LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ADMINISTRATION AND PROCEDURE

(Reference: Review of the Australian Capital Territory (Self-Government) Act 1988 (Cwlth)

Members:

MR S RATTENBURY (The Chair)
MR J HANSON
MS A BRESNAN
MS M PORTER

TRANSCRIPT OF EVIDENCE

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Secretary to the committee:
Ms J Rafferty (Ph: 6205 0557)

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

WITNESSES

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Amended 9 August 2011

The committee met at 9.01 am.

CORBELL, MR SIMON, Attorney-General, Minister for Police and Emergency Services and Minister for the Environment and Sustainable Development
QUINTON, MR PETER, Senior Manager, Civil Law Group, Legislation and Policy Branch, Justice and Community Safety Directorate

THE CHAIR: I welcome everyone to this public hearing of the Standing Committee on Administration and Procedure inquiry into the Australian Capital Territory (Self-Government) Act. On behalf of the committee I would like to thank you, minister, and your officials for appearing today. I imagine that we do not need to go over the matters contained in the privilege card. I remind witnesses that the proceedings are being recorded by Hansard for transcription purposes. Before we proceed to questions from the committee, minister, would you like to make some opening remarks?

Mr Corbell: Thank you very much, Mr Chair. I thank members of the committee for the opportunity to appear this morning. Obviously you have a copy of the government's submission before you. I would simply preface the submission by saying that the government welcomes this inquiry. We believe it is timely that the Assembly looks at issues around the operation of effectively what is our constitution, the ACT self-government act. The government has been consistent in its representations to the commonwealth about the need for review and modernisation of elements of the self-government act. Whilst the commonwealth itself has not to date embarked upon a review of what is a piece of commonwealth legislation, it nevertheless has indicated to the territory that it is supportive of the territory undertaking its own review of the self-government act. Therefore we welcome this process this morning.

The government's submission deals with a range of matters. Obviously it deals with matters such as the size of the Legislative Assembly, the size of the executive and a range of other matters where the territory continues to be barred from the ability to legislate on a range of matters that are available to other jurisdictions—notably, state governments and state parliaments. The submission goes into those matters in a greater level of detail. I simply indicate that I would be willing to elaborate further on those, if the committee is interested in them, to try and answer any other questions that you may wish to ask.

THE CHAIR: Thank you, minister. I have a number of questions but I appreciate that the government's submission has covered a range of important issues in the act. I will start with the comments you have made on the size of the Assembly and the size of the executive. I guess there is a different view amongst the submissions around how the size of the Assembly should be contemplated. I think you refer to the Electoral Commission playing a role; other submissions have referred to perhaps an independent process involving more of the community. Is that community involvement something that the government has considered?

Mr Corbell: The government would certainly be very open to that. The process that the government proposes in its submission is not mutually exclusive of some form of engagement with the broader community. The process that is recommended in the government's submission is drawn from, firstly, the issues raised by Dr Hawke in his

review of the administration of the territory and, secondly, the comments made by Professor John Halligan in his assessment of the Latimer House principles last year.

Professor Halligan suggested, given the stalemate that currently exists in terms of there being a lack of agreement amongst all the political parties as to the actual number of members that should be the quantum of the increase in an increase in the size of the Assembly, that the Electoral Commissioner could potentially be engaged to examine the issue and to make some recommendations. That would not preclude the Electoral Commissioner from engaging in a public consultation process as part of that. That is certainly not something that the government would have any concern with.

The point that the government would make about the issue of the size of the Assembly is the ratio that was established by Professor Pettit in his review of self-government arrangements after the first 10 years of self-government, where he indicated that the ratio of elected members per electors at the time of self-government was 1:10,000. That ratio is now 1:14,285 and is at the very high end when compared to other jurisdictions in Australia of a similar size, such as the Northern Territory, which has one elected representative for every 685 voters, and Tasmania, which has one elected representative for every 1,110 voters. This is a ratio that the government believes should be had regard to. Applying that ratio would result in an increase to around 25.

MR HANSON: Can I seek a point of clarification. When you talk about the ratio of elected representatives, does that include local government in the other jurisdictions? So when you look at that ratio, it is incorporating mayors and local councils; it is not just looking at the state government numbers, is it?

Mr Corbell: I would have to clarify that, Mr Hanson. I am not sure whether Professor Pettit or Dr Hawke—I beg your pardon; Dr Hawke did look at combined state and local government level political representation in making the comparison between jurisdictions. So it includes local government representation.

MS PORTER: Does it also take into consideration the geographical differences? Obviously it is just a raw figure, minister. I was thinking about the Northern Territory, which I do have some experience of. It seems a terribly low number, but obviously many of the members would have huge distances to travel to be able to contact their particular constituents. Is any consideration given to the geographical spread of where people actually live or are these just the raw figures?

Mr Corbell: These are just the raw figures. These are the figures that Dr Hawke put together. But it is important to stress that whilst geographic considerations are a consideration, with a growing population, the complexity and multitude of issues that you have to address are also growing.

I think it is worth making the observation that self-governance now is a much more complex task than it was in 1989. I can draw the parallel from the experience in some of my own portfolios. In 1989 there was no real, significant work or task of the executive when it came to water policy, energy policy or climate change policy. These are now significant elements of the territory's administration and significant tasks for the executive to have to address. Issues of water security are critical. Issues of energy supply, issues of the cost of utilities, issues of responding to climate change policy,

which is a whole mammoth new area of federal policy and one that the territory must also engage in, simply were not on the agenda even 10 years ago, in terms of the task of the executive. So the task of the ACT executive has grown considerably since self-government.

Obviously that places more strains on the capacity of a small executive to adequately manage all of those various and competing tasks. That is directly relevant to the size of the legislature. So whilst geographic considerations should not be ignored, complexity and increasing scope of the task of governing a city which has grown in population by nearly 100,000 people since self-government should also be kept in mind.

MS BRESNAN: In your submission you have mentioned Professor Halligan's suggestion that there be that independent review in conjunction with the Electoral Commission. I suppose it is a bit of a hypothetical question, but who would conduct this independent review? What are your views on how it would then be acted on? Presumably it would still have to come before the Assembly to agree on the process. How do you see it would work in practice?

Mr Corbell: There is no doubt that at the end of the day the Assembly would still need to reach some sort of position on the issue of an increase, either unanimously or by a majority. Obviously it would be desirable for all parties in the Assembly to agree on what an increase in the number of members should be. The proposal by Professor Halligan, I think, was spurred by his recognition that it would be desirable if there was a non-partisan analysis of the need or otherwise for an increase in the size of the Assembly. That would form the basis for the inevitable political consideration that would come afterwards.

As to who would be involved, I think that is an open question but it is quite possible for agreement to be reached on an inquiry panel which would include the Electoral Commissioner or which would work in conjunction with the commissioner to provide advice to the Assembly on the question. You could appoint people who are clearly not partisan in their perspective but who would bring the necessary expertise and rigour to the exercise, people like the people that had previously commented on this issue, people of the calibre of Professor Pettit, Professor Halligan or others who understand the broader context of electoral representation and the issues around effective governance. There are plenty of people in academia and elsewhere who could bring that expertise.

MS BRESNAN: If you were basing it on that ratio idea that provides, in some way, probably a more objective criteria that could be applied, it would remove some of the issues of increasing the size by basing it on population?

Mr Corbell: Yes. The government would argue for that ratio of one member for every 10,000, I think it is, which was the basis on which we formed the size of the Assembly in the first place, and use that as a starting point.

MR HANSON: On the size, I am trying to get my head around the quantum that would be required. You are advocating for a bigger executive—and I understand the logic for that—but obviously if you increase the size of the executive and you are

going to draw that from a single party, you need that party to secure a certain number of seats and you require a backbench. I would be interested in your view about a larger backbench. You are operating at the moment with two and I understand it does put a lot of pressure on backbenchers. Ms Porter would probably have a view on that.

When you are talking about the expanded executive, have you got a view on what size that would be and whether there is a requirement to make sure that you have a certain number of backbenchers from the government to fill the range of responsibilities such as whip, committee responsibilities, Assistant Speaker and so on? I am trying to form an idea of the size of the government, essentially, and then the size of the Assembly from that point of view.

Mr Corbell: They are certainly interrelated; that is true. Professor Halligan and Professor Pettit both made the observation that any increase should ensure that there is a workable legislature as well as a workable executive. They both made the comment that at the moment, even amongst non-executive members, the work of the Assembly's committees is under significant strain due to the multiple membership on committees by the same members. It is particularly acute in the context of the governing party but it is also an issue amongst non-government parties. It has always been an issue for minor parties and independents and it has been an issue for the opposition of a purely political flavour.

Halligan and Pettit both said that you have to have regard to the workability of the Assembly's committee system. If you want to have an adequate check on and watchdog function of the executive's actions, you need to have a committee system which is sufficiently robust. They make the observation that they do not believe it is at the moment because there are too many people trying to do too many things on the committees, even amongst non-government members of committees.

That said, in terms of the size of the executive, the government does not have a particular view on the number of what an increased size of the executive could be. Although the government's submission highlights the position in other jurisdictions—the Northern Territory has a much smaller number of electors than the ACT and has one elected representative for every 685 residents, compared to our one for every 14,200 residents, and it has an executive of eight—the self-government act itself does not put any overall constraint on the size of the executive. It specifies that the executive shall be a maximum of five but that can be changed by enactment of the Assembly itself. So the Assembly itself can make an enactment to specify what the size of the executive should be or can be.

Our view is that such an enactment should only set an upper limit on the total number of ministers but clearly, in the current arrangements where there are only 17 members, there is little point in making such an enactment because there are only a certain number of members that you can draw from in any event. With a larger Assembly, it would make sense to make such an enactment to specify what the upper limit should be on the number of ministers that could be appointed by the Chief Minister.

THE CHAIR: Section 41 talks about the size of the executive. I think there has been some discussion in the past about whether it is in the power of the ACT or the commonwealth to set that upper limit on the size of the ministry, the size of the

executive.

Mr Corbell: It is quite clear that the territory has the ability to set the size of the executive by enactment but in the absence of such enactment the maximum number of ministers is five. If you like, the self-government act specifies a base limit but that can be varied by the Assembly itself, by a territory enactment. No government has chosen to pursue such an enactment. I think that is because of the practical difficulties with trying to establish a ministry of more than five, given the size of governing parties. The largest governing party that has been formed in the Assembly is nine, in the term of the last Labor government. The smallest, I think, was the first Follett government which had five Labor members and had four ministers from those five members.

THE CHAIR: Are there other questions on the size of the executive? Otherwise, I was going to move on.

MS BRESNAN: This question crosses over a bit. In attachment A and in a number of other submissions, there are some changes to or deletions that could occur in the self-government act. To get clear how this process would work if it were to come in, are you suggesting that those changes be made to the self-government act and then we would have almost a separate process to determine what the size of the Assembly would be? We would be making those changes, I guess, in parallel with looking at the size of the Assembly through another process. If this were to occur, is this how you see this would work?

Mr Corbell: Essentially, yes. These are proposals to change those elements of the self-government act where we believe there are some outmoded restrictions that still exist on the power of the territory to be self-governing and to determine its own affairs and some provisions that would reflect more contemporary practice around the recognition of the prior custodianship of the land by the Indigenous people of the territory. It would provide some further guidance around the purpose of the self-government act itself, to ensure, clarify and make a commitment in legislation that the territory has seen the successful development of a separate and autonomous political system which provides for representative democracy of its citizens and that it is the Assembly which is the legitimate representative voice of the people of the territory when it comes to their elected representatives, when it comes to matters solely those of the territory. I think that is an important point to make.

These issues arise at times of dispute over contentious matters, for example, civil unions or euthanasia, where the question is often raised, "Who is the Assembly elected to represent?" It would be worth stating in the preamble to the self-government act, "The Assembly is the only body that is elected by universal adult franchise to represent the views of the people of the ACT on matters that are solely the province of the ACT." Leaving aside debates about the rights or wrongs of particular policy positions, it is worth stating that that principle is one of the fundamental principles that underpin the concept of self-government and, therefore, should be reflected in the self-government act.

THE CHAIR: In the submission there is a section on the immunity of the commonwealth in relation to section 27 of the self-government act. In particular, you make reference to the fact that binding the Crown, although highly desirable, can

entail significant regulatory resources and, therefore, it would need a lot of consultation between the ACT and the commonwealth. Can you just elaborate on the observations you make there?

Mr Corbell: Perhaps as a bit of background, the territory law only binds the commonwealth where the commonwealth agree to be so bound; otherwise their own provisions apply—however they choose to apply them. This became most obvious about 10 years ago, or more than that—around 1997-98—when the newly elected Howard government chose to sell a large number of commonwealth-owned buildings.

Those buildings were built prior to self-government, but on their sale into the private sector they shifted from being regulated by commonwealth regulation to then having to be managed, in terms of building standards, by ACT legislation because they were just a private building like any other private building in the ACT. There had to be a range of regulatory efforts put in place to regularise their compliance with ACT building standards as they transitioned in the ACT jurisdiction.

These types of matters emerge from time to time. Another example would be issues around the management of waterways. For example, in terms of the Murray-Darling Basin arrangements, Lake Burley Griffin, our largest body of water, was not captured in terms of considering the territory's water assessment. It was a very small amount of water in the scheme of things but, nevertheless, it had to be dealt with differently because it was commonwealth water, not ACT water.

These types of discrepancies arise and can bring additional regulatory resource requirements on the territory. Nevertheless, in principle we take the view that it is desirable for the commonwealth to be bound on a range of matters. This is occurring right now, for example, in relation to the regulation of waterways. It is proposed that the commonwealth's Lakes Ordinance, which governs what you can and cannot do in terms of boats and other watercraft on Lake Burley Griffin, should be regularised and we should have a single piece of legislation, which will be ACT legislation, which governs all waterways in terms of the use of waterways, including Lake Burley Griffin.

There are negotiations ongoing between us and the NCA to that effect. Quite frankly, the commonwealth parliament has got better things to do than worry about the Lakes Ordinance. It makes sense for us to have a consistent regulatory regime, particularly because it is ACT police who are enforcing these provisions and they should be able to do so in a consistent legislative framework.

MR HANSON: In the government's submission at 4.6 you talk about limitations on the ACT's legislative powers. You talk about what we can and cannot do. There are some things in relation to censorship which create, in your words, an unnecessary distinction between the ACT and other states and territories. What I am trying to get a view of is this: in accordance with what the government wants to see occur with the self-government act and other associated legislation, what would be the difference between us and a state at the end, functionally, in your view? What things would you see us still having limitations around in terms of what the ACT could or could not do? Do we become, essentially, a state in all but name under what the government is proposing or do you see there are some important distinctions that would need to

remain?

Mr Corbell: In terms of our legislative power, there is no reason why the ACT cannot have the full range of powers that are available to a state parliament. Obviously that does not accord us state status. The states are named and identified in the constitution and they have particular rights and prerogatives as a result of that. We would not be a state in such a circumstance—that is, we would not be guaranteed a certain number of members of the House of Representatives, a certain number of senators and certain other powers in relation to the operation of the Federation. But there is no reason why we could not have the broad grant of plenary power that is available to those parliaments to make laws for ourselves.

I think that is the distinction. For example, there are a range of exemptions that, quite frankly, do not make any sense. One that is highlighted in the government's submission is in relation to the issue of censorship. The states have the power to determine what material should or should not be classified or censored. The territory does not. The territory has the power to regulate the commonwealth's regime and to enforce it, but we do not have the power ourselves to determine what material should or should not be classified. That is done under a commonwealth statute.

There is no reason why this situation should continue to exist. It is an anomaly. Equally, there are other, more serious limitations on our capacity to be self-governing—for example, the operation of another piece of commonwealth law, the Andrews act, that prohibits this place even having a discussion about the matter of euthanasia. Leaving aside views as to the desirability or otherwise of that policy matter, it makes no sense that that matter can be raised and debated in a bill brought before a parliament in any state but it cannot be brought before the legislative assemblies of the Northern Territory, the ACT and, for that matter, Norfolk Island. It makes no sense whatsoever. Whilst that is outside the operation of the self-government act per se, it is nevertheless a constraint on our ability to be self-governing.

MR HANSON: Minister, the ACT was established, as we know, as the seat of the federal parliament. We only exist because of the federal parliament. A lot of these restrictions were put in place with that view. Essentially, what you are saying is that, other than the restrictions on the mandated number of Senate and House of Representatives seats that we get, as you see it there would be no difference in law between what the ACT and the states could legislate for and what their powers would be. That is fundamentally what you are saying, without going to perhaps details about classification or euthanasia.

Mr Corbell: I think it is more nuanced than that. In the government's view, we cannot be a state. We cannot aspire for statehood in the same way that the Northern Territory is making the case. The reason we take that view is that we are the seat of government. We were established as the seat of the government for the federal parliament. Our circumstances are different. The government does not argue for or aspire to statehood per se. But we do say that, when it comes to the administration of the territory's own affairs, as to those matters which are rightly the domain of state governments in other places, it should be the same for us.

We understand and we absolutely accept that our powers are derived from a grant of power from the federal parliament, and that is because we are the seat of government. There is no contest on that issue. But what we are saying is that the grant of powers should be consistent, to the greatest extent practicable, with the grant of powers or the powers that are available to equivalent state legislatures. That is what we are arguing for.

MR HANSON: Just on that, and it is a bit of an extrapolation, the other states and the territory have an administrator or an upper house. If we were to expand the scope of our—

MS BRESNAN: Queensland does not.

Mr Corbell: They do not all have—

MR HANSON: Queensland has a governor.

Mr Corbell: They have no house of review.

MR HANSON: No, but they have a governor, an administrator or an upper house.

Mr Corbell: Yes.

MR HANSON: If we were to become equivalent, essentially, to the Northern Territory or more similar to the states, do you see a requirement to go down that path or is that unnecessary?

Mr Corbell: It is an interesting question. It is not a matter that the government has given any real consideration to, but I could offer some observations. First of all, there would be a question about who represents the Crown in that the Governor-General also represents the Crown. She is present in the territory and she has certain powers under the self-government act—that is, to dissolve the Assembly should the Assembly be unworkable. Obviously the Governor-General would do that on the advice of her federal ministers.

In that respect the government's submission highlights that there should be a requirement to consult with the ACT executive before making a judgement as to whether or not the Assembly is unworkable—given we would be the ones in the hot seat about determining whether or not it could be workable—rather than leaving it to a more distant federal minister to advise the Governor-General accordingly.

Coming back to your question of the administrator, there would be a question about whether you could have two representatives of the Crown, given our constitutional arrangements—that is, our powers come from the federal power. We are not sovereign in that respect. The states are sovereign so they can have their own representative of the Crown in their own right.

The Northern Territory has an administrator. The role of the administrator is not dissimilar to the role of a governor in other jurisdictions. Whether it is needed constitutionally is a bit of a moot point, but I think there would be value in an

administrator for ceremonial purposes. At the moment the role of the head of government and effectively the head of state, if you like—it is not quite the right term but I think you understand what I am saying—is performed by the Chief Minister. That puts considerable demands on all of our chief ministers, who basically have to do the job of the lord mayor as well as the premier as well as the governor; whereas in other jurisdictions you have the ability for the governor to be a patron, to attend civic functions and important events and represent the state or the territory as a whole without that more partisan role that you would have, inevitably, from an elected representative. It may be desirable from that perspective. Whether it is needed constitutionally, the government really does not have any view. It is not a question that we have really turned our mind to at all.

One other point that is worth making about this is that this notion that a governor in another place acts as some sort of check on executive power is entirely misplaced. Governors act on the advice of their ministers. They can counsel, they can warn, but at the end of the day they must act on the advice of their ministers. The suggestion that an administrator or a governor can act as some sort of check on what the executive does is misplaced.

Ultimately, as we now see in Queensland, for example, the newly elected government have a very large majority. They will pass all sorts of legislation of their own volition, without any need to secure other votes on the floor of the parliament. They will present them to the governor and the governor will act in accordance with the advice of her ministers and will enact the laws. So I think it is wrong to argue that the governor acts as some sort of check on executive power. It is just not the case.

MR HANSON: I do not think anyone was arguing that.

MS PORTER: In 5.1, Land planning and management, the government submission says:

> While not addressed directly in the Act, the framework for land planning and management in the ACT is relevant to the broader consideration of the ACT's authority to self-govern.

I know you and I have had some discussions around that. Could you expand on that and talk about its importance in relation to this inquiry?

Mr Corbell: It is probably worth noting that there were two important pieces of legislation passed at the time of self-government by the federal parliament. One was the self-government act itself and the other was the commonwealth's land and planning act, which devolved certain powers to the territory when it came to the administration of land and development and retained others for the commonwealth, recognising that the commonwealth had its own interest in the ongoing development of the seat of government as the seat of government—that is, the national capital functions.

There do remain anomalies between the jurisdiction of the territory and the jurisdiction of the National Capital Authority in the administration of land. These are particularly vexed where both the ACT and the commonwealth each has responsibility

for some form of approval for development of land. There are quite a number of sites across the territory where we each have jurisdiction. This is confusing, unnecessary and inefficient. In the government's view those matters can be addressed. There was a review of the operation of the National Capital Authority and its governing legislation a couple of years ago. There is further work ongoing between the two governments to try and clarify and remove some of those overlaps, and we welcome that.

MS PORTER: Can I ask a question that arose from the previous discussion around statehood or whatever we are called; we are not allowed to be a state, obviously. It is a question raised in Professor Williams's submission, from memory. He talks about the importance of what different people are called or what the actual Assembly is called. You were talking about the fact that we can be seen as not significant because people just say, "Oh well, what's the territory got to do with that?" He was suggesting in his submission that if our Chief Minister was called "premier" and if we were called "parliament", that would actually raise the bar regarding the way we are treated in those fora.

Mr Corbell: I think these are matters for judgement. The government does not have a particular view on these matters. I note that the observation has been made about whether the Chief Minister should be called "chief minister" or "premier". A former minister, Michael Moore, made that observation recently in one of his print columns. Equally the suggestion has been made that we should be called a parliament. These are matters of presentation. I do not think they are directly material to our ability to have full self-governance. These are matters for people to discuss. The government does not have a particular view on them.

THE CHAIR: In attachment A there is a reference to section 14(1)(c) of the self-government act, asking for clarification of what is meant by the provision. It is not discussed in the submission so could you elaborate on the background as to why the government has concerns about this provision?

Mr Quinton: Section 14 deals with disqualification of members. At the time of drafting these provisions, this was one of a number of fairly contentious provisions. You will see that the provision in subsection (1) paragraph (c) uses a series of phraseology, and that phraseology is pretty important because it goes to the question about a member of the Assembly losing their office. In particular, a member loses office if they take or agree to take, directly or indirectly, any remuneration, allowance, honorarium or reward for services rendered in the Assembly.

It is a fairly steep penalty for words of such general import. There has been from time to time discussion about what some of these provisions actually mean and when they are actually engaged. In other parliaments and other places those words can be explained or developed, but because at the moment they are locked away in section 14, they act as a bit of a sword of Damocles and sometimes we just do not know what they mean in particular circumstances. So government has simply indicated that it might be useful to go back and have a look at how these words are being used in other jurisdictions and other places to see whether there is any current learning that could help to explain and make these things a little clearer.

THE CHAIR: I want to wrap up by asking this: once this committee finishes its

inquiry, and presumably we have reached some agreement around areas that are of concern or that we believe need updating, have you given any thought to the best way to work with the federal government to change the self-government act? Is it something that would be done via the government or via the Speaker? What do you see the mechanism being?

Mr Corbell: Your question is a little hypothetical, Mr Rattenbury, because it depends a little on what you recommend. The government's view would be that we will give close consideration to the recommendations of the committee in its report and, depending on what the committee recommends, we can then ascertain the best way forward. The overriding principle is that this government has always been committed to advancing the interests of the territory in terms of its ability to be truly self-governing, to have those remaining restraints on our ability to determine our own affairs removed from the self-government act or elsewhere, and we remain of that view. As to the best way of approaching that, that would depend very much on the recommendations that you make. But we always seek to maintain an open and constructive dialogue with the commonwealth on these matters. Ultimately a change to self-government is only going to occur with the agreement of the commonwealth, both the executive and the parliament, and we will need to continue to have a constructive dialogue with them.

THE CHAIR: Do you see it as a responsibility of the government and not the Assembly to take it forward? Implicit in the observation you just made is that the executive will deal with it, not the Assembly.

Mr Corbell: The fact is that it will be the executive of the commonwealth that will ultimately determine what is presented to the parliament in terms of any change to the self-government act; therefore the ACT executive will need to negotiate with its counterparts federally. That does not exclude some role for the Assembly as a whole, but I think the nature of these things is that the proposals are going to come from the commonwealth executive and will require negotiation with their counterparts here.

THE CHAIR: There being no further questions, thank you, minister and Mr Quinton, for taking the time to appear this morning. As you know, a copy of the proof transcript will be forwarded to you, to provide an opportunity for you to check the transcript and suggest any corrections.

WILLIAMS, PROFESSOR GEORGE, Faculty of Law, University of New South Wales

THE CHAIR: Welcome. You are on speaker phone with the Standing Committee on Administration and Procedure. We will jump straight into it and formalise the hearing if you are happy with that.

Prof Williams: Yes, that is fine.

THE CHAIR: Thank you for taking the time to both make a submission and appear before the committee this morning by telephone. Have you been sent the privilege card in advance of your speaking to us?

Prof Williams: I have not but I am aware of those issues.

THE CHAIR: We will move straight on. Would you like to make an opening statement before we start asking you questions?

Prof Williams: I would like to say a few things. Obviously my submission sets out my concerns with the current state of the ACT self-government act. In doing so, I set out some very basic principles against which you might judge any piece of self-governing legislation. I think it has been well known now for many years that the ACT model fails on many of the most basic grounds. In particular, it is extremely rigid when it comes to things such as the size of the Assembly. It is somewhat ambiguous when it comes to other matters such as the number of ministers and it imposes very important constraints on the powers of the Assembly.

The ACT also has problems relating to the second-class status that territorians find themselves in when it comes to rights under the federal constitution. I also say in the submission that I think these problems are reflected in other areas such as the naming of ACT positions and institutions. When you look throughout the system, it has been set up in a way that clearly gives a lesser status than other self-governing places. That also extends to the Northern Territory when it comes to the specific powers and protections. What I suggest is that there are some very useful, modest changes that could be made to the self-governing legislation that would fix a number of these problems, including removing limitations on the size of the Assembly and repatriating many of those matters to the Assembly, where they should rest, consistent with, for example, the Northern Territory.

I do say that I think there is a longer term project here as well. In particular, I think there is one vital, missing component when it comes to ACT self-governance and that is that there has never been any form of popular process whereby territorians themselves have had the opportunity to determine what sort of system of self-government they want and the terms of that system. That is extremely unusual. Normally self-government is not granted without popular demand. The absence of that demand and, in fact, a denial of wanting that in the form of the referendum in the ACT mean that the system reflects, I think, the problems of its birth. If in the end the ACT wants a longer term, better system, then I think a crucial element is to involve the population in a way that makes it clear that it is a self-governing system that responds to their desires and wishes. The Northern Territory has long engaged in

some of these processes as part of its move to statehood.

More generally, it is recognised that the ACT is not in a position to assert a better system of self-governance without actually having a popular process involving conventions. There was a failed referendum on one occasion. I think that part of the work of the committee could easily look at involving territorians in getting behind this if that is what they want to do to change and improve the system in the longer term.

THE CHAIR: Thank you for that. This committee obviously has a remit to consider the self-government act and then potentially make recommendations which would go to the commonwealth. Are you arguing that we should in fact have a community engagement process before we make recommendations to the commonwealth or is it your view, which some others have put, that we should be given the power to deal with some of these things ourselves and then have that conversation with the community?

Prof Williams: I think that is a matter of strategic judgement as much as anything else. There has been a recent and significant change in removing the executive veto of territory laws. If there is the short-term possibility of getting further worthwhile changes to the self-government act, even if it is by the commonwealth, then I would be seeking those opportunities. I think it is problematic in these areas of constitutional design to put all your eggs in the one basket. If there are notable and obvious problems, I think it would be sensible for the committee to recommend that those matters be dealt with immediately.

That said, I think it should be twinned with also recognising an entirely different type of process that moves beyond the unfortunate nature of the birth of the Assembly in the self-government act. If territorians actually want self-government, then I think the longer term project is to involve them and to find out what they want and, as part of that, to seek a repatriation of powers from the commonwealth to the territory so that those changes can be made locally.

THE CHAIR: I am going to pass you on to Mr Hanson.

MR HANSON: You talked about the size of the Assembly. Have you given any thought to what its size should be?

Prof Williams: I have in the past. I cannot see any rational basis why the Assembly is a smaller size than, say, the Assembly of the Northern Territory. Personally, I would be looking at around 25 members. One of the reasons for that is that if you simply track the population growth from when the ACT Assembly was created to the current population, that would give a size, I think, even greater than 25. I think that is the likelihood. I think it should remain as a one-tier Assembly but simply of a larger size that reflects population growth and gives a greater opportunity to have a bigger pool of talent from which to draw ministers. Given the three-party system that is emerging in the territory, it would enable a bit of space amongst all those parties to have a larger number of people to draw upon for the roles that are needed.

MS BRESNAN: This question relates to the process which you have mentioned is going on in the Northern Territory at the moment. You mentioned in your submission

that there are changes to the self-government act that you think could be done now because the provisions are seen as obsolete. A number of submissions have made that point.

One of the things we discussed this morning with the government was that potentially you could have a process where you make those necessary changes to the self-government act because they are seen as pretty much outdated. Then you would have almost a separate process which looks at determining the size of the Assembly. Do you see that as potentially a way forward and way in which you could involve the community to a larger extent by looking at those issues about the size of the Assembly, rather than the whole gamut of things where you can make changes to the self-government act that potentially do not or may not need that direct community involvement?

Prof Williams: You could certainly focus on the size of the Assembly but personally I think it would be a mistake to focus too much on that to the exclusion of other things. The reason is that if you have a debate about whether the ACT should have more politicians, then I think it is pretty obvious the way it is going to go. The way I would be interested in that debate running is where people talk about the system of government they want and the functions they think the Assembly should perform, including the executive drawn from the Assembly.

Over a period, if people are looking at those functions and what they want in light of the numbers in the Assembly, I think they very quickly would come to the view that there is a real problem there. What the community would like to see is not achievable in the best form with the current configuration of the Assembly. I think the size has got to be a product of those other things. If it is just a matter of people seeing whether they can up numbers, they will say, "Let's go as low as possible."

As to changing the size of the Assembly, it is dangerous for it to be seen as the Assembly wanting it. Again, it has to be a popular process where it just becomes a matter of common sense. If there is a problem and people see a need for a change, they come to require it.

You mentioned the Northern Territory. I should mention that I am on the Northern Territory committee looking at these issues. I am the only person outside the territory who is assisting them with these matters of their convention on the statehood process. They are approaching many of these issues in a different way.

Again, the main thing there is issues with the size of the Assembly and the like. They do not reach any preconceived notions but they very strongly hold the view that it has got to come from the community to have any real chance of success. For example, the convention that they have now passed legislation to hold after their forthcoming election bans sitting members of the Assembly being delegates to that convention. In order to emphasise the popular mandate, they have also opened up the convention so that 16 and 17-year-olds can not only vote but stand as members of the convention in what will be a 100 per cent popularly elected convention. That is their answer to these problems. They say, "If we want to move forward, then it must be done in a way that is absolutely and clearly backed by a popular voice."

MS BRESNAN: On that, looking at the two examples of the ACT and the Northern Territory, the Northern Territory executive may be considering a bigger issue, a move to statehood. How would a similar process work in practice in the ACT? We are not potentially considering that issue but we are looking at how we operate as a territory. It is more about having those powers that the states have and about being able, as a territory, to determine the size of our Assembly rather than have that directed to us. Do you think they are comparable examples? You made the point in your submission that potentially the ACT should have been looking at statehood or at other changes to the act or creating a new act. Is that a practical thing to occur here in the ACT?

Prof Williams: I think the label "statehood" is the right label for the Northern Territory. In fact, the ACT ought to be seeking largely the same sorts of outcomes. It is not absolutely clear that the territory cannot become a state. Probably that is the answer. Even if it is the answer, surely in similar terms the people of the ACT should be seeking a system of self-government that gives them equal democratic rights to other Australians and that enables them to elect a Legislative Assembly that can make laws generally on their behalf and that they should be free over time to continue to develop the terms of their system of self-government. The Northern Territory has got a label for that but the ACT should be pursuing exactly the same sorts of issues. I cannot see any reason why the people of the ACT, given their interest often in matters of democracy, would not be pursuing these things.

You have also got to remember that the Northern Territory's agenda includes things like the number of Senate seats it has. It could lead to a very odd position. The Northern Territory is proceeding on a very good path at the moment, where there is quite a high chance it will work on this occasion. If that is the case, they may well get an extra two Senate seats, with a much smaller population, and it would be somewhat odd for the ACT to be left with two. But it has never done the work locally to determine what it thinks its own aspirations should be.

MS PORTER: My question is around what we call ourselves, and you have mentioned in your submission that you think it is important. We raised it with the minister before you came on. He said that it is not something that the government has concerned itself with and that he really did not think it was all that important—or that is what I gathered. Having some of these powers would mean that when we were sitting around the table people would take more notice of us. One of the difficulties that we have as a territory is being somewhat ignored.

Just recently I heard some discussion about the number of female leaders there were around the country and how many Labor governments there were. The ACT did not even feature in that conversation which was being held at that time. We often get missed in the mix. By calling ourselves a parliament or by calling our Chief Minister a premier, would it really have any effect?

Prof Williams: I think it would. It really depends upon what the vision of the Assembly and the people of the ACT are for their self-governing future. Again, if you look at the Northern Territory, a very clear part of their vision is that they want to be treated equally with the people of the states. Statehood is their way of achieving that. But that is just a mechanism to get there. What drives them is not the fact they want to be a state but the fact they are annoyed that they are treated as second-class citizens,

that their laws can be overridden and that there can be interventions around things like Indigenous issues and euthanasia.

Even if they do not support their local policies, they certainly do not support an intervention from the commonwealth. They see things such as the recognition that flows from names as being crucially important to that because their long experience is that if you want to be treated differently, the best way of marking that is to have a naming and a system that illustrates through that that there is a significant tier of difference in the way the system works. Their vision is that they want a premier, they want a governor and they want the things that will indicate equality on their behalf.

I have always been surprised that the ACT has not been, I suppose, more forward in this and other regards, as opposed to the Northern Territory. When it comes to these things, I think it is pretty obvious in the mindset of the Australian people that if you have a legislative assembly as opposed to a parliament and if you have a premier as opposed to a chief minister then there is a reason that the names are used and they relate to the territorial status and the things that come with that.

I think it is significant also that the ACT in other respects has not seen to assert itself. The ACT is the only jurisdiction that does not have a solicitor-general. The solicitor-general is very important in the Northern Territory in asserting their democratic and constitutional rights in the High Court and other forums. The ACT does not have that, despite its much larger population. The ACT does not have an administrator, which is a significant problem when it comes to some of the symbolic functions that might be fulfilled by that role. There has never been any conversation, to my knowledge, of any significant public nature in the ACT about these matters. As I said at the beginning, I think it is very problematic. You need a vision and you need a sense of what you want. I do not think that has been articulated yet. Too much of the focus has been on significant but relatively minor changes to self-governing legislation, as opposed to a more holistic picture.

MS PORTER: You said before that you thought the number issue was rather distracting in some ways, and it certainly would be distracting if raised with the public as a first question. However, having listened to the minister and also from experience in this place, if you want to have a voice around the table but are occupied with a huge number of matters at any given time, it is very difficult for you to get your head around everything that you are presented with and then take that to the table on every occasion. It is a very heavy load that ministers now carry—and also backbenchers and shadow ministers. I think the numbers are an important aspect.

Prof Williams: I think the numbers are crucial. The best comparison is now the position that the Queensland ALP finds itself in its single chamber in providing viable opposition with the number of members it has. It cannot even function in all the committees. I am well aware of the load that is on ministers and members in the ACT Assembly. Of course, it has the functions of not only a state in terms of ministerial councils and the like but also local government. It is in the worst position of all assemblies and parliaments in the country in that respect. It is certainly worse than the Northern Territory. The numbers are illogical. In my view, that clearly should be changed.

THE CHAIR: Firstly, I want to assure you that we do have a solicitor-general now. The Assembly enacted that in the past 12 months.

Prof Williams: I did not realise that. Is that right?

THE CHAIR: Yes.

Prof Williams: That is good to hear.

THE CHAIR: We have made some progress.

Prof Williams: Good. That is great to hear.

THE CHAIR: You have touched on the issue of not having an administrator as being a problem. I guess there is a bit of a sense at the moment that we do not have one and I guess there has been no discussion of it being a problem. It is one of those classic cases of "if it ain't broke, don't fix it". What is the particular significance you see in that role, if I can just explore that point a bit further?

Prof Williams: The jurisdictions that have a governor or an administrator tend to find the role very useful. Having someone who is above politics, who plays a symbolic role within the community, can be a focal point for certain community discussions and can play a role that understandably a partisan politician finds it very difficult to play. I do not think the role is that important in terms of some of the constitutional functions that necessarily are exercised elsewhere. The ACT self-government act is actually in very good shape when it comes to codifying some of those conventions and shows that that can work.

I would simply say that if you are having a longer term conversation about what system of self-government you would have in the ACT it is a question people should address. It never has been addressed, to my knowledge, in any satisfactory way. Given the rejection of self-government, it was not something that the commonwealth really thought it had any need to listen to the ACT about. It is just one of those issues that I think people would be interested in and it should be looked at.

THE CHAIR: It came up a bit in the discussion with the minister, who appeared just before you. If I understood him correctly, it was almost as though he was suggesting that we share the commonwealth Governor-General in a similar way that we do the commonwealth Ombudsman. I do not know whether other members of the committee understood it that way.

MR HANSON: I think from a legislative and constitutional point of view, but not from a ceremonial point of view.

THE CHAIR: Yes.

Prof Williams: You could do that. I think this, again, goes to questions about the identity of the ACT, which have always been awkward and problematic. In the end, I think one of the questions is: does the ACT actually want to forge its own identity as a self-governing jurisdiction? That really drives a lot of what happens in the Northern

Territory, but that is partly because of its distance and because it has a lot of unique and distinctive features. Perhaps the people of the ACT are largely happy with being integrated to a high degree within the commonwealth system. If that is the case, sharing that role makes perfect sense. On the other hand, if there is a desire to assert a more parochial and local system of self-government then I imagine you would want someone who more closely identifies with the people of the ACT than someone who has broader responsibilities for the whole of Australia.

MR HANSON: In your submission and today you have argued for greater powers and autonomy for the ACT. You have also argued for a political process like a referendum, plebiscite maybe, to shape what self-government should look like. But the last time we did that it was pretty clear that the people of the ACT said they wanted less autonomy and fewer powers, and you have just referred to the fact that they voted against self-government. On the one hand you are advocating a popular process, but you are then ignoring the fact that the last time we had that popular process and argued for greater autonomy and powers, it was exactly what the people of the ACT did not want. How do you justify this apparent contradiction?

Prof Williams: I would simply say I think it is time to ask them again. I recognise absolutely the truth of what you say. People voted against it and it was imposed upon them. That is no way to set up a self-governing system. As I have said, I think it is the source of many of the problems today, including problems that do not relate to the Northern Territory because they were given greater flexibility over a range of matters. I just think that if that is what people thought a long time ago, the question is: do they still think that? There ought to be a conversation about that. Ultimately, if they do not want the system to grow into a proper self-governing system then that must be respected and then you simply will be left with the sort of hybrid, unfortunate model you have got, but that is probably the most that you could do.

MR HANSON: It just seems a bit odd that you are saying, from, I suppose, a constitutional expert's point of view, that there is this need to do X, but then you are going to ask the populace something and you anticipate they will say Y. There is a bit of a problem there. I am not saying that we should not engage in a popular process, but it seems that if we do so we are going to end up in a position where we either have a stalemate or we go backwards.

Prof Williams: You may do. I think that comes down to questions of leadership within the ACT and issues around what leaders advocate for and might argue for. I would say that even if there is a view that the system should not evolve into something more self-governing, there are still some pretty basic flaws within the self-government act that ought to be addressed. For example, simply dealing with matters around the size of the Assembly is something that at some point had to be dealt with; otherwise perhaps the Assembly will go to the next half century with the current number of members that it has but with an increasing incapacity to deal adequately with local problems. I recognise the awkwardness of the situation, but at some point I think you have got to revisit these issues and do so in a way that actually gives people a second and better opportunity to think about what they want.

MS BRESNAN: Just on what Mr Hanson said, because it goes back to the questions I was asking you originally as well, you are talking about having that process. As

Mr Hanson said, when we had that process before, people said, "We don't want self-government." Can we still make those changes to what are basically flaws in the self-government act and then have a process that engages the public more? As you said, there are things with the self-government act that really do impact on the ACT parliament's ability to govern. You talked about the size of the Assembly as well, but I do not see how we could make those changes to the size of the Assembly without having that conversation with the public. In terms of what you are saying, perhaps there are some contradictions there.

Prof Williams: I recognise that. This is an area where you are dealing with a system of self-government that is inherently contradictory because it is a system of self-government based upon people's desire not to have one. This is very difficult. I am dealing with matters in the Northern Territory where things are far more straightforward. But here, that complicates things enormously. Perhaps the best way I can put it is to say that even if you are to have a system of self-government continuing to be imposed upon you, you would still recognise that some things in that system need to be changed, so that at least you want a decent system imposed upon you. There are tensions there but that is the case.

When it comes to issues such as the size of the Assembly, I would not be advocating that the self-government act be changed to set a new number of members but simply be changed so that the Assembly itself can make that change. That is where you open up the conversation to say, "We've now got this capacity; we need to talk about what people want and whether in fact there should be a change."

MS PORTER: We are actually quite a different population than we were a number of years ago. A lot of different kinds of people live here. The conversation may not be at all the same as it was a number of years ago but I suspect it might be. But we are a different kettle of fish now.

Prof Williams: These things do change a lot. You have only to look at the drafting of the Australian constitution. That took 10 years and there were failures along the way, referendums that did not work. In the Northern Territory's case, the people of the Northern Territory in 1998 voted narrowly not to have statehood. But they now have a brand new process, some 14 or 15 years later, because they think it is time to ask the question again. In fact everything there is indicating that a better process is likely to lead to a very strong outcome for statehood. That is why the process is so important. If you just give people a referendum cold, I think you know what the answer is. But if you set up a process of genuine engagement, the experience elsewhere is that you may well get a positive answer, and an answer that actually reflects people's pride in being part of a community that they would like to see responsible for its own decisions and have a proper capacity for self-government.

THE CHAIR: I am just being advised by the secretariat that the last vote was in fact in 1978, some 35 years ago.

Prof Williams: That is right.

THE CHAIR: So perhaps times have changed. I thought it was later; I thought it was 1988. But I am advised that it was in fact 10 years before that.

Prof Williams: No, the act came in in 1988, but it took a decade to move from a "no" vote to the imposition of self-government.

THE CHAIR: Professor Williams, I am conscious of the time and the fact that you have another commitment. I have a number of technical questions which I would like to ask. Would you agree to receive those, perhaps by email, afterwards and give your views on those?

Prof Williams: Certainly, I am happy to do that. I do have 10 minutes, if you want me to do anything more now. But I understand that you may have another witness to move to in any event.

THE CHAIR: I want to ask you a more general question. From your experience with assisting with the Northern Territory process, do you have any advice to us as to how we might deal with the commonwealth? Obviously if any changes are to be made we need the commonwealth government to come on board. Is there anything that you have observed in the Northern Territory process that would be perhaps wisdom to share with us?

Prof Williams: I think the potential lesson from the Northern Territory is that you should expect little or no interest from the commonwealth until you actually have a popular base for what you want to do. The removal of the veto recently was a surprising and unusual aberration in that pattern, and it came about for a range of unusual reasons, particularly given the nature of the hung parliament. But they have on many occasions sought the commonwealth to act and the commonwealth have said, "If you want us to act, get your own act together first and make sure you have a very clear expression of interest from the people of your jurisdiction about what you want."

That is why they are going through these processes, so that then they can present something to the commonwealth and say: "This is our vision for self-government. Now we expect you to realise it." The expectation is that that will happen because, once you do that, it is very difficult for that to be ignored. I think that is where there is a very strong contrast with the ACT, where you do not as yet have the same strength, at least publicly, of bipartisan or tripartisan commitment. That is very important in the Northern Territory. Equally you have not set up the broader processes that move beyond the Assembly to start to build and educate around those issues.

THE CHAIR: I want to ask about executive power. Do you think there is any need for the current schedule 4 of the self-government act, which basically spells out a whole series of specific areas in which the executive can act, or do you think we could more or less replicate section 61 of the constitution and provide for a general executive power?

Prof Williams: I think that the power, both legislative and executive, in the ACT should be expressed in general terms. That is the way it would normally be done. It is a very odd way that it is done at the moment. I think that will obviously be subject to conflicts with the commonwealth, as would occur with any other state, but I cannot see why the executive power in the ACT ought to be less than, say, the executive power in New South Wales or Tasmania.

THE CHAIR: Earlier this morning we discussed with the minister or the government amending section 27, which is about the issue of binding the commonwealth. Do you have any views on that matter? At the moment the situation is that the commonwealth is only bound in areas that are set out in the self-government act, as opposed to a general binding. Is that something that you have given any consideration to?

Prof Williams: Only to the extent that, again, I would be equalising these types of provisions with what occurs in the states. Particularly if the Northern Territory does become a state in the next five years, I cannot see that there is any reason why the ACT parliament ought to have lesser capacity in this regard than the Northern Territory. These types of provisions are a very clear reflection of the commonwealth's concern 20 or more years ago that the ACT Assembly would go off the rails. Of course that concern was manifested in the abolish self-government parties, and you have a range of restrictions that just do not make sense given how the Assembly has evolved into a mature and well-functioning parliament compared to any of the other parliaments in the country.

THE CHAIR: The last thing I want to ask about is the limitations in section 23. I recall that in your submission you described them as obsolete or inappropriate—words along those lines. Could you talk us through why you think those provisions are obsolete?

Prof Williams: They fall into two categories. In some areas they are simply reserving matters to the commonwealth, and it is just not necessary. I cannot see why, for example, the self-government legislation needs to prohibit the Assembly from making laws about raising a navy. Unless you have designs on Lake Burley Griffin, I think it is just not necessary to put that in there. There are other things there like the coining of money and other matters. It is just not required and it sends very strong signals about what their concerns are. They are just not necessary, in the same way that you would not even conceivably put those within a state constitution.

THE CHAIR: Is that because they are dealt with in the federal constitution?

Prof Williams: They are; that is right. Some of those are exclusive-type powers anyway, so they are actually not necessary. The other one of course is the euthanasia one, which is just a blunt statement as to the legislature's incapacity to deal with that matter. I just do not think that is appropriate. I think that if the commonwealth wants generally to pass a law for the country preventing a jurisdiction from doing something, that is fine, but I do not think it should pick and choose in this way. Again it sends signals about capacity to pass laws in the area, and that is a real sticking point in the Northern Territory, and for good reason. I think it should be a general law-making power, and that again reflects what occurs elsewhere.

THE CHAIR: That seems to be the end of the questions this morning. Thank you for taking the time to join us by phone connection, Professor Williams. We will forward to you within about a week a copy of the transcript of today's proceedings, if there are any tidy-ups you want to make or any minor corrections that you feel need to be made.

Prof Williams: Could I quickly mention one thing. I just noticed that the acquisition

of property also is in section 23. The only exception to what I said is that I personally would support certainly human rights being included in an instrument as a yardstick against which to measure legislation. The Human Rights Act could be moved into the self-government legislation over time. Again, that would have to be on the basis that it was something that the Assembly and the territory wanted.

THE CHAIR: Thank you for your time this morning. We will be in touch with the transcript and about other matters.

BROWN, MR EWAN, Gungahlin Community Council

THE CHAIR: I welcome Mr Ewan Brown from the Gungahlin Community Council. I thank you for taking the time to join the Standing Committee on Administration and Procedure this morning in our inquiry into the ACT self-government act. Have you had a chance to look at the privilege card? Do you understand the implications of that?

Mr Brown: Yes, I do.

THE CHAIR: Before we proceed to questions from the committee, is there any general statement you would like to make in addition to your submission?

Mr Brown: Yes. Thanks for the opportunity to participate in this important process. As a reasonably longstanding citizen of the ACT, my perception is that we have to accept as a given that self-government is here to stay. I find that the community is increasingly expecting government to take action or implement regulations or procedures on a very wide range of matters. It has gone beyond the typical town council, roads, rates and rubbish approach. There is a sense of community now. They feel as though there is a purpose in belonging to an ACT or particularly a Canberra community.

Our aim is to seek a better system of representation for residents, both ACT wide and in specific areas of the ACT or the region. That is probably covered in our semi parochial view of what we want to happen in Gungahlin. We feel that two effective tiers of government would probably be preferable to three, as occurs in the states.

Firstly, we want to promote Canberra as an ideal place to live, work, play, learn and visit. To achieve this, it needs appropriate recognition from the commonwealth government as a vital regional hub as well as the nation's capital. Thus the profile of the ACT needs to be raised nationally. Elements could include adoption of a common terminology for the elected body such as a parliament. I notice that is starting to be used now. The common usage term may help in providing that sort of perspective. The key elected office holder should be the premier as leader, to put it in sync with the states, without having a formal process.

One urgent factor is to give the edifice up on the hill a specific, nationally recognised name to differentiate it from the often derogatory terminology used by the media. It is always Canberra being responsible for bad news, on which the media thrives. It is a bit like Washington, the capital, has the White House. We want to move away from that terminology. It is an issue I have tried to push before.

GCC's vision seeks adherence to the original concept of self-contained satellite centres serviced by all the necessary amenities. That covers the tone of our submission. It also favours an electorate system comprising elected candidates who live in or close to the geographic area of representation, thus having a better understanding of issues facing local residents and businesses. We have some concern that we never see some of our elected members turning up to community meetings. We feel as though the electorate in which we reside covers a huge range of Canberra and Canberra suburbs. It is very unrepresentative of a lot of the interests in certain

areas.

The GCC, in concert with other community councils, feels that the current community representation model is undervalued and underutilised. It does not comprise formally elected representatives, even though we go through a process of election. We should have a more formal structure, creating a recognition by government of, and better resourcing to provide, an extra, effective tier of representation. The formalisation of a combined community councils forum would add value to a whole-of-government perspective and facilitate more input on ACT rather than on specific matters.

The GCC favours an increase in the size of the current parliamentary membership model; firstly, to spread the growing workload over more members and ministers and, secondly, to provide area-specific representation. We favour something like a five by five model, which would give us a specifically named Gungahlin electorate. Another element would be that we would see some benefit in having the elected members having local emphasis. That, in a sense, covers my opening statement.

THE CHAIR: Your submission articulates very well the issues around the electoral boundaries. Thank you for that. I agree with many of the comments that you have made. You particularly come down on the five by five model. Is that because you think it best delivers that geographical outcome or are there other considerations in that?

Mr Brown: It is mainly affected by the constraints of the plus or minus 1.5 per cent in the population coverage and some of the problems we have experienced. I alluded to the fact that the Molonglo electorate covers south Canberra right through to the Gungahlin spread. Under the last model proposed, the new seven-member electorate would have included Turner, Braddon and Lyneham, which have totally different issues to a lot of the Gungahlin areas.

We still experience significant growing pains and we will continue to do so for probably another 10 years, with most of the growth in Canberra, apart from the new Molonglo estate, in the north-western side of Gungahlin. We think that Weston Creek will also experience similar problems further down the track but what we are currently experiencing is lack of amenities, lack of resources, major problems with roads. We are not compensating for the growth factors.

One of the problems we have at the moment with the current model of electorate representation system is that it does not take into account the rapid growth in the areas. The latest ABS stats show three out of the four high-growth suburbs are Gungahlin based. We feel as though we are constantly behind the eight ball in terms of representation. We also feel as though we have a significant number of area-specific issues that probably need the attention of an ACT government.

THE CHAIR: You made reference to local members having electorate offices. Historically, I think, in the ACT it has not been done because there is a sense that the city is still small enough that people can come to Civic and because of the significant cost attached to having 17 or perhaps 25 electorate offices. What are your thoughts on that, given those historical views on it?

Mr Brown: The real concept is this self-contained satellite component. It is a central tenet of a lot of our representations. We want to see government office buildings, we want to see a significant local employment hub. We see benefit in having most of the amenities and resources in these satellite areas. At the moment, because of the traffic issues, we feel as though we want to try to minimise the egress from Gungahlin or at least try to equalise the process. It is an afterthought that it would be beneficial to have that local representation and local offices for the parliamentarians. As I said before, we do not often see many of the elected representatives even at community meetings.

THE CHAIR: Do you think you have problems accessing members and ministers under the present scenario of sitting MLAs?

Mr Brown: It is not necessarily a problem. It engages the community to a far greater degree. It gives them a sense of belonging and probably reinforces the fact that we need a strong parliament in the ACT.

MR HANSON: You mentioned—not in your written submission but in your oral discussion there—that you see a greater role for community councils in providing either representation or advice to the Assembly and perhaps to the executive. Do you have any further thoughts on what sort of format it would take? Would it be more formalised? Would there be some sort of session here at the Assembly where the community councils would attend and advocate, a separate parliament as such? How would you see that progressing? Is that the sort of thing you had in mind?

Mr Brown: It could be an evolving process. The first step is to get the combined councils working in unison. The current process is to try and get them to agree to put forward a request for some sort of resourcing and to concentrate on the pan-ACT issues to a greater degree, because most of us tend to deal with our own area-specific issues. We feel as though, being voluntary organisations, we are under-resourced, so if we did have a paid resource of some formal structure that would help the process. As I said before, I am not looking for a third tier of government, but it could be an important and vital input process to the ACT government if we had more input generated through the community councils and through that peak body.

MR HANSON: When I attended your AGM, I counted four members of the community who were not there either as invited members or members of the committee, and they elected you. I was not able to vote because I do not live in Gungahlin. How representative is your community council and other community councils when you turn up to an AGM and you have four people turning up from the community? Are you confident that when you express a view from the community council it is actually representative of the views of the community, or is it very narrow?

MLAs also spend a lot of time directly engaging with the community councils—the Gungahlin community and other communities—on a separate level. Is the community council at the moment expressing the view of the Gungahlin community, and how do you do that? How can members of the Assembly be assured that when you hear from the Gungahlin Community Council you are hearing the views of the Gungahlin community?

Mr Brown: I certainly share your concerns. I have undertaken a process of trying to establish far better modes of communication with the community. I feel as though we should not be having almost a unilateral view of what is going on in the area. One of the problems is that we cover so many different issues and it is often hard to get the message out to the community and to try and seek feedback.

I am working on a communication process where we are trying to skill people up with particular issues that we think concern them and are asking for feedback. We have prepared a major issues list. We say it is a living document. We are giving people the opportunity to come along and challenge the issues that are being raised in there. We are circulating that electronically and in hard copy. We are re-establishing our hard copy magazine "GunSmoke" to try and get more traction in the community.

Certainly I am aware of it. We get large attendances when there are issues like the NBN rollout that really affect a lot of people. I am also trying to establish a process where I have suburban representation. So we will have appointed people that can advise us what is happening and what some of the problems are. Most of us on the executive cannot afford to drive around Gungahlin all the time just to see what is happening.

In many respects you tend to rely on the fact that you are doing a good job and getting things done and we can tick the boxes as we achieve the benefits for the community. It is a problem. We try to have a process where we work closely with the government and the public service to try and achieve results without ramping up the issues into a major public forum. I really do not want to go to that length to say I am getting far better representation. I am also trying to seek input from local businesses to see what they think. I am trying to find a viable body to do that. It is about making sure I get good feedback from the local community about what is happening.

MR HANSON: But you do not see any formal process whereby the role of community councils would be established in the act or in any insubordinate legislation necessarily. You see the current structure, in terms of legislation, as appropriate. It is more about energising that, perhaps with more resources.

Mr Brown: Yes. It is too early yet. I would like to see it operating effectively before there was any consideration. Given the fact that we have taken so long to even try and resurrect the self-government model, I would not want to extend it into a third tier in the near future.

MS BRESNAN: I go back to your submission. In relation to the size of the electorates, you mention that you have done some electorate modelling. One of the issues that have been mentioned, particularly by Dr Allan Hawke, is the ratio of representation, comparing us to Tasmania and the Northern Territory. Is that something you have also looked at in your modelling in terms of what size the electorates should be and how many members they should have?

Mr Brown: Most of our modelling was previously based on local electorates and local representation. That is an issue that has not been explored through the community about federal representation. I suppose most people would feel fairly

aggrieved that we only have two senators representing the ACT compared with 15 or so in Tasmania. I feel as though that is not within our bailiwick. That probably would be better considered under the combined community council process, where they could start looking at the issues that really affect Canberra. We probably get more rates and rubbish issues. We need a peak body to look at the legislative and regulatory impacts.

MS BRESNAN: One of the things that the government also mentioned was that Dr Allan Hawke looked at combined federal and state representation. He actually looked at combining those and how many representatives people have in different states. The ACT, obviously, is quite under-represented in all respects when you combine it. You said that you have looked at 10,000 electors—probably what it was in 1989 and then what it should be now. Is that what you have looked at in terms of what would be the number of members and how they would then represent their electorate?

Mr Brown: We are probably building up towards one to 10,000, rather than one to 15, as it is close to at the moment. As I said, we have concentrated mainly on the Gungahlin area and we feel as though we do not have the mandate to comment.

MS BRESNAN: It is not something which has been discussed at the combined community councils, is it? It has been on a lesser level. Is that something you think would potentially be discussed?

Mr Brown: It is certainly more than potential; it is on the agenda for the meeting in two weeks time.

MS PORTER: You talked about—it has been mentioned in other community council submissions and certainly it was discussed this morning—the need to have people in the community themselves having a discussion. What should be the number and how should the new Assembly look in terms of its size? It has also been pointed out by members here this morning that when we first did that a really long time ago the actual fact of having self-government was roundly condemned and people said they did not want it. You also express how difficult it is to contact the community and get them involved in what you are doing. Have you any ideas as to how we can have that involvement with the community, how we can engage them to such a degree that they understand the implications of what they are discussing and that they would consider the size of the Assembly, or the parliament, as being a benefit—a larger size—rather than a negative?

Mr Brown: I started off by saying that I thought the community had grown to accept the concept of self-government. We have yet to see how many independents will stand and whether there will be some strangely named parties putting up their hand—

MS PORTER: Like the ripe tomato party and the party, party, party.

Mr Brown: Yes. We tended to concentrate on providing more of a local representation and trying to appeal to the Gungahlin community as a whole to say, "There are a range of specific issues here that are relatively unique to that particular area." There are issues that are faced by the older suburbs that are not relevant and

therefore people say, "It's not in my backyard so I don't need to be involved in it."

I think there is a beneficial process by having an intermediary sort through a lot of the issues. One of the issues we are currently looking at in the combined community council process is the empowerment of residents and citizens in terms of the ACAT process. We feel as though a complainant who fronts up to an almost quasi judicial body is totally overwhelmed by the power of both the regulators and the defendants, or the developments.

Having that extra tier of involvement helps thrash out some of the issues. It provides a conduit of information out to the community and compacts the information going through to the government or the public service. We do not see it as our role to really wave the flag about the whole the electoral process, although we have a meeting to greet the candidates. We will be asking all the candidates in the current election what their attitudes are towards our issues. That will include the size of the electorates. We may be able to get some feedback from there.

I notice that even a recent meet the minister function out in Gungahlin drew relatively few people, mainly the usual suspects. Quite a lot of the usual suspects even did not attend. It is difficult. I notice there is also a fairly comprehensive document "Connecting with the community" which is beneficial to both parties, but it takes a lot of work to actually get that process working. We are just seeking small incremental steps. One of the processes would be this more empowered, combined community council process which might look at the bigger picture issues and take the pressure off the individual councils as well.

Every week I would probably be faced with 20 or 30 issues that you really have to make input into. You just feel overwhelmed in many cases because, firstly, you have got to go through the process of trying to get your own committee involved, let alone the community. We are adopting a process of raising awareness to a significant degree and waiting for the flood of feedback, if it is ever going to come.

THE CHAIR: I think we have some sympathy. One of the issues all members face is the number of issues that we seek to address in a day or a week. I think Mr Hanson had another question.

MR HANSON: I was just going to make a comment—and Mr Rattenbury would no doubt agree with me, as a member for Molonglo—that Molonglo is a very difficult electorate. There are some very different groupings and it is a big electorate. We understand those issues and I think we probably all have those sorts of discussions informally. I was at a Woden community council meeting a while back which was briefed by the Electoral Commissioner. A point he made was that, regardless of how you slice and dice the electorates—whether it is five and five or three and seven or any other number—it is very difficult to get a neat fit and to have a Gungahlin community or a Belconnen community.

If you are going to have equal representation, it is difficult to do that. It is probably more complex than five and five if you are going to fit everybody correctly. It might need to be a moving number if you are going to get a neat representation of a Gungahlin community, a Belconnen community, an inner north community and so on.

I just make that as an observation.

Mr Brown: We are aware of that. It was probably an interim measure. We thought it would be a better step because it may give us more area-specific representation. It would certainly provide more MLAs or members of parliament more ministers to spread the workload. So we can see some benefits there. It would take account of the growing population in Gungahlin. Things will tend to even out as it starts to mature and as the issues are ticked off.

THE CHAIR: Is there anything you wanted to add, Mr Brown, that you have not managed to convey?

Mr Brown: No, thank you.

THE CHAIR: Thank you very much for taking the time to appear on behalf of the Gungahlin Community Council, and thank you for your submission. When available, which is usually within a week, we will provide you with a proof of the transcript from today's hearing. There will be an opportunity for you to make any suggested corrections that you think are necessary.

Meeting adjourned from 10.46 to 11.15 am.

HAWKE, DR ALLAN

THE CHAIR: Dr Hawke, good morning, and welcome to the public hearing of the Standing Committee on Administration and Procedure inquiry into the ACT self-government act. On behalf of the committee, I would like to thank you for attending this morning. We look forward to the discussion with you. I understand you have had a chance to look at the privilege card.

Dr Hawke: I have read it, yes.

THE CHAIR: Would you like to make any remarks before we proceed with questions?

Dr Hawke: I am here in perhaps two contexts today: firstly, because of the report that I did into the ACT government, the one called *Governing the city state*; and, secondly, because of the one I did for the commonwealth on the National Capital Authority, *Canberra a capital place*, which I delivered in July 2011.

On a personal basis, I was born here. On my mother's side I am a fifth-generation Canberran. Her family settled here early in the 1840s. On my father's side they came here in the early 1920s, when my grandfather was occupied with building the first Parliament House of the commonwealth. So I have long roots and am very proud to be a member of Canberra and the district.

THE CHAIR: On both a professional and a personal front, you have excellent credibility for appearing before the committee this morning.

MS PORTER: You actually might qualify as a real Canberran!

Dr Hawke: I hope so!

THE CHAIR: The two reports that you have done in the last couple of years are the basis on which the committee is very keen to speak with you today. I want to start by asking about one of the key issues that has come up in many of the submissions that the committee has received, which has been a discussion of the size of the Assembly. In your first report, on ACT government, the *One government* report, you suggested that the size of the Assembly be increased to 25, with a ministry comprising seven members. Can you take us through how you got to those specific numbers? Was there a particular rationale for it?

Dr Hawke: There was a specific rationale. I thought that ideally the administration of the ACT should be in terms of seven functional units. The fact of having ministers who have to carry more than one of those directorates I think imposes some unnecessary burdens on those people. As you know, the size of the ministry is itself limited by the legislation. So I was of the view that seven ministers would be about right for the seven directorates. But in terms of the size of the Assembly itself, I did not have any fixed views. I just drew on some previous work and thought that that sort of number would allow efficient and effective working of the Assembly. It would allow for a committee structure and perhaps for some better accountability measures.

The issue of course has always been that no political party wants to go to an election arguing for an increase in the size of the Assembly. But the case for that is undeniable. So I would put the view that your inquiry is most timely and that in the event that you are able to come up with a bipartisan outcome then that might feed directly back into the commonwealth after the ACT government election. I am hopeful that in the forthcoming commonwealth budget Minister Crean will announce, in accordance with recommendation 1 of my NCA report, that they review the ACT self-government act in concert with the ACT Assembly.

THE CHAIR: Certainly the evidence at last year's Senate inquiry was that the commonwealth was not entertaining a review. But the genesis of this committee's inquiry was that they recommended that the ACT do it ourselves.

Dr Hawke: That is correct, but I am still hopeful. It is commonwealth legislation, not ACT legislation.

THE CHAIR: Of course.

Dr Hawke: So my fallback position was that, if the commonwealth was not prepared to do it—and I am inclined to think that might have been a view coming more out of the legal part of the commonwealth rather than the part that Minister Crean is responsible for—it seemed to me this was an ideal opportunity for the Assembly to go back with the changes that they wanted to that legislation and for that bill to be introduced and enacted during the course of next year, as part of the centenary of Canberra.

THE CHAIR: There was a question that I was going to ask later but you have touched on it now. Do you have any advice to us on, at the end of this process, how the ACT Assembly might best engage with the federal government in the event that we recommend changes to the self-government act?

Dr Hawke: I would think that a bipartisan group, one member from each party, led by the Chief Minister, should front the Prime Minister and put it on the table in that way.

MR HANSON: Dr Hawke, on the specific number, you have recommended 25. Have you looked at the implications of that in any detail in terms of the cost and the mechanics of it? If we were to grow to 25, what would that mean? Does the executive need to move out of this building? Do we need a new building? One of the obvious consequences of growing the size of the Assembly is the cost, and that rubs up against competing agendas. If we were to put this to the community, the cost is going to be an issue, I would have thought. Have you looked at that in any detail?

Dr Hawke: I did not. There is no magic about 25; it could be 21 or 23. I actually think that is a decision better left in the hands of the Assembly. I was arguing that we needed seven ministers; therefore you need a certain number to go with that. You all would know only too well the constraints on the current Assembly in this building. Sooner or later that will have to be addressed. There was a proposal to build a new building over there, which is now not on the agenda. I am imagining that in the next two or three years the Assembly itself will need to address what it is going to do about its longer term future. Whether it moves back into, in a bigger way, across the road or

how it does that, I am a bit uncertain.

MS BRESNAN: In the first review that you did of the ACT public service, in chapter 2 you talk about a lot of things in relation to self-government. One of the things you mention in there is including a preamble that would recognise the traditional ownership of the land in the ACT. Obviously you are supportive of seeing that included.

Dr Hawke: That came about as a result of the former Pettit report. I was attracted to that recommendation. I know there is some debate about who the traditional owners of the ACT are, but I would have thought there was a way around that in terms of a preamble. The issue would be whether you named who they were.

MS BRESNAN: But it is something that you are supportive of?

Dr Hawke: Yes, I am absolutely supportive of it.

MS BRESNAN: In terms of a preamble, there is something which has been mentioned in a couple of other submissions as well, including the issue of recognising traditional ownership. One of the things the government talked about this morning was potentially having something which acknowledges the status of the ACT parliament, that it is the elected representatives who represent the ACT. Do you think that anything else like that would be worthwhile to have in a preamble?

Dr Hawke: I am torn here, because Canberra is often used in a pejorative sense as a reference to what happens up on the hill. I am torn between that and the fact that those of us who live here know and love the place as it is. So to the extent that other people are discouraged from coming here and spoiling what we enjoy, that is one part of it. But the fact is that this is the national capital and it should be a place that all Australians are proud of.

I know there is a sense in which Australians differ perhaps from those in other nations like the Americans, who do have that sense of civic and community pride. But I have found in my time that people who put Canberra down are inevitably those who have never come here, who have never spent any time here. It is the national capital. It represents the national institutions. There is so much here that is good about what Australia stands for as a nation and how you identify as an Australian. I have always sought to encourage that sort of view. The centenary will be a very important way of demonstrating that to Australians at large.

THE CHAIR: Ms Porter.

MS PORTER: Following on from that theme of core things that you were talking about—the fact that Canberra is the nation's capital and the fact that we are often given a bad name because it is the place where decisions are made that people do not necessarily like—the suggestion was made this morning that Washington does not suffer the same problem because it has the White House. There was a discussion about what else you could call the parliament. I have always referred to it as the house on the hill, which I presume is not something the media would necessarily grab with both hands. It does not give it much distinction.

There is an issue around whether we are respected because we call ourselves an assembly and we only have a chief minister. The Northern Territory has a chief minister. Certainly Norfolk Island has a chief minister. It is quite common to have that position named as such. Does it really matter? The minister this morning did not seem to think that it really mattered. Professor Williams thinks the opposite. Have you got a view?

Dr Hawke: The difference between us and the Northern Territory, of course, is that they have an administrator and we do not. I think we have a system of government that works well for Canberra. I do not think that the title "chief minister" derogates in any shape or form from what the Chief Minister takes to the table at COAG which, coincidentally, is on this week. I do not have a problem with the title. I think it conveys it very nicely.

I think in many ways Canberra sets the standard for some other administrations. A couple of examples of that would be the Chief Minister talkback, which has a direct relationship with citizens. The panel of political commentators that we hear on the radio is another. These are issues that I think Canberrans take for granted but they are not replicated in other jurisdictions around Australia. I think there are other ways in which we could promote and capitalise on those sorts of direct citizen interactions.

We are blessed by having people in the community who know a lot about a lot of things. There are two universities here and other national institutions. There is the commonwealth public service and the ACT public service. We have a level of expertise, I think, that is not replicated elsewhere around Australia and we should benefit from that as well.

MS PORTER: Do you think that we could utilise that level of expertise and the way we have grown since we had the first referendum of self-government, to engage the community in a different way about this topic?

Dr Hawke: Yes. There was that exercise, time to talk, which I think was a rather nice method of engaging the citizens of the ACT. I think from time to time the Assembly has led the way in having those sorts of forums which allow direct input.

One issue that I was chatting to Tom about earlier is the peculiarity of Canberra not only being the seat for the functions carried out by the state governments but the fact that we have the municipal functions and whether or not there might be a committee of the Assembly that looks at planning matters and takes, in turn, questions from some of the jurisdictions or maybe from around the electorates—Gungahlin, Molonglo, wherever—and allows people to write in or appear before that committee where the minister would be at the table and would answer questions or take them on notice and reply.

THE CHAIR: There was some discussion earlier today about your *one ACT government* report. You particularly drew out the issue of representation ratios.

Dr Hawke: I did.

THE CHAIR: There was some discussion earlier about whether we are comparing apples with apples in the sense that in the ACT we have state and local rolled into one.

Dr Hawke: That is correct.

THE CHAIR: The other jurisdictions have two separate tiers.

Dr Hawke: That means the ACT is even more disadvantaged.

THE CHAIR: This is the question I wanted to ask. Mr Hanson might want to join this discussion as well. Do you think it is a fair comparison to make, given the different structures?

Dr Hawke: I think it just emphasises the point that I was making. By any measure, the ACT is under-represented.

THE CHAIR: Do you think that applies at the federal level as well?

Dr Hawke: Yes, I do, but I do not foresee any possibility of there being any change at the commonwealth level. The ACT's GDP is much bigger than both Tasmania and the Northern Territory. Are we going to get eight senators and X number of members of the House of Representatives here? I think not. I think we are probably going to be stuck with the number we have got. To me, that adds to the case to increase the size of the ACT Assembly to allow better representation and better interaction between Assembly members and the citizens.

THE CHAIR: I want to move on to discussions about national land. Do other members want to pursue any other topics?

MS PORTER: I want to talk about national land too.

THE CHAIR: I want to open up the conversation more from your National Capital Authority report. Do you see any significant crossovers in terms of matters we might need to consider as part of the review of the self-government act?

Dr Hawke: I think my advice to you there would be to wait and see what is announced as a result of this, on the back of the forthcoming budget in May. That will provide a better vehicle for you to look at what I recommended, what the commonwealth government has accepted and is going to implement and you can test whether there are any gaps or issues there that you would wish to pursue further. That would be my advice.

THE CHAIR: One of the areas we have discussed this morning with the minister is the binding of the commonwealth. Certainly there are issues around the control of the lake and things in that context. There certainly seems to be room for improved integration, I suppose, or less duplication.

Dr Hawke: I absolutely agree with you and I have tried to make recommendations to bring that about. I am still hopeful that most, in not all, of that will come to fruition on 8 May.

THE CHAIR: Thank you for that tip. Ms Porter, you have a question.

MS PORTER: No. It is fine. You have covered what I wanted to ask about.

THE CHAIR: Mr Hanson.

MR HANSON: Most of the witnesses we have heard from are suggesting, pushing or advocating for greater autonomy, greater powers, for the ACT. Some went so far as getting close to statehood, some not so far. Looking at it the other way, given that we are the seat of government and that is why we exist, do you see that there are some important things that the commonwealth needs to retain in terms of power over the ACT, or not? What are those?

Dr Hawke: I agree with that. The national centre, for instance, should and probably will remain firmly in the grasp of the commonwealth. I believe the commonwealth should have a legislative power. I do not believe they should use the administrative power in the way in which they have in the past. That is probably in part what led to Senator Brown raising that issue in the parliament. I believe that, rather than an administrative mechanism, there should be a legislative mechanism which still allows the commonwealth to exercise that power. I have set out in here some rationale behind why that should be.

The other issue that I have raised is that I do not think it is any longer appropriate for the ACT government to be administering Jervis Bay and that really negotiations with the commonwealth and the New South Wales state governments should be pursued to transfer it properly to the New South Wales government.

THE CHAIR: Has there been much adverse reaction to that recommendation? Has anyone expressed a counter view?

Dr Hawke: Not that I am aware of. I have not heard a counter view. The only view I have heard is from some of the people who would be affected there that they are looked after in as good a way as they are now. Yet the ACT government would say that the ACT citizens have basically been cross-subsidising services in Jervis Bay. That is probably my view.

THE CHAIR: It would be reminiscent of the opposition to self-government for the ACT in the first place?

Dr Hawke: Sure. My recollection of the reason Jervis Bay exists is that, when the ACT was selected as the seat of government, it had to have a port.

THE CHAIR: That is my understanding.

Dr Hawke: It is 100 years next year and it is the coming of age, 21 years, of self-government. Surely, if any place is mature enough to take these things on, it is the ACT.

THE CHAIR: The issue of Jervis Bay, as an elected representative, always feels like

an odd one to me. Hence, we have, as an Assembly, almost nothing to do with it at all. Yet there is some formal connection there which I have never entirely understood. Members, any questions.

MS BRESNAN: You were talking about what powers the commonwealth might have. What legislative powers would you see them still retaining in terms of the ACT? Would it be, as you said, having that control over the parliament and that zone? Is that the main thing you mean by having—

Dr Hawke: That is the main thing, but I think they will always retain some residual power in terms of planning for the ACT as a whole. The issue is how you get the right balance between the commonwealth's interest there and the ACT's interest there, as expressed through the Assembly. I have tried to sort that out here, and I am waiting to see whether or not they are going to accept that that is the way ahead.

MS BRESNAN: Mr Corbell was here this morning and he gave the example—it is a small example—of Lake Burley Griffin, where the commonwealth controls that but ACT Policing are the ones that—

Dr Hawke: That is right.

MS BRESNAN: It is an example of something that does not make sense in practice.

Dr Hawke: That is right. Hopefully the NCA report will lead to some rationalisation of those interactions. I detect now that there is very goodwill on behalf of both the commonwealth and the ACT to come to commonsense measures that suit both parties. I do not think that has existed for some time, until more recently. Perhaps that reflects some changes in personnel on both sides.

MS PORTER: You mentioned an administrator. Obviously we do not have an administrator here at the moment. Do you think that that is a deficit? Do you think it is necessary for us to look at that?

Dr Hawke: I did have a think about that. I thought: "The Northern Territory's got one. Could the Governor-General serve both roles here?" I decided that really it was a bit of an issue at the margin and that it works perfectly well as it is now. If you did have one, I guess there would be some tripping over of representational roles which would affect the position. In particular I think of the Chief Minister vis-a-vis an administrator or the Governor-General, if they were to do that. We are fortunate to have a Governor-General who lives here and who is available and does do a lot of work throughout the ACT. It is perhaps not well understood elsewhere around Australia about how much good work she does, including in terms of hosting functions for charitable fundraisers and that sort of thing at her place.

There are two other issues that rear their head a bit. One of them is: are we ever going to see a new Lodge? That site has been set aside for such a long period of time. Again I think politics get involved here. It was like the replacement of the VIP fleet, which I had quite a lot to do with. No party wants to be seen to be promoting that against what some Australians might say about that. But I think that is a serious issue for the future. The other issue for the future is something to do with a better convention centre—the

thing that Rupert Myer was involved with, and there is another separate issue being prosecuted by the Anglican Church, a non-denominational thing. If somebody could bring those two parties together to deliver an outcome for Canberra in 2013, I think that would be a rather nice outcome. I can give Tom separately some details about those parties.

MS BRESNAN: I have a question about what is in the *One government* report and what other submissions have said. In terms of the process that you would follow and engage in to make the changes in the ACT, whether it is about the size of the Assembly or the self-government act, there is a lot in the submissions about some pretty basic things in the self-government act that you could theoretically change without having to have a conversation with the public about it.

Dr Hawke: I agree.

MS BRESNAN: What are your views on that—that we could actually just go ahead and do some things and that there are other things about which we could have that conversation?

Dr Hawke: I would have a very close look at the Northern Territory legislation, pick the eyes out of that and use that as a vehicle for putting the case to the commonwealth and saying, "If it's good enough for them why isn't it good enough for us?"

MS BRESNAN: George Williams had a couple of different arguments about whether it is about creating a different act or making some of those changes to the self-government act that are recognised by everyone as being pretty much outdated mechanisms. I would be interested in your views on that.

Dr Hawke: I would have argued that the commonwealth, as part of their gift to the ACT for its centenary—and I still argue that—should rewrite the act in its entirety. Failing that, because they have not picked that up yet, and if they do not pick that up, the easiest way ahead is to recommend changes to particular parts of the legislation to achieve the effect that we will want to achieve here for the ACT and the Assembly. I doubt you would have much problem at all next year in getting bipartisan support to get that through the parliament. I suspect that will actually happen.

THE CHAIR: Are there any points that we have not drawn out that you want to make?

Dr Hawke: No. I appreciate your inviting me along. I have a vested interest in the outcome of your inquiry. I wish you good luck.

THE CHAIR: Thank you very much. Likewise, thank you for taking the time to appear today. We appreciate your time, your thoughts and observations. As is normal practice, we will forward to you a copy of the transcript of today's hearing, just in case there is anything you would like to correct.

Meeting adjourned from 11.42 am to 12.28 pm.

HUNTER, MS MEREDITH, Parliamentary Leader, ACT Greens

THE CHAIR: Good afternoon, Ms Hunter. Welcome to the Standing Committee on Administration and Procedure inquiry into the ACT self-government act. On behalf of the committee I would like to thank you for appearing on behalf of the ACT Greens today, and our apologies for the late start. Our private meeting took just a little longer than we might have anticipated. I can only imagine that you are aware of the privilege card and the contents of it.

Ms Hunter: Yes, I am.

THE CHAIR: That being the case, we will go straight into it. Would you like to make some opening remarks?

Ms Hunter: Because of the time constraints I will not go into too many remarks, other than to say that obviously the ACT Greens are pleased that this inquiry is being undertaken. We think that it is timely that the ACT has a revision of that act which shows that we are now a mature democracy and our act should be reflecting that, by taking away some of the limitations. The elected representatives of this community should not be limited in their ability to legislate in a way that reflects the values of our community.

Back in 2009, when it was the 20th anniversary of self-government, the Greens did put a motion to the Assembly. It was a remonstrance motion. It was amended along the way, but at the end of the day that motion was around calling on the Chief Minister to raise this issue with the commonwealth about the need to review and revise the self-government act.

THE CHAIR: With respect to the size of the Assembly there has been quite a discussion already. I think it is going to be one of the key themes of the inquiry. I note that the Greens believe the size should be increased. You actually discuss the Electoral Commissioner playing a role in that. Certainly some of the witnesses have suggested that we need a public process or an independent process. Do you have any comments on perhaps what has been put in this submission versus that engagement with the public?

Ms Hunter: That is right. We have put in that idea of the Electoral Commissioner as someone who is separate from and independent of the parliament to play some sort of role. I was listening this morning. The attorney did talk about a panel of experts, and one of those could be the Electoral Commissioner. But to take the politics out of it a bit, I think that there is some merit in having some sort of process where people can be working through that, providing their expertise and then presenting back to the Assembly what they believe those numbers could be. At the moment the Electoral Commissioner does play that role around redistribution, so that it can be separate from the Assembly. They could look at population as a way of looking at numbers.

The reality is that in the ACT since the introduction of self-government our population has increased dramatically. We would be one of the leanest parliaments in Australia; we would be the leanest parliament. Certainly if you were looking at similar parliaments, in Tasmania there are 15 members of the Legislative Council and

25 members of the Legislative Assembly. They have nine ministers. In the Northern Territory they have 25 members and eight ministers.

Clearly we are smaller than Tasmania but larger than the Northern Territory. You can see that they have greater representation. In fact I think the number mentioned this morning was that there is a representative in the Northern Territory for every 600 or so people, whereas here in the ACT we are talking about just over 14,000 people.

Clearly we also, as members of this place, know the responsibilities that all of us have to take on, and particularly the executive. They are becoming increasingly more complex. I think that it is well understood not just by members of this place but in the broader community that we do need now to be seriously looking at this issue and increasing the size of the Assembly.

THE CHAIR: I want to turn to the part of the submission on dissolution of the Assembly. It talks about a concern with the ability of the Governor-General to dismiss and proposes an alternative idea. There has been some discussion with the previous presenters around whether the ACT needs an administrator or some sort of role in that vein, potentially both for this kind of role and for a ceremonial role. Is that something that you or the Greens have given any thought to?

Ms Hunter: What we are putting forward is that we do not see that there is a role for the commonwealth executive in the ACT. If we had a situation where there was not a majority, which is quite often the case after an election, and that people could not work through to elect a chief minister, to have some workable option in place, we are suggesting that we do not need anyone else to step in. We will just put into the act that you would go back to another election.

So our view is that we have become a mature democracy. We have been here for more than 20 years. I think we have proved our credibility as a parliament and we do not need that interference from outside. We can put things in that would respond to situations such as I have just described.

MR HANSON: Ms Hunter, the submission was provided by the convenor of the ACT Greens and has Greens motifs on it. Are you appearing as a member of the Greens or as an MLA?

Ms Hunter: I am a member of the Greens party, Mr Hanson.

MR HANSON: The staff member that you walked in with today, is he attending as a volunteer for the Greens or as a member of the ACT Assembly? Is he being paid by the Assembly at the moment?

Ms Hunter: He is a staff member of mine, as you know. If that is an issue, Mr Hanson, I can reflect. But at the moment he is just listening in on a public hearing, like other people sitting in and listening in on a public hearing.

MR HANSON: No, because you are here as a member of the Greens, right? And you are using Greens documentation and—

MS BRESNAN: Chair, is this appropriate?

Ms Hunter: This has been submitted by the Greens party, Mr Hanson, and I am attending as a representative of the Greens party.

MR HANSON: You just said you are attending as a member of the Greens party, with assistance from your staff, who are paid for by the Legislative Assembly—

Ms Hunter: I am actually sitting here and answering questions. If you have one, I am happy to answer it, Mr Hanson.

MR HANSON: The question is: is the staff member that is here, that you walked in with and who is assisting you today, being paid for by the Legislative Assembly or is he volunteering at the moment as a member of the Greens?

Ms Hunter: I have not had that conversation but he is here and he is interested in this hearing.

MR HANSON: Can you confirm, given that you are representing the Greens, that in the preparation of this submission you did not use any Assembly resources prior to coming here to represent—

Ms Hunter: That is right. It is the Greens party who put this submission together, Mr Hanson.

MR HANSON: And you have not used any personal resources of the Assembly in preparation for appearing here today?

Ms Hunter: That is right.

MR HANSON: Thank you very much.

Ms Hunter: I thought you might have something about the legislation.

MS BRESNAN: I have a question about the legislation. One of the things which are mentioned in here is having a preamble to the self-government act which would acknowledge Indigenous people. That is something that Dr Hawke mentioned. He was supportive of it. Obviously this is something that is important. Would there be anything else which could be included in the preamble? Mr Corbell mentioned something this morning.

Ms Hunter: What we have included in this submission is that acknowledgement of Indigenous people. There has been some talk today about whether a preamble would include other things, such as the acknowledgement of the parliament and the role it plays in the territory. I am open to that. Our original discussion here was definitely about acknowledging the traditional owners and custodians. As I said, obviously the Greens would be open to something broader than that. That was what we had focused on here.

MS BRESNAN: I think it is also suggested in the submission that the self-

government act refers to the Assembly, not the parliament. That is something that Ms Porter has been asking questions about. The attorney said that could be something which could be included. The idea was that it would change the way people viewed the ACT. We are the elected body for the people of the ACT. Do you see a potential value in having that sort of information included?

Ms Hunter: As I said, we are open about this. What we have put forward here is that that can be reflected in other parts of the act. That does not necessarily mean that you could not or would not put in some sentences, some words up front, to reflect that. What we have suggested here is to acknowledge the Indigenous owners and custodians. The importance of the parliament can be reflected in other parts.

MS PORTER: The topic of what we are called has been discussed, as Ms Bresnan was just saying. Whether we should be called a parliament, whether or not it gives us better recognition, whether when we are around the table, for instance, at COAG, we are called a parliament rather than an Assembly, whether our Chief Minister is called a premier, do you put any value on that? Is that something that occupies the Greens party's mind?

Ms Hunter: Yes. We think that we should be recognised as a parliament rather than an assembly. We have put into the submission that that should be reflected. Obviously at the time, 20-odd years ago or more, "legislative assembly" was what they came up with and was agreed. We think that it is timely too that this is recognised as a parliament.

MS PORTER: We talked about that time when those decisions were made. Quite some time before that, there was a referendum held and roundly defeated. The idea of having self-government was certainly not something that the ACT population viewed with any high regard at all.

We talked previously about how we could come to these decisions about size. How would you see or how does the Greens party see us engaging with people so that we do not end up with the situation we had before? Obviously the ACT is a different animal now. It has a different population. As you said, it has a far bigger population. How do we make sure that we properly engage so that we have people really engaging on this topic at a deeper level than they possibly did before?

Ms Hunter: I think that is a really good question. We heard evidence earlier in the day about the move towards statehood in the Northern Territory and the sort of engagement that is going on there around their constitutional convention and so forth. What the Greens and others have said here is that the self-government act in a way is our constitution. I guess there would be quite a few parts of it that are pretty much run of the mill. They may not spark excitement or the need for engagement.

Once you start talking about preambles, for instance, obviously if you are going to talk about the inclusion of Indigenous people and an acknowledgement, there would need to be engagement with the Indigenous community. If you were going to have a broader preamble, then I think that is where some engagement would be necessary. There are some issues there that would need to be managed. You would not want it to end up falling apart because nobody can agree on every word used. That is something

where you probably would want to be clear on the scope of a preamble. I do think there is a need for conversation with the community.

The other reality is that, for many people in our community, the thought of more political representatives is not necessarily first on their wish list. That is why we came to the view that separating out that discussion to a more expert panel about what would be a reasonable number of representatives, considering our population, was a good way to go. Yes, some sort of community engagement, like we do with many pieces of legislation, would be essential. This is a particularly important one.

MS BRESNAN: One of the questions I asked the attorney had been raised in the government's submission. They could see that there are certain things in the self-government act that most people believe are outdated and do not apply now to the ACT. The attorney said you could have a process where you could look at amending the self-government act and take out some of those aspects, but you also have a process where you have an independent person, or the Electoral Commissioner, looking at the size of the Assembly. You would still be having that discussion with the public about it, but there are certain things in the self-government act which could now come out. We could do that without necessarily having a discussion with the public about those particular aspects.

Ms Hunter: I think you could sit down and probably identify the parts of the act that people would want to be engaged with. There would be a number of sections in the act that we are not going to change, so that would not be so much of an issue.

The Greens are always supportive of engagement with the community when we are moving in new directions or progressing things. I just think that it needs to be thought out. We are obviously not going down a path of the constitutional convention exercise that is going on in the Northern Territory, by any means. We should be having a think about how we have that conversation with the community, while at the same time being very clear that it is not about them having a decision-making role because, at the end of the day, this is a commonwealth act of parliament. That is where it will be decided. I think that as long as you are clear about those rules of engagement, that is important.

THE CHAIR: Thank you, Ms Hunter. Are there any other questions?

MS BRESNAN: Just on one of the things that Dr Hawke said in referring to "potentially a gift to the ACT for the centenary". He was suggesting that it would be about changing the self-government act. I think he has put this idea about having a completely new act. Do you have any particular views on that?

Ms Hunter: I think that Dr Hawke is right. The principle here is that just by virtue of this being the seat of federal government it should not mean that we should not be a self-governing territory. As I said before, we should not have the powers of our elected representatives limited so that we cannot legislate on a range of matters—the full range of matters that other states can legislate on that reflect the issues, the concerns or the values and so forth of our community. I think that that would be a great gift.

THE CHAIR: Thank you, Ms Hunter, for taking the time to appear today. As you are well aware, you will receive a transcript of the proceedings within a week—if you have any comments or corrections that you feel need to be made. Thank you for your submission and taking the time to appear today.

The committee adjourned at 12.46 pm.