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

CANBERRA

FRIDAY, 11 MAY 2012

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

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

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Amended 9 August 2011

The committee met at 9.01 am.

WALKER, MR PHILIP, President, ACT Bar Association

THE CHAIR: Welcome to this public hearing of the Standing Committee on Administration and Procedure inquiring into the ACT (Self-Government) Act. On behalf of the committee, I would like to thank you for taking the time to both make a submission and join us in discussion this morning. I imagine you have read the privilege card and appreciate its contents?

Mr Walker: I have on previous occasions, and I do.

THE CHAIR: Thank you. Mr Walker, before we proceed to questions from the committee, would you like to make some opening remarks?

Mr Walker: Yes, a few. You will have received submission No 6, which is a letter from the association dated 21 February. It is never a good thing to commence with an apology, but I did say that I would try and provide you with something further. I have simply not had the time to do that. Having said that, there are a few other comments which I could make.

The comments about the planning and land management act contained in that letter were ones which received the endorsement of members of the council of the Bar Association. The comments that I might make about the self-government act, I have to say, have not. I do so in this respect only: of the barristers at the bar, the three that have had most to do with the self-government act since self-government have probably been David Mossop, Chris Erskine and me, just because of the areas in which we practise.

The odd comment that I will make I do not intend as a form of advocacy for a particular outcome; it is more that it occurred to me that I ought to take the opportunity to just point out a couple of things which you may wish to take on board and consider, without necessarily saying, "You must go left," or, "You must go right on this." They are just aspects of the self-government act which might have escaped your attention—I do not know. I thought it appropriate at least to flag them for you.

I can go into a bit more detail about what I have said about the planning and land management act provisions if you wish. I have some extracts here from the planning and land management act, just to identify a couple of the points—unless you have a copy of that legislation yourself.

THE CHAIR: No; that would be helpful, thank you.

Mr Walker: I have only made three copies, so I think I have underdone it.

THE CHAIR: We can share. Do you want to take us to the specific points that you think are worth talking about.

Mr Walker: Yes. I am not going to go through some great dissertation on the law. I think the points can be made reasonably quickly.

THE CHAIR: Thank you.

Mr Walker: The planning and land management act, being one of the original four acts of self-government, has as much constitutional effect as the self-government act does itself. What caught my attention and was the reason behind the letter that the association wrote is that, in a way, if you look at limitations on the power of the Legislative Assembly, there are some limitations which are more extensive under that act for an otherwise supposedly intermediate government than exist anywhere else in Australia.

Section 25 deals with the territory plan. This section was initially enacted as part of a guarantee that various things would not change about the administration of land at the time of self-government. In its form, it requires the Legislative Assembly to enact particular laws, such as the establishment of a planning authority and the creation of a plan, and provides for various things which should be included within those laws. What has never really been established is what, if any, continuing effect this section has.

At one level, one might say, once the Assembly has been established and has enacted laws of that kind, thereafter it may amend them, repeal them or do whatever it wishes with them. At another level, they constitute a continuing limitation on the capacity of the Assembly to make laws within the areas with which they deal. For example, it requires the establishment of a territory planning authority, and it is the planning authority's responsibility, in 25(1)(b), to prepare and administer the plan and keep it under review.

None of this is particularly problematic, but it raises questions such as these. What if the Assembly decided that there should be some committee of the Assembly that reviewed or created parts of the plan? Is it within the legislative competence of the Assembly to take the preparation of a plan out of the hands of a planning authority and give it to a minister, for example, if that was considered appropriate? Again, as I said at the outset, I am not advocating for any of those things; I am merely identifying the fact that this may constitute an impediment on the powers of the Assembly.

Perhaps a more problematic provision is 25(4). That requires the laws to include provision for the making of the plan and amendments to the plan, including the procedure for ascertaining and considering the views of the public. As a general rule, nobody could argue with that as an appropriate approach to making the territory plan. But what would happen, for instance, in the circumstances where there is a special need to pass an enabling act which might have the effect of overriding provisions of the territory plan? For instance, with the dam that was created, there was some delay, as I gather, under ACT law. It is not unknown for state governments to pass enabling acts to say something like, "Notwithstanding any other law, the construction of this highway or this dam is approved," so as to avoid any legal challenges and complications.

It is an interesting question as to whether, if you ultimately pass legislation which has the effect of amending the plan, you potentially run afoul of some of the provisions within this subsection. For example, in the 2008 plan, it was proposed that a draft

simply be implemented by way of legislation—legislation saying, "Here is the plan." There was a real question as to whether, if there was no ascertaining of the views of the public in relation to that plan, it could simply be done by legislation.

Paragraph (c), "the procedures for just and timely review, without unnecessary formality, of appropriate classes of decisions on planning, design and development of land", covers the usual administrative review for planning decisions. Being in a commonwealth act, however, it leaves open for challenge challenges which have been made, and one which is currently being made. That limits the power of the Assembly to exempt certain planning decisions from, in this instance, ACAT review.

There is a proceeding in the Supreme Court at this very moment as a result of exemption from third-party review on the Kingston foreshore, one of the parts of which is: is this actually valid or does it offend parts of the self-government legislation? And when Capital Property Projects, I think it was—one of Terry Snow's companies—challenged the Direct Factory Outlet in Fyshwick, there had been a removal of a right of merits review in industrial areas, and one of the grounds of challenge was: can you do that, given the provision in the self-government legislation? Subsection (5) says:

> This section does not limit the power of the Assembly to make laws otherwise than under this section.

It may be, as I said in opening, that this was really for the establishment of laws in the territory and that subsequently the Assembly can make any laws that it likes. But that has not been authoritatively determined. The problem with these things which are of a constitutional nature is that they tend to be sleepers; they do not have day-to-day effect. Everybody forgets that they are there right up until, typically in a large project, somebody suddenly pulls out this sort of legislation and raises a question of whether, particularly if the implementation of that project has been expedited, what has been done is contrary to federal law. The ultimate question is: given that the Assembly has now been in existence for 23 years, does section 25 really have any role in relation to the territory plan as a provision in a federal statute at all?

The other aspect is section 29. That provides that the executive administers territory land. I take it that members are aware that the territory is divided into national land and territory land. It is a division made for administrative purposes. National land is under the direct administration of the commonwealth and is a very small portion of the territory. Territory land is, as this section says, under the administration of the executive on behalf of the commonwealth.

There is a real question as to the extent to which the executive can authorise any other authority to exercise these powers under section 29. It may well be able to delegate them, but I am thinking, in particular, that section 162 of the Planning and Development Act actually provides that the territory planning authority may exercise the powers of the executive on behalf of the commonwealth—playing the authority executive, the commonwealth—to grant territory leases. Not only is it an interesting question, but there is another one in the case of Hamib and Winyu, which is presently before the Supreme Court, as to whether it is competent for the Assembly to legislate that another authority may exercise the powers of the executive.

The executive can clearly delegate. In fact, section 38A of the self-government act was put into that act to make sure that where federal legislation said the executive could do various things, the executive had the power to delegate. But there is a big difference between the executive having the power to delegate and that delegation—its form, its existence, its revocation—remaining within the control of the executive so that the executive effectively calls the shots, and a provision such as 162 of the planning and development act which actually says that there shall be a power, executive powers, conferred on the territory planning authority, the executive, according to that act, having no power unilaterally to revoke the authorisation given to the planning authority by virtue of section 162. There is a question as to whether that is valid, because it limits the power of the executive granted under section 29(1). As I said, that matter is presently raised in proceedings in the Supreme Court.

I have also mentioned in the letter that the issue was debated in the matter of Blicharz. The Chief Justice—I do not think he was the Chief Justice then—said that 29(2) limits the powers of the Assembly and the executive in relation not only to matters related to interest in land but also to the planning and land management issues covered by the land act. He goes on to say that it is a very wide discretion and therefore it is going to be a rare case where you will successfully challenge something under this section. But he acknowledges that the possibility is open.

In summary you have a commonwealth act regulating the executive's control of territory land in a way which itself potentially impedes the capacity of the Legislative Assembly to pass laws in relation to the administration of territory land. We shall see what happens in the matter in the Supreme Court.

That was all I wished to say in relation to the planning and land management act.

I want to mention a couple of points that, over the course of the years, I have picked up and thought about in relation to the self-government act. We have all seen the submissions about the size of the Assembly. It is a peculiar thing for a 23-year self-governing jurisdiction to have the size of its legislature determined not only by the commonwealth parliament but by commonwealth regulation to boot.

The other aspect that nobody ever seems to debate is this. I see *Hansard* referring to the Tenth Assembly, the Ninth Assembly or something like that. It has always occurred to me that it is an interesting question under the self-government legislation whether, short of actual dissolution by the Governor-General under section 16, there has only ever been one Assembly, the members of which change from time to time—unlike, for example, the commonwealth or the states, where the Governor-General in the commonwealth or the governor in the states actually dissolves the parliament and sends it off to an election. There is no equivalent reference to dissolution of the Assembly; it is merely that members vacate their office and new members come in.

It may have very little practical consequence as a day-to-day matter save for the fact that if the Assembly continues, things which are on the Assembly notice paper may not lapse. I understand that it used to be the practice, I think in Victoria, to prorogue parliament fairly regularly so that it effectively wiped the notice paper clean. And there are other parliaments which have not taken the prorogue option but regularly

pass motions effectively wiping the notice paper clean.

It is not a point that is going to worry people on a day-to-day basis, but there is, and always has been, in my mind, a question as to whether in fact you get a new Assembly upon an election or whether, as sort of a body, that is in fact the case.

The other issue is section 24, which provides that the Assembly has the same privileges as the House of Representatives. That now has defined its expression in the commonwealth Parliamentary Privileges Act. But subsection (4) removes from the power of the Assembly the capacity to imprison or fine. That is hardly a power that is regularly exercised by any parliament in Australia, but it does raise the question: what if you actually want to get documents or want to get somebody before an Assembly committee and they do not want to come? Can they just say: "I don't care. I'm not coming."? What can you do about it? As I said, I raise the question about 24(4); it is not the sort of limitation that I am aware of that exists in any of the states.

Section 48A provides:

> The Supreme Court is to have all original and appellate jurisdiction that is necessary for the administration of justice in the Territory.

This is something about which I really wish I had had the time to put something down on paper for you. In a Federal Court decision on Kelly and Apps, it was suggested that that actually limited the capacity of the Legislative Assembly to restrict appeals to the Supreme Court, because if you said that you could only have an appeal of a particular type—say, an appeal on a question of law in one particular matter—or if there was no appeal at all to the Supreme Court, you might limit its power to do justice in the territory.

That has not been followed in other cases, but in my quick look over the Supreme Court's handling of section 48A, I note that Mr Justice Refshauge said last year, when the question was raised about the ambit of 48A, that he did not have to deal with that "fraught" question in his decision. Last year also, there was a further appeal based upon 48A limiting the capacity of the Assembly to restrict rights to the Supreme Court.

It therefore is still something of an open question as to exactly what 48A actually does. I have to say that I thought the more conventional approach to it—it has certainly been the approach favoured by Justice Jeff Spender and Terry Connolly—was that it was a grant of power effectively subject to enactment to do justice according to the law. So if the Assembly said, "You will only have an appeal on the question of law from a particular decision," 48A gave the Supreme Court power to exercise its jurisdiction, but effectively subject to enactment. Kelly and Apps took a different view. It is not something that has ever gone up as far as the High Court of Australia for ultimate determination.

The final thing I want to mention is that there are various protections for the independence of the judiciary in 48C and 48D of the self-government legislation, including the judicial commissions and so forth. No such equivalent exists in relation to ACAT.

ACAT is an extraordinary body, given its jurisdiction. It can deal with some of the smallest things you can possibly imagine. It exercises a small claims jurisdiction. It might deal with administrative review on matters involving only a couple of hundred dollars. I had a case three years ago which involved many tens of millions of dollars, and the first port of call was going to be ACAT. All tax decisions go to ACAT first; all planning decisions go to ACAT; disciplinary decisions and licensing decisions go to ACAT. It is a body with a very wide range of powers. We recently debated the question of whether the jurisdiction of the Magistrates Court should be lifted to $250,000. There are cases before ACAT the value of which leaves $250,000 behind in the dust.

As I said at the beginning, I am not necessarily here advocating for something; it just occurred to me that it may be useful for those matters to be raised. I can at a later time, if necessary—just backtracking one step—give you some references to cases which dealt with 48A and the jurisdiction of the Supreme Court, if you would like me to do so.

That is a long opening statement, Mr Chair, but there you go.

THE CHAIR: Thank you, Mr Walker. You have certainly raised some unique issues that have not been brought before the committee. I appreciate that because the scope of the committee's brief is quite wide. You have certainly opened up some wider issues. Do members have specific questions flowing from those comments?

MS BRESNAN: I do have one. Obviously, you have talked about the PALM act quite a bit. Do you think that through changes that could possibly be made with the self-government act, depending what that included, it could actually deal with some of those issues you have raised or do you see it as a separate piece of work?

Mr Walker: I think it could be done in one and the same act. Whether the commonwealth parliament makes changes by way of two acts or one act is really just a matter of form. Then you could pass an act—an Australian Capital Territory self-government review act or something—that picks up anything. That is really a matter of form. My point was that it should not get left behind the somewhat more high profile self-government act itself.

MR HANSON: I just echo the chair's comments. That is a really interesting presentation. It raised a whole range of things that I do not think we had even considered. I think it is probably a matter for us now to digest what you have said to explore where we go from there and whether there are things that we need to get more information on. Thanks very much. It was very interesting.

Mr Walker: I did say that I would try to present something in more detail. As I said, I simply have not had the time. But if there is something where you thought I, the association and its members might be able to be of further assistance if you wanted to follow up on some point, then we would try and give you a bit more detail than I have been able to today.

THE CHAIR: I think that would be the best approach at this point—for us to come

back to you with specific questions. I wanted to ask about your comments on the protections for ACAT which, of course, has been created under statute. Therefore, it has a different status to the rest of the judiciary. I am just trying to remember, and I am sure you can help me quickly. Is that not the same in other jurisdictions? How does that compare where there are administrative tribunals in various similar forms in most other jurisdictions?

Mr Walker: You are testing my memory. Undoubtedly, you will find jurisdictions the same as here. I cannot remember exactly what the requirements are for the removal of, say, a presidential member of the federal Administrative Appeals Tribunal. Part of the problem you often get with these things is that sometimes people are appointed to limited terms. That presents a bit of a problem because you cannot help but feel that somebody just marks that person's card during the currency of a limited term.

I cannot give you chapter and verse. I have no doubt that there would be administrative review bodies without the same measure of protection. I am merely highlighting to you that ACAT should not be regarded as the poor cousin of the courts, given the ambit of its jurisdiction, because it can be enormous.

THE CHAIR: Yes. I guess I was not asking for that comprehensive analysis. Perhaps the better question is: what specific concerns do you have in raising that point?

Mr Walker: There is one other matter I should make in relation to ACAT. It is a technical lawyer's distinction, but it gives a bit more context to ACAT. ACAT exercises two kinds of power. It exercises an administrative review power. In other words, it exercises a second round on the merits of an administrative decision, just like a member of the bureaucracy might make.

The other aspect of ACAT is that it exercises judicial power. It actually in some respects exercises exactly the same sort of power as the courts do. It just seems to me that a body with that scope, with that range and also one that also exercises judicial power should not be left out of the review if you are looking at matters relating to courts. It is really not terribly much more than that. I say this quite regularly: do not forget ACAT. That is all.

THE CHAIR: Thank you. I have got some other questions, but are other members wanting to jump in? You have mentioned in your submission somewhat briefly the limitation on the terms of leases in the ACT.

Mr Walker: Yes.

THE CHAIR: I think we are all aware of the 99-year issue. Is that something you would just like to offer some further comments on?

Mr Walker: It is only the question of why this continues to be an issue for commonwealth regulation. The commonwealth passed a regulation to provide that certain church and education leases can go to 999 years. Somebody made a case, which was accepted, that in certain circumstances leases should be longer than 99 years. The question I ask is: if it has been recognised that occasionally cases like

that are properly and validly made, why have they got to be made to the commonwealth? It is not terribly much more sophisticated a point than that, I have to say.

It was a point made more with reference to residual limitations on the competence of the ACT Legislative Assembly which do not seem to have a place as much 23 years on as they might have originally. That was more the position. I have heard the arguments saying that it gives greater security of tenure. I do the odd land valuation case. I have to say that unless you are going close to the end of term, I cannot imagine that any valuer is going to say that you get a lot more for a 999-year lease than you would for a 99-year lease. It is just a matter of pure land valuation.

Certainly, there are some renewal issues, but I read the Law Society's submission on the issue. How much of a problem are they? You have virtually got an automatic right under statute these days to get most leases renewed. It really was just a question of why does this argument any more have to be made to the commonwealth. That is all.

THE CHAIR: Thank you. That draws the point out very clearly. Any other questions, members? Thank you, Mr Walker. I think we will let you off the hook at that point. I suspect, though, given the depth of the material you have given us today, that we may well all be in touch with further questions at a later point in time and we appreciate your offer on that.

Mr Walker: Happy to please.

THE CHAIR: That being the case, we will conclude your evidence there. Thank you for appearing today. As I am sure you recall from previous occasions, we will provide to you shortly a transcript of today's hearings. If there is anything you feel needs to be clarified, we would invite you to do so.

Mr Walker: If I get the opportunity to put something down in a bit more detail, and I certainly will not for the next three weeks, is there still some capacity to submit material to you or is there a time limit?

THE CHAIR: No, not at this point in time. I do not think we are going to be finished in the next three weeks or so. Then the next Assembly sitting period is not until August; so there is a bit of flexibility for the committee, I think. If you do find the time, you are welcome. But, as I say, it is equally likely we will come back to you to further discuss one or two of the points you have raised. Thank you again for appearing today.

GREEN, MR PHILLIP, ACT Electoral Commissioner, ACT Electoral Commission

THE CHAIR: I would like to welcome Mr Phillip Green, the ACT Electoral Commissioner, to the hearing of the Standing Committee on Administration and Procedure's inquiry into the Australian Capital Territory (Self-Government) Act. Thank you for appearing. I appreciate that you were at the Assembly late last night as well. So you are perhaps feeling a bit like the rest of us. On that basis, we particularly appreciate your appearing this morning. I am sure you are aware of the privilege card. Can we confirm that you understand the implications of it?

Mr Green: Yes, I do, thank you.

THE CHAIR: Thank you. We will get straight into it. We have received your submission, thank you. Would you like to make some opening remarks to elaborate on that?

Mr Green: Thank you and good morning. I do not have any prepared remarks. If you would like me to go through the recommendations that the commission has made in its submission and speak briefly to those, I am happy to do that. Otherwise, I am happy to take questions.

THE CHAIR: Perhaps if you want to pick up the points that you think are the most important ones, it might help us focus the discussion.

Mr Green: Okay. The commission has made six recommendations in its submission. The first recommendation we made concerns section 26 of the self-government act, which is the section that provides for the process of conducting an entrenching referendum under the self-government act, which has happened once in the history of the ACT when in 1995 the principles of the Hare-Clark system were entrenched by referendum.

The recommendation we have made is that the self-government act be amended to define the term "majority of the electors" that is used in that section to mean a majority of electors casting formal votes in a referendum, because at the moment there is some doubt as to what that expression in the self-government act actually means. If you want to give it its widest meaning, and it was the meaning that we were probably running with at the time of the 1995 referendum, a majority of the electors meant a majority of the number of people on the electoral roll.

If you typically get 91, 92 per cent of the people on the electoral roll who actually vote, and then you get another four or five per cent of those voting informally, even if you were to get more than half of the people voting formally in the referendum to vote in favour of the referendum, you still might not get more than half of the number of electors in the territory voting in favour of the referendum.

Effectively, everyone who does not vote whose name is on the roll, some of whom might have left the ACT or have died, plus all the informal voters, would be casting a no vote in the referendum. So it just seems to me that it would be a much better look if the test was half of the number of people casting a formal vote in the referendum.

Our second amendment, which I think is mirrored by lots of other submissions to this inquiry, is that the commission recommends it would be appropriate to amend section 8 of the self-government act to give the Assembly the power to set its own number of members. That would bring the ACT Assembly into line with the Northern Territory Assembly, which is in a similar situation to the ACT in that we are governed by a self-government act. It is an act of the federal parliament.

The mechanism, as I am sure you are aware, that currently exists in the self-government act is quite cumbersome. It requires the federal minister to make regulations. There has to be a motion of the Assembly passed before that can happen. It is quite cumbersome. It seems to have been an obstacle to increasing the size of the Assembly in the past. I think the ACT can make a very strong case to the commonwealth to get that particular amendment moved.

The third recommendation we made was regarding the existing requirement for compulsory enrolment that is currently contained in the self-government act. The commission is recommending that that provision should remain unchanged. There has been some talk in other inquiries in the Assembly over the years looking at extending the right to vote to, for example, 16 and 17-year-olds. But the discussion then moved on to the self-government act requiring compulsory enrolment for everyone who is entitled to vote.

If you lower the voting age to 16, that would then lower the compulsory enrolment age down to 16 as well, which would be effectively imposing a penalty for failure to enrol on 16 and 17-year-olds. There has been some argument that that is perhaps not fair. The view that has been taken by various Assembly committees and the ACT government, which the commission endorses, is that the integrity of the compulsory enrolment system should remain. If you were to make enrolment voluntary for some classes of voters and compulsory for other classes of voters, that would be problematic. So we are just suggesting that that part of the self-government act not change.

Our recommendation 4 looks at section 67B(d) of the self-government act, which currently provides that a redistribution of the territory into electorates is to commence not later than six years after the previous redistribution. The original intent, as I understand it, behind that provision was that it was requiring the Assembly to have a referendum at least every second election. That was made in the context of three-year terms for the Assembly. Now that we have moved to four-year terms, to keep the original intent of that provision that there be a redistribution at least after every second election, it would be appropriate to amend that from six years to eight years, which would keep that intent going.

Recommendation 5 is really just a housekeeping issue. Section 67C of the self-government act currently provides for qualifications of a person to be enrolled as an elector and to vote in an election. But it expresses it in such a way that the Assembly is able to vary what is specified in the self-government act. It can add to the number of people who are entitled to vote. It can subtract from the number of people that are entitled to vote according to what is listed in the self-government act.

So effectively the terms of what is in the self-government act have been overtaken by

the ACT's Electoral Act. A similar circumstance regarding qualifications of MLAs used to be in the self-government act. It was overtaken by amendments to the ACT's Electoral Act and the self-government act was amended after that to remove those qualifications of MLAs from the self-government act. So we are just suggesting for consistency that the qualification of electors come out of the self-government act and simply be contained in the ACT Electoral Act, which would avoid a certain amount of confusion, I think.

Finally, our last recommendation emerged from looking at some of the case law that has happened with electoral law, commonwealth elections and the commonwealth constitution where things like the case law around—my brain is not working all that well this morning after a late night last night.

THE CHAIR: It is still tired from last time.

Mr Green: It is indeed. The case law around the right to free speech and the right to participate in elections and so forth hangs on a phrase in the constitution which talks about the House of Representatives being directly chosen by the people. There is not an equivalent provision of that nature in the ACT Electoral Act. It is assumed that the ACT Assembly will be elected directly by the people but it does not actually say that. In fact, I do not think there is anything in the self-government act that would prevent the Assembly giving two votes to some people and one vote to other people—for example, landholders or ratepayers could be given two votes. That would not happen, but I do not think there is anything in the self-government act that would prevent that.

MR HANSON: Minds are ticking over there.

Mr Green: I am obviously exaggerating for effect, but the point I am making is that—and I am not a lawyer; so I believe I am not the right person to be asking the question—I am wondering whether it might be appropriate to seek legal advice as to whether there would be any virtue to put in the self-government act something along the lines of the constitutional provision that applies to Senate and House of Representatives elections about the Assembly being directly chosen by the people.

Also, there is nothing in the self-government act that says each elector may only vote once in an election. There is a provision in the commonwealth constitution to that effect. Again, because it is effectively our constitution, it might be something appropriate to put in the self-government act.

THE CHAIR: Thank you for that brief summary. Again, you have raised some very interesting points and certainly broadened the scope of the discussion we have had in the committee so far. The committee thanks you and your staff for the time you have put into that submission.

I wanted to ask about recommendation 2. It talks about giving the Assembly the power to determine its own numbers. We have certainly had quite a number of submissions suggesting a change in the numbers. At a practical level, if the Assembly were given the power and if the numbers were changed, how does it work then for the commission to give that effect and what is the time frame?

Mr Green: The time frame essentially would depend on the amendments that the Assembly moved to the Electoral Act. Again, exaggerating for effect, it would be possible for the Assembly between now and October, if it was given the power tomorrow, to enact something that said that the Electoral Commission will conduct a redistribution and it will take two weeks to do it. There would be no possibility for public consultation. It could just decide what the boundaries are and we could have an increased Assembly in October.

But that would cut short all of those opportunities for public consultation and it would not be something that I would recommend. However, the Assembly has the power to do that, if it was given the power to decide its own size. To do it properly and as it should, and if we were looking at the 2016 election, which I think is a much more reasonable proposition, the process would be that the Assembly would need to amend the Electoral Act to alter the number of members. It would have to specify the number of electorates and the number of members to be elected in each electorate.

Once those amendments were made, the normal redistribution provisions would kick in. A redistribution typically takes between six to nine months, depending on the number of objection phases there are in the redistribution process. So you are looking at amendments to the Electoral Act and then a redistribution process of six to nine months.

MR HANSON: I have a question following on from that. With the number of electorates, obviously when you are looking at redistributions to match up five or 10 further—plus or minus five per cent—I have been at forums where you have been presenting on this, and obviously each community wants its own whole community. We see this with the Gungahlin community and the Woden community, where they are split. It may not be a question for now; maybe you would need to come back to it. How many electorates do we need to get down to? Is there a better number so that you could actually have that community, so that you could have a Tuggeranong community, a Belconnen community and a Gungahlin community? Is there a way that we can achieve that? At the moment with the electoral system, with the plus and minus five per cent and with the three electorates, we seem to be slicing and dicing. It does not matter which way you go, someone is a loser. Is there a way around that which would amend the act so that it would provide maybe flexibility so that we could achieve communities being within the one electorate?

Mr Green: That is not an issue that we addressed in our submission because we would see that as an issue for the Assembly rather than for the self-government act. If the commonwealth amends the self-government act to give the Assembly the power to set its own size then that would be a debate for another time. It is not really a debate that I see the Assembly having with the commonwealth at this point. Once the commonwealth gives the Assembly the power then that becomes a live issue—assuming that it is a live issue.

I would actually caution against trying to engineer the Electoral Act to avoid splitting districts for what I think is the very powerful reason that if you look at the history of drawing electoral boundaries in Australia and at the reason why we have the fairly tight tolerance of plus or minus five per cent variation from quota at the time of the next election, it is all aimed at providing for the concept of one vote, one value.

There has been a long history in Australia where that was a right that was not there, and there were a large number of reforms in a large number of jurisdictions—in fact, in all jurisdictions now—to move away from quite disparate numbers of electors in electorates, which was giving disproportionate election results and not giving one vote, one value. As soon as you start trying to require redistributions to not split town centres which have random numbers of electors in them—and it varies from time to time—it would be very difficult to consistently come up with sets of boundaries that keep whole town centres together and give you one vote, one value as well.

I would very strongly suggest that the higher priority is one vote, one value. With our redistributions we try to avoid splitting districts as much as possible because we do see them as communities of interest. But if one vote, one value is the higher priority then it is almost inevitable from time to time that districts will be split.

I would also make the point that the ACT is the only jurisdiction that I am aware of where electoral boundaries can be as neat as we have them now. We have never split suburbs in our history. We have never split a suburb between electorates. Most other jurisdictions, because of the size of their populations, the messiness of their geography and their district and suburb boundaries and so forth, do split suburbs. They do not just split whole town centres but suburbs between electorates. I think the ACT is way ahead of the rest of the country in at least keeping suburbs together and mostly keeping districts together. The fact that districts have to be split is unfortunate but I think it is much more important to give that priority to one vote, one value.

MR HANSON: That being the case, if we were to increase the size of the Assembly and also increase the size of the electorates, would that lead to a risk of needing to start splitting suburbs? What is the threshold at which your electorates essentially become so small that perhaps you would need to split suburbs in two?

Mr Green: It will depend on a number of factors. For example, if the Assembly is divided into three even-sized electorates, that would involve making the current Molonglo smaller and the other two five-member seats larger. That might give you an opportunity to keep town centres together more than currently. But that is now. Populations change all the time, so something that might work now will not work in 12 years time or whatever.

If you go to five-member seats—I have not looked at this for some time—and just taking Tuggeranong as an example, if you divide the ACT into five-member seats, one of the ways you would do that is to start at the bottom of Tuggeranong and work north until you get to the point where you were satisfied that one-fifth of the territory would be in that seat. The last time I did the maths on that—and the numbers have changed since—because Kambah and Wanniassa are so big, the numbers did not work at that time—this was some years ago now—to keep all of Kambah and all of Wanniassa entirely together, simply because of the numbers and the geography. So the fewer electorates you have, probably the greater chance you would have of keeping districts together. The more electorates you have, probably the greater the chance you have of splitting districts. But it really does depend on the numbers, the geography and shifts in time. So it is a movable feast.

MS BRESNAN: Following on from these questions, quite a lot of submissions have made the point about the Assembly deciding on the size, in that it would actually be better to remove the Assembly from making that decision and send it to somebody like the Electoral Commissioner to look into that. It is not really about the politics but it is one of those decisions that no-one really wants to make. If you give it to somebody like the commissioner, it is removing it from that situation. As we have already talked about, it is a huge thing to do. Is that something that the commissioner is in a position to do and would be comfortable doing?

Mr Green: As you know, I am a member of a three-person commission, and this is not an issue that the three of us have discussed. So what I am about to say will be my views and my fellow commission members might not agree with me on this. I might come at this a little obliquely. In previous submissions the commission has looked at the issue of the size of the Assembly and what would be an appropriate size to increase it to. The commission has listed a series of principles that we think should be enshrined in the legislation to both keep one vote, one value happening and to maximise the integrity of the Hare-Clark system.

One of the key features of the Hare-Clark system is that because of the way quotas work, if you have an electorate with an even number of members to be elected—say, if you are electing six in an electorate—it would be possible for one party to get more than half of the votes but not to get more than half of the seats, which would not be fair. If you have an odd number of members in an electorate, it is always the case that if you get more than half of the votes you will get more than half of the seats, simply because of the way the mathematics works. So one of the principles that we have identified is that electorates should always have an even number of members in it. From memory that is also one of the principles enshrined in the Hare-Clark entrenchment act.

Another suggestion that we have made is that it is very desirable for each electorate to have the same number of members in it. The fact that we have two electorates with five members and one electorate with seven members does lead to a certain amount of disparity in the voting powers of people in the two different electorates. It means that minor parties have a better chance of being elected in a seven-member seat than they have in a five-member seat. So the fact that there is a difference there is not desirable. It would be more desirable to have the same number of members elected in each seat.

Another constraint that you have is that you would always want to have an odd total number of members elected in the Assembly. If you have an even number of total members then you will get deadlocks. With one side with 20 and the other side with 20, you cannot elect a Chief Minister and you cannot govern. So you need to have an odd number of total members.

All of those constraints added together quite severely restrict the options that will work well. You can have three by seven, you can have five by five, you can have three by nine, and then you start to go up. So between the range of 20 and 30 you have really only got 21, 25 or 29 that work as options that meet all of those criteria.

One way in which the Assembly could work, if it was to take the decision out of the hands of the parliament and make some kind of automatic formula in the Electoral

Act, would be to enshrine those principles and to link the number of members in total to the number of the population. So as the population grows then the number of members would grow. I have not looked at that in detail. That might be made to work. I would be quite uncomfortable with the commission being the body responsible for deciding, without any guidance, what the number of members would be. We would not make anyone happy if we had that power.

MS BRESNAN: True.

Mr Green: But that is my view. My commission members may take a different view.

MS PORTER: I know it is probably not something that we need to concern ourselves too much with in regard to the questions that are before us at the moment, but you did raise the quite interesting inquiry that we had into the voting age some time ago. It was a committee that I was on at the time. You will recall that there was quite a mixed response from young people about that and you rightly reflected that a number of them said, "Yes, that would be a good idea but I don't want to have it as compulsory."

One of the recommendations of that committee was that the next Assembly should have a look at that again. But the particular committee has decided not to revisit that at the moment. Do you think that, given the change in the way that some young people engage now, perhaps in the next term of this Assembly that question is revisited, notwithstanding that you recommend that that particular part should not be changed? I agree with that but I was wondering whether we should be having another look at that whole concept.

Mr Green: There is certainly no harm in having another inquiry into it. Whether it would arrive at a different conclusion, whether enough has changed in the meantime, I am not sure. We are certainly finding at the moment, not only in the ACT but across the whole of Australia, that participation on the electoral roll by 18 to 19-year-olds is at record low levels. We are going to be putting a big effort into increasing the proportion of 18 and 19-year-olds on the ACT electoral roll in the lead-up to our election.

We think that part of the low numbers of young people on the electoral roll is connected to the fact that young people these days are electronically connected to the world. They conduct business on the internet, on their phones, on their iPads and so on, whereas the electoral roll still requires people to fill in a form and sign it, and that is just something that young people are not doing in the sort of numbers that they would have 10 or 15 years ago or more. So we are having issues with getting 18 and 19-year-olds to participate in the process. If you were to reduce the age even further, I am sure we would see even greater difficulties in getting younger people to engage. Their lives are just so full of so many things that they are doing that it would be another responsibility that some would embrace but I am sure others would think that they had more important things to do.

MS PORTER: They seem to be engaged more in the debate rather than being engaged in putting their name on the electoral roll?

Mr Green: That seems to be what we are seeing, yes.

MR HANSON: With the one vote per elector, you are saying that is not enshrined in the legislation?

Mr Green: No, I do not think so.

MR HANSON: Does that mean it is legal or that there is no law? If I go and vote 16 times, is that a breach of any law?

Mr Green: Yes, it is a breach of the ACT's Electoral Act. But the point we were making is that the federal constitution has some fundamental principles built into that, and the fact that each person shall only vote once is a fundamental—

MR HANSON: I just wanted to make sure that it is enshrined somewhere in legislation.

Mr Green: It is in our Electoral Act. But there is nothing in the self-government act that prevents a future Assembly from changing that if it wanted to. I am not saying that an Assembly would.

THE CHAIR: Are there any other matters, members? Otherwise we will let Mr Green off the hook after his late finish last night. Thank you again for reappearing this morning after your work on the donations bill into the late hours last night. As is the usual process, we will shortly have a transcript of today's hearing and we will forward it to you for any concerns that you have. We appreciate the evidence you have given us. As I said at the start, you have raised some issues that have opened the committee's eyes to some additional points. If we have any further questions, we know how to contact you, of course. So thank you very much.

STEFANIAK, MR WILLIAM GEORGE, former member of the ACT Legislative Assembly and Appeal President, ACT Civil and Administrative Tribunal

THE CHAIR: Mr Stefaniak, thank you for appearing before today's hearing of the Standing Committee on Administration and Procedure inquiry into the Australian Capital Territory (Self-Government) Act. We appreciate your taking the time to make a submission. You of course will be familiar with the privilege card and the implications of that.

Mr Stefaniak: Yes.

THE CHAIR: Would you like to make any opening remarks to the committee this morning?

Mr Stefaniak: I take it everyone has got the fairly short, four or five-point submission I made in writing?

THE CHAIR: Yes.

Mr Stefaniak: I have a couple of other possible suggestions which I am not necessarily wedded to myself but I will simply throw them in, just in terms of suggestions to consider. Fundamentally, in a very short opening statement, I will just reiterate what I have said in my written submission.

Whilst we will never be a state, unlike the Northern Territory, because of the federal constitution, there are some things we should have a say over. I refer, for example, to our leasehold system. I note that the federal government was going to pass a law, which we pushed for, for 999-year leases. That got nowhere. I think everyone is aware of—in fact, it is even in the self-government act—things such as controversies over euthanasia laws and things like that where the ACT has no control.

I have also stated my view that we should be able to pass laws as to how many members we have. I would reiterate my view that you certainly could not do it for this election, but maybe you could consider it for 2016. To my mind, the ACT, because it is a city-state, effectively, probably would only need about 25 members all up, regardless of the population. In terms of a pro rata figure regarding what the population was in 1989, when we got 17 members, and what it is now, it would probably be pretty close to 25 members. But I think 25 members would be a sensible move to make. I do not know what that would cost. I think we did some costings when I was still in the Assembly, and it was something like $4 million to $5 million. That may be money well spent if, as a result of better decision making, you end up making or saving an extra $100 million.

If you did that at some time in the near future, the electorates probably naturally fall into place. I have suggested five with five. Belconnen obviously is a self-contained entity, as is Gungahlin, which is growing. The inner north and inner south, old Canberra, would be another one. Then there are Woden-Weston and Tuggeranong. It lends itself to that. That might well be a very simple way if, indeed, the Assembly were to wish to increase the number of members.

I made another submission in relation to the number of ministers. I was a minister for close to seven years. At various stages there were ministries of four or five. Also, in the First Assembly, we tried a lot of different things. We had four ministers and four executive deputies for a while. Depending on the minister, it was a bit like being a parliamentary secretary; it was just a matter of how much work you were given.

I suppose there are a number of different things you could actually play with, but if you want to stick to the traditional number of ministers, if you had, say, 25 members, I would think that six ministers would be enough, including the Chief Minister. I know the Northern Territory has 25 members and they have something like eight or nine ministers, but they have a very vast territory which may justify additional expenses and additional ministers.

Having had considerable experience in various portfolios, I think six ministers would be enough to ensure that ministers were not absolutely overworked yet you still had reasonable economy in terms of not having too many ministers and so that, no matter who the government was, you had a reasonable crossbench or, in some sort of coalition or alliance, there would be a reasonable backbench. There would be people available from the governing group as Speaker, there would be people available to, if need be, chair committees, and there would be sufficient government members to form part of the committees.

When you had a large grouping in the First Assembly—indeed this probably applied even in a couple of the other Assemblies—you would have one or two government backbenchers being on three or four committees. I think at one stage in the Third Assembly Harold Hird was on about five or six committees, and you simply cannot really do the job if that is the case.

I made the comment that the Assembly can easily accommodate 23. It probably would not take much to have 25. When we were looking about 10 years ago at increasing—I think it was in the first Stanhope government—the size of the Assembly, there was talk of the executive simply moving over to the north building. So practically it would not be all that difficult.

Might I also just say that, despite the reservations of ACT people, and there was only one referendum—I know that because I was in Muswellbrook at the time—where people voted against self-government, it was always going to happen once the federal Labor government at the time, the Liberal opposition, the Greens and the Democrats—I do not know if there were Greens then, but there were certainly Democrats—all decided to have self-government put on the ACT. I think the commonwealth obviously saved a bit of money by doing so. It is not something that the commonwealth is ever going to take back. I think we need to make it work as well as we can.

Having served in six of the seven Assemblies and, from what I can judge, in the current Assembly, I think virtually all members—there might be a couple who in the past I would be a little bit wary about, but that goes back to the last century—have done a pretty good job on behalf of their constituents, regardless of whatever party or grouping they are with. I think the territory has been relatively well served by all governments, especially when one considers what happens interstate. From what I

have seen of ministerial colleagues interstate when I have been to council meetings, I think the ACT has been pretty well served and probably better served than a number of other states. I think in the short 20 years or so the Assembly has been going—it is a bit more than that now—it has actually served the people of the ACT well. That obviously does not mean it cannot be improved.

One thing I would throw in for consideration—again, I stress that we have been well served as an Assembly and there would probably be people in a number of Assemblies who might even fit the categories I am going to mention, which is more of concern nationally, I think, and perhaps even internationally than here—is that any parliament needs to represent its community in as broad a spectrum as possible. That means young, old and in between and those in various professions and walks of life.

There has been criticism, and I think more probably so of the federal parliament—and this has applied, I think, from time to time generally—that if you get a fairly narrow political class, you are not getting the breadth of people you actually want in the Assembly. That probably has not happened to any great extent in the ACT, but certainly federally there has been a fair bit of criticism in relation to it becoming more of a profession and people not having experience in life before they come in. The experience they have got has been working in a quasi political environment—for example, in a trade union or within a party structure—and they have not had that experience in life.

That is not to say that some of those people have not performed exceptionally well once they have got in. I would not want to be too prescriptive, but a suggestion I would make is that if you wanted to look at the area of improving governance in the territory, maybe 80 per cent of all members standing for any particular group would have to have, say, five years experience outside of anything political. It could be just simply a house mother or a house husband. It could be five years in any form of work, but something that is not purely political.

I would say 80 per cent because I think you need to be flexible enough to have 20 per cent of those individuals who would not fit into that category but would contribute significantly to the governance of the territory. I would imagine there are a number of people in all of those categories who have done a very good job for the territory. It is something where there is a growing concern in terms of the federal parliament.

In the old days—I am 60 now, so I can probably remember politics back to the early 1960s, having always taken an interest in it and my parents having taken an interest in it—there were criticisms around having too many lawyers. That is fair enough too; there were. That has probably changed a fair bit for the better. It is all swings and roundabouts. In my current position I am certainly not going to say, and I do not think I really need to, anything political in terms of the Assembly or indeed the federal parliament.

I note, and I have read it before, a Navy League magazine which laments the British defence cuts under the Cameron government and makes the statement: "A political professional class with very little experience other than in politics has formed." It goes on to say: "That has been increased in terms of the House of Commons and a variety of members from across society, including from engineering, business,

commerce, industry and the military, has decreased."

When you look at some of the scandals and things that have occurred over recent times in the British parliament, that is a telling criticism. No doubt some members of the committee would not agree with my attitude to things like defence. I think I am on the public record during the 2000 strategic review as saying that Australia should spend 2.5 per cent of GDP on defence. Whilst I do not get involved in politics these days, I did write to David Cameron and give him six pages of criticisms and some helpful suggestions as to why he was cutting his defence force.

It is an interesting commentary, perhaps, on a more narrow grouping of people without the necessary experience. I wonder whether the choices they made would have been made there, and in certain other areas too. That government has been criticised for cutting down what was a very fine military force into something that probably cannot properly protect the Falklands. I think they have about $60 billion worth of oil reserves. It just makes it an economic nonsense. On the other end of the scale, there is regular criticism in other areas. I wonder whether it would have happened had there been a broader spectrum of people available in that very large parliament.

It is a criticism that has been made not just in Australia but in other Westminster democracies in terms of a narrow political base. I certainly cannot point a finger in terms of it ever having any real effect in the ACT. It is a consideration and it is something you might like to consider when you say, "What can we do to ensure that our members are better prepared to represent the ACT?" I just throw that one in as a possibility of something you might like to consider. I would be interested to see if anything ever comes out of that.

In terms of the Assembly here, I will briefly say something more—and please ask me questions in relation to my experience when we had four ministers and five ministers. No matter how well prepared you think you might be, it is a very steep learning curve when you become a minister. You might have expertise in some areas because of your prior job before you come to the Assembly and that makes it easier; sometimes it does not. I must say that, after a while, even when we had four ministers, I suppose everyone got into the swing of things.

But when we went to five ministers, in the two governments I was in, you certainly had a lot more time to devote to three or four portfolios instead of four or five. That made a considerable difference in terms of being able to really be across everything and in being not shafted by bureaucrats but snowballed a bit on certain things. Some bureaucrats might want a policy to get through and you do not have the time or the level of expertise to see past that. It makes for better governance if a minister does not have a huge number of portfolios because, obviously, you can devote more time to those you have.

We are a small territory. We are never going to have, I would think, anything past about 25 members and, in my view, nor should we. I think that if we had six ministers it would mean that someone could be, for example, the health minister and have one other small portfolio and someone could be the education minister and have one other small portfolio. It would enable a minister to get across their portfolio much quicker

than they can if you have, for example, three or four fairly major portfolios. Probably very few people want to increase the size of the Assembly and it is not a popular thing, but one benefit would be a slightly increased ministry. Personally, I felt that when we had four—I was one of four and one of five—it made a significant difference.

THE CHAIR: Thank you for those remarks. No doubt you have provoked some interesting discussion. I think your suggestion on diversifying the membership of the place is one that would excite quite a bit of discussion and possibly preclude your successor from joining the Assembly.

Mr Stefaniak: I do not think so. That is why I specifically said 80 per cent. I also specifically said that you have some very capable people who would not necessarily fit that category but who have given sterling service to the Assembly. I would be loath to say 100 per cent. I think Napoleon was a general at 24 and William Pitt the Younger was Prime Minister at 24. If you go back into history and you go back into Australian politics, any number of people are doing a good job. I hear good things from people. I have never met him, but young Wyatt—whatever his name is—from Queensland went in at 21. Winston Churchill, I think, was in his 20s when he went in.

You cannot be absolutely dogmatic about something, but I do note the trends in larger parliaments. Whilst you always need to ensure that good people, regardless of their experience and age, are able to run for parliament, if you have a worry about the base of people coming in and the lack of experience or the lack of variety—it is not so much experience but just variety in terms of the population in Canberra—that is just a suggestion as to how you might overcome it. It is probably more of a problem for the federal parliament and the House of Commons than it would be for the territory because I think we have been very well served and continue to be well served. But I throw that in.

THE CHAIR: Thank you. Mr Hanson.

MR HANSON: I just make the point that surely the determination of who elects us should be made by the electorate. It is not for some grouping or committee or the Assembly to start ruling people in or out based on some perception of eligibility based on "they're a lawyer, so they can't be in or they're a unionist, so they can't be in". That is, I would have thought, directly interfering with the principle of the Westminster democratic system. I find it extraordinary that you would suggest that we would be amending the Electoral Act to preclude certain people from standing for election based on some quota system, which is what you seem to be suggesting.

Mr Stefaniak: I doubt if, in reality, you would be precluding people from standing. It is something which would probably have an effect on a group who is running candidates in every electorate. I do not necessarily think that could preclude, say, an independent or someone like that. I am saying that if it is seen as a problem and there seems to be a growing issue in terms of larger parliaments, I simply throw it in. It is not something of any great note, I think, for the ACT.

I think the far more important areas you need to consider are powers you have and the size of the Assembly. That is controversial in itself. We came very close in about 2002 or 2003 to almost getting there but, in the end, we did not. Those are the issues

which I think are probably more important for the Assembly.

I simply flag that as something which seems to be a problem, or a possible problem, in terms of other, larger jurisdictions. Certainly, people in the community have raised that with me. It may not be an issue here. I simply put it there in the mix for something to consider. I am not particularly concerned if you reject it out of hand. I certainly do not think the Assembly has been adversely affected in any way by its composition in the seven Assemblies that we have had to date. I reiterate my remarks about how well served I think we have been compared with some larger states.

THE CHAIR: Mr Stefaniak, in your 17 years in the Assembly, has there ever actually been a point where there has been a consensus on changing the size of the Assembly?

Mr Stefaniak: Not really. I chaired, Mr Speaker, a similar committee to what you are doing, just on the size of the Assembly, back in about 2002-03. We had all sorts of excellent suggestions, but Kerrie Tucker and I initially arrived at three electorates of seven. John Hargreaves gave a dissenting report in relation to that one. At one stage I think we were getting fairly close because people were talking outside the committee but, at the end of the day, there was not a consensus.

THE CHAIR: I am interested that you speak of having come to a consensus around 21. You are now suggesting 25. Is there a reason that you adjusted your thinking on that? Could you explain your thinking?

Mr Stefaniak: The Assembly has grown. Tasmania, I think, has adopted that. I look geographically at the ACT and it lends itself to that. That may change and you might have to twiddle a little bit, for example, if the suburb of Molonglo becomes a very large area. The other Hare-Clark jurisdiction has always has had that. I look back at elections and I do not think it would have made a huge difference, say, for the election in 1995 or 1998. It just seems to be a logical place where we are going to end up. In terms of my preferred model, that would be it.

It is 10 years since we started looking at it and the majority of the committee came up with three electorates of seven. Even then I think the pro rata number of people per member would have justified 22 or 23 at that stage. It is probably up to 25 now. I do not think we should ever go past 25. I think that would be excessive. The electorate would be rightly upset about that. No-one wants more politicians. Ultimately I think that would be a good idea. I think that with 17 members the Assembly has done a pretty good job. If you are talking about it purely in good governance terms, something like that would be the way to end up ultimately.

THE CHAIR: Thank you. Ms Bresnan.

MS BRESNAN: In your submission you talked about having five electorates. You mentioned having Belconnen and having those discrete areas. When Phillip Green, the Electoral Commissioner, appeared he said that with smaller electorates you risk the situation that you may have to split suburbs. He gave the example of Kambah and Wanniassa being very big suburbs, obviously.

Mr Stefaniak: Yes.

MS BRESNAN: Do you have any view on that? I know that is a more technical thing—

Mr Stefaniak: I think splitting a suburb is not sensible. If you take Ginninderra, which is my old electorate—I still live there—there was some criticism relating to poor old Nicholls and Hall. Hall does not see itself as part of Gungahlin but Nicholls was certainly part of Gungahlin and if you are doing it on 17 you have to do that. Obviously no-one is going to split suburbs but—correct me if I am wrong—I think another suburb went into Ginninderra. Was it Palmerston?

MS PORTER: Palmerston.

Mr Stefaniak: Yes. That is at least fairly logical in terms of where it is; it is part of Gungahlin and Belconnen is Belconnen. Certainly there were some issues. If you are going to increase the size of the Assembly, I think the number I suggested does at least enable you, probably at this stage or probably for the next 10 years or so, to have distinct geographic entities which actually mean something.

Given that Canberra is a city-state, though, in terms of what real effect it has it may not be that significant. In 1989 I opened an electorate office and paid, I think, two bucks for five hours on a Friday at the Weston Creek community centre. Whilst a couple of constituents came, very few did in the end—and I ended up playing squash with the year 12 kids from Stirling College, which was great fun.

We looked at this again earlier this century, and in the first Stanhope government members were allowed to go out and occupy a certain area and have people come in, but again there were not many. Because Canberra is a city, people are very used to coming into Civic; they will come here to see their local members. Having electorate offices outside of the city is probably an expense that really cannot be justified. We did it in 1989 and 1990, and then when we tried it as an Assembly in about 2003 or something, but there simply was not the demand from the population. Most people are quite happy to come in here. So that is a factor in terms of whatever your electorates are.

MS BRESNAN: Thank you.

THE CHAIR: Ms Porter.

MS PORTER: I think the point was made by Mr Green, though, that in a very short space of time populations have shifted and grown and will continue to shift between areas. So it is really unpredictable as to whether or not there would be a split of suburbs under a five-five or whether a seven-seven would be better, because the populations are shifting all the time. We know that Tuggeranong used to be known as "nappy valley", which of course it is no longer known as.

I was interested in the discussion we were having before about the people that are elected. I agree with Mr Hanson that that would be a very difficult thing to be included in such an act, but I do believe that the responsibility is really on the political

parties and groupings themselves to do more work in attracting people and encouraging people to become involved in politics generally and in the exercise of democracy, to attract people and to then be able to put forward a mix of candidates that does reflect the community more generally.

You were saying what is happening in larger parliaments now, and I do note that it is a problem. People do talk to me about that. They do not want a monoculture of people representing them; they want people from across the community, to reflect the community more generally, and to have life experience. Recently, at the commonwealth parliamentary women's association we had 10 young women come to us from across Australia to engage in learning more about democracy. None of them were politically aligned and all of them said, "What we have learned from this process is that one should get more life experience before one enters into formal politics." That was quite interesting—that these young, intelligent women, who are very much engaged in the political discussion, believed that they needed more time to get life experience before they went any further. That is just a reflection on your comments.

Mr Stefaniak: I think you do need a degree of flexibility. You have a very good track record here in terms of virtually everyone. If I ever had a criticism of a member in terms of perhaps querying their real motivation—I really cannot think of anyone much; if I had any suspicions it was not this century—the only person I would have had concern about had a fair bit of life experience. But it is a criticism I get a fair bit. I am not 100 per cent sure how you would actually overcome it or indeed in the ACT whether you need to. But I throw it in there if it is ever an issue. It certainly was a criticism of the federal parliament—I hark back to 20, 30, 40 years ago, of too many lawyers—and certainly a criticism you get of the UK parliament. There are other criticisms of the American system in terms of it being very hard to stand unless you have got a lot of money. So anything you can do to encourage people to throw their hats in the ring and stand—and we have been well served by the people who have done that here—is to be encouraged.

That may not be an ideal model; there may be a better way of ensuring that we never get to a stage where there is a preponderance of one grouping. My concern is that sort of political class idea. I do not think the ACT has ever had that, but it is a growing concern and it may really only reflect major parties. I simply throw that in as a possibility if there is ever a real concern about that in the territory. But there are probably other ways, if it is of any sort of concern to this committee, that the committee could look at it, including your point about perhaps education and encouraging as many people in the community who are interested to throw their hats in the ring regardless of who they are. It is good when people have different experiences. The concerns really relate to, I suppose, more a political class. I have not noticed that yet in the ACT, but it is something if you are looking at the whole spread that you probably need to be aware of.

THE CHAIR: One of the issues that has been raised with the committee—I would be interested, in light of your experience, whether you have a view on this—is the value perhaps of changing the name of the institution and/or the Chief Minister; whether the Assembly should be described as a parliament and the Chief Minister as a premier. From your experience of kicking around some of these ministerial councils, has the ACT seemed diminished?

Mr Stefaniak: Not really. I wonder whether you can actually change the name of the Chief Minister to a premier when we cannot be a state. I think there may be a legal problem with that in that premiers are premiers of states. There are governors of states. They have their own constitutions. I think there might be a legal reason why if you are a territory you have to have a chief minister. In the Northern Territory they are MLAs, but it is referred to as the territory parliament up there. There is probably nothing to stop the ACT Legislative Assembly, even though you are all MLAs, being called the ACT parliament—and a lot of people refer to it as such, so I do not think there would be a huge problem in terms of getting people used to that.

Were we diminished in any way? I think initially, because we were fairly new and a lot of people thought we were just an adjunct to Canberra, we got that. It was like a bit of subtle Canberra bashing. But it did not take terribly long for people to really appreciate that we were very independent. The first ministerial meeting I went to was as racing minister and everyone got on really well. The second one, I had to chair, six weeks into the job, as education minister. But the third one, when Simon Crean was still the minister and Ross Free his offsider, was a real eye opener for me. It was in Adelaide in about July 1995—and I do not think anything has changed. You very much divide up; your allies are the people with similar interests to you, and often the small states and territories would get together and the big states would not, and often the political groupings go out the window.

I remember a fascinating exchange between one Labor state, New South Wales, and the other Labor state then, Queensland, and the federal minister Simon Crean. It was amazing; we were all watching it like a tennis match as they were getting stuck into each other. They were also in the same faction in the Labor—but they had very different interests. People go into those meetings and look after their own state's or territory's interests. I certainly did not get the impression after a while—perhaps they were just getting used to us—that we were really disadvantaged. We are disadvantaged perhaps because we are small, but I do not think the fact that it is the ACT Legislative Assembly really disadvantages us as such. I do not think you can change the name of Chief Minister, but certainly a lot of people refer to this Assembly already as the ACT parliament. I do not know if there is any legal impediment to your changing the name if the committee so desired.

THE CHAIR: We might have to wrap it up there. Our next witness is appearing by phone. I was letting it run a little bit because I thought we were waiting for them—

Mr Stefaniak: Okay.

THE CHAIR: But thank you very much, Mr Stefaniak, for taking time to both submit and appear today.

Mr Stefaniak: No worries. Good luck with your deliberations. I just conclude by saying that I think one of the highlights of this Assembly has always been its committee system. I am sure you are all going to agree on a few points which will, I am sure, advance good governance in the territory, even if you do not agree on all points. So good luck with your deliberations.

MS BRESNAN: Thank you.

MS PORTER: Thank you very much.

THE CHAIR: We will do our best and of course you will receive the transcript from today as soon as it is ready. Thank you very much.

Mr Stefaniak: And good luck to all of you in the next election.

THE CHAIR: Thank you.

REYNOLDS, PROFESSOR MIKE, Public Policy Institute, Australian Catholic University Ltd

THE CHAIR: Good morning, Professor Reynolds.

Prof Reynolds: Good morning. I was hoping to be there in person but I have had a sinus problem so I could not fly down. I was going to come down for a couple of days. But it is nice to be with you and thank you very much for the opportunity.

THE CHAIR: Thank you for continuing to appear before the committee despite your ill health. We have received your submission and thank you for that. Would you would like to make some opening comments or elaborate on any points you have made, then we will go to questions.

Prof Reynolds: Sure.

THE CHAIR: I think we will be okay with the technology, but if you cannot hear us at some point please let us know. We can hear you very well, but if you are having trouble with any of the committee members let us know and we will just reorganise ourselves a little.

Prof Reynolds: I can hear you okay, but if people are away from the mikes it may be a little bit of a concern. I just thought I would say that.

THE CHAIR: We have got further microphones down the table, I have just realised, so we should be fine. You are aware of the privilege statement of the Assembly?

Prof Reynolds: Yes, I am. Thanks very much.

I thought I would just give you a background quickly in regard to my role as adjunct professor with the Public Policy Institute in Canberra. But I do come from a background as a teacher-academic in the public policy area over a large period of my life. Also, for those who do not know my background, I had 16 years of local government in Townsville City Council; nine of which I was mayor of Townsville and about 4½ of which I was deputy mayor. I then served in the state government between 1998 and retired in 2009 after four terms as assistant minister, two terms as minister and the last term as Speaker.

I have also of course lived in Canberra for three years, from 1992 to 1995, when I was professor and director of the Australian Centre for Local Government Studies in the department of management, so when I looked at the invitation you sent to the institute it was something that I had some experience of, I suppose, in terms of the two spheres of government that we are looking at in regard to the ACT system but also in regard to Canberra itself.

My submission is basically in terms of the reviews that I looked at, which you had put in your letter of invitation that you were looking at, and also of course other reviews that I did. Given the number of reviews and studies of the performance of the ACT Legislative Assembly, the government, the two arms of the Westminster model, there has been very strong support across the board for the need to change, if you like, the

size of the Legislative Assembly, the size of the executive, of the government, and I suppose the representative system as a whole.

In the submission that I have given to members I was really looking at the relationship particularly between those two arms of government. I have not dealt too much at all with the judiciary. The major point in my submission is that, if you have a parliament or an Assembly that does not have the constituent numbers to ensure that the job of the Assembly is done in terms of its committee structure and making the executive much more accountable, transparent and open, that Assembly would not be seen to be doing the job it could do if the resources were much better.

I think I should say, Mr Speaker and members, first of all, that I commend the Legislative Assembly for, a number of years ago, adopting the Latimer House principles. There are not too many parliaments or assemblies across Australia who would follow your lead and open up, so to speak, for independent assessment, the workings of both the Assembly and the government. There is a natural tension between the two, and I think it has been a very admirable job that has been done by what you are doing now.

The areas that I have looked at in terms of the performance of the ACT Legislative Assembly have been based on the uniqueness of Canberra as our nation's capital and also as a territory with a much lower population than the states, especially the bigger states. You have a unicameral system of government, which is the same as Queensland, but you have a dual system of governance incorporating the jurisdiction of the local and state government.

When I lived in Canberra, I sometimes had friends who were visiting me saying, "The ACT Legislative Assembly is just really a big city council." Well, it is not a big city council. It has the functions, roles and responsibilities of a large council, but it also has the rigour of being in the state-territory system, sitting around the COAG table with the states and with the chair of the Australian Local Government Association—sitting really as a partner in regard to the work of governance across Australia.

In looking at the views in terms of the size of the Legislative Assembly, I think there is an absolutely overwhelming case to expand the number of members in the Assembly. I am very much aware that the commonwealth act which set up and established the ACT Assembly and self-government basically does allow the commonwealth, by regulation, to increase that number from 17, as it is now, to an amount to be determined.

The point that I would make here is that it has already been expressed by the meeting of the senior public servants that was held—the territories division of the department of regional Australia—to the Senate that they would be favourable to seeing the ACT Assembly reviewing that. And that is exactly what is being done.

I see the size of the Legislative Assembly absolutely being pivotal in regard to the performance and the measures of performance that one needs to look at in terms of the Assembly itself. A number of reviews—indeed, back in 2002, a previous standing committee—did recognise that there should be 25 members, but due to the financial costs of such a change they came back to recommending 21.

I think the most important thing to say is that the latest reviews are all around that 25 members are needed to significantly enhance governance capacity in the Assembly. And that is what I would see as being the recommended number. I am very much aware, as the members around the table would be, that this is about the financial backup for such a plan as well. I will touch on this in a moment. And no doubt members of different political parties across the Assembly would need to work, I believe, in a very bipartisan way to achieve what may need to be achieved here.

Currently in a number of the states, including Queensland, which I am very familiar with—the Legislative Assembly in Queensland has 89 members. It has had 89 members probably for a couple of decades. It is really up to the executive in a state to determine the number of members that would be present in a particular assembly or parliament. I think that is fraught and lacking in integrity, especially at a time when the Assembly is committed to implementing progressive reform.

I have recommended that the ACT Electoral Commissioner would be ideal in leading that process. If the Assembly does determine that there needs to be an increase in the membership, it should be up to the independent process there, led by the ACT Electoral Commissioner.

In the reviews that I have seen, one thing is very obvious to me. Given the Hare-Clark system that you have adopted and successfully used in the ACT, the different political parties, including the Labor Party, the Liberal Party and the Greens—indeed perhaps the independents, but particularly the three political parties I mentioned—would seek different outcomes, dependent on the number of members. I think that needs to be put into an independent process.

The next area which is really tied into what I am saying is the need for an enhanced executive. Let me just give you this comparison. If you look at the city of Townsville, where I live, we have less than 200,000 people in the city of Townsville. We have a full-time mayor and 10 full-time councillors. They were elected here in the last month. That is a comparison in regard to the municipal functions and responsibilities of a local council. But if you add to that the state and the much larger population of Canberra, you can see that comparison.

When you look at 17 members of the Assembly—I really find it extraordinarily difficult to understand how you can give your utmost with those numbers. The very fact of having, I think, four members of this committee—is that right, Mr Chair?

THE CHAIR: Yes, correct.

Dr Reynolds: The divvying up of the different responsibilities that are required in regard to both state government and municipal functions would mean a pretty lean time.

In my research, as well, I have seen ministers through both sides of the major parties talk about the stress and the strain of actually being a minister in the system—that the workload is horrendous. Being a state minister, I can see that very much being the case.

The enlargement of the Assembly allows the Assembly to make the executive much more accountable. And having only up to five ministers—the Chief Minister and up to four ministers—really curtails the work that the executive can do in conjunction with the parliament as well.

I will just conclude by saying a couple of things. I put forward a new committee system for the Assembly. One of the things that I have seen, both as an academic and as a person who has practised politics over the years, is that quite often it is a winner take all position. I know that in the Assembly there is a publication I saw of a former Speaker, Wayne Berry, who stated that if you looked at, for example, the chairs of the public accounts committee since self-government, 10 of the 12 chairs have been members of the opposition.

Changes need to occur, I think, in a very bipartisan way. I would commend to you for your consideration the changes that have occurred in the Queensland parliament over the last couple of years. But I would also stress, which I have in my submission, that the Queensland parliament in the last couple of years went through a disgraceful process of really taking away the rights of the Speaker, so that the Speaker is really now just the chair of the committee of the Legislative Assembly and the house committee that has been formed has usurped the role of the Speaker.

That is the dreadful part, I believe, of the legislation that came in. But if you tuck that aside for a moment, you can look at the process that has come in in terms of portfolio committees, with seven committees being formed, some of those being chaired by members of the opposition, and see that you are really looking at the detailed scrutiny of legislation from both the policy and implementation perspectives. And ultimately, greater accountability of the executive leads to a far greater degree of openness and transparency in the process. I know that Dr Hawke, in a couple of the reviews that he has done, stressed the need in the ACT, at your level of government, to work towards that.

The last point that I made in my submission was, just as an example, about integrity reform in the ACT. What can be seen is that there has been a lag regarding the ACT Assembly catching up with the other states, as we see reforming the integrity processes adopted by the Assembly and indeed by executive government.

I suppose the major point that I make here is that, if you have 17 members and you have up to five ministers, I have no doubt that this would be an area that would be a slippage. I think the workload that is present in the Assembly—even though I am commending the work you do and the clear, progressive nature of the work you are doing—makes it very difficult to get on top of some of these aspects that really do need attention in the ACT.

I think I will leave my comments there, Mr Chair. I am happy to discuss them or answer any questions.

THE CHAIR: I can see a few members of the committee itching to ask some questions, so we will get straight into it. I just wanted to ask you about your thoughts around the process of changing the numbers of the Assembly.

Dr Reynolds: Sure.

THE CHAIR: There have been a couple of points discussed in the committee so far. The first is whether we simply should ask the commonwealth to confer the power on the Assembly rather than retaining it itself. You seem to allude more to simply us asking the commonwealth. The second then relates to your point about the Electoral Commissioner playing a role. We had the Electoral Commissioner appear earlier today, and he has commented on this. I do not want to paraphrase him unfairly, but what I drew from it was that there is obviously a political decision around the number of members, given the cost implications and various others. The commissioner sort of said he would probably feel comfortable if the Assembly provided a formula they were then to apply—some sort of criteria. Would you like to comment on either of those points?

Dr Reynolds: Yes. First of all, section 8 of the act, in part III, says:

> The regulations may fix a different number of members for the purpose of subsection (2) …

It does clearly allow the commonwealth to be guided by the ACT Assembly's decision in that regard. If the Assembly decided to have 21 members, 25 members or whatever it might be, the commonwealth could take that recommendation on and, hopefully, implement the recommendation.

But, Mr Chair, you bring to this the core of a much more important question. The much more important question here, to my way of thinking, is that you are ultimately working towards self-government—to ultimately not have the stranglehold of the commonwealth around you. I suppose in that regard, ultimately, the Assembly should have the power within the Assembly itself to determine the number of members it should have. Again, this does come to a political question of which one of those is favoured in regard to, hopefully, getting the go-ahead from the commonwealth government in regard to the expansion of the Assembly numbers.

The other point you raised was about the fairest and most responsible process of determining the actual number. In a range of the reviews that I looked at, it was quite clear that there is a political divide here. I mentioned that you have got a compact, if you like, or contract, between the ALP and the Greens in regard to minority government. The ALP and the Greens could determine that, but I would much prefer to see bipartisan support across the Assembly—if you were going to look at the actual numbers, to have some agreement on that.

I know that in the past there has not been agreement because of the Hare-Clark system and what people see as being favourable outcomes depending on which particular party you are representing. That is why I have indicated what I have in terms of the Electoral Commissioner.

In terms of other formulae that could be used to do this, one could imagine that that could be done based on some of the Latimer House principles in regard to what you want to achieve as an Assembly by looking, as I have referred to as well, at the

Commonwealth Parliamentary Association and 87 guidelines that were used by Wayne Berry in assessing performance. You may well be able to get indicators through the Latimer House process or through other mechanisms like the CPA—as I say, that is an example—which would then lead to perhaps consideration by an independent electoral commissioner of how many members there should be.

The main point I would make in conclusion is that this is not handled very well by state governments, because the party who has the power, who wants to stay in power, wants it to continue. As I say, we had 89 members in the Queensland parliament probably for over 20 years. It suited the government of the day to continue with those rather than the state having one vote, one value. It got away with the gerrymander which was in Queensland for so many years. You still have mechanisms by which the majority government could put the spoke in the wheel and really play quite a partisan role.

THE CHAIR: All right. I have looked down the table and the members are nodding at me, saying they feel they have got the key points that they wanted to draw out from your submission. Unless there is anything else, we can probably wrap it up there and simply say thank you for overcoming your poor health to join us today—and also for your submission; we appreciate the detail that is in it. We will, of course, send through to you shortly a transcript of today's hearing. If anything arises that you feel needs clarification or was uncertain or unclear in your comments, you are welcome to make additions.

Dr Reynolds: Sure. I thank you, members of the committee and the staff of the Assembly for the opportunity to be involved. Again, congratulations for having the wisdom to go forward in the way you have. It really illustrates the progressive nature of the ACT under different governments over a period of time. I wish you well in the process of determination. I look forward to seeing the results at some particular time. Thank you very much.

THE CHAIR: Thank you.

Meeting adjourned from 10.59 to 11.17 am.

WATERFORD, MR JACK, personal capacity

THE CHAIR: I welcome Mr Jack Waterford to the hearing this morning. Thank you, Mr Waterford, for taking the time to appear before the Standing Committee on Administration and Procedure inquiry into the Australian Capital Territory (Self-Government) Act. I imagine that you are familiar with the privilege card and that you are comfortable with the contents of that. I think we will get straight into it then. Would you like to make some opening remarks and share some of your thoughts with the committee?

Mr Waterford: I do not have any formal submission, but there are a couple of points that I would like to particularly focus on. You can take it that I am generally liberal on issues such as the size of the Assembly and whatnot, although I have got a couple of ideas about that, but just a sort of couple of broad, general things.

I am a strong supporter of the idea of repatriating the constitution. I think that beyond the ordinary reasons for it is a continuing problem of ACT self-government, which has never much troubled me but which I hear about almost every time you speak to a citizen. I refer to this belief that the people of Canberra strongly rejected self-government, that it was foisted upon them, that they did not want it and so forth.

I have always thought that amongst the noblest constitutional words there are anywhere in the world are "We the people" as in "We the people of the United States." It is one thing for the people of the commonwealth through the commonwealth government to give or, if you like, to foist self-government on the people of the ACT. But there is a reciprocal transaction which involves accepting it. I think that the ceremonials of doing it are not unimportant, not least because they are a way of bringing it in from the bottom up rather than as a gift which is put upon us.

I am fairly liberal minded about a number of aspects of things. For example, I am not entirely sure that I agree with the submission of the Greens that citizens of the ACT ought to be citizens in exactly the way that all citizens are of other parts of Australia. That is partly because if I had my druthers I think I would revise the federation framework 100 years on and also because I think that living in the ACT is a special privilege and an honour because the ACT does, in quite significant parts, belong to all of the people of Australia. That has to be acknowledged in our constitutional framework.

Nonetheless, I believe that we ought to exercise all the privileges, responsibilities and duties of governing ourselves and that we ought to take this on. We ought to take this on in some sort of formal way which reflects our own conscious decision to accept this burden and then to divide up powers between various layers and types of government—whether it is judicial, executive, legislative and so forth—and maybe not do it in a way exactly as imagined by the commonwealth. What I mean by that is that we need not hand over to our elected representatives, our executive government or our judiciary necessarily all the powers that have been given to the people of the ACT by the commonwealth parliament.

I use this as an example that I have not even really particularly thought about. Eventually, I think the commonwealth has now repatriated censorship powers back to

the ACT. I think I am right in saying that. I am not particularly sure that I want the ACT Assembly, anyway, determining matters of general censorship. I think that beyond a few anti-discrimination provisions of wide framework, there is no need to devise a constitution for the ACT which gives it powerful powers of interfering in family relationships, matters of sexuality, mutual obligations within the family and various things like that on an old model devised 100 years ago.

If they do, I think they would proceed from fundamentally different paths than were devised then or are, if you like, ensconced in New South Wales or Victorian legislation. So I think that we could sort of play with that idea and adopt something that we really felt was ours.

The second point that I would like to make is that I still see some scope for experimentation with our republican form of government that we have not taken up. I think there is quite a bit of genius in the way the ACT government has developed its committee system, has coped with perpetual minority governments and so forth. But there are other things that we could do and that could take advantage of the peculiarities of Canberra.

I will give you one idea, which is actually an idea that I was given long ago for the *Canberra Times* and scarcely ever took up. Mike Delaney from the motor traders once commented to me that Canberra has got an incredible array of terribly well educated, very experienced public policy people who are now retired. There are experts on fisheries, on the environment, on industry and so forth scattered all around. Most of them are still actively interested in the common weal.

Mike Delaney suggested that we more or less have a panel of those as preferred op-ed writers at the *Canberra Times.* I am not suggesting that for you, but what I am suggesting is this, for example. The main restriction on your committee system here at the moment, particularly with a fairly small Assembly, is that there are only so many hours in the day that you can hold committee meetings. Even if you are terribly interested in the commonwealth of the ACT, there is only so much energy you can put into writing and devising things.

But I do not see why you could not have a panel of pre-qualified experts who could be co-opted on to committees as a sort of lay jury to assist committees and probably do half of the hard work on them. I do not mean extra the Assembly. I mean committees that are controlled and run by the Assembly but much more loosely than under the present system.

I think in somewhat the same way that we pay jurors, they might be paid a reasonable but token sum of, say, $200 a day or something like that. The Assembly could widen its purview of a lot of public affairs by having four or five people on committees assisting ordinary committees of two or three members and holding hearings, preparing reports and so forth.

I think that that could also be extended by having what you might call party-preferred lists of people so that non-elected people but, in effect, people nominated by their political parties, or something like that, could sit on committees—obviously without a deliberative power as such—to assist in the work of committees to hold hearings, to

widen the range of Assembly supervision of public expenditure et cetera and to increase the knowledge base. It might even be a way of pre-qualifying some members of parliament, because there is a great obstacle with popular representation in the ACT, which is that incumbency confers all sorts of advantages that are not shared by non-incumbents, which is a reason why the turnover is not particularly high.

There are risks with this. One of the obvious risks, of course, is that the sort of people who volunteer are professional busybodies with strong interests who are not particularly representative of wide opinions. I think that the way to deal with that is to go wide rather than narrow—in effect, to have 1,000 pre-qualified people and to be wide ranging in the sort of inquiries that you hold rather than narrow and focused.

It is often remarked, for example, that one of the differences between a royal commission in Australia and in the United Kingdom is that typically a royal commission in the United Kingdom will be comprised of an archbishop, a prominent former judge and a retired colonel—or something like that. Rather than being sort of legal, fact finding and inquisitorial in their manner, they conduct general consultations with people. They are sometimes open. Sometimes they hold consultations at which basically ideas are just talked about. Research is commissioned and put on the public record. I do not think we have had an inquiry like that probably since the royal commission into human relationships—what was it called; something relationships?—in about 1974 under the Whitlam government.

By contrast, our inquiries tend to be narrow, focused and fact finding in orientation, and usually guilt attributing. Instead of expanding the range of human knowledge or discussing important issues that we ought to think about because of the way society is changing, technology is changing or whatever, we tend to be sort of narrow and, well, generally conservative. I do not mean in a party partisan sense but in the way that we do it.

I do not necessarily want an Assembly interested in every aspect of human activity or of people's lives, I might say. But I do think that we want elected politicians to be knowledgeable about and interested in the sort of things that affect the lives of the people of Canberra. I think anything that enhances that is much to be encouraged, particularly in a day such as this where, in spite of all of the massive developments in human communications, social media and various things like that, all of the evidence indicates that there is actually an increasing distance between politicians, the political process and ordinary citizens.

This is manifested partly in the hostility to politicians of the sort that one sees even with the hostility to self-government, but also a want of understanding of what they do, of what we expect of them and sometimes as well—this particularly annoys me—a sort of a feeling that a lot of things can be resolved, as it were, in some sort of scientific manner rather than by doing what politicians must at the end of the day do, which is to make choices, ration resources and do the sorts of things that they believe that the public interest requires.

It appals me the way, for example, with planning legislation or something like that, that people sort of think that one day we will find an all-wise person who can reconcile all interests over a particular thing and who, having sort of heard everybody,

will be able to hand down a judgement from on high about it. It is never like that. It always involves placing the environment above this, placing design considerations above that. Those are value judgements and those are the value judgements that we elect politicians to make. Anyway, that is all I have got to say.

THE CHAIR: Thank you. I think you have provoked a few questions out of that. I will start. I want to explore where you were going early in your remarks. I was left with a sense that you said—forgive me if I am paraphrasing you incorrectly; that is why I want to ask the question—there is a sort of ongoing resentment about the delivery of self-government. I sort of took what you were saying as almost trying to find a peace around that process. Did I understand you correctly?

Mr Waterford: Yes. I think it is still there 30 years on. People sort of think that this was something that was imposed on them that they had never wanted and that they did not like. Since it is well known that all politicians are completely useless, they are expensive, they steal all of our money and waste it and various things like that, this is just some sort of expression. Facts are unimportant compared with those feelings. I do not have to tell you that the ACT is significantly underrepresented in any sort of framework or something like that.

I am not talking about this in terms of dealing with businessmen in town or people from social settings, cultural lobbies or anything like that. I am just talking about out in the street. I observe it inter alia just reading letters to the editor of the *Canberra Times* or whatnot. There is this sort of feeling that you are all bloody usurpers.

MS BRESNAN: Just on that point, obviously one of the questions we are looking at, and there are a lot of submissions on it, is the size of the Assembly.

Mr Waterford: Yes.

MS BRESNAN: Quite a few have suggested that the size is something that you would give to someone like the Electoral Commissioner to look at. We had the commissioner today saying he would actually want a bit of direction from the Assembly. Given what you have just said, do you think it is actually enough for the Assembly to provide some direction if that was to happen, give it to someone like the Electoral Commissioner to then look at? Do you think then that is a way of actually—

Mr Waterford: No, I think at the end of the day—

MS BRESNAN: addressing what you said?

Mr Waterford: that we, the people of the ACT, and you as our representatives, must make a decision about the size of the Assembly. If you ask me what I think the size ought to be, it would be 25, 27 or something like that.

MS BRESNAN: But when you just said, "We, the people of the ACT," how—

Mr Waterford: It would be in some sort of constitutional framework, not necessarily fixed for all time but possibly fixed according to some sort of formula that there will be one member of the Assembly for every 20,000 people or something like that. That

might vary and change over time. There are obvious reasons—I have always myself been a little bit uncomfortable with differentially represented electorates, I must say. But there are obvious reasons for preferring numbers divisible by three and preferably not by two.

But that aside, I sort of think the more it is a respectable number, the better, and I think that 17 is definitely too few. I think it is a major problem of government, and I do not say this in any disdain for any of you, that by the time you get anything like a party capable of forming government, which in the ACT is probably seven, eight or nine people at most and do what you must do—for example, provide a Speaker or whatever and then have, say, six ministers and whatnot—you are putting impossible burdens on that political party to govern.

I also observe a little bit tartly that if you look at state governments all around the countryside, the ACT is actually uncommonly blessed in the capacity and articulateness of its politicians. If you go to New South Wales you would be hard pressed finding 17 people capable of getting up and speaking ex tempore on almost any public issue as ACT politicians do all the time because we live in an environment where their votes actually count.

We have great problems in the states forming capable and competent ministries because there are only usually four or five people who are much good. Then you get vast constitutional problems which we have observed in every state of Australia. It is that all power tends to flow to the Premier or the Chief Minister. Very tight reins are kept over ministers. People like the chief of staff of the Premier or Chief Minister, the sort of Kevin Rudds of the world, become the eminence grise. There is an incredible sort of crisis of accountability. I think that in that sort of sense, the more you lever the system, the better.

MS BRESNAN: Thank you.

MR HANSON: Moving on from the size of the Assembly, you talked about repatriating the constitution. I did not quite understand what you meant by that but I got the sense of less powers in the ACT rather than more. So there were things that the ACT, and you talked about censorship, has power over that perhaps they do not need to. Are you talking about less power for the Assembly or—

Mr Waterford: Perhaps the way that we took up the power might be different than as framed in the style of legal document that we use. For example, quite apart from my own personal views on euthanasia, it has never occurred to me as the prime sort of territory that I want ACT politicians to be advising us on. I am not talking about whether it should be a commonwealth power, a local power or anything like that. If we write a duty statement for the ACT parliament in somewhat the same manner as section 51 of the Australian constitution, we would not necessarily frame it in terms of (a) banking, (b) coinage, (c) currency and exchange or things like that. We might talk about it in wider and somewhat more social terms, not so as to restrict necessarily its legal power but to confine it in somewhat different ways.

MR HANSON: Is that not a political debate though? There would be political parties in the Assembly that would see that as perhaps core business, in talking about

euthanasia or gay marriage and so on, and others that would see a difference in what the Assembly should be dealing with. Shouldn't it be for the people of the ACT then to make the decision at the ballot box as to what they want their Assembly to be talking about rather than that being imposed in terms of what the Assembly is restricted in doing? So if the people of the ACT do want a conversation about euthanasia and gay marriage, perhaps they will support one party over another and so on. If you want it from a bottom-up point of view, which is we the people, then you would leave that to the electorate to decide rather than being restrictive with a duty statement of some sort.

Mr Waterford: Willy-nilly, we are stuck with constitutional government. What I mean by that is that the powers that the ACT can take up are, at the end of the day, constrained by what the commonwealth gives us. But quite apart from that, there is an inevitable tension in any system of government between what you might call a sovereign parliament and a constitutional government. A constitutional government is one which is constrained by rules.

Let us suppose, for example, that quite apart from what the commonwealth does, we decide to constrain ourselves according to a human rights act. So we say, "Come what may, we're not going to let the Assembly violate rights of free speech, privacy and so on." This is a self-denying ordinance and, no matter what the popular enthusiasm of the moment is about—say, terrorism, famine, disease or something like that—we are going to limit the power of our elected officials to intrude in those sorts of matters. That is what I call constitutional government. So it is a check and a balance at the end of the day as to whether you actually have the power to do anything. In constitutional government there is a suspicion all the time that politicians or officials might be exceeding their power and that they are constantly on the back foot and forced to justify their right to intrude into people's lives.

No official in the ACT has a right to do anything that cannot at the end of the day be located in law. And even then the law can be under attack as possibly not justified under the ACT (Self-Government) Act or possibly constrained in some manner by the Human Rights Act or something like that. That is the sort of system I want, not because I do not think you are splendid chaps but because at the end of the day I fear that we might elect somebody who is mad or somebody who panics in response to some sort of situation. I am prepared over time, by referendum or constitutional means, to change the framework to deal with the problems of the day. But in the meantime I actually want a system of law that keeps a pretty close eye on your powers and duties.

MS BRESNAN: Can't that happen in any democracy, in any state—

Mr Waterford: By throwing them out every three years?

MS BRESNAN: No. You said you do not want to get someone who is mad, but that is the nature of democracy. People stand and people vote for them. You cannot say, "We need to put in these processes so we don't get this sort of person coming in." There are not any guarantees that you can stop that sort of thing in any democracy.

Mr Waterford: No, but you can define areas to keep out of or you can define areas

where you say, "Look, you can play around in here, but sensitive value judgements are going to be involved." For example, I believe there should be a right to privacy, but privacy obviously has to be balanced against all sorts of other rights and duties, and you cannot ever specify with any sort of exactness just what the content of it is at any particular time. I am prepared to leave some of those judgements in the hands of judges and some in the hands of politicians, but I do want to say absolutely that there are some zones of personal, human, family activity for which there is a working assumption that the ACT parliament does not have a right to legislate.

MS PORTER: You talked about the fact that you thought it was about time—and it was really following on from what Mr Hanson talked about—that the people actually owned self-government rather than it being imposed and that that would, I think—

Mr Waterford: Accepted ownership of it, yes.

MS PORTER: Yes. I am still struggling about the way in which that can be achieved, given the cynicism, given the disconnect between the people and what we are actually doing in this place, and the fact that we are all seen as the lowest common form of life. I am struggling to see—

Mr Waterford: There are time-honoured ways of doing this. It is never particularly pretty. Say, for example, the Northern Territory, which, for some fanciful reason, thinks it should have statehood, has held conventions to determine the framework of it. I think they are going through or have just deferred such a process yet again. The framework that the Northern Territory is following is fairly similar, as it happens, to the framework by which new states were formed in the United States from what had previously been territories or parts of other states. But if you decided, for example, that the Oklahoma territory should become a state, you held meetings of the great and good and powerful in those sorts of areas. They met in assemblies; drafting committees were put together. At the end of the day their resolutions were adopted, in the Australian framework, by some form of referendum. That is how it also worked with the Australian constitution.

In fact I could refer to one of the constitutional geniuses of Australia, much more recently interpreted than anybody else. It used to be conventionally thought that the Australian constitution was handed down on high from England, from the Queen—a classic top-down sort of constitution. When Bill Deane went onto the High Court, he made a general statement of his views which revealed to a lot of people who did not know him well that he was actually a constitutional radical rather than a very conservative commercial lawyer. But he said: "That's not true. The constitution of Australia is owned in Australia and is a 'we the people' type of document." Forget about the fact that it is an act of the British parliament. It was drafted by the Australian people and it was adopted by the people in the states before it went through the legislation of the parliament of the United Kingdom. That makes it, if you like, an Australian document.

There are certain things that flow from that. There are other questions that sometimes arise. If you give powers, can you take them back? The constitution of Papua New Guinea, for example, is technically a law of the Australian parliament. If we decided they were misbehaving, could we repeal that law? I do not believe so. What is the

impact of that on the ACT? I do not know. I do not actually doubt that the commonwealth could abolish self-government tomorrow, but it would be a very interesting and nice question.

MR HANSON: When you talk about the advantages of incumbency, looking at the photos behind you, we see that in this Assembly we have eight new members since the last election, which is nearly 50 per cent. If I look back at the photos of three Assemblies ago, there is only one person remaining. So I am not sure if it is necessarily—

Mr Waterford: I take your point on that. The problem about it is—I suppose it is more true for independents than it is for party members—that if you suddenly decide that, as a matter of public duty, recognised virtue or something like that, you ought to be a member of the ACT parliament, the means by which you become known to and recognised by a large number of people and therefore get the 14 per cent that you will ultimately need are very difficult. The *Canberra Times*, for example, are not all that greatly interested in you, and possibly less so when they become aware that the reason why you are so avidly seeking publicity is that you want to go into parliament. That is not because we are antipolitical but because there are a lot of people shouting for attention and at the end of the day the space in papers is rationed. If the *Canberra Times* nonetheless is relatively generous, the commercial radio and television stations have almost zilch coverage, and the ABC only a fraction of the coverage that the *Canberra Times* can give. The social media probably are more effective, but to much more focused audiences. So there are real difficulties in getting known.

Maybe one of the answers is to join a party, go to enough branch meetings and find yourself enough of a followership that your party itself attracts support and then vie amongst your party's panel of candidates for recognition. But even then, inside the slate of candidates that, say, the Liberal Party, the Labor Party or the Greens are presenting, the incumbents do have a big advantage over the people that most other people have hardly heard of. Sometimes, of course, it is an equally marked disadvantage, because people have taken a marked dislike to somebody who has been elected. In fact I am thinking about this in terms of the next ACT election—running some private campaigns saying, "I don't care who you vote for but don't vote for X, on the basis that they're a proven dud."

THE CHAIR: You have done it fairly publicly already.

Mr Waterford: What?

THE CHAIR: I think you have done it quite publicly already, for those that read the Sunday *Canberra Times*.

Mr Waterford: Yes. I do not know the way out of it, because we do not, again, have the political styles that we did 50 years ago when we wrote most of the rules. We do not have town hall meetings these days. We try very hard to organise general public meetings at which candidates speak, but they do not work very well, and the same old people come and—

MR HANSON: People do not turn up.

Mr Waterford: No.

MR HANSON: We have all been to them, and it is 17 candidates and four members of the public.

Mr Waterford: Yes.

MS PORTER: The same four members all the time.

Mr Waterford: Yes. So it is very difficult.

MR HANSON: It is, but I am not sure if it is any more difficult here than it would be in any other jurisdiction.

Mr Waterford: Perhaps you are right. I have always loved Papua New Guinea, I must say. They routinely throw out about 60 per cent of the elected members every election. And that is in single-member constituencies.

MR HANSON: It is not necessarily a political system we would like to mimic, I am sure.

THE CHAIR: That is probably a good point at which to wrap up, particularly as our next witness has arrived. I would like to thank you, Mr Waterford, for taking the time to come and discuss self-government with us today. I think you have presented some quite different ideas. I particularly thought the ideas you had around committees were unique in terms of the evidence we have heard. I think you have provoked some thought among the committee today. We will provide to you shortly a transcript of today's hearing, in case there is anything you feel you need to clarify or correct. Otherwise thank you again for taking the time.

Mr Waterford: Thank you for listening to me.

WETTENHALL, PROFESSOR ROGER LLEWELLYN, Adjunct Professor, ANZSOG Institute for Governance, University of Canberra

THE CHAIR: I welcome Professor Roger Wettenhall to the hearing of the administration and procedure committee's inquiry into the Australian Capital Territory (Self-Government) Act. Thank you for taking the time to appear today. We appreciate it. Being a witness, and at least I have met you before, you are familiar with the privileges card and the consequences of that?

Prof Wettenhall: Yes.

THE CHAIR: Would you like to make any opening remarks or speak to the content of your submission in any further detail?

Prof Wettenhall: Perhaps I could just say that in the submission I made I tried to do two things. One was to reflect on the commission's report that my colleague John Halligan had submitted and, secondly, to push, I suppose, something that is rather a hobby horse of mine—that is, the issue of non-departmental public bodies. I think it is relevant to your inquiry. Halligan was on about the self-government act, but your terms of reference also said "and associated legislation". This takes me particularly to the Legislation Act, the Public Sector Management Act and the Financial Management Act, which I would argue are definitely acts associated with the self-government act because the system of self-government is not going to work properly unless those acts are fairly well set up and implemented.

Just on the Halligan report, essentially I agreed with everything John said. Of course I agree that the Assembly should be enlarged. John and I together have actually varied a bit between 21 and 25 members. He goes for 25 and I support that now. Indeed, I actually thought I saw reinforcement of that in your committee's report on officers of parliament recently. I thought that perhaps that report did not say quite enough about the relationship between the legislature and the executive. That is terribly important when you think of the Ombudsman, the Auditor-General and so on.

The simple point is that you say in that report that you need enough members to constitute the committees which will relate to these officers—whether you call them officers of parliament or not—and if the Assembly is so small it is very hard to find members like that who can stand apart from the executive government sufficiently. I would have thought there your committee was putting forward another argument for AN increase in the number. You need more members for all sorts of reasons, like the backbench and so on. The only thing I disagreed with John Halligan on was when he wanted to change the name of this Assembly. I thought that the name he suggested was going to invite more intervention from the feds, not less. Surely that is not something we want to achieve. Therefore, I did not like that.

John talked at one place about municipalisation. I know you heard me talking about this the other night. I think it is important, when you look at the self-government act and how the system is working, to just realise that we are alone, of all the sub-national governments in Australia, in not having a subordinate local government system. When one looks at the way Tuggeranong, Woden, Belconnen and Gungahlin are growing, there is some sort of a case to be made out for having local, fairly conventional style

local governments in those town centres and their surrounding suburbs.

When Professor Donald Rowat visited a couple of times—the Canadian professor whom I regard as the leading scholar of the government of capital cities: he is dead now; he died recently—the comment he made about the ACT was that its self-government will never be complete until it has its own local government system. He was really looking at the growing satellite towns or cities around and thinking they needed their own local government, partly to take some of the load off the members of this Assembly. I think that is an important issue that people considering how self-government works ought to be thinking about all the time.

If I come to the other part of my submission, I have been researching—gosh, for 30 years or so—non-departmental public bodies. You can think of cases so easily—the ABC, the CSIRO. It is really a very interesting area, I find. All public sectors have them. I have got in this bag—they are fairly messy, but just to flash them by you—copies of papers that were produced when the Cameron government was coming to office in Britain. They are messy because I have downloaded them from the web. This is a parliamentary committee looking at this. It is entitled *Smaller government: shrinking the quango state*. What they are on about is reducing the number of these bodies, or at least getting order in this area of public administration.

The other one I put in is called *Read before burning*. It is a catchy title. It is all about the same thing. This is an English public administration think-tank that was set up early on in the Cameron government. It is called *Read before burning: arm's-length government for a new administration*. At the beginning of that government there was tremendous interest in these bodies. The Hawke report says we have got 180 of them here in the ACT. This report found 900 in Britain and they were still counting because they really had not identified them all.

It is a very messy, disorderly part of our machinery of government. Whenever you have a serious look at this area, you get very serious proposals to establish some order in it. It might involve reducing the number and it might involve combining some of them. All sorts of things need to be looked at. It involves classifying, because some of them—the term "arm's length body"—tell you at arm's length we are further away from ministers and departments than regular departments of government. But the length of the arm can differ from case to case and you might need class categories to sort that out.

THE CHAIR: For the clarity of the committee can you just explain why you have particular concerns about those arm's length bodies? What do you see as the flaw in having them?

Prof Wettenhall: I come to these acts that I am interested in. I think it is very important to have them. I am not opposed to them at all. I think that they are able to specialise in their functions more than general purpose departments and so on. It is this lack of order. When you look at the parts of the documentation of the ACT public sector that deal with them, there are clashing lists and clashing categories. The attempt to define them in the Legislation Act is not the same as the attempt to define them in the Public Sector Management Act. Again, it is not the same as the Financial Management Act. It becomes very confusing. The confusion, I suppose, has come out

of the planning area.

I think Hawke says in his report that you need to get 26 ACT entities signing off before you can approve a development application. The fact that you have got 26—and Hawke talks about this in his report—is indicative of lack of clarity and disorder in this area. My submission is not necessarily that we need less of them. No, I think that might result from trying to establish order. It is just that we ought to be getting a common view on the definitions, the categories and so on. The brouhaha that developed between Jon Stanhope and Neil Savery over the planning thing, most of us seem to agree, led Stanhope to establish the Hawke inquiry. That is very largely because of uncertainties and confusion about roles. Roles are spelt out in these various acts and so on.

That is really my contention. The area needs sorting out. It is disorderly. I am saying the same thing as people looking at the situation in Britain all over the place. This is a very messy part of our public sectors. Almost wherever you go this is the case. It really does need some serious attempt to sort it out. Given that we have got three statutes all saying different things here in the ACT, surely it is time to try and have a look at those statutes and get some common definitions and perhaps some common procedures for handling these things.

The other thing to say is that it is not the first time I have said that. I have said that in submissions to other committees. Even a submission we made from the University of Canberra to that Costello secret review said this. But of course it was so secret and we have no idea what notice they took of that. It is not the first time we have said this. People tend to say, as happened with the Cameron government: "Yes, this is an important argument. Yes, we've got to do something about it." But then when you start operating the wheels of government, other things rise up and take your attention. It becomes a sort of: yes, good idea, but we have not got time to get to it or take it seriously or do anything about it now. So people keep saying what I am saying—and I think they are heard—but in the pressure of the moment their arguments are pushed aside. I would like to see this committee taking this on board and taking it seriously.

THE CHAIR: That is probably a perfect point to see if the committee want to explore some of those issues. Ms Bresnan.

MS BRESNAN: On the question that you raised about the ACT not having municipal councils—I know Sydney raised that at the forum—what would be your suggestion? Do you think that if we expanded the size of the Assembly that would then deal with that situation? Or do you say that we need to actually look more broadly at the way we govern the city? I am just trying to get a sense of what you are actually saying around that.

Prof Wettenhall: I am saying that we differ from all the other sub-national governments in Australia—

MS BRESNAN: Yes, I recognise that.

Prof Wettenhall: and the Northern Territory on this. The other night John Halligan was talking about the identity of the ACT. I think this is an identity issue. But in terms

of running the system there would be much more opportunity for popular consultation and collaboration in government if you had a lower level of government operating. What is more, it would mean that the ministers at the centre of a territorial government would not have to spend so much of their time on issues which anywhere else would be called municipal issues.

MS BRESNAN: So even if we were to expand the size of the Assembly, say to 25 members, you would still see that we needed to look in future at having a lower level of government?

Prof Wettenhall: Yes. I am not pushing it here and now. I am just saying it is an important issue to consider and not to forget it.

MS BRESNAN: Thank you.

THE CHAIR: You said that you and Professor Halligan have had quite some discussion about the size of the Assembly. It has certainly been one of the key topics we have heard from witnesses on. You said you have sort of moved from 21 to 25. Would you like to elaborate on the reasons why you have changed or progressed your thinking on that?

Prof Wettenhall: I think we just thought, "Three electorates, three sevens, are 21." There would be some sort of arithmetical simplicity about it. I think it was no stronger than that. The case for even more than 21 is so strong, I think, as we go forward.

MS PORTER: I just wanted to clarify that. Are you saying that the view at that particular time was about arithmetic, more or less—I may be misinterpreting what you just said—and now you are thinking that the size should be 25 because our population has grown?

Mr Wettenhall: Yes. The population has grown. I think the complexity of governments has increased.

MS PORTER: As well?

Prof Wettenhall: Yes. As to the argument for a bigger backbench in the legislature, these are all such significant arguments. If somebody said, "30," I would probably say I would go for that too, but 25 is the biggest number that has been suggested so far. I think the case for the increase is very strong, so, yes, I would go for that.

MS PORTER: With regard to the bodies that you were talking about before—and you said you feel they need to be tidied up or some more rigour needs to be applied—do you think it is because they have grown like Topsy over time?

Prof Wettenhall: Yes. The *Canberra Times* today tells you a new one is going to appear, a federal one. The Portrait Gallery is now being taken out of the department managing. It is a budget proposal and I presume it will not be very controversial. The Portrait Gallery is going to come out of the department managing. That is going to be a new statutory authority. That is because there is a constituency that are very interested in the Portrait Gallery and they have been pushing for this. It will get more

specialised attention that way for its functions, its needs and so on. That is like Topsy; another one grows. Here and there they are growing like that all the time, but we do not really stand back and think about the process by which this happens.

THE CHAIR: I think all the committee members at some point were at the session last week or the week before. What does "IPAA" stand for?

Prof Wettenhall: Institute of Public Administration Australia.

THE CHAIR: Thank you. One of the issues that have come before the Assembly and which I find very interesting is this: if this committee forms a view that we should make some changes, how should we go about that, in the sense of how do we take the public with us? We had the discussion with that group the other night and it was a group with a particular set of interests. This came up in that discussion. How do you generate that broader public engagement so that we do not end up with perhaps a repeat of the situation in the 1980s where people felt self-government had been foisted upon them and they got something they did not want? Do you have any thoughts on that?

Prof Wettenhall: Are you talking about increasing the size or—

THE CHAIR: A range of matters. I think there has been discussion of changing the name of the Assembly. There are more technical issues around parliamentary privilege, the planning and land management act and conflict of interest provisions. There is a whole series of matters there—commonwealth veto powers and those sorts of things. Do you have any thoughts on how we might progress some of those issues?

Prof Wettenhall: They are not very practical because my thought is that if all the parties in the Assembly could, as a matter of principle, find common ground on these issues and, together, were publicising a view—it is said about the self-government act, "But the parties can't agree on the number so how can we be convincing to the commonwealth who need to change a bit of legislation?"—and bringing all their followers along together, I think that would be marvellous. I do not suppose that is a very practical suggestion.

THE CHAIR: I see implied in what you are saying, in a sense, a unanimity of view would convince the public that it was in the greater good because of the arguments being put to one side.

Prof Wettenhall: Yes, I think so. It would squash out the possibility of serious opposition to these things that really are matters of principle as far as the government is concerned. They are not the sorts of issues you would expect the parties to argue about, I think. They are a different sort of issue. But you have still got to get the parties to agree on them.

MR HANSON: You would be surprised.

MS BRESNAN: Yes, you would be very surprised.

THE CHAIR: Are there any other matters, members? Between the session we had

where you spoke the other night and your submission I think we have got a fairly good sense of your views. Thank you for coming along today. We appreciate the time that you have put into the submission and, I guess, your ongoing interest in self-government and the governance of the territory. As you would be aware, we will provide you with a copy of the transcript shortly when it is available. If there are any matters that arise from that that you want to clarify with the committee we are of course open to that. On behalf of the committee, thank you for coming today.

Prof Wettenhall: Thank you.

Meeting adjourned from 12.09 to 2.30 pm.

CORNWELL, MR GREG, personal capacity

THE CHAIR: I would like to welcome Mr Greg Cornwell, who is appearing before the committee this afternoon. Mr Cornwell, of course, is a former member of this place. The privilege card, I imagine, is quite familiar to you, and its consequences?

Mr Cornwell: Yes, thank you.

THE CHAIR: Would you like to make some opening remarks? We have all received your tabling statement, thank you.

Mr Cornwell: Yes, I would. I would like to amend my original submission. Firstly, at point 18, I now back 25 rather than 23 members. Secondly, at point 25, and despite my comments on 18 March 2011, I reluctantly support all control for the Assembly in all local matters because I feel that people should accept their responsibilities—both members and voters, I might add.

As one of the few people who subsequently became a member who agitated for self-government in the 1970s and 80s, I am very much aware that our efforts would not have been successful if the federal parliament had not decided to rid itself of the expensive responsibility of administering the ACT. The self-government supporters seized upon what was offered, thankful for whatever autonomy was granted and without much thought to the future. Those of us who were subsequently joined by people even less experienced in legislative power, and who formed unfortunately the majority of the disastrous First Assembly, were not forward looking either.

There was great timidity in the early Assemblies. There was failure to adopt basic aspects of a parliament, like ministerial honorifics—"the honourable"—not linking with the federal Remuneration Tribunal for salaries, and only organising a superannuation scheme halfway through the First Assembly—and some people had to be talked into it. I might add that we also did not get a mace until 2004. It was almost as if the inexperienced members, of the first few Assemblies anyway, were embarrassed and fearful of the newfound roles and regarded the new legislature as temporary, knowing most Canberrans were against self-government.

This timidity unfortunately has persisted in the crucial area of Assembly size, despite two options to increase numbers. Successive Assemblies have failed to seek either option, I think for the same fear of electoral backlash. Now, 23 years on, the territory is suffering the consequences.

The ratio of constituents and voters to members has grown substantially, ministers and opposition shadows have multiple portfolio responsibilities, members average three standing committee memberships each—that is my averaging. Two ministers and the Speaker have sat upon select committees of this Assembly, and they have been on others previously. These are undesirable situations in my opinion which overburden all MLAs, obliging them to be jack of all portfolios and masters of none.

As Canberra grows, the need for more elected representatives should parallel the Chief Minister's recognition, on 19 April 2012, that so far as the ACT public service was concerned, "it was inevitable the overall size of the service would increase as the

ACT population grew".

This inquiry should not be seen as an academic exercise of this committee. If the Assembly itself does not accept the need and seek more members you will be rightly condemned as not being interested in good governance but only in preserving your own comfortable jobs and those to come after you.

So please put aside the timidity I spoke of earlier and in the words of *Yes, Minister* "be courageous". You are never going to be universally popular but democracy cannot do without you, and you owe it to Canberra's largely ungrateful population to provide the best elected representation possible. Frankly, that includes increased Assembly membership. Thank you, Mr Chairman.

THE CHAIR: Thank you. I think there was no timidity in your remarks, Mr Cornwell. We very clearly have an understanding of what your thoughts are. In the first sentence of what you just said, you said you have changed your mind and gone from 23 to 25. Is there a particular rationale for that, just out of interest?

Mr Cornwell: Not really, except that in talk out there in the community—and it is a fairly lonely activity, I might add, talking about increased Assembly size—most of the people seem to look at 25 as being suitable. May I say that there is another factor involved—that is, 25 can be divisible by five, for a start. It just seems to me that if we are looking at 23 or 25, let us go for the top one so that we do not have to necessarily worry about increasing it even a little more later on. Who knows what may ultimately happen, as far as the size of the Assembly is concerned? But I do not see 25 as being less than we need now or, for that matter, at this moment, more.

MR HANSON: The figure of 25 leans towards five electorates, obviously, whereas 23 would be three and another—and 27 would be three as well. So do I take it that your number is more that you prefer five electorates over three or is it just a random number?

Mr Cornwell: No, it does not mean that. I think I have mentioned here that my suggestion to the committee would be that you work out the figure and then leave it to the Electoral Commission as to how they split up the electorates. Otherwise I can see we will never end up with anything more than we have at the moment, because frankly everybody here will have different views. Certainly five fives or—

MR HANSON: I do not know if it is that simple though. I just make the point that if you say 25, there is a logic to three of five; if you say 21 there is a logic to three of seven, and so on. Accepting your point that you just say a number and then it is up to the Electoral Commission to sort it out, if you do say 21, you have three electorates, but if you say 25 it is likely that you would have five. So I do not think the two can be completely—

Mr Cornwell: I originally suggested 21 back at the Pettit report inquiry. My two colleagues there, Mr Osmond and Mr Stanhope, in fact wanted it kept at 17. I may stand corrected here, but if so I will hear about it: I think my party's view at the time was 21. Frankly, that is not a large enough increase from 17. I just do not feel that another four is going to make much difference. If you are going to increase, let us do

it properly. That is essentially my point.

MS BRESNAN: Just on a similar point, in your tabling statement at point 25 you made comments about the veto. You had a different view on that. What changed your view about the veto so that, as you said, the ACT should be able to have full powers?

Mr Cornwell: That was a difficult one. People have said to me as recently as two nights ago, "Yes, but it's nice having the commonwealth's protection for anything that the Assembly might decide that we don't like." Okay, it is nice. I would welcome that too, except that if you accept democracy you must also accept your own responsibilities for having it. Therefore if you are silly enough to vote for some people who subsequently do wrong then you vote them out. But you have to accept your responsibility. You cannot keep running back to the commonwealth and saying, "Please protect us."

I know we have had particular issues, mainly in relation to moral matters and things, where the commonwealth has stepped in. But I see those as probably ambit claims because I think that if the Assembly had total control over what goes on in this territory—with the exception of NCA; I do not expect you to be taking over the NCA responsibilities—who knows what may come up from people, not necessarily in this Assembly but further down the track? Nevertheless it is something that has to be accepted. You only have to look around the world at the moment. People in France perhaps are waiting to see what is going to happen. Look at Greece. But remember this: the decisions were made by voters, and that is the way it should be.

MR HANSON: Do you not see a risk in what you are suggesting there that if the Assembly does enact things on moral lines, this then becomes the debating house for moral issues and elections are fought mostly about the moral issues of the day—

Mr Cornwell: I would certainly hope not.

MR HANSON: be it euthanasia or gay marriage and so on? Whether you are for it or against it, we tend to be swinging from one to the other and they are the debates of the day and they are the issues that elections are fought on, whereas perhaps we would rather put those to one side and focus on things that might be more applicable or relevant directly to the broader population of the ACT.

Mr Cornwell: I would hope so. But may I make a point on this? Even on moral issues one of the problems is 17 members. If you have 25, I am not saying things are going necessarily to be better but they will not necessarily be worse. You will have a broader, I would trust, point of view being expressed. This is difficult with a very small number like 17. I remember quite vividly the many abortion inquiries that used to come through this place at regular intervals, and we might as well have just filed it away because we all knew what the vote was virtually going to be, and that was it; there was not going to be any change in it.

With too small an Assembly there is that danger. With 25, yes, I think it could. I think the ex-Clerk of the Senate, Harry Evans, made the point that it is possible for legislatures to be too small. So it is not only on the moral issues, although they tend to get all the headlines; it is just that I think we need more input from people.

MR HANSON: Most parliaments have a house of review. The federal parliament has the Senate, which I guess could be seen as a moderating influence on whichever way it goes—left, right, moral issues and so on. We do not have that, and if you take away the federal parliament's power of veto, we are then left with a very small parliament, whether it is 17 or 25, without the power of review. That does not give you cause for concern?

Mr Cornwell: No, it does not, because I think that the proof of the pudding is going to be there, in that if a major mistake is made, in the view of the electorate, the party concerned will pay the penalty at the next election. But there is, do not forget, another alternative, and that is a referendum. What is to stop some of these moral issues being taken up in a referendum? Let the people out there decide. I am of the view that certain things would certainly be different from what is being decided now if a referendum were conducted. But that is an option which of course a self-governing Assembly could introduce.

MS PORTER: There has been some discussion about ways that the additional numbers could improve the committee system. Mr Waterford appeared before us before, and you will be able to read his commentary later on. He made some quite interesting points about whether we should be including other advisers—I cannot remember what he called it. It was like a panel of people who we could draw on to assist with some of the committee deliberations, to actually broaden out the discussion. Do you have any comments about the committee system from your long experience in this place?

Mr Cornwell: Again, one of the problems with 17 is that most of your committees have three members. I do not really think that is enough; I prefer five. However, I do not object to advice being given to committees, even people sitting in and doing it, but ultimately the decision has to be taken by the elected representatives. I do not see why you cannot have the advisers now to the committees because it is the same situation. You are coming back to the point that the decision is going to have to be taken by people like yourselves.

THE CHAIR: Okay. Any further questions from the panel?

MS BRESNAN: In your submission at paragraph 43 about the extension of executive powers you said that they do not appear to be needed or desirable because we have already got some of those powers vested in us. I was just wondering if you could expand on that particular point because it does also mention the veto.

Mr Cornwell: Yes. The point is that the commonwealth probably could step in, in the states, and prevent certain things taking place. But they do not do it, and they probably do not do it because the states do not attempt to bring these things on. You could argue of course that they are busy enough already. By the way, you have raised an interesting point because one of the matters we have to be careful of here, and we certainly noticed this in early assemblies, is this desire to be progressive. I do not use the word in a kindly fashion. There was the idea: "We're going to sort of break the mould. We are going to do different things here and be different from the rest of the country." That is something that we have learnt over the 23 years is not such a

desirable idea. Sure, we might have certain views on certain things, but we do not go way out on a limb, any more than the states do, because, yes, there is the proviso there that could be moved on.

MR HANSON: I have heard you previously say that members should not do more than two terms. Do you still have that view?

Mr Cornwell: Yes. I took a great interest in term limits in the USA. Unfortunately, with the term limits there, whilst the idea was commendable, some of the early exercises were rather poor. Setting up term limits of one term of three years did not do much except that after the second year you lost all your staff because they knew they were not coming back. But I do believe that we could investigate the term limit question. If a term is four years, three terms would make 12 years. I think that is fair enough. Let me put it this way: if you have not achieved what you set out to do in 12 years, I do not think you are going to do it somehow.

MR HANSON: With the Hare-Clark system, though, where with whichever party you have a choice—the electorate get to choose—I would have thought there would be benefit in experience. As an example, Katy Gallagher has served three terms—she would be gone—whereas she has only pretty much recently taken over as Chief Minister. I am not sure that that would necessarily have brought it to four. You can see that there would be a number of members who have grown and developed experience and that would then guard us.

Mr Cornwell: Yes, and in fact in one of the papers I produced on the term limits I conceded that there could be a case for making an exception, and the Chief Minister is a good example of this. It would be absurd if somebody became Chief Minister and their three terms were up. You have got to make some exception.

One thing that has not worked here yet to any great extent certainly has happened in Tasmania under Hare-Clark. People really have lost their seats to other members in the same party. I know this has happened here once or twice, but not to the same degree as in Tasmania. Unfortunately, that suggests to me that perhaps the Tasmanians are more politically aware than the members of the ACT population, but I could be wrong. I do not know whether there is a particular reason for that, but it certainly has not happened to the same degree here.

You could leave it, certainly, to members. But bear in mind that some people are very good at digging themselves in and they can stay—forever, if they so wish. I do not know that that is desirable. I think that we do need a bit of a change and that 12 years is enough under normal circumstances. With a change of government, yes, that could be a completely different situation, because obviously you have got people who were in opposition now coming in to ministerial positions, where they can do something to advance the things that they have been advocating.

THE CHAIR: One of the discussions that have floated around the issue of the size of the Assembly is whether we should just ask the commonwealth to make the change or whether we should ask the commonwealth to give us the power and then go through an ACT-driven process as a second step. Is that something you want to offer any thoughts on?

Mr Cornwell: I do not mind really, except that I think my recommendation point 3 is probably crucial to that; that whatever decision is made we, the Assembly here, the ACT, must decide in the future. We do not want to be going back to the commonwealth all the time saying, "You have allowed us to increase to 25; now—guess what—we want 30." I do not mind either way how this happens, but I believe that ideally, ultimately, the commonwealth, if they are going to make that decision, make it once only and then it is entirely up to the ACT Assembly, or we do it ourselves, given permission from the commonwealth. But both must be watertight.

The other point I suggested at point 2, and this was not necessarily an attempt to get you people off the hook, was that the idea could be put into place at the 2016 Assembly election. That was only because I do not think you have got time between now and October to do it. So I thought it would be easier to tie it up then and see what happens. It is going to take a while, obviously.

MS BRESNAN: The Electoral Commissioner made that point, about being realistic about what you could achieve in the time.

Mr Cornwell: And they also have to draw up the boundaries, don't they, for the new Assembly, and that is not the sort of thing that would happen overnight.

THE CHAIR: I cannot remember from your submission: did you have any observations on the size of the executive?

Mr Cornwell: I have suggested that there should be seven ministers. The big problem there—

THE CHAIR: That is the highest suggestion we have had, so it would be interesting just to explore that a little bit.

Mr Cornwell: I do not know whether I am right or wrong—correct me if I am wrong—but I think the Northern Territory has eight?

THE CHAIR: Yes.

Mr Cornwell: And Tasmania has seven.

THE CHAIR: Nine there, I think.

Mr Cornwell: That is right because they have got extra—okay, nine and eight. I do not believe that our ministers should have more than one major responsibility. You could argue what you want in terms of major responsibilities, but, seriously, education, health, attorney-general and, I suppose, TAMS, because that covers roads, rates and rubbish, which are of major importance to most people. That is four for a start. You have the Chief Minister, of course, which is a position within itself, and that makes five. People may want the environment. I find it absurd that ministers are faced with a number of senior portfolio positions to juggle, and I make the point in here that that applies to the opposition as well, because you are not going to get, in my opinion, the best out of anybody if they are constantly juggling three or four portfolios, be they

large or small—transport and housing could be others of importance. So that is why I am suggesting seven. And, with respect, Mr Speaker, I think the Speaker needs to be the Speaker.

THE CHAIR: Yes.

Mr Cornwell: All of these factors have to come in and I think it is important. The other point is that if you are going to increase the size of the Assembly why not increase the size of the executive to take advantage of these opportunities.

THE CHAIR: Another area where I suspect you might have an opinion is that some people have suggested that we should seek to change the name of the institution and of the Chief Minister to Premier, for example, just to put us on par with some of the other jurisdictions. There are mixed views on this. I would be interested if you want to express one.

Mr Cornwell: I would not change the name of the institution and probably not the Chief Minister. We have a Chief Minister of the Northern Territory, as you are aware. Norfolk Island I think has a——

MS BRESNAN: Chief Minister.

Mr Cornwell: Right. I do not have a problem with this, but what is very important is not to change the name of the institution, because in this case we are not dealing with local issues; we are dealing with national and indeed international forums and it is important, therefore, that you go forward to COAG or any of these other activities with the rank, if you like, up here of an assembly. I know people have said—

THE CHAIR: One suggestion is that we might go to ACT parliament; that is the predominant suggestion.

Mr Cornwell: No, I do not think so. I think that the word "assembly"—Legislative Assembly or Legislative Council—is well known throughout Australia and indeed throughout the Commonwealth Parliamentary Association and this is important in terms of their recognition, if I could put it that way, of us.

By the way, I think that there is another small matter here: having only 17 members compared with just about everywhere else except Norfolk Island, which obviously stands as a fairly obvious difference, does not do the image of the Assembly all that much good among our peers both in Australia and, to a much lesser extent I must admit, with the overseas activities of CPA. I do not think that matters a great deal, except that they too recognise the Assembly or the Legislative Assembly, unless there are a couple of different ones like the House of Keys in the Isle of Man or something like that. But, okay, we have to consider our position in the wider scheme of things as well. It is not just here.

THE CHAIR: Any last-minute questions before we thank Mr Cornwell for his time? Thank you for both your written submissions and taking the time to come along today. We appreciate the contribution.

Mr Cornwell: You are welcome.

THE CHAIR: We will send you a transcript of the proceedings, as I am sure you are aware, somewhat down the line. If there is anything you need to raise, please do.

Mr Cornwell: Thank you very much, and good luck, my friends.

THE CHAIR: Yes. Thank you.

Mr Cornwell: As I say, be courageous.

FAULKS, MS CHRIS, CEO, Canberra Business Council
HOWARD, DR JOHN, Policy Director, Canberra Business Council

THE CHAIR: Thank you for joining us this afternoon and for attending this hearing of the administration and procedure committee's inquiry into the ACT (Self-Government) Act. I believe you are aware of the privileges card and the consequences of that, having—at least in the case of Ms Faulks—appeared before.

Ms Faulks: I have.

THE CHAIR: We will jump straight to it if you are happy with that. Would you like to make some opening remarks to elaborate on your submission or is there anything else you want to say?

Ms Faulks: Just very briefly.

THE CHAIR: Yes, please.

Ms Faulks: Canberra Business Council welcomes the opportunity to appear and provide a submission to the review of the commonwealth Australian Capital Territory (Self-Government) Act 1998 being undertaken by the ACT Legislative Assembly Standing Committee on Administration and Procedure.

As you know, Canberra Business Council presented a submission in March 2011 to the Senate Legal and Constitutional Affairs Legislation Committee inquiry into the Australian Capital Territory (Self-Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill 2010. At that time the council stated that the lead-up to the centenary of Canberra in 2013 provided an ideal opportunity to review and update the ACT (Self-Government) Act, and we continued to believe that.

We would like to raise or discuss five issues today. The first is the ability of the Legislative Assembly to determine its own size. It goes without saying that, from the council's point of view, the power to determine the size of the Legislative Assembly should be vested in the Assembly itself, consistent with other jurisdictions.

As to the size of the Assembly, it was the council's view in March last year, and it remains our view, that there is an overwhelmingly sound case for increasing the size of the ACT Legislative Assembly and the size of the ACT executive. It is our view that the Assembly must be of a sufficient size to provide fair representation of the ACT community, function as a legislature and have the capacity to scrutinise the executive government.

We are recommending that the size of the executive increase to seven. We are also suggesting that the role of the committees should be increased and improved, and that the resourcing of MLAs be lifted. This may seem an unusual submission from a business community that is always about small government. However, we feel that in the ACT there is a need, given that we cover both the local government and state responsibilities, for a legislature that is of sufficient size that the ministers can perform their duties and the committee system can scrutinise the legislation as it goes through—plus have the opportunity to be a bit more strategic and to investigate longer

term issues for the ACT.

THE CHAIR: Thank you. There are a number of issues there, and I suspect other members might have questions. Have you a specific view on what the size of the Assembly should be?

Ms Faulks: We are recommending 25. That is not a figure that we are going to die in a ditch over. We think that the size of the Assembly should be increased. If you look at the relative representation in other jurisdictions, at the moment there is one elected representative for 14,285 people in the ACT. The closest to that is Victoria, which has one elected representative to 4,620 people. It is a huge gap. Even if we had 25 members, we would still be at one elected representative to 9,714 voters. So even at that number we are nowhere near the rest of Australia. We recognise absolutely that going from 17 to 25 members has a political risk associated with it and a cost burden; as I said, we are suggesting 25 but we would wear anything less than that.

THE CHAIR: You specifically mentioned seven members of the executive. Can you take us through your thinking in coming to that number? We have had quite a few suggestions that it be six, so it is interesting to hear the different rationale behind the numbers.

Ms Faulks: Yes. John, you can speak up here as well. Our consideration around this was mainly the workload of the ministers. Obviously, we are a small jurisdiction and we are a very physically constricted city-state, so we are not looking at something the size of Queensland, where ministers might have to travel large distances. Nevertheless, because ministers cover a range of portfolios—each of them—it is our concern that, unless that load is spread adequately, you have a situation where the driving force is not the executive but the bureaucracy. That is simply because ministers do not have the time to adequately drive the agenda themselves. If six were to be the number, we would be very happy with that, but we are of the view that the current workload for the current ministers is not something that is sustainable.

Dr Howard: I agree with that. The work that the council does interacts, obviously, with the executive. It is pretty apparent that executive ministers are quite overloaded in terms of the range of responsibilities that they need to deal with. But the other dimension to it, of course, is that the ACT operates in an intergovernmental environment and we as a community need to be pretty sure that the ACT is fully represented in intergovernmental councils such as COAG groups, and the supplementary standing committees; other ministerial councils; and, of course, the Australian Local Government Association, which seems to be increasing its role. These councils and committees address pretty important national reform agendas; it is important that we are participating fully or to the greatest extent possible.

THE CHAIR: Thanks. Members?

MR HANSON: It strikes me as quite interesting because everyone that has appeared before this committee, as far as I can recollect, has argued for more members of the Assembly and presented similar arguments. It seems that the reticence actually comes from us as an Assembly. We have been through this process before, in 2002, and probably before that. Part of that might be because we do not want to be the people

going to the public saying, "We want to create more of us." It is a difficult thing to do. It appears that it is self-interest.

The question is this: to members of the public, many of whom did not want us here in the first place, if there is a compelling argument and we, as a committee and as an Assembly, believe that having more members is the way to go, how are we going to sell this in a way that gets the community on board? Have you got any views about that?

Ms Faulks: One of the arguments that is compelling is that we have gone beyond being just a small, backward community with what people used to refer to as a local council government. We should be positioning ourselves, and I think most Canberrans would like to see Canberra positioned, alongside the other states and territories as a mature democracy and a viable—if not a state, then certainly a significant territory.

When you go to the people and say to them that, as I said, Victoria has the next closest ratio, with one elected representative for every 4½ thousand voters and we have 14,200, you start to realise that things are getting more and more out of kilter. I think you could sell that argument to the population.

There is always going to be a political risk when you are trying to increase the size of a legislature like the Legislative Assembly. Obviously, leadership is required. It would be nice if there were some external body and some formula that you could apply automatically so that the size of the Assembly increased as the population increased or whatever. Unfortunately, that is not the case. It will be a hard ask; we are not denying that at all. But at the end of the day this is about good governance.

MS BRESNAN: Can I just ask something on that as well. We have talked to George Williams. He has been involved in different sorts of processes in the Northern Territory, where they are discussing statehood. They have had a convention-style process. Do you think something like that would assist in that process, or do you think that is going too far and away? Also, there has been a suggestion of having almost something like community leaders who would actually advocate for this sort of thing. Do you think those sorts of things would help bring the community along with this decision to do this if it was tackled?

Ms Faulks: I think all of that would be important. Consultation is an interesting thing. Once you go out to consultation, people quite rightly expect you to take notice of what they are saying. If the majority of the population come out and say, "We don't want any more people," you are left with that. So there is a leadership component here. You have to look ahead rather than look back and say: "Where do we want Canberra to be positioned? Do we want to be just a local council that is regarded as such, or do we want to position ourselves eventually as a potential state and at least sit side by side with the other jurisdictions?"

There is also a very strong argument that people in the ACT deserve to have access to their elected representatives. When this becomes so out of kilter, there is not an opportunity to do that. Even with modern technology, it just becomes impossible. And as a sort of side issue, if you look at the resourcing of some of the members of the Legislative Assembly, it is my understanding that the postage allowance, for example,

is not even enough to write a letter to everybody in your electorate once a year.

MS PORTER: We do not have one. We do not have one as such.

MR HANSON: Not even once a term.

Ms Faulks: You start to ask exactly where the democracy is in this and how you can communicate with the people you are asking to elect you and that you have a responsibility to represent. That becomes increasingly difficult as the numbers that you are looking after become bigger and bigger.

MS PORTER: I have an observation, through you, chair: under the Hare-Clark system it is even more complex, because you are not representing 14,000 people; you are representing your whole electorate.

Ms Faulks: It could be 35,000.

MS PORTER: Or more.

MR HANSON: It is 115, I think, in Molonglo.

MS PORTER: Yes, and 66 or something in Ginninderra. So you are in fact representing them and they expect you to represent them all, not just a little bit of it. How could you do that? You could not say, "Oh, well, I'm just representing the bit that is around where I live" or something. That would just be a nonsense. So it is even more complex and more difficult than what you are suggesting.

Ms Faulks: I think that is right. The other thing is that it seems to me that it is not an issue where there is substantial division or separation of support and others that are saying no. Virtually every credible inquiry or report that has been written on this has recommended an increase in the size of the Assembly. It is not as though it is coming out of nowhere. And it has been going on for two decades at least. So it is not a surprise. It is just that, given the cost and the political risk, no-one really is prepared to bite the bullet.

Dr Howard: And it does come back to an issue of good governance. There are a number of dimensions. For the Assembly to be able to provide a pool of talent that is available for appointment to the executive, if we are talking about increasing the executive to six or seven, that becomes an issue too in relation to the size.

But also we also need to make sure that the mechanisms for ensuring accountability and scrutiny are actually working and that members can get across the complex issues that are coming before government.

We also need to provide for an informed and effective debate. It is not a matter of holding the executive accountable. I also see that members have a critical role in providing information and knowledge to feed into the policy processes and the governance functions.

That is sitting behind our thinking of providing a greater resource for the ACT

community in the exercise of governance. It is not just a matter of more members; it is about more effective governance.

Ms Faulks: And particularly the ability of the backbenchers to run effective committee hearings and inquiries and for those to be resourced so that you can access the expert advice that you need to do that.

MR HANSON: Resourcing is an interesting issue, because that actually is not determined by an act. It is determined essentially by the executive, as I understand it—certainly for resources for MLAs, for their postage allowance, for the running of their offices, how much salary component is and so on. Of course, one of the challenges is that whoever is in government probably does not want to resource the opposition very well.

MS BRESNAN: But it is also the rem tribunal. It is a bit of both. It is actually a bit of both.

MR HANSON: Yes.

MS BRESNAN: Yes, so it is actually not entirely—

MR HANSON: But largely. One of the problems, I suppose, is the electoral cycle and politics getting in the way, as it does with the numbers. I think there is a reticence to go to certain numbers—you know, 21 favours this party, 25 favours that party. It is always a difficult debate.

Dr Howard: But sitting behind the issue, as you say, Mr Hanson, there is a resourcing issue. It is the executive that introduces the appropriations for executive departments, of course, over the parliament. But in this sort of climate, where there are major constraints on the revenues, it becomes a tricky issue as to how much the government feels it can afford to recommend in the appropriation for parliament. Turning that around, it is very much the case for the parliament to actually argue the case to the executive as to why the resourcing increase is required.

Ms Faulks: We also had discussions about the numbers in the Legislative Assembly. It is true that you could go to 19 or 21. At 21 you are still at 11,500 voters per elected member. So it is a catch-up, but given that this is such a difficult issue and it has so much political and cost risk, you could just bring it up to date now. But at some stage in the future you are going to have to go again. So the question is: do you do it in two jumps and have twice the political pain and whatever? It would be very difficult a second time around to argue that there should be another increase. So in the end, we came to the conclusion that you were better to do it once and get to where you needed to be and it could take us forward for some time. As I said, I would be the first to admit that it will be a difficult ask.

THE CHAIR: You made some references to changing the role of the committees. Would you like to elaborate on that?

Ms Faulks: Yes. I will start; then John will speak as well. We actually think there should be an economics committee of the Legislative Assembly, one that deals with

the economy, diversification and a whole range of issues associated with that. But more than that, we actually feel that when you have a very small backbench and there are so many responsibilities across both state and local government, you are asking a small number of people to double up to sort of be able to service the committees and to hold them properly.

Ideally, if you look at the ratios in other jurisdictions, you will find that in New South Wales, for example, the proportion of backbenchers to all members is 82 per cent. So you have got a much larger backbench there. In the ACT, it is 64 per cent; so you have not got that pool of backbenchers that can really ramp up. Our Hare-Clark system and our smallish government here would really work very well if the committee system were able to ramp up, both in terms of getting the opinion of the community through hearings such as this one, a broad cross-section of the community, but also in terms of investigating some of the more strategic directions for the territory.

Dr Howard: I would just like to reinforce that. I think, Mr Chair, that we see committees as a very important part of the parliamentary process and parliamentary business. It is much more than the scrutiny functions. It does provide members with the opportunity to contribute to policy in terms of their own knowledge and experience and also the capacity to pick up the views in the community. Public hearings like this one are fantastic resources that the parliament or the Assembly has got available to it to tap into what the community is thinking and community views. That is a sort of unique form of engagement, or unique form of community engagement if you like.

Just to reinforce Chris's comment, we are not necessarily arguing for an increase in the number of committees, but I think some sort of realignment to provide a role which we see as important for a committee concerned with economics and industry—

THE CHAIR: One of the things—

Dr Howard: which would interface with us, of course.

THE CHAIR: Yes. Did you want to follow on from this, Amanda?

MS BRESNAN: No, it was another question.

MR HANSON: Talking about the ratio you use though, you include councillors now.

Dr Howard: Yes.

MR HANSON: If you took that out, for example, the ratio in Victoria I think would be 1 to 27,000, or actually 1 to 14,000.

Ms Faulks: Are you talking about the ratio of voters to elected representatives?

MR HANSON: That is right, yes.

Ms Faulks: We looked at that. We can tell you what the ratio is for the councillors, but the reality is that we have both responsibilities.

MR HANSON: Certainly we do but I suppose that as a city state we are not—look at Victoria, for example. It is many, many times bigger than the ACT. By the nature of that geography, you need to have separate councils. I am just wondering whether we are comparing apples with oranges by doing that because if you are to sort of assume that you would need to have a council for this city which is only a small jurisdiction—

Ms Faulks: But we are not suggesting that you go from 14,200 down to Victoria or, would you believe, Western Australia with 977 voters per elected representative. We are not suggesting that at all. Even at 25 you are only going from 14,200 to 9,700 which is still double the number of voters per elected representative than in Victoria, which is the next closest.

Dr Howard: I think there is a related issue there too. It is that, sure, the ACT is a combined city-state and does pick up the state and municipal functions. But bear in mind that in the states with strong local government sectors, they do provide, they do undertake a wide range of functions including planning and development, culture and recreation.

In Queensland local government does water and sewerage and so on. So there is a range of functions done by local government in the states, which we do not of course undertake in the territory. That involves a resource cost and there is a representation issue that goes with that. Certainly, in New South Wales, for example, libraries are run exclusively—virtually exclusively—by local government.

So we need to think state and local when we are making these comparisons and when looking at issues concerned with community representation. Of course, economic development is a major focus of small and large councils around the country.

THE CHAIR: In discussion earlier this morning, the issue of the 99-year leases in the ACT was raised. Is this something that is particularly on your radar?

Ms Faulks: We do not address that in our legislature and I am not sure that we—

THE CHAIR: That is all right. You are free to add further comments if you wish. You are not constrained. You do not have to answer it, either. I am just—

Ms Faulks: No, I appreciate that absolutely. I would be happy to get back to you on that with a position. That has not come up in our discussions here.

THE CHAIR: In some ways that answers the question.

Ms Faulks: Yes. So I think from the council's point of view, certainly from my time there, it is something that the business community accepts and just gets on with. Is there a better system? There may well be and we would be happy to get back to you with the council's view on that.

THE CHAIR: That is fine. It has not come up a lot and the fact that you are not perceiving it as an issue I think in many ways answers the question I was asking.

Ms Faulks: That plus the fact that we have not actually got close to the end of the 99 years yet in some ways. So even though we are coming up to our centenary, a lot of the land was not released 99 years ago. I suspect that when we come close to it it may be more of a concern.

THE CHAIR: The other thing I just wanted to ask you about was this: there is this division of national lands and ACT lands. Some of that plays out through both the self-government act process, but also the planning and land management act and the like. It has had quite some discussion obviously with the Hawke review and in various other bits and pieces. Are there any observations that you wanted to make on that nexus of issues?

Ms Faulks: I can talk about our submission to the inquiry into the NCA at the federal level and how that impacts. The council's view is that the commonwealth's responsibility for the national capital, and particularly for the central areas of the national capital, is not something that they should walk away from or that the ACT should let them walk away from.

I will be fairly frank here. When we presented to that committee we said that it was for a number of reasons inappropriate to move towards the ACT having the total responsibility for planning. The reason for that is that in the first instance it is a responsibility under the constitution that the commonwealth has for the national capital.

Secondly, we do not think that the 366,000 people at this stage should be responsible for maintaining or developing the national capital on behalf of all Australians. That is something that should be and should remain the responsibility of all Australians through the federal government.

The third thing, which is a more complex issue, is that we are a small jurisdiction with limited revenue and at the moment a fairly tight budget. There will always be the temptation to sell land or to develop areas of the national capital in order to gain revenue. That would effectively destroy urban planning into the future for the national capital. We feel very strongly that that needs to be held on behalf of all Australians by the active involvement of the federal government, but in partnership with the ACT government.

We were very opposed to the cuts that took place in the NCA when they occurred, primarily because 40 per cent of their staff, many of whom were internationally renowned urban planners, were lost. It will take the National Capital Authority, even with appropriate funding, in our view up to 10 years to get back to the position that it was in when they were decimated in 2008. At that stage, and thankfully continuing, we have been able to maintain a national capital that we think is world class and has the potential to go even further. But it requires the ACT government and the federal government, currently through the National Capital Authority, to safeguard that on behalf of all Australians into the future.

THE CHAIR: Thank you. That is very clear. Members, any further questions? Thank you for taking the time to come and join us this afternoon and for your written contributions. We do appreciate them. It is very much helping the committee shape its

thinking. As always, we will forward to you shortly a transcript of today's proceedings. If there is anything you feel the need to clarify or correct, please let us know. Otherwise, thank you again on behalf of the committee for appearing today.

Ms Faulks: Thank you.

Dr Howard: Thank you.

MR HANSON: Thank you.

The committee adjourned at 3.19 pm.