What we, the Electoral Commission, did in our submission was to concentrate on those aspects of the law that need to be amended to implement four-year terms and what it would mean in a budgetary sense for the running of elections in the ACT if we moved from three years to four years. We felt it wasn't our position to argue either for or against three-year terms. We felt it was our position simply to state what the consequences of that would be and the decision as to whether it would be appropriate to move from three years to four years was not one for the commission to have a view on, so we didn't really go into that area.

As far as the ACT's effective constitution is concerned—the Australian Capital Territory (Self-Government) Act 1988, which is obviously a Commonwealth act—it doesn't limit the term of the Assembly, and gives the Assembly the power to enact its own term of office. So, in theory, it could pick whatever particular term it wanted. If it went too far, I think that the Commonwealth government would probably rein the Assembly in, as it has the power to do.

The only real time constraint mentioned in the self-government act is a requirement, if the Assembly divides the ACT into electorates for the purposes of elections for the Assembly, that a redistribution be held at least every six years after the previous

distribution. Having been peripherally involved in that, my recollection of that time was that the six-year date between redistributions was effectively a requirement to have a redistribution after every second election, given that at the time three-year terms were the norm. Three-year terms were set firstly in the ACT Electoral Act under the Commonwealth parliament, which was what provided for elections for the first two Assemblies, 1989 and 1992. Once the Assembly was given the power to enact its own electoral legislation for the 1995 election, that's when the ACT then adopted fixed three-year terms.

The self-government act doesn't really have any limitation, other than this requirement to have a redistribution every six years. The ACT Electoral Act currently provides that a general election is to be held on the third Saturday in October on the third year after the year when the last ordinary election was held. That means, given that the last election was in October 2001, the next election is due on 16 October 2004. To introduce four-year terms in the ACT it would be simply a case of amending the words "the third year" to "the fourth year" in section 100 of the Electoral Act, and that would be enough to provide for four-year terms.

We do mention in our submission that we feel it would be appropriate to still have the election on 16 October 2004 and that four-year terms would then kick in after that, otherwise you're changing your term after you've been elected to what the voters thought was a three-year term.

MR HARGREAVES: Can you just go back over that again?

Mr Green: To introduce four-year terms in the ACT, it would be a very simple amendment, just an ordinary majority of the Assembly.

MR HARGREAVES: Yes, I got that bit.

Mr Green: If you just amend section 100 of the Electoral Act to say that a general election under this act must be held on the third Saturday in October in the fourth year after the year in which the last election was held, if you made that amendment now, that would have the effect of providing for an election in October 2005.

MR HARGREAVES: But cannot the act be amended now so that it applies from 16 October 2004?

Mr Green: Yes, that's exactly what we have recommended.

MR HARGREAVES: And that is what you are recommending.

Mr Green: Yes.

THE CHAIR: You would recommend that so that that would mean, if we chose to go to four-year terms, that that obviously would be for the next Assembly. It would start on 16 October 2004. The next election date would be the third Saturday in October 2008.

Mr Green: That's right.

MR HARGREAVES: I'm glad you cleared that up, Mr Green, because I had misunderstood that bit in your submission.

THE CHAIR: I suppose you can't offer an opinion, given your position as a paid official, but have you received any correspondence since the February 1998 election—and the term, of course, for the Fourth Assembly was three years and eight months—from anyone either complaining that that Assembly went for three years and eight months rather than three years or, conversely, saying, "That was quite a good idea because we think there should be longer terms"? Have you received any correspondence as electoral commissioner in relation to that issue?

Mr Green: I don't recall receiving any such correspondence, but it's unlikely that I would get such correspondence because I would expect that sort of thing to go to a minister rather than to me.

THE CHAIR: Sure, but I just wondered. Sometimes people do write direct to departments.

Mr Green: No.

MR HARGREAVES: You have heard me talking about convergence of the federal elections and the ACT elections. From my perspective as a candidate, it was a right royal pain, I have to tell you. I did not know when one was, but I did know when the other one was. Do you have a feeling about having the four-year term actually separating them and at what frequency is there likely to be a convergence, given a worst-case scenario?

Mr Green: I was going to get to this later in my opening remarks. Do you want me to finish my opening remarks or address that directly?

THE CHAIR: Please do. Sorry to interrupt you.

Mr Green: Just to finish summarising our submission: just changing those couple of words in the Electoral Act is all you need to do to introduce four-year terms, subject to waiting till after the next election. There are a few consequential amendments, which we've set out in our submission, which are essentially to do with the funding disclosure scheme, which has some periods in it which are tied to three-year terms. We're recommending that those be changed to four-year terms. I won't go into any detail on those, unless you'd like me to do that.

MR HARGREAVES: No, they are self-explanatory.

Mr Green: The other thing, which again is quite straightforward, is the cost side of things. In current dollar terms, we estimate that the next election is going to cost about \$1.5 million over and above the normal just under \$1 million of the ordinary running cost of the commission. Effectively, every 12 years you are going to be saving \$1.5 million in today's terms if we move to four-year terms over three-year terms, which averages out at something like \$125,000 a year as being the saving.

MR HARGREAVES: Before you get off that topic, how much would it cost you, over and above the cost of an election, to put a referendum on the top?

Mr Green: Again, I was going to come to that, but we estimate that if we were to hold a single-question referendum with the next election it would cost about \$230,000.

MR HARGREAVES: On top of the election cost itself.

Mr Green: On top of the election. That's for things that are specific to a referendum. Most notably, the casebook mailed to households is a fairly expensive item, which I expect would be something that you would be wanting to do.

MR HARGREAVES: So we use up two years worth of savings in one go.

Mr Green: Yes, that's right. I was going to come to that.

MR HARGREAVES: I just wanted to put that in *Hansard*, Mr Green.

Mr Green: That is all I was intending to say on the submission itself, unless you've got specific questions about that.

MR HARGREAVES: There is the convergence.

Mr Green: There are a few more things, the convergence being one of those, on which I have some extra things to talk about. Perhaps I should do the convergent election or the concurrent election issue first. I have actually got here a list of election dates going back to Federation for Commonwealth elections. As you can see, they vary widely, but at the point in time when the ACT moved to introduce October elections, which was before the 1998 ACT election, of the previous six Commonwealth elections at that time, four of them were in March and the other two were in December and July.

At the time we had elections happening in February, the Commonwealth was tending to have its elections in March, so we were getting a convergence at that point. I think that was one of the factors behind moving towards an October date. It just so happens that the 1998 election was on 3 October 1998 and the 2001 election was on 10 November 2001. I would caution against moving the ACT election date on the basis of very recent Commonwealth history because, if you look at Commonwealth history going back, the most common dates for Commonwealth elections in recent years have been December and March, which is probably far enough away from us as not to cause us any grief. It's a very moveable target.

MR HARGREAVES: When I was talking about the convergence of the dates, I think that that was the success, as you quite rightly pointed out, of the October change. There was the scare that we had in the 2001 election because of the opportunity of the Prime Minister of the day to go bang. I know that we have provision for that. I'm just thinking about the confusion for the voter. Also, practically speaking, your office conducts elections for them, so you have potentially within a space of three months two elections to run. I am glad that you would be doing it, not me. I am just wondering whether, as with the savings spread over 12 years, moving it to four years and having the federal government having its up to three years would widen the gap even further.

Mr Green: I'm sure it would. If we in the ACT moved to four-year terms, obviously the possibility of us being concurrent with the feds reduces dramatically. I did notice in the media in the last couple of days that the Prime Minister is starting to talk about four-year terms for the Commonwealth parliament, which obviously would involve a constitutional referendum. I think he was also talking about adopting the Victorian model of having a minimum term of 3½ years, with the possibility of going anyway in that last six months. My feeling on the Commonwealth terms is that we just go our own way and the Commonwealth will go its and sometimes we'll converge and sometimes we won't.

THE CHAIR: You recommend, at any rate, that we keep the fixed term.

Mr Green: Fixed terms have lots and lots of benefits. As you might know, I was involved in a consultancy advising the Northern Territory government on changing its electoral act and bringing it into the 21st century and fixed terms was one of the things that kept coming up in public consultation as being something that was very desirable. The business community wanted it, the political parties wanted it. The certainty that it provided was something that very strongly came out in public consultations as being something that was very desirable.

THE CHAIR: On your paper about the House of Representatives election dates for the last century, for 1925, 1928, 1929, 1934 and 1937 you have "NT" next to the year. Does that mean the Northern Territory?

Mr Green: The Northern Territory was a different date; I can't remember why.

THE CHAIR: Did they have elections then? They have only had their assembly, I understand, since the 1970s.

Mr Green: No, they were Commonwealth elections for the House of Representatives, but they were held, for some reason, some weeks after the rest of the country. I don't know why.

THE CHAIR: That was for the Northern Territory seat.

Mr Green: That was just for the Northern Territory.

THE CHAIR: Were they part of South Australia then? No, that was in colonial times.

Mr Green: I don't know the history of that, but that's what that meant.

MR HARGREAVES: On that discussion about three-year or four-year terms for the Commonwealth, does the Commonwealth have the same freedom as us to change the length of its terms or are they required to have a referendum on it?

Mr Green: The Commonwealth Constitution sets out the maximum terms of the federal parliament. From memory, it works from the first day of sitting of the parliament and the Governor-General has to issue writs within a certain period of the end of the three years from that date. I think they can actually extend an election for a bit more than three years from one to the next and that's because it starts from the first sitting date.

MR HARGREAVES: It would require a referendum to change the Constitution to allow the House of Representatives to meet for four years.

Mr Green: Yes, it would. And then there's the implication that has for the Senate, because the Senate is tied to two House of Representatives terms, so a move to four-year terms for the House of Representatives would mean eight-year terms for senators if the Senate term wasn't altered. I'm a bit hazy on this, but I think that the constitutional referendum in 1988 that provided for four-year terms for the House of Representatives provided for four-year terms for senators as well. I think that was one of the arguments why people voted against it, because it had that change as well.

MR HARGREAVES: That's all good stuff. Thank you for that.

Mr Green: I do have more, if you'd like more.

THE CHAIR: Yes, go on, please.

Mr Green: On the issue of whether to hold a referendum, which was something that was discussed at last week's hearing—

THE CHAIR: Yes, we had a number of people who thought that that would be a good idea.

Mr Green: We looked into the history of other states. As has been discussed, there are six Australian jurisdictions that have four-year terms. Only one of those—New South Wales—held a referendum before introducing four-year terms, which was in 1981. Victoria, Western Australia, South Australia and Tasmania introduced their four-year terms by amendments to their constitutions passed by their parliaments. Their constitutions didn't require a referendum to be held. The other jurisdiction that has a four-year term is the Northern Territory. That is written into their self-government act, so they've had that from self-government in 1978. So there has only been one successful referendum on the introduction of four-year terms and that was in New South Wales.

MR HARGREAVES: Out of how many attempts?

Mr Green: Out of six. I think Malcolm Mackerras' submission goes into the number of different referendums that have been held. There was one in Queensland in 1991 which asked people whether they wanted to extend the maximum term of future parliaments from three years to four years and, taking Malcolm Mackerras' figure, that was voted against by 48.8 per cent for yes to 51.2 per cent for no. Then there was the Commonwealth referendum in 1988, which we were just talking about, asking whether people wanted a four-year maximum term for both senators and members of the House of Representatives, and that was voted against by 32.9 per cent for yes and 67.1 per cent for no nationally.

MR HARGREAVES: With federal referendums, you need to have a majority of states as well as a popular vote, don't you?

Mr Green: That's right.

MR HARGREAVES: What happens in the states? It is just the popular vote, isn't it?

Mr Green: I think so, yes.

MR HARGREAVES: In that case, comparing a federal referendum result with a state referendum result is not exactly the same process, is it?

Mr Green: It's not, but if you're just looking at the straight yes vote, no vote.

THE CHAIR: You have to look at the question, too. In fairness to Mr Mackerras, he mentioned that the question was a bit difficult.

MR HARGREAVES: Yes. I guess I was trying to wrap my head around whether it went down through the popular vote or because of state majority or whether it was a bit of both.

Mr Green: I think it was both. I don't think it got a majority in any state.

THE CHAIR: To lump the Senate and the House of Representatives together probably caused all sorts of problems in its own right. They are very different sorts of systems historically. As I recall, the ACT was the only place where one of those questions got a majority in 1988, and I thought it was on four-year terms, but Mr Mackerras pointed out that that wasn't the case; it was something else.

Mr Green: I can't recall what it was now. That was the end of the things that I had prepared, so I'm happy to take any questions.

THE CHAIR: We know that the term for the majority of Australian democracies is four years. Thank you for saying that only one actually went to a referendum. That is an important question for us. The others simply enacted it. Coming to that, firstly, are you aware of any problems with other states and territories simply going to a four-year term without putting it to the people first? Has there been any significant community angst about that in those states that you're aware of?

Mr Green: Not that I'm aware of, no. An interesting feature has been that to begin with they moved to non-fixed terms of four years, so that the average term was quite significantly less than four years, but we have now had New South Wales, Victoria and South Australia all move to fixed four-year terms, which I think is indicating that people are seeing the merits of fixed four-year terms. The Northern Territory has now had that recommended to them as well. I also notice Peter Beattie in Queensland has been talking about the possibility of fixed four-year terms in Queensland, which would require a referendum.

THE CHAIR: In terms of other Western-style democracies, we know that the UK has five years. I think that the Americans have four for the House of Representatives.

Mr Green: Four for the President. They have elections every two years for the Congress.

THE CHAIR: What about other democracies? Say, what do the French do?

Mr Green: I am not an expert on that. I did notice that some of the submissions did go into that.

THE CHAIR: If you don't know, don't worry.

Mr Green: There's a convergence. Some are six, some are five, some are four. It's very rare to get one more than six; that is the impression I got.

MR HARGREAVES: Is it also fairly rare to get them as low as three.

Mr Green: From some of the figures I saw quoted in one of the submissions, three seems to be less popular than four or five.

MR HARGREAVES: Mr Chairman, I have an administrative question for Mr Green. If the self-government act were changed it would, to me, obviously have an impact on the workload of your commission in terms of going to four-year terms.

Mr Green: Sorry, that's not an amendment to the self-government act; that is to the Electoral Act.

MR HARGREAVES: Sorry, if we amended the Electoral Act to say that the term is going to be four years and we did all the consequential changes that you have recommended, it would have an impact on your office, clearly, and it would save us money and so on, but I want to get a feel for whether the parliament needs to give your office a certain degree of notice of that change. In other words, if you are preparing for an election to occur in October, I do not know how much lead time you use to kick it off.

Mr Green: Three years at the moment. As soon as we finish one, we start getting ready for the next one.

MR HARGREAVES: When it comes down to the nitty-gritty, would it be advisable, for example, that we address the legislation in December of this year? Is the lead time significant to your office; if so, why?

Mr Green: It seems to me that the important thing for the Assembly to do is to enact four-year terms before the next election so that if you are intending to have four-year terms come into play after 2004—so the next election would be 2008—it would be, I think, proper to inform the public that they are actually electing their representatives to four-year terms rather than three-year terms.

In terms of election preparation for the commission, we really focus on the next event; so, once the 2004 election is over, assuming that any increase in the term has been passed before that election, that's really all we would need to know.

MR HARGREAVES: So you would be doing your business plan, as it were—a five-year business plan or whatever—in a rolling program and the earlier you have notice of the change in goal posts, the better it is for you.

Mr Green: Yes. Because at the moment we have three-year terms, we have a cycle that runs on the three yearly cycle, so we've planned up until the next election and

immediately after, but we get over that hurdle before we start thinking about the next one.

MR HARGREAVES: You provide information to people. Getting yourself on the roll is one campaign that you have had. In that sort of information you send to people you give them important information, such as “Do you know you’re electing people for four years?” When do you actually start that get on the roll type of campaign?

Mr Green: We are really doing get on the roll activities all the time. In fact, over the last few years we’ve moved away from the every two years doorknock that we used to do, which was an expensive and inefficient process. We’ve now moved to a continuous roll update process where we’re using data from a range of government and semi-government bodies to identify people who are in the act of moving address, turning 17 or 18 or whatever. We are targeting people much more cleverly and using our dollars more effectively that way.

That’s something that we’re doing all the time. I wouldn’t have thought that moving from three years to four years would impact on that process very much. The election itself, we start doing our multimedia campaign—television, radio, newspapers, household deliveries and so forth—about a month out of the election, so we’re talking probably September. We would certainly be including in that fairly prominently the notion, if indeed this has happened, that the term has changed.

MR HARGREAVES: In terms of maintenance of the electoral roll and electronic voting, would either of those have any impact on the introduction of four-year terms?

Mr Green: Not directly. Four-year terms would give us the ability to do more long-term development of things like electronic voting and counting systems. A three-year term for a really complex IT project does cut things fairly fine. If you look at the way that the electronic voting was introduced before 2001, by the time we went through the process of convincing the government to do it, and then the government convincing the Assembly to do it, and then us convincing cabinet to give us the money for it and then going through the contract process and the software development process, three years was a very tight timetable, so a four-year term would certainly help us in developing that sort of cutting edge system. I would certainly like to see the ACT continue to be at the forefront.

MR HARGREAVES: Also, presumably, picking up the bugs in the system that you’ve got, which is standard practice for any IT system. Bugs emerge. Having a longer lead time to solve those problems and have a test run would be advantageous, I would imagine.

Mr Green: Certainly. I’d place on record that there weren’t any bugs in the system that affected the final outcome last time, but we are in the middle, having got budget funding, of upgrading the system and, obviously, we need to test any changes that we make to it. Obviously, a four-year term would give us a bit more time to do that sort of thing.

THE CHAIR: I have nothing further. Thank you very much, Mr Green.

The meeting adjourned from 3.40 to 4.15 pm.

JOHN WARHURST was called.

THE CHAIR: I have to read this out to every witness. It is probably not terribly relevant for an inquiry such as this, unless you are going to surprise us with something.

You should understand that these hearings are legal proceedings of the Assembly protected by parliamentary privilege. This gives you certain protections and also certain responsibilities. It means you are protected from certain legal actions, such as being sued for defamation for what you might 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 Assembly as a serious matter.

Do you understand that?

Prof Warhurst: I do.

THE CHAIR: Would you please tell the committee your name and the capacity in which you appear before this committee?

Prof Warhurst: I am John Warhurst and I am appearing in a personal capacity.

THE CHAIR: Do you wish to make any statement?

Prof Warhurst: No, I would prefer to answer questions. I do not really have a prepared statement.

THE CHAIR: All right. As you are aware, we are looking into the question of four-year parliamentary terms. No doubt you are aware of the situation in other Australian jurisdictions.

Prof Warhurst: Yes.

THE CHAIR: My first question is: what opinion do you have about whether the Assembly should have a three-year term or a four-year term, or some other type of term?

Prof Warhurst: I lean towards a four-year term. It is not something that I feel very strongly about. It does seem to be the direction in which other jurisdictions are moving. I am not aware of any jurisdiction which is moving the other way, but I will stand corrected on that.

On balance, with a single chamber—which means that there are no complications involving the term of the upper house, which is an issue in some jurisdictions—I tend to lean towards four-year terms, for reasons of good government and cost and, in a federal system, to avoid bothering the community with elections too often.

I suppose I should say that I have not seen some of the arguments for four-year terms proven in a hard evidence sense. The good government argument is the one that would sway me most: governments being distracted by having to go back to an election, governments perhaps even governing in a way which always has an eye on the next

election, or at least does so more frequently than it would if you had four-year terms. I am a little bit persuaded by those arguments, but I would welcome some hard evidence and some real study of that fact.

For instance, I think that, with talk about continuous campaigning and speculation about when the next election is going to be, even if it is actually quite a long way away, even under a longer term you could get a situation where government was distracted by electoral concerns.

MR HARGREAVES: Would that not be a bit negated by having the fixed term?

Prof Warhurst: It would be. I think you are quite right. I think having the two together—

THE CHAIR: So if the Assembly went to a four-year term, would your view be that we should continue to have that as a fixed term?

Prof Warhurst: Yes, I like the idea of fixed terms. In terms of good government—avoiding being distracted by other matters, speculation and those sorts of things—fixed terms are the best thing. I know there are arguments against fixed terms but, where they operate in practice, I do not think they cut across Westminster responsibility and relations between the parliament and the government. I think that can be addressed.

THE CHAIR: Obviously, we have elections in October. Were we to go to four-year terms, it would be a fixed term and it would again be an October election. Do you have any problems with October as the month when we have our elections here in the territory? Is there any issue in that for you?

Prof Warhurst: No, not at all. I think it is a pretty sensible month in which to have one. Whatever time of the year you have an election, in any one year there may be a problem with school holidays or those sorts of things. However, I think that, considering the weather and the general cycle of people's lives, October is a pretty good time to have an election. I am not saying it is the only good time.

MR HARGREAVES: What are your thoughts on the convergence of the federal election with the territory election and having the four-year term, which would put us predominantly out of sync? You have been an observer of ACT elections for a long time. Do you agree or disagree with the idea that there can be voter confusion between the two regarding the issues if these elections are too close together?

Prof Warhurst: Yes. I am not in favour of elections being too close together. I think most people can distinguish between the two. However, in terms of having territory elections fought on territory issues and federal elections fought on federal issues, it is probably best if they are not too close together. There are probably other reasons to do with the funding and voter intolerance of having elections fairly close to one another that might also make you want to keep them apart. I think that being out of sync is probably a good thing, rather than a problem.

MR HARGREAVES: Can I take you back to something you were saying before? You were talking about good governance. I take your point about governments having an eye

on the election and so on. One of the arguments advanced, which I happen to believe, is that there is an action year in the middle of the term, but in this case we have two action years in the middle.

Notwithstanding that, because we have two tiers of responsibility we are often compared with state jurisdictions when it comes to the length of the term or the method of deciding it, and so on. However, the other state jurisdictions do not have that local government element. What do you think of the idea that having a four-year term would enable a government or a minister to better administer the territory, having regard to the fact—and I think it is a numerical fact now—that the Assembly changes about 30 per cent of its members at each election, so there is that overlay, I suppose?

Prof Warhurst: I tend towards thinking that good governance is more likely under a four-year term than a three-year term. I hadn't really thought about the particular character of the territory, to be honest. As for whether having more local functions than the state governments means that there's a stronger argument in the territory for a four-year term than there would be elsewhere, I'd have to think about that one.

I suppose the good governance argument runs along the lines of ministers and others not only not being distracted but also making their decisions in a more objective fashion than they would if the election was six or nine months away. I have two comments to make on that. First, there is another aspect of good governance, which is being responsive to the people. You could argue that having an election coming up within 12 months might have the minister keeping an eye on those responsiveness issues, which is part of good governance as well.

Second, I'm not sure of the evidence for bad governance in the lead-up to an election, anyway. Most ministers, you would say, are in the business of—

MR HARGREAVES: Ros Kelly might disagree with you.

Prof Warhurst: Well, I suppose so.

MR HARGREAVES: Do you want some evidence?

Prof Warhurst: Fair enough. There are certain portfolios where you have community grants and those sorts of things where you might be inclined to deviate from good governance in the interest of getting re-elected. But I suspect that most ministers in most portfolios most of the time just don't have the raw material, even if they were inclined to do things before an election for electoral purposes. With the sort of policy area they are concerned with and the sorts of decisions they're called upon to make, you could argue both ways about whether it's worse or better in the 12 months leading up to an election.

MR HARGREAVES: Are you aware of the difference in beast between the committee system in the federal parliament and the committee system here in the Assembly?

Prof Warhurst: I would like you to explain that to me.

MR HARGREAVES: The committee system here, because it is essentially non-partisan, has a much greater role in advising the parliament than the committees do in the

federal parliament. Indeed, the federal parliament has more in common with Westminster than it does with us. One of the members of the House of Lords actually told me that in the UK committees were created to give the backbenchers something to do with their time—I don't want to embarrass anyone.

I can't say a thing about my delightful colleagues on the hill, but in the Assembly—particularly in the case of the planning committee, which has a day-to-day advisory role—the type of committee inquiry and the effect of those inquiries are much more relevant to what happens in the territory than is the case in the other parliament.

After a significant inquiry, a report is given to the Assembly but often, by the time the government of the day has had an opportunity to react to it and provide resources, there is an election and it falls off the agenda. What do you think of the notion of extending the term—even by only 12 months—so that committee members can get to know their committee portfolio more intimately and also get a chance to follow up the recommendations that the committee has made?

Prof Warhurst: There is something in that. In fact, it probably applies more at the parliamentary level than it does at the governmental level, where you might argue that four years would enable ministers to get a better grasp of their portfolio. Of course, they can be changed, regardless of the length of the parliamentary term, whereas committees probably have more necessity for stability in terms of their composition.

The good governance argument applies there as well: the more people are left in their positions to gain experience and get to know the lie of the land, the better it is from the point of view of good government. I accept what you say that that could be an argument within the parliamentary arena for longer terms, so long as the government and the opposition don't move people from their committee portfolios.

MR HARGREAVES: Therein lies the uniqueness of the ACT committee system, even among the Commonwealth countries. We have a predominantly non-partisan approach in our committee system, where it is the segments of the chamber that are represented rather than the proportionality of the parliament. I don't know any other Commonwealth jurisdiction that does that. My attendance at a Westminster seminar to test this revealed to me that, of the 20-odd countries represented, none of them did that in any of their state or federal levels. That in itself is a democratic issue. I was interested in that.

One of the comments made was that holding elections every three years makes the government of the day more accountable. What do you think of the notion that another year really doesn't make a lot of difference anyway, given our experience of the three years and eight months term and the ACT's history thus far of holding governments and chief ministers accountable mid-stream?

Prof Warhurst: To take each of those points in turn, I'm not convinced that there is great benefit in saying that you're holding governments accountable by having elections every three years. I don't think four years makes too much difference, as far as that is concerned. As I said before, I lean towards the longer term, for good governance reasons.

As you say, the composition of the Assembly and its relationship to government, particularly in its slightly earlier history, was one where there were other ways of the

Assembly holding governments accountable in the traditional fashion of no confidence. That's how it's done in representative democracy; whereas the argument for a three-year term is that participatory democracy is what you want in terms of accountability—that you're holding the members of the Assembly personally accountable every three years.

I should say also that the fixed term comes in here, too. It's turning the argument on its head a bit, but the strongest argument for lengthening terms—I'm going to tie myself in knots here—is that the average term is two years and three months in those three-year jurisdictions that don't have fixed terms and that gets up people's goat. It is going to the people too frequently, and I think it is too frequently.

I like the combination of a fixed term and a longer term, which is a sort of double whammy as far as good governance is concerned. It ensures that you will get a longer term, whether it's three years or four years, and I think that has stood the ACT in good stead. I think the fixed character of the term is almost as important as the length of the term because governments behaving in a certain way when an election is coming and being distracted by talk of an election will perhaps be even more frequent if they don't know when the election is going to be.

MR HARGREAVES: Or when one side does.

Prof Warhurst: Or when only one side does or not even the whole of one side—maybe just the premier, the chief minister or the Prime Minister would know that. That leads to a level of media speculation, which is another aspect of bad governance in my book because it means that the media, in their terms, are not focusing on holding the government accountable for policy and are running after hares as far as the election is concerned.

MR HARGREAVES: When we had the public hearings on the size of the Assembly, there weren't a lot of people engaged in the discussion. I actually went public with the criticism that the lack of academic rigour was rather remarkable.

Prof Warhurst: Sure. I noticed that at the time. I felt half guilty, to be honest, that I hadn't put more effort into making a submission.

MR HARGREAVES: I'm also struck by a similar approach to this inquiry. What I'm trying to gauge is the apathy level of the people in voter land—whether neither of those issues is something they're terribly bothered about and whether making them go to a referendum is going to make the slightest bit of difference to their apathy.

For a number of years we have been discussing the size of the Assembly and the length of its terms, most significantly with Professor Pettit's review, and I have been struck by the singular lack of engagement of the media and the general public. I don't know what the chairman feels. He probably has a similar experience to mine: trips around the pubs don't reveal anybody saying, "You people are trying to feather your own nests here." From your movements around academia, do you think am I reading the thing right?

Prof Warhurst: Absolutely. In terms of the community as a whole, I wonder how many people in the ACT would know how long the term of the Assembly was anyway. That would be an interesting question to ask.

MR HARGREAVES: They get the superannuation wrong every time.

THE CHAIR: They assume we're on something like the Commonwealth one instead of just a very bad super scheme.

Prof Warhurst: Those of us who, in their own way, are closer to these things feel that everyone should be interested but that most people in the community are not. That was revealed at the time of the last inquiry into the number of members of the Assembly. I went to a public meeting, which had been reasonably well advertised, and there was hardly anyone there who didn't have a particular position to put. You get a very small group of highly involved people with their own barrow to push.

THE CHAIR: There is always a knee-jerk reaction to the size of the Assembly: "We don't want more politicians," and "Why don't you cut it?" But I don't get any vibes at all in relation to three or four-year terms. You said you wondered how many people actually know how long we go for. That would be an interesting question in itself.

Prof Warhurst: I'm not even sure you would get the same knee-jerk reaction to this one, because it's a bit more complicated.

THE CHAIR: It also means people having to go to the polling booth a bit less, which is something a lot of people would wish for. They've said we have too many elections.

Prof Warhurst: That's right. I can imagine people could run the argument that it's cheaper and that there's a saving to the public purse.

MR HARGREAVES: We heard that the saving is \$125,000 a year. Over a 12-year cycle it's \$1.5 million. Final story.

Prof Warhurst: I don't see any strong argument for trying to raise people's level of interest through a referendum or any other means. I wouldn't mind there being a public education campaign, but my experience suggests that it wouldn't go very deeply into the community. Similar to the Pettit report or some other committee report, only a small number of significant people in the community would have an interest in it. It would be regarded as academic, in the worst sense of the word.

MR HARGREAVES: If you knew that it would cost \$200,000 to do a referendum and having a four-year term saved \$125,000 a year, your reaction to that would be, "Forget the referendum."

Prof Warhurst: That is the case.

THE CHAIR: In the Fourth Assembly we had a three years and eight months term. Have you heard any comment either for or against that?

Prof Warhurst: I can't remember hearing any comment at all, Chairman.

MR HARGREAVES: Except from me. I thought it was a great idea.

THE CHAIR: You're a politician. I meant the general public.

MR HARGREAVES: Well, yes. I get an extra eight months of work.

Prof Warhurst: I'm not sure if too many people would have noticed, to be quite honest—and it must have changed the month for the election and all of that sort of thing.

THE CHAIR: We went from February to October.

Prof Warhurst: February to October is a good thing. But although I think there are strong reasons for October, there'd only be a small percentage of the community that would be bothered by even that very sensible move. I could even ask my students, whom I regard as having a self-declared interest in politics, but they probably wouldn't get very excited by the issue and wouldn't be very knowledgeable either.

MR HARGREAVES: We've had fixed terms for a long time, but I bet that if you asked your students to tell you the date of the next election, they wouldn't be able to do it.

Prof Warhurst: No. If there were one or two out of 400 I'd be surprised.

THE CHAIR: Have you got a class on at 5 o'clock?

Prof Warhurst: Yes, I have.

THE CHAIR: Why not just ask them that?

Prof Warhurst: I will. I'll tell them what I've been up to, and I'll put two or three questions. One would be fixed terms or not and another how long the ACT term is.

THE CHAIR: Just ask them how long it is and if it is fixed term. And the last question?

Prof Warhurst: That would be: when is the next election?

THE CHAIR: That would be fascinating. They say that it is predominantly young people who are interested in politics.

Prof Warhurst: If you like, I can report back.

THE CHAIR: That would be interesting to see.

MR HARGREAVES: I bet you hear a predominance of "don't knows"—and quite reasonably, too. I'm curious about it. In New South Wales they seem to have an election every second week. They've got council elections, state elections and shire elections. If you want to frighten the horses, just talk about the elections.

It seems to me that with our unicameral system and the combination of both territory level and local level, if we make ours out of sync with the federal election, the voting public of the ACT will appreciate it.

Prof Warhurst: That is a positive. I'm not in favour of bringing all Australian elections together. I know some people have suggested getting it all over at once. That would be disastrous.

MR HARGREAVES: It would mean that for a period of about 12 hours there would be no governments in the country at all.

Prof Warhurst: That's true, and you'd get total confusion as far as the issues and personalities are concerned.

THE CHAIR: Thank you very much for your attendance.

Prof Warhurst: Not at all.

THE CHAIR: And it would be fascinating to see—

Prof Warhurst: I will ask, if you're serious about it.

MR HARGREAVES: Serious, my word! We get feedback from the constituents when we are on the shopping centre stalls and what I'm getting is nothing—an absolute lack of interest. Even if I raise the issue, I get, "Don't care." It would be very interesting to see whether your people are switched onto politics.

Prof Warhurst: That's right. Some of them have come to the ACT from elsewhere, but that's a complication we can forget about.

Resolved:

That, pursuant to standing order 243, the committee authorises the publication of evidence and submissions received by the committee during this hearing, together with any supplementary material arising from the public hearing.

The committee adjourned at 4.41 pm.