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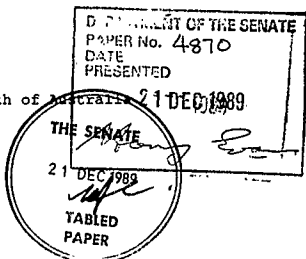
Inquiry into the ACT Election and Electoral System

Report Number 5 of the
Joint Standing Committee on Electoral Matters

November 1989

Australian Government Publishing Service
Canberra

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JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

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Staff	Mr Michael Petter Mrs Helen Misa

SUBCOMMITTEE

The inquiry into the ACT Election and Electoral System was conducted by a Subcommittee chaired by Dr Wooldridge, MP. Members of the Subcommittee were:

	Dr Wooldridge (Chairman)
Mr Lavarch	Senator Schacht
Mr Lee	

Subcommittee Secretary	Dr Robyn Seth-Purdie
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1. Replaced Mr Charles Blunt, MP on 11 May 1989.
 2. Replaced Mr Gary Punch, MP on 16 February 1988.
 3. Replaced Mrs Carolyn Jakobsen, MP on 21 November 1989.
 4. Replaced Mr Peter Shack, MP on 25 May 1988.
 5. Replaced Senator John Coulter on 25 November 1988.

TERMS OF REFERENCE OF THE INQUIRY

- . That the following matter be referred to the Joint Standing Committee on Electoral Matters for inquiry and report: The method and practice of the first ACT election.
- . That the Committee review the electoral system and the election process.
- . That the Committee particularly examine whether the deposit required to be paid by candidates is adequate and whether the cut-off level for unsuccessful candidates is set at the most appropriate level.

GLOSSARY

Additional Member System. Mixed electoral system where part of the legislature is elected from single member constituencies using a plurality or majoritarian system and other members are elected under a proportional representation system so that the total number of members elected is proportional to the votes.

Alternative Vote. Form of Majoritarian electoral system where members are elected by an absolute majority. Voters are required to number candidates in order of preference. Votes of the least favoured candidates are distributed in turn until one candidate receives a majority. The system is usually restricted to single member constituencies. Often referred to as preferential system. System used for Australian House of Representatives elections.

Approval Voting. Untried form of Plurality electoral system where voters can vote for as many candidates as they approve of.

Block Vote. Form of Plurality electoral system used for multi-member constituencies. Electors have as many votes as there are candidates to be elected. Candidates with highest number of votes win.

Constituency. Geographical areas into which a country is divided for electoral purposes. May be either single member or multi-member.

D'Hondt System. Proportional Representation system based on the Highest Average concept. Uses series of divisors to ensure that the next candidate to be elected is from the party with the highest average vote. Divisors are 1,2,3,4, etc.

Droop Quota. Minimum number of votes required to ensure the election of one representative. Total number of valid votes divided by one more than the number of seats, and one added to the quotient. $Quota = \lceil \text{votes}/(\text{seats}+1) \rceil + 1$.

First-Past-The-Post. Plurality electoral system where the winning candidate is the one who receives the largest number of votes regardless of whether a majority is obtained.

Hagenbach-Bischoff System. Proportional Representation system based on the Highest Average concept. Involves the combination of a quota (usually Droop or Hagenbach-Bischoff) and a divisor system. Two stage process where candidates receiving a quota are elected first and any remaining seats are determined by a divisor system (D'Hondt, Sainte-Lague etc.).

Hagenbach-Bischoff Quota. Number of votes required to gain election. Total number of valid votes divided by one more than the number of seats.
 $Quota = \text{votes}/(\text{seats}+1)$.

Hare-Clark. Variation of the Single Transferable Vote form of Proportional Representation. Used in Tasmanian House of Assembly elections.

Hare Quota. Number of votes required to gain election. Total number of valid votes divided by the number of seats. $Quota = \text{votes}/\text{seats}$.

Highest Average. Method of calculating a party's seats in proportion to its votes. Seats allocated on the basis of the highest average votes per seat after each additional seat has been allocated.

Imperiali Quota. Number of votes required to gain election. Total number of valid votes divided by two more than the number of seats. $Quota = \text{votes}/(\text{seats}+2)$.

Largest Remainder. Method of calculating a party's seats in proportion to its votes. Seats allocated on the basis of the largest number of votes remaining after seats have been allocated by quota.

List Systems. Generic term to describe Proportional Representation systems where voters choose from lists of party candidates. Covers Highest Average and Largest Remainder systems.

Majoritarian Systems. Electoral systems where the winning candidate is required to achieve a majority of the vote (more than 50%) to gain election. Majority can be attained either through a Second Ballot or by means of preferences (Alternative Vote).

Modified D'Hondt System. Variation on the D'Hondt system used for the first ACT Legislative Assembly election. Involves D'Hondt divisors to determine number of seats won by each party and Single Transferable Vote system to determine election of individual candidates.

Modified Sainte-Lague System. Proportional Representation system based on the Highest Average concept. Uses series of divisors to ensure that the next candidate to be elected is from the party with the highest average vote. Divisions are 1.4,3,5,7, etc.

Plurality Systems. Are those in which each eligible voter either abstains from voting, or votes for one candidate. The candidate with the most votes wins. Example: First Past the Post systems. In such systems votes are not able to rank candidates.

Proportional Representation. Electoral systems designed to ensure that seats in the legislature are allocated as near as practicable in proportion to votes received. Only used for multi-member constituencies.

Sainte-Lague System. Proportional Representation system based on the Highest Average concept. Uses a series of divisors to ensure that the next candidate to be elected is from the party with the highest average vote. Divisors are 1,3,5,7, etc.

Second Ballot. Majoritarian electoral system where a second election is held if no candidate receives a majority (more than 50%), of the vote at the first election. The numbers of candidates standing at the second election is restricted either by number or by threshold.

Single Non-Transferable Vote. Plurality electoral system designed for multi-member constituencies. Electors have only one vote. Candidates with the highest number of votes are elected.

Single Transferable Vote. Preferential form of Proportional Representation electoral system for multi-member constituencies. Electors are required to number candidates in order of preference. Candidates receiving a Droop quota are elected. Any surplus votes are distributed and if any seats remain unfilled candidates with the lowest number of votes are progressively eliminated until all seats are filled. System used for Australian Senate elections.

Threshold. Minimum condition required to secure representation or continuance in a scrutiny process. Threshold may be a number, or percent, of votes, or a quota. Used in Proportional Representation systems to deny representation to parties securing a minimal share of the vote.

CONTENTS

CHAPTER	PAGE
Committee Membership	iii
Terms of Reference	v
Glossary	vi
Contents	ix
Preface	xiii
Recommendations	xiv
Overview	xv
1. THE ROAD TO SELF-GOVERNMENT	
• Seat of Government	2
• Designs, committees and commissions	3
• First elected representative	4
• The Advisory Council	5
• Parliamentary representation	5
• Report on self-government	5
• A parliamentary inquiry	6
• Construction gets underway	6
• Another report	6
• 'One of my better deeds'	6
• A Progress Report	7
• Difficulties in preparing for self-government	7
• Another parliamentary inquiry	9
• Recommended electoral system	9
• The Legislative Assembly	10
• The first Task Force	10
• Another discussion paper	10
• The self-government referendum	11
• Another House of Assembly	11
• Second Task Force recommends proportional representation	11
• House of Assembly report on Self-government	12
• Minister proposes single member electorates	12
2. ELECTORAL SYSTEMS	
• Introduction	16
• Electoral systems	17
• Plurality systems	18
• Majoritarian systems	24
• Proportional representation	28
• Mixed systems	36
• Conclusion	38

3.	THE EVOLUTION OF A UNIQUE ELECTORAL SYSTEM	
.	The introduction of the Bill	40
.	Hare-Clark and Senate systems considered unsuitable	41
.	Special features of the original Bill	41
.	Hastening towards self-government	42
.	The Bill goes to the Senate	44
.	Further amendments considered by the Senate	45
.	Debate on the 'Hill' Amendments	46
.	Reminder: the system is a compromise	48
.	Democrats attempt to substitute Senate count	48
.	The amended Electoral Bill is passed	49
WHENCE A D'HONDT SYSTEM?		49
.	Discussion paper	50
.	First modifications to a d'Hondt system	50
.	Proposed amendments arouse concern of Electoral Commission	51
.	No reply from ACT Administration	51
.	All care and no responsibility?	52
4.	SPECIFICATIONS OF THE MODIFIED D'HONDT ELECTORAL SYSTEM	
.	Broad typology	54
.	Deposits, registration and ballot papers	54
.	The method of voting and formality rules	55
.	Interpreting the voter's intention	55
.	The scrutiny	56
5.	THE CONDUCT OF THE ELECTION	
.	Statutory responsibility	62
THE 'EDUCATION CAMPAIGN'		62
.	Commission puts ACT Administration on notice	62
.	Effectiveness of public information campaign	67
THE SCRUTINY		68
.	Reports of the scrutineers	68
.	The Electoral Commission responds to criticism	70
.	Conclusions	72

6.	EVALUATION OF THE MODIFIED D'HONDT ELECTORAL SYSTEM	
.	Level of deposit and party registration	76
.	Comprehensibility	80
.	The threshold	81
.	Proportionality and vote values - other formulae	85
GIVING EFFECT TO VOTER INTENTIONS		86
.	Deeming rules	86
.	Party voting tickets	88
.	Coherence	90
.	Conclusion	92
7.	AN EXAMINATION OF ALTERNATIVES	
.	Summarising the evidence	94
.	Conclusions	102

LIST OF APPENDICES

APPENDIX		PAGE
A	Submissions received for the Inquiry into the A.C.T. Election and Electoral System	106
B	Witnesses who appeared before the Joint Standing Committee on Electoral Matters	109
C	Alpha Listing - Submission Makers and Witnesses	111
D	Senate System	115
E	Hare-Clark System	117
F	Deeming Rules (i) - Scrutiny under modified d'Hondt of ballot papers received by a party or its candidates as first preferences	119
G	Deeming Rules (ii) - The transfer of votes from candidates not provisionally elected	123
H	Deeming Rules (iii) - The final allocation of seats to party candidates	127
I	Paradoxes in the Voting System for the Australian Capital Territory Legislative Assembly	130
J	Ballot Paper used in 1989 Assembly election	Inside back cover

LIST OF TABLES

TABLE		PAGE
2.1	Australian Electoral Systems	18
2.2	Electoral Systems used for National Parliaments	19
6.1	Electoral Deposits	78
6.2	Outcome applying the d'Hondt formula to first preference votes at the ACT election	82
6.3	Effect of threshold	85
7.1	Summary of electoral systems favoured by witnesses	96
7.2	Summary of electoral systems considered unacceptable by witnesses	98

xii

RECOMMENDATIONS

Chapter 6 - Evaluation of the Modified d'Hondt Electoral System

1. The level of deposit required for a candidate nominating for election to the ACT Assembly be raised to \$250. (Paragraph 6.15)
2. Political parties wishing to register for ACT elections be required to demonstrate a minimum membership of one hundred eligible ACT electors. (Paragraph 6.16)
3. Restrictions be introduced to prevent the same individual:
(a) from being able to register; or
(b) from being the registered officer
for more than one political party in the ACT. (Paragraph 6.18)
4. No change should be made to the provisions whereby independent candidates are not permitted to lodge the equivalent of a registered party voting ticket. (Paragraph 6.64)
5. In order to make the ballot paper of a manageable size independent candidates should be grouped. (Paragraph 6.64)
6. That where appropriate the Senate formality rules and deeming provisions serve as a model for the formality rules and deeming provisions of the ACT electoral system. (Paragraph 6.66)

Chapter 7 - An Examination of Alternatives

7. A referendum be held in the ACT to establish which of the two following electoral systems would be preferred by the majority of voters
- a system of single member electorates using the House of Representatives voting system
- A system of proportional representation with multi-member electorates modelled on the Tasmanian Hare-Clark voting system. (Paragraph 7.25)
8. The Commonwealth government provide funds for the Australian Electoral Commission to conduct the referendum. (Paragraph 7.25)
9. All parties should agree to introduce at the earliest opportunity whichever of the two electoral systems is preferred by a majority of ACT voters. (Paragraph 7.25)

xiii

PREFACE

When it was initially suggested that I might chair the Inquiry on the 1989 ACT election, I responded enthusiastically.

However, my enthusiasm waned somewhat when, on mentioning to my colleagues that I was chairing this Inquiry, I met with the common reply - "What have you done to deserve that?"

Any doubts as to the wisdom (or otherwise) of this Inquiry were settled after the first two days of public hearings, when the first twelve witnesses proposed twelve different electoral systems to replace modified d'Hondt.

The Joint Standing Committee on Electoral Matters is one of the more political committees in the parliament and, in recent times, has been noted for its minority reports.

Being chairman of a committee in which one never had a majority was not an easy task. That the ALP, Liberal, National, Democrat and Independent members of the committee were all able to come to a common position is indicative of how hard we all worked to put aside any entrenched position in an attempt to achieve something worthwhile.

I would like to particularly thank the committee secretary, Allan Kelly, the Inquiry Secretary, Dr Robyn Seth-Purdie and Helen Misa. Given the public interest in this inquiry, all worked tirelessly to produce the report on time.

Michael Lee, the Chairman of the Joint Standing Committee on Electoral Matters, deserves special thanks, as it was his preparedness to enter into a spirit of bipartisan co-operation, that enabled all of us to reach a unanimous report.

Michael Wooldridge, MP
Sub-Committee Chairman

OVERVIEW

The Road to Self-Government

1. Until it achieved self-government in 1989, the Australian Capital Territory, was governed directly by the Commonwealth or its agencies.
2. The road to self-government has been rough and circuitous, primarily because of the problem of distinguishing functions and places over which the Commonwealth should retain control, from those functions and areas which should be managed by the people of Canberra. Even now the Territory does not enjoy the same level of autonomy as other states and territories and the 'demarcation dispute' continues, with calls, inter alia for the 'repatriation' of the ACT electoral legislation.
3. Chapter 1 outlines some of the major events which have affected the growth and development of Canberra and traces the changing attitude of the executive towards granting self-government.
4. The Canberra community has been offered representation in some form or other since 1928, when one of the three Federal Capital Commissioners was elected on a property franchise. In 1930 well known community identities stood successfully as independents in the first Advisory Council which replaced the Commission, but it also gave too little scope for the citizens of Canberra to influence the government of civic affairs. Continuing dissatisfaction led to a series of reports and inquiries on self-government, the first in 1949.
5. The form and extent of community representation offered to the people of Canberra have varied greatly. However, no mechanism, ranging from the election of one of the three Federal Capital Commissioners in 1928 to the last House of Assembly which was expired in June 1986, was considered by the people of Canberra to offer them sufficient scope for participation in civic affairs. Continuing dissatisfaction led to a series of reports and inquiries on self-government. All investigations resulted in recommendations for governing bodies elected by a form of proportional representation.
6. Against this background the outcome of the referendum on self-government in November 1978 - a resounding vote in favour of the status quo - may seem surprising unless it is seen as a rational response to a campaign which raised potent fears that self-government would mean increased charges.
7. Self-government for the ACT was a policy of the Labor Government elected in 1983. Chapter one ends with a brief description of the Government's two unsuccessful attempts to introduce self-government for the ACT.

xvi

Electoral Systems

8. Chapter 2 discusses what are commonly considered to be the essential features of electoral systems. Some of the electoral systems most commonly used throughout the world are described and analysed in terms of the benchmarks discussed earlier.
9. No electoral system embodies all of the features considered desirable. None is free from short-comings. The chapter concludes that no one electoral system is the best for all countries and in all circumstances. The most appropriate system for an electorate is that system which best satisfies those requirements which the electorate considers most important.

The Evolution of a Unique Electoral System

10. Chapter 3 gives an account of how an electoral system never previously used in Australia emerged in a new proposal for self-government in the ACT. It describes how the Government, in its anxiety to secure passage of the self-government legislation, agreed to a series of hastily considered compromises which transformed the electoral system originally proposed beyond recognition. What had commenced as a d'Hondt party list system of proportional representation became a 'bizarre hybrid' with features of both list and preferential systems, whose combined effect could not readily be predicted.
11. Before the legislation was passed concerns were raised in Parliament about the viability of the proposed system. The Australian Electoral Commission also expressed grave doubts to the Department which had carriage of the self-government project. However, the Department did not reply to them and they were not made public until after the much amended *Australian Capital Territory (Electoral) Bill 1989* became law.
12. Anticipating the conclusions reached in Chapter 5, the outcome has been an unacceptable electoral system which has brought the never popular self-government concept into further disrepute in the ACT. The Committee has not attempted to apportion blame, but the derivation of the modified d'Hondt electoral system should serve as a warning to Ministers, to Parliament and to the bureaucracy, of what can go wrong when an objective, regardless of how worthwhile it may be itself, is sought over-zealously.

xvii

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1. Tasmanian Electoral Commission, Mr Colin Ball, Evidence, p. S524.

Specifications of the Modified d'Hondt Electoral System

13. This chapter attempts to describe in the simplest possible terms how the modified d'Hondt electoral system operates. It includes an outline of the formality rules and deeming provisions, both unusually complex, and of the stages of the scrutiny including the operation of the threshold and the use of the d'Hondt formula. The rules regarding candidate deposits, party registration and the layout of the ballot paper are also summarised.

The Conduct of the Election

14. Under the ACT Electoral legislation the Australian Electoral Commission would normally have sole responsibility for ensuring that voters in the ACT understood how to cast an effective vote, that is, how to vote formally and how to ensure that the vote had the intended effect.

15. The Australian Electoral Commission had serious reservations about its ability to conduct a cost-effective public awareness campaign because of the complexity of the electoral system. The ACT Administration agreed, and its Minister confirmed, that in this instance Commission responsibilities would extend no further than instructing voters on how to cast a valid vote; the ACT Administration would assume responsibility for the remaining aspects of an education campaign.

16. The Committee examined evidence concerning the education campaign and concluded that it had been inadequate in some respects. The shortcomings fell within the area of responsibility assumed by the Department as a result of its agreement with the Electoral Commission.

17. The conduct of the election was the sole responsibility of the Australian Electoral Commission. During the lengthy scrutiny, which lasted 9 weeks and two days, the Commission attracted considerable criticism. It was accused of inefficiency and of conducting a 'go slow' campaign to fulfil its earlier predictions that under the modified d'Hondt electoral system, it would be two months before results were known.

18. After consideration of evidence from party scrutineers, Electoral Commission officials and others with expert knowledge of electoral scrutineers, the Committee concluded that criticism of the Electoral Commission's performance was largely ill-informed. Above all, the Committee was impressed by the unprecedented scale of the election - with the largest ballot paper and field of candidates ever seen at an Australian parliamentary election, and complex formality rules which required scrutiny staff to check every one of over 20 million squares on 150 421 ballot papers.

xviii

Evaluation of the Modified d'Hondt Electoral System

19. The purpose of requiring election candidates to pay a deposit, refundable upon election or upon securing a specified, minimum percentage of the vote, is to discourage those who are not 'genuine' from nominating.

20. Currently candidates for the ACT Legislative Assembly elections are required to pay a \$100 deposit. There are no minimum membership requirements for political party registration in the ACT and it is not necessary for party candidates to be nominated by a minimum number of eligible electors, although, independent candidates must be nominated by two eligible electors.

21. In the first ACT election there were 117 candidates, 108 representing parties and 9 independents. The former included the 'Party! Party! Party!', the 'Sun Ripened Waxen Tomato' and the 'Surprise Party.' Arguments for and against raising the deposit are canvassed in Chapter 6. The ACT and Western Australian deposits of \$100 are the lowest Australian state or federal deposits with the next lowest being \$200.

22. The Committee believes that the deposit should not be too high but considers that a level of \$250 would not be prohibitive to or discourage serious candidates. The conditions for the refund of the deposit should remain the same, namely election or receiving at least 4% of total formal first preference votes.

23. The Committee recommends that:

- The level of deposit required for a candidate nominating for election to the ACT Assembly be raised to \$250.

24. The above measure should, however, be taken in conjunction with action to require that political parties registering for ACT elections have a minimum number of members. The minimum number should be high enough to establish the parties as genuine but not so high as to discourage the emergence of new, or the continuation of minor political associations. The Committee considers that a minimum of 100 members would satisfy these requirements.

25. The Committee recommends that:

- Political parties wishing to register for ACT elections be required to demonstrate a minimum membership of one hundred eligible ACT electors.

26. At the last election, one person, reputedly affiliated with one of the larger parties, registered and became the registered officer for six different parties. The Committee believes that such a situation is absurd and believes that action should be taken to prevent its recurrence.

xix

27. The Committee recommends that:

Restrictions be introduced to prevent the same individual:

- (a) from being able to register or
- (b) from being the registered officer

for more than one political party in the ACT.

28. The Committee was presented with ample evidence that the system made it difficult for electors to give effect to voting intentions, and on occasion could subvert them.

29. The threshold chosen for the ACT electoral system is a Droop quota, the same type used with the Senate and the Tasmanian Hare-Clark systems. It is calculated by dividing the total number of first preference votes by one more than the number of candidates and adding 1 vote to the total. For 17 vacancies this comes to approximately 5.56% of total first preferences.

30. There is no intrinsic quota in a d'Hondt system and the threshold quota in the modified d'Hondt electoral system is quite different from Senate and Hare-Clark quotas, which can be built up from the transfer of surplus or excluded votes. The ACT system excludes parties or independent candidates who fail to achieve the threshold. The result of this was that not all elected candidates achieved more votes than the candidates who were excluded by the threshold and were thus unsuccessful. This formed the basis of much of the criticism which has been directed at the modified d'Hondt system.

31. The Committee considers that the 5.56% threshold is arbitrary. It certainly has not proven to be any guarantee of stable government. However, the Committee is of the view that it is not appropriate to make any recommendation concerning the threshold, in isolation from the ACT electoral system in its entirety.

32. The No Self-Government Party noted that Independent candidates did not enjoy the privilege of lodging a registered voting ticket and recommended that parties should be treated the same as independent candidates and not be permitted to lodge party voting tickets.

33. The Liberal Party also could find no basis for discriminating between independent candidates and parties in this way, and recommended that consideration should be given to introducing 'Robson' provisions with whatever voting system is in force. That would mean the abolition of how to vote cards at polling booths and the adoption of rotating ballot papers.²

xx

2. Evidence, p. 225.

34. The Committee considers that although it might appear to be fairer to treat parties and independent candidates in an identical manner, there are nevertheless good reasons for making some distinctions. If independent candidates were permitted to lodge registered voting tickets there would be nothing to prevent persons from standing with the primary purpose of benefiting a particular party through the distribution of their preferences.

35. The requirements of any alternative electoral system would affect how independent candidates could be treated in relation to parties. However, the Committee recommends the following principles:

- No change should be made to the provisions whereby independent candidates are not permitted to lodge the equivalent of a registered party voting ticket.
- In order to make a ballot paper of manageable size, independent candidates should be grouped.

36. Deeming rules are used to interpret a voter's intention when that intention is not absolutely clear. Without deeming rules votes may be wasted by being disregarded as informal or exhausted. The deeming provisions in the ACT electoral system are elaborate. Some of them have attracted substantial criticism on the grounds that they go beyond what could reasonably be inferred from the ballot paper. Examples of the effects of the deeming provisions given in Chapter 6 show that the voters intention can be thwarted by some of the provisions.

37. The AEC pointed out that the deeming rules were poorly understood prior to the election and several parties including the Australian Democrats and the National Party distributed how-to-vote material which advocated placing preference votes above and below the ballot line for the same party.³

38. The deeming provisions which drew most intense criticism were those concerning the use of the registered party voting ticket. It seems unlikely that many voters would have been aware of the operation of these rules and the consequent affect on their votes.

39. The Committee understands that the rationale behind the deeming provisions was to eliminate vote wastage by maximising the formal vote. Accordingly where a voter's intention appeared to be clear the deeming rules were designed to give effect to that intention. The rules were devised by the ACT Administration on the basic premise that as the electoral system was fundamentally a party list system, votes for candidates of parties should be interpretations primarily as votes for parties.

xxi

3. Evidence, p. S44.

Hence any ambiguities were to be resolved by reference to registered party voting tickets. This philosophy does not appear to have been supported by the Australian Electoral Commission.

40. The Committee concluded that some of the deeming provisions in the ACT electoral system imposed unreasonable interpretation upon voters' intentions in order to maximise the formal vote. The Committee recommends that:

Where appropriate, the Senate formality rules and deeming provisions serve as a model for the formality rules and deeming provisions of the ACT electoral system.

41. To allow votes to be cast in a meaningful manner, an electoral system should be constructed on solid democratic principles and it should be internally consistent. One of the major sources of criticism of the modified d'Hondt system is that it lacks integrity. A number of witnesses expressed concern over structural anomalies within the modified d'Hondt system. These were:

- . The threshold, already discussed, is inconsistent with the fundamental aims of the proportional representation system, party list d'Hondt, on which modified d'Hondt is based. It limits the extent to which parties will be represented in proportion to their vote.
- . By excluding in bulk, parties and independent candidates who fail to achieve the threshold, the system runs the risk of not guaranteeing sufficient candidates will remain to fill all vacancies.
- . The system allows the transfer of first preferences from parties and independents who are excluded by the threshold, presumably so that those votes will not be wasted, but does not allow the distribution of surplus votes. At the provisional election of candidates stage, the system allows the transfer of votes to candidates who are already elected.
- . Candidates not provisionally elected at the provisional election of candidates stage, have all the votes they have accumulated up to that point transferred away from them but may also gain votes from other provisionally elected candidates.

42. Because of the problems identified with the modified d'Hondt system, the majority of witnesses recommended that it be abandoned. Only the Liberal Party, the Residents Rally and the No Self Government Party considered that it could reasonably be

given a further trial but without the so-called 'Hill' amendments, (stages 6 to 8 of the scrutiny).

43. The No Self Government Party suggested that a pure d'Hondt list system might as well be used as no candidate was elected outside of the order determined by the party. In its submission to the Inquiry the Labor Party also mentioned a pure d'Hondt, party list, system - but as a second best option (after single member electorates).⁴ However, the strongest calls were for the rejection of the modified d'Hondt system as hopelessly ill-conceived and irredeemable. The Australian Electoral Commission concluded that it was:

an electoral system in which the whole is less than the sum of its parts'.⁵

44. The Committee tried at length to find simplifications of the modified d'Hondt electoral system which would enable it both to address the concerns of the witnesses and to operate effectively. However, because of the difficulties associated with the first ACT election, namely the size of the ballot paper, the length of the count and the near impossibility of understanding how to cast an effective vote, the Committee was unable to come up with any changes to the modified d'Hondt system which would be considered acceptable by the ACT electorate.

An Examination of Alternatives

45. In Chapter 7 a tabular summary is given of the electoral systems favoured by witnesses with a coded list of the reasons given to support their choices. A similar tabular list sets out systems unacceptable to witnesses.

46. Not all witnesses commented on the electoral system or gave a preferred alternative. Of those that did, most approved of a proportional representation system: either the Senate or the Hare-Clark⁶ system with 3 x 7 multi-member electorates. The most commonly cited reasons in favour of such a system were that it:

- . would allow for an accurate transformation of electoral support into representation in an assembly and thereby ensure that the government reflected a suitable range of electoral opinion, and
- . permit change of government when electoral support fell below a reasonable level.
- . was long established (in Tasmania), and
- . would also provide an acceptable degree of local representation and an acceptable speed of counting.

xxiii

4. Evidence, p. S286.

5. Evidence, p. S49.

6. That is, the Tasmanian Hare-Clark system as it is currently operating.

47. Representatives of the Labor Party and Ms Padgham-Purich, an independent MLA from the Northern Territory, supported a system of single member electorates. The reasons advanced in its favour were that the system:

- . is used in every other state or territory in Australia with the exception of Tasmania;
- . is simple, widely understood and trusted;
- . allows the most effective form of local representation and a uniquely close relationship between a member and constituents; the obverse is that a member is most directly accountable to the electorate;
- . allows results to be known very rapidly; and
- . historically, is most likely to result in stable government.

48. The crux of the difference between the two major viewpoints put to the Committee is the comparative advantages of stable and workable government versus government which represents the fullest possible cross-section of interest groups and viewpoints. However, to couch it this way is to accept that the only effective government is a majority government. The outcome of experiments with minority governments in Tasmania and the ACT cannot be predicted, but there are already signs of instability in the ACT.

Conclusions

49. Many of the submissions have included the desirable features of acceptable electoral systems. However, there is no perfect electoral system; the best system for any government system or polity depends upon the prevailing political and social circumstances. In evidence before the inquiry the recently retired Australian Electoral Commissioner, Dr Hughes, drew attention to the view expressed by the Commission in its publications, that there had been *'an excessive proliferation'* of electoral systems in Australia. The Commission had two major concerns about the development of the modified d'Hondt system:

1. The development of yet another electoral system was contrary to the principle of parsimony, and
2. The system selected was *'an attempt to stick together two totally disparate streams of electoral development.'*⁸

50. The Committee acknowledges the validity of Dr Hughes' claims, particularly the view that it would be undesirable to develop yet another electoral system. The novel and interesting suggestions of some witnesses have not been explored for that reason.

51. The Committee opinion on what alternative it should recommend is divided. The preferred system of the Labor Party members remains single member electorates, for the reasons cited above, namely, that it is a simple, trusted system, giving an unrivalled degree of local representation and most likely to result in stable government. The preferred system of the Coalition members and of the Democrat representative, Senator Jenkins and of the independent, Senator Harradine, is a Hare-Clark system with multi-member electorates, on the grounds that: proportional systems are inherently fairer; can also provide local representation; would be ideally suited to the circumstances of the ACT; and a system of proportional representation was overwhelmingly supported by the majority of groups giving evidence to the Inquiry.

52. The Committee is however unable to recommend either system as one that would at present be likely to secure passage through both Houses of Parliament. For that reason it recommends that the choice be put to the ACT electorate in a referendum. On the basis that the determination of the electoral system is a Commonwealth responsibility, the Commonwealth Government should provide the necessary funds for the conduct of the referendum by the Australian Electoral Commission and should undertake to abide by the result.

The Committee recommends that:

A referendum be held in the ACT to establish which of the two following electoral systems would be preferred by the majority of voters

- . a system of single member electorates using the House of Representatives voting system
- . A system of proportional representation with multi-member electorates modelled on the Tasmanian Hare-Clark voting system.

The Commonwealth government provide funds for the Australian Electoral Commission to conduct the referendum.

All parties should agree to introduce at the earliest opportunity whichever of the two electoral systems is preferred by a majority of ACT voters.

7. Evidence, p. 108.

8. Evidence, p. 119.

CHAPTER 1

THE ROAD TO SELF-GOVERNMENT

- . Seat of Government
- . Designs, committees and commissions
- . First elected representative
- . The Advisory Council
- . Parliamentary representation
- . Report on self-government
- . A parliamentary inquiry
- . Construction gets underway
- . Another report
- . 'One of my better deeds'
- . A Progress Report
- . Difficulties in preparing for self-government
- . Another parliamentary inquiry
- . Recommended electoral system
- . The Legislative Assembly
- . The first Task Force
- . Another discussion paper
- . The self-government referendum
- . Another House of Assembly
- . Second Task Force recommends proportional representation
- . House of Assembly report on self-government
- . Minister proposes single member electorates

Seat of Government

1.1 Proclamation of the *Australian Capital Territory (Self-Government) Act 1988*¹ concluded a long and difficult gestation period for the granting of territorial self-government. The Constitution provided for the creation of a seat of government within a territory. A decision to locate the seat of government in the Yass/Canberra district was made in 1908 and was embodied in the *Seat of Government Act 1908*². A compact for the hand-over of land comprising the Federal Capital Territory from NSW to the Commonwealth was achieved by the *NSW Seat of Government Surrender Act 1909* and the *Commonwealth Seat of Government Acceptance Act 1909*³. The latter came into force on 22 January 1911.

1.2 Until the self-government bills were passed the Capital Territory was the responsibility of the Commonwealth Parliament. The Commonwealth controlled ACT finances, and the scope of responsibilities of successive Commonwealth Ministers responsible for the ACT ensured executive control. Similarly, law-making procedures were also reserved to the executive by virtue of the *Seat of Government (Administration) Act 1910*⁴ which delegated power to the Governor-General to make laws (Ordinances) for the peace, order and good government of the ACT. Ordinances could be disallowed by either House of the Parliament, however, in practice very few were disallowed. The Seat of Government (Administration) Act was conceived as an interim measure at a time when the Parliament was meeting in Melbourne. The long title of the Act is 'An Act to provide for the Provisional Government of the Territory for the Seat of Government of the Commonwealth' (emphasis added). The ceremony inaugurating and dedicating Canberra as the national capital took place on 12 March 1913.

1.3 The laws of NSW and a number of Imperial Statutes also provided another source of law by virtue of section 6 of the *Seat of Government Acceptance Act 1909* and various Commonwealth Acts⁵.

1.4 In subsequent decades the form of self-government and its timing were the subject of innumerable ministerial pronouncements, inquiries, reports, findings and considerable debate in Parliament. Various experiments at what can be loosely described as representative or consultative government were tried but all reserved ultimate decision-making to incumbent Commonwealth Governments. The laws of NSW were generally applied and where they were deficient ordinances were Gazetted and sometimes debated by representative advisory bodies. The local community was, in effect, disenfranchised on local issues.

Designs, committees and commissions

1.5 An international competition for the design of the new city was launched in April 1911. Criticism that Walter Burley Griffin's winning entry was too elaborate and costly caused the Government to refer the three best entries to a departmental board of experts for report. The board was unable to recommend any of the designs and submitted its own, which was adopted, and work on the national capital commenced. A change in government saw Griffin invited to participate in the implementation of the board's design. He refused to co-operate with the board and was subsequently asked to prepare a report on how his proposal might be implemented. Consideration of his report led to the decision to revert to his original plan. Griffin remained in control of the work at Canberra until December 1920 when the Federal Capital Advisory Committee was established.

1.6 The creation of the Federal Capital Advisory Committee provided some impetus to construction and planning of the city. The planning and construction of infrastructure for the seat of government proceeded apace with the creation of the Federal Capital Commission (FCC) in October 1924. The FCC was given powers to plan, develop and administer Canberra under the *Seat of Government (Administration) Act 1924*⁶. The Commission comprised three appointed officials with pervasive and extensive powers. Its immediate and principal task was to arrange for the transfer of Parliament and the public service to Canberra. Considerations of even a modicum of consultation about basic municipal affairs with the community were subordinated to the immediate task. The Commission nevertheless attempted to forestall some criticism by coalescing community groups into the Social Service Association and providing it with funds to improve social amenities.⁷

1.7 One factor militating against self-government or community consultation during the formative years of the territory was the lack of population. In March 1916 it was 2400 people, at the end of 1922 it was 2500, and when the provisional Parliament House was opened in 1927, it was 7,000. In 1927 Australia had a Seat of Government in Canberra comprising a few "temporary" and permanent structures and permanent houses, a relatively small number of public servants, and a larger group of construction workers. Another factor, advanced by the Commission, was that Canberra was different from other towns because it was being built with public money; the vision that was Canberra could only be destroyed by municipal or parish politics.

1. No. 106 of 1988.

2. No. 24 of 1908.

3. No. 23 of 1909.

4. No. 25 of 1910 (came into force 1 January 1911).

5. Australia, Parliament, 1984, *Task Force on Implementation of*

ACT Self Government, Parliamentary Paper 139, pp. 12-13

(Hereafter called the 1984 Task Force).

6. No. 8 of 1924.

7. Australia, Parliament, 1979, *Planning in the ACT - Procedures, processes and community involvement: Report of the Joint Committee on the Australian Capital Territory, Parliamentary Paper 65*, pp. 1-6. See also: Gibbney, Jim 1988, *Canberra 1913-1953*, AGPS, Canberra, Chapters 1-3.

First elected representative

1.8 The provisional Parliament House was opened on 9 May 1927. The same year Canberra's first large-scale political meeting was held to form the Federal Capital Territory Citizens' Representation Committee which prepared and circulated a petition for an elected representative to the Commission. The extent of the petitioners' success was questionable. *The Seat of Government (Administration) Act 1928*⁸ provided for the third member of the Commission (the 'Third Commissioner') to be elected on a property franchise. During their brief tenure, the two successive independent community representatives often clashed with appointed Commissioners. Two years later, with a change in government, the Commission was dismantled and the administration of the capital was returned to various departments.

The Advisory Council

1.9 A new means of representative consultation was established - the ACT Advisory Council comprising four public servants appointed by the Government⁹ and three elected representatives. The Council's role was to advise the Minister for Home Affairs on matters affecting the Territory, including the making of new ordinances, and the amendment or repeal of existing ordinances.

1.10 The first Advisory Council elections were held in May 1930. The successful candidates were independents well known to the community through involvement in community affairs. The Council did not have any real power beyond its advisory role. Its recommendations were accepted if they conformed with government policy and rejected if they did not. The elected members were part-time and staff resources provided were minimal. However, the Council did represent a forum where community concerns could be ventilated; a sounding board for community reactions or concerns. At the time it was seen by some as an interim measure pending a decision on the final form of government for the Territory and its subsequent implementation.

1.11 Vacancies were filled in a succession of counts. To fill the first vacancy candidates with the fewest votes were excluded in order and their preferences transferred to continuing candidates until one candidate had an absolute majority. To fill the second vacancy, all ballot papers, excepting those of the elected candidate, were re-sorted to the second preference shown. Again, candidates with the fewest votes were excluded and their votes transferred until a continuing candidate achieved an absolute majority. The third vacancy was filled in like manner. This was the Senate voting system which operated from 1919 to 1948. Advisory Council elections were conducted under this system until 1951 when proportional representation was taken up.

Parliamentary representation

1.12 Just prior to the Second World War, when the population was 10 000, the National Capital Planning and Development Committee was appointed by the Government to monitor the development of Canberra. At the end of the war, when the population was approaching 15 000, the Citizens' Rights League was formed with the endorsement of the Advisory Council. It campaigned for Territorial representation in Parliament and for the establishment of a legislative council. Demands for Territorial representation in Parliament were partially assuaged by the introduction of the *Australian Capital Representation Act 1948*.¹⁰ This Bill, while providing for the election of a Member for the ACT, restricted representation to local matters. The Member could only vote on motions for the disallowance of any ordinance of the ACT or on an amendment to such a motion.

Report on self-government

1.13 The question of territorial self-government was placed by the government in the hands of the Town Clerk of Hobart, who, in 1949, presented a report recommending the creation of a city council of 12 aldermen and a mayor elected by proportional representation¹¹. The recommendations were not implemented by the Government nor were they taken up by the in-coming Liberal-Country Party government in 1951. Instead, the number of elected members to the Advisory Council was increased to five, giving them a majority over appointed members.

A parliamentary inquiry

1.14 The early 1950s, as well as being a period when questions about local government re-emerged, was also a period when questions about the development of Canberra were being asked in Parliament. The population in 1954 was 28 000 of whom 8 700 were employed directly or indirectly by the Commonwealth. After 40 years only a semblance of Walter Burley Griffin's grand plan was evident to even the most generous observer.

1.15 In November 1954 the Senate appointed a select committee to inquire into the development of Canberra in relation to the original plan and subsequent modifications, and matters incidental thereto, such as self-government. The Committee's report¹², presented in September 1955, recommended that the system of divided departmental control of Canberra be replaced by a single authority, comprising a commissioner and a corporation responsible to the Minister for the administration, planning, construction and development of Canberra. The Committee also tackled the by now vexed question of self-government, recommending a legislative council responsible for making laws on

10. No. 57 of 1948.

11. Cole, H J R, Report on Civic Administration with a recommendation for a City Council for Canberra, 1949.

12. Australia, Parliament, 1955, Report from the Senate Select Committee on the Development of Canberra, Parliamentary Paper, S2.

8. No. 44 of 1928.

9. The Advisory Council Ordinance 1930 (No.4 of 1930).

specified subjects, but with no executive or administrative functions. The Committee foresaw a need for a municipal council for the city and a shire council for rural parts of the ACT. The immediate impact of the Committee's recommendations was reduced momentarily by the general election of October 1955, but during the 1956 autumn sittings the Senate debated the Committee's report at length. A number of important changes followed.

Construction gets underway

1.16 Impetus for action came from another quarter during this period. In April 1956, the Prime Minister, The Hon. Robert Menzies, wrote to the Minister for the Interior (the Hon. David Fairhall) *'I am not very proud of what has happened to Canberra during my current period of office.'*¹³ The new Minister's action resulted not in self-government but in Commonwealth parliamentary oversight of the planning and development of the city by the Joint Committee on the ACT, established in 1957. The Committee initially saw its role as the parliamentary guardian of Burley Griffin's vision. Shortly before the Committee's first meeting the Prime Minister announced a crucial decision affecting the population and development of the city. Defence personnel dealing with policy would be transferred from Melbourne to Canberra. A program of works was announced.

Another report

1.17 During the same year, the question of self-government was addressed yet again, this time in a study undertaken by the Royal Institute of Planning and Administration. The report echoed underlying sentiments already enshrined in the Advisory Council Ordinance which reserved to the executive final decision-making powers. The report concluded:

*...it should be frankly recognised that the fundamental difficulty associated with the granting of increased self-government to the Territory is that of reconciling local independence and responsibility with the overwhelming financial responsibility of the Commonwealth for both the maintenance and the initial construction of a capital city worthy of the nation. This, of course, is the crux of the political problem.*¹⁴

'One of my better deeds'

1.18 Planning and development needs again eclipsed local aspirations towards self-government, this time with considerable vigour and government (financial) support. The vision came from Sir William Holford, commissioned to revive Burley-Griffin's

plan. Co-ordination was achieved by the establishment of the National Capital Development Commission in 1957. Government support came from the Hon. Robert Menzies who, in later life and during a period of considerable debate about the construction of a casino in Canberra, considered that the development of Canberra as a national capital *'... might be regarded as one of my better deeds.'*¹⁵ In 1958, when the NCDC commenced addressing the Holford plan, the population was 39 000 and growing at a rate of 5 000 per annum. Such was the speed with which the planners and builders approached their task that a decade later, when the population had reached 100 000, the Molonglo flood plain had been transformed into Lake Burley Griffin and many public buildings had been completed or were nearing completion.

A Progress Report

1.19 In 1966 the Member for the ACT was given the right to vote in any divisions in the House of Representatives. In May 1967 the question of a form of self-government for the ACT was again discussed in a progress report presented to Parliament by the Minister for the Interior, the Rt Hon. Doug Anthony. The report addressed the desirability and practicality of extending a share of the responsibility for the government and administration to ACT electors. In its opening chapter the report reiterated a principle stated in previous reports:

*The basic problem in developing a system of self-government for the Australian Capital Territory would be to keep inviolate the interests of the Commonwealth, and at the same time provide an effective and efficient system of government by assigning to the local community appropriate responsibility for its domestic and community affairs.*¹⁶

Difficulties in preparing for self-government

1.20 The progress report was more a discussion paper detailing investigations conducted by government departments into questions of administration, finances and law as well as political realities than a blueprint for self-government. Couched in what could be described as careful bureaucratise the report concluded:

In short, alongside the many more years of departmental investigation and testing of proposals, depending upon the decisions of the Government in relation to the future

15. Sparke, op cit, p. 267.

16. Australia, Parliament, 1967, Self Government for the Australian Capital Territory - A Progress Report by the Honourable J D Anthony, MP, Minister for the Interior, on Preliminary Studies into the question of self-government for the people of Canberra and of the Australian Capital Territory, Parliamentary Paper 49, pp. 24-25. (Hereafter called 'The Progress Report').

13. Quoted in Sparke, Eric, 1988, Canberra 1954-1980, AGPS, Canberra, p. 52.

14. ACT Regional Group, Royal Institute of Public Administration, The Government of the Australian Capital Territory, Canberra, 1957, p. 2.

government of the Australian Capital Territory, a stage would be reached where the community could begin to participate, in one way or another, in a gradually widening range of activities and with an increasing degree of responsibility. It would not be necessary for changes in the present system of government and administration of the Territory to await the completion of all of the investigations.¹⁷

It is difficult to estimate accurately how long the investigations will take with the existing limited resources, which are often stretched to breaking point with the pressure of work generated by the community and its spokesmen. As can be seen, the problems are considerable. Completion of the task appears likely to take several years, although at this stage it is not known what complications can be anticipated. Should a larger and more effective team organisation be set up to assist the investigation the time-scale would naturally be reduced.¹⁸

The report concluded

*It remains for the parliament as the representative of the electorate on whose behalf the national capital and its Territory were created, and the Government, as the instrument through which the Australian Capital Territory is administered, to decide what form of self-government should be established and how the many national and local interests are to be served.*¹⁹

1.21 If anything, the Advisory Council was a gesture rather than a serious attempt at democratic self-government. Its powerlessness made it the subject of ridicule; one candidate in 1967 was elected as True Whig.²⁰ In 1969 the elected members resigned en masse, claiming that 50 of their recommendations for the Minister for the Interior had been ignored, and additional rates had been arbitrarily introduced.²¹ The mass resignation failed to produce any revolutionary fervour towards self-government from Canberra citizens. Instead, there were moves towards rationalising the laws of the ACT. This monumental task involved an examination of Imperial and NSW Acts in force in the ACT and the identification of those with continued practical utility and those which could be repealed. This task was undertaken by the ACT Law Reform Commission commencing in 1971.²²

17. *ibid.*

18. Progress Report, *op cit*, pp. 24-25.

19. *ibid.*

20. Sparke, *op cit*, p. 269.

21. *ibid.*

22. *ibid.*, p. 277.

Another parliamentary inquiry

1.22 Amidst changes in portfolio and departmental responsibilities, in August 1973 the Joint Committee on the ACT was requested to inquire into self-government and finance in the ACT. The Committee's report, presented in 1975 recommended that self-government be granted to the ACT '... in as wide terms as are consistent with the national interest.'²³

1.23 It recommended the establishment of a Legislative Assembly of 19 full-time members. It said Territorial Government should be undertaken in two stages, the first would involve the Assembly's development of its practices and procedures, and gradual assumption of responsibilities, the second, the assumption of a general power to make Ordinances.

Recommended electoral system

1.24 Of significance for the purposes of this report was the manner in which Assembly members were to be elected, the principal issues being the number of electorates and the system of voting. The report's recommendations included:

*... the division of the ACT into two electorates based on the divisions currently used in House of Representatives elections.*²⁴

1.25 Imbalances between the number of electors and between the two divisions could be overcome by the division with the larger number of enrolments at the closing of the rolls returning ten members and the other nine.

*Further electorates could be created after the first Assembly election as more seats for the House of Representatives were allocated to the ACT.*²⁵

1.26 The Committee recommended that the Senate voting system be adopted but modified to allow optional preferential voting.

1.27 In a dissenting report, the Member for Canberra (and a former Advisory Council member), Ken Fry, recommended: *That for the next election of the ACT legislative Assembly the Federal Electorates of Canberra and Fraser should each be divided into two wards. Each ward should return five or six representatives, depending on the*

23. Australia, Parliament, 1975, Self Government and Public Finance in the Australian Capital Territory, Report from the Joint Committee on the Australian Capital Territory, Parliamentary Paper, p. 26.

24. *ibid.*, p. 44.

25. *ibid.*

actual population in each ward area, and the larger of the two electorates should return one more representative than the smaller in order to have an uneven number of members in the Assembly.²⁶

The Legislative Assembly

1.28 A number of developments, however, pre-empted the Committee's recommendations. In July 1974, during the course of the Committee's inquiry, Cabinet decided to replace the Advisory Council with a larger, wholly elected, Legislative Assembly comprising 18 part-time members, nine each from the electorates of Fraser and Canberra. The first election was held in September 1974. There was a field of 56 candidates, 25 candidates standing in the Division of Canberra, and 31 in Fraser. Voters were required to vote preferentially up to the number of vacancies (9) but further preferential voting was optional. The Assembly had its first meeting in October. The Assembly's powers, the ACT Committee noted, were limited; the Minister for the Capital Territory had discretionary powers whether to refer an Ordinance to the Assembly and a discretion to accept or reject its advice.²⁷

The first Task Force

1.29 In December 1975 the in-coming Fraser Government undertook to set up a Task Force to give executive authority to the Legislative Assembly from July 1976.²⁸ The report of the Task Force recommended detailed arrangements for implementing self-government over mainly municipal activities. The Minister for the Capital Territory, the Hon. Tony Staley, later announced that the Government had abandoned the 1 July 1976 deadline. No new date was set.

Another discussion paper

1.30 In September 1977 the Minister, Mr Staley, reopened public debate on self-government, by releasing a proposal for the constitutional development of the ACT

*... with the objective of encouraging widespread public examination and comments on the issues prior to a final decision being made.*²⁹

While not proposing a specific voting system the report advocated a basic structure for the ACT government:

... the term of the present Assembly will be extended until no later than 31 December 1978 to allow full public debate of the proposals

26. *ibid.*

27. Joint Committee on the ACT, 1975 report, op cit.

28. Australia, Report of the Task Force on Self-Government in the Australian Capital Territory, March 1976.

29. House of Representatives, Hansard, 15 September 1977, p. 1181.

*... Under the proposals now released it is envisaged that legislative and executive responsibility for a significant portion of territorial activities will be transferred in one step to an elected Assembly. The Commonwealth, however, would retain control of matters affecting the national interest or the seat of government interest.*³⁰

The self-government referendum

1.31 Any public debate about the proposals was soon lost in the December 1977 general election campaign; with a new Minister for the Capital Territory, the Hon. R. Ellicot, there was a change in direction. In November 1978 the citizens of Canberra voted in a referendum on self-government.

There were three options and voters were asked to mark them in order of preference:

Proposal A - a state-type legislature to which functions would be delegated in stages

Proposal B - municipal-style government

Proposal C - allowing present arrangements to continue for the time being.

1.32 The result: 63 per cent voted status quo, 30 per cent state type and 6 per cent municipal-type government.³¹ The result relieved the Government of any pressure for granting self-government to the ACT in the foreseeable future.

Another House of Assembly

1.33 In 1979 the Legislative Assembly, which had continued in office without an election since 1974, was renamed the House of Assembly with a membership of 18. Elections for the House of Assembly were held in June 1979 and 1982. The electoral system used was the pre-1984 Senate system of proportional representation. The following year, 1983, saw a change in Federal Government and another attempt at what had eluded their predecessors.

Second Task Force recommends proportional representation

1.34 Another Task Force was appointed on 9 November 1983 by the Minister for Territories and Local Government, the Hon. Tom Uren. The Task Force submitted its report in May 1984.³² The report outlined and developed a strategy by which a responsible and representative system of government could be introduced in the ACT in a way which was consistent with the ACT's status as the seat of Government and Canberra's role as the national capital.

30. *ibid.*

31. Sparke, op cit, p. 288.

32. Task Force, op cit, p. 16.

1.35 The report recommended a 15 member unicameral legislature elected by proportional representation from three electorates.

House of Assembly report on self-government

1.36 In August 1985 the House of Assembly's Standing Committee on the Transition to Territorial Government presented a report on proposals for self-government.³³ The report's extensive recommendations covered the form of self-government, the powers of a proposed Legislative Assembly, electoral matters and financial arrangements. The proposed Legislative Assembly would have a membership of 21 full-time members, elected from multi-member electorates. The report endorsed the Senate, proportional representation system, without naming it, recommending that *'current Federal electoral legislation be applied to the ACT electoral system.'*³⁴

Minister proposes single member electorates

1.37 In December 1985 the Hon. Gordon Scholes, Minister for Territories, proposed a system of government with an ACT Council of 13 part-time members, elected from single member electorates. It would have four-year fixed terms and would be responsible for basic municipal and state-type functions. Most of the remaining functions would be integrated into a single Commonwealth portfolio. A firm timetable was declared -

June 1986 - existing House of Assembly lapses

September 1986 - elections for ACT Council

January 1987 - Council begins to operate

1.38 On 19 March 1986 the ACT Council Bill was introduced in the House of Representatives; many critics attacked the Bill as providing little more than a town council. The political opposition concentrated on the theme that single-member electorates would favour the Labor Party and exclude minority groups. The Bill was passed by the House of Representatives on 14 April 1986. It was introduced in the Senate on 16 April 1986 but did not pass the second reading stage. On 26 May 1986 Mr Scholes announced the Government would propose amendments to the Bill which would provide for 10 single-member electorates and nine members elected from the ACT at large. The Bill was not restored to the Senate Notice Paper. On 22 August 1986 the Democrats introduced the Australian Capital Territory Effective

Self-Government Bill which provided for 3 seven-member electorates with election by a single transferable vote system. The Bill did not pass the second reading stage.

33. Australian Capital Territory, House of Assembly, Report: Proposals for Self Government, Report of the Standing Committee on the Transition to Territorial Government, August 1985.

34. *ibid.*, p. 22.

CHAPTER 2

ELECTORAL SYSTEMS

- . Introduction
- . Electoral systems
- . Plurality systems
- . Majoritarian systems
- . Proportional representation
- . Mixed systems
- . Conclusion

Introduction¹

2.1 On 4 March 1989 electors in the Australian Capital Territory went to the polls to elect members of the new ACT Legislative Assembly. The electoral system used, termed modified d'Hondt, provided for a form of proportional representation not previously used in Australia.

2.2 There are now a number of different electoral systems used to elect members to the various Parliaments in Australia. This chapter provides an outline of the electoral systems used in Australia together with some of the systems used in other countries, it also provides details of the method of scrutiny used in the Australian systems. This chapter is solely concerned with the mechanics of translating votes into seats and does not cover other aspects of the electoral process, i.e. franchise arrangements, candidate selection, the role of parties or manipulation of the electoral process.

2.3 The purpose of an electoral system is to translate the will of the electorate, as expressed through the ballot box, into members of a legislative body. The ways this can be achieved are many and varied. Electoral systems throughout the world range from very simple first-past-the-post systems to quite complex arrangements using a number of differing systems.

2.4 Given the almost infinite variety of systems and combinations that are possible it is probably worthwhile considering some basic requirements that a truly representative system should possess.

2.5 An electoral system should:

- . result in a legislature that reflects the electorate's wishes;
- . result in a government that reflects the majority opinion of the electorate;
- . allow for stable government;
- . ensure the election of members whose personal qualities best fit them for legislative responsibilities;
- . be easily understood by the electorate;
- . ensure a quick result;

1. This chapter reproduces, with minor amendments, a paper produced by Dr Gerard Newman, Director of the Statistics Group of the Parliamentary Library. The paper is *Electoral Systems*, Current Issues Paper No.3 1989-90, Legislative Research 2 Service, September 1989.

- . allow effective constituent representation; and
- . allow elector choice of candidates.

2.6 In considering the above requirements it should be noted that some may not be compatible and that not all will be present in any individual system. The absence of some of these requirements in a system should not necessarily mean that the system does not have merit. Electoral systems should vary from country to country depending upon the individual circumstances prevailing at that time and place.

The function of any electoral system is to convert the votes cast in an election into seats in the legislature. This can be achieved by a plurality of votes, a majority of votes, or proportionally. Thus there are three categories of electoral systems: plurality, majoritarian and proportional representation.

Electoral systems

Plurality

- . First-Past-the-Post
- . Single Non-Transferable Vote
- . Block Vote
- . Limited Vote
- . Approval Voting

Majoritarian

- . Alternative Vote
- . Second Ballot

Proportional Representation

- . List
 - . Largest Remainder
 - . Highest Average
 - . d'Hondt
 - . Sainte-Lague
 - . Modified Sainte-Lague
- . Single Transferable Vote
 - . Senate
 - . Hare Clark

2.7 The electoral system adopted by a country probably depends more on the country's political tradition rather than any abstract consideration of the relative merits of different systems. Countries with a British political heritage are more inclined to plurality and majoritarian systems while those of a European heritage are more inclined towards proportional representation.

2.8 As no one system incorporates all the requirements described above there would appear to be a strong argument for a legislative electoral system to be based on a combination of systems. However, this solution has not won general acceptance

as only the Bundestag of the Federal Republic of Germany, and the Japanese House of Councillors use a combination of systems. A significant feature of the electoral systems used in Australia is the use of one system for the lower house of the Parliament and the use of an alternative system for the upper house.

2.9 A summary of the electoral systems used in Australia and major western countries is contained in Tables 2.1 and 2.2.

Plurality systems

2.10 Plurality systems are the simplest of all electoral systems. The plurality system awards the seat to the candidate who receives the most votes regardless of whether the candidate receives a majority of votes. The plurality system is almost always used in conjunction with single member constituencies, but can be adapted for multi-member constituencies.

TABLE 2.1: AUSTRALIAN ELECTORAL SYSTEMS

State/Territory	Seats	Constituencies	System
New South Wales			
Legislative Assembly	109	109	Majoritarian: Alternative Vote
Legislative Council	45	1	Proportional Representation: Single Transferable Vote
Victoria			
Legislative Assembly	88	88	Majoritarian: Alternative Vote
Legislative Council	44	22	Majoritarian: Alternative Vote
Queensland			
Legislative Assembly	89	89	Majoritarian: Alternative Vote
South Australia			
House of Assembly	47	47	Majoritarian: Alternative Vote
Legislative Council	22	1	Proportional Representation: Single Transferable Vote
Western Australia			
Legislative Assembly	57	57	Majoritarian: Alternative Vote
Legislative Council	34	6	Proportional Representation: Single Transferable Vote
Tasmania			
House of Assembly	35	5	Proportional Representation: Single Transferable Vote (Hare-Clark)
Legislative Council	19	19	Majoritarian: Alternative Vote
Northern Territory			
Legislative Assembly	25	25	Majoritarian: Alternative Vote
Australian Capital Territory			
Legislative Assembly	17	1	Proportional Representation: Modified d'Hondt

TABLE 2.2: ELECTORAL SYSTEMS USED FOR NATIONAL PARLIAMENTS

Country	Parliament	Seats	Constituencies	System	Candidate Choice
Australia	Senate	76	8	Proportional Representation: Single Transferable Vote	Yes: individual candidate
	House of Representatives	148	148	Majoritarian: Alternative Vote	Yes: individual candidate
Austria	Nationalrat	183	9	Proportional Representation: 2 stage 1st Stage; Hare quota; 2nd Stage; d'Hondt	Yes: from party list
Belgium	Chamber of Representatives	212	30	Proportional Representation: 2 stage 1st Stage; Hare quota; 2nd Stage; d'Hondt	Yes: from party lists
Canada	House of Commons	282	282	Plurality: First-Past-The-Post	Yes: individual candidate
Denmark	Folketing	179	17	Proportional Representation: 2 stage 1st Stage; Modified Sainte-Lague (135 seats) 2nd Stage; Largest Remainder (40 seats)	Yes: from party lists
Finland	Ehduskunta	200	15	Proportional Representation: d'Hondt	Yes: from party lists
France	Chamber of Deputies	577	104	Proportional Representation: d'Hondt	No: strict party list
Germany	Bundestag	498	248	Additional Member; Constituency; Plurality (248 seats); National; d'Hondt (248 seats)	Yes: individual candidates No: strict party lists
Ireland	Dail	166	41	Proportional Representation: Single Transferable Vote	Yes: individual candidates
Israel	Knesset	120	1	Proportional Representation: d'Hondt	No: strict party lists

TABLE 2.2: ELECTION SYSTEMS USED FOR NATIONAL PARLIAMENTS (Continued)

Country	Parliament	Seats	Constituencies	System	Candidate Choice
Italy	Chamber of Deputies	630	31	Proportional Representation: 2 stage 1st Stage Imperiali quota; 2nd stage Largest Remainder	Yes: from party lists
Japan	House of Representatives	511	130	Plurality: Single Non-Transferable Vote	Yes: individual candidate
Netherlands	Second Chamber	150	1	Proportional Representation: d'Hondt	Yes: from party lists
New Zealand	House of Representatives	95	95	Plurality: First-Past-The-Post	Yes: individual candidate
Norway	Storting	157	19	Proportional Representation: Modified	Yes: from party lists
Sweden	Riksdag	349	28	Proportional Representation: Constituencies; modified Sainte-Lague (300 seats); National; Largest Remainder (49 seats)	Yes: from party lists
Switzerland	Nationalrat	200	26	Proportional Representation: Hagenbach- Schaff	Yes: from party lists
United Kingdom	House of Commons	650	650	Plurality: First-past-the-post	Yes: individual candidates
United States	House of Representatives	435	435	Plurality: First-past-the-post	Yes: individual candidate

Source: Adapted from T. Mackie and Rose The International Almanac of Electoral History, 2nd ed. Facts of File, Inc. New York.

2.11 The plurality system or first-past-the-post system awards the seat to the candidate with the most votes. In the following illustration candidate B wins the seat although not obtaining a majority.

Candidate	Votes	%
A	5 000	31.2
B	7 500	46.9
C	3 500	21.9
Total	16 000	100

2.12 Plurality systems are widely used but are largely restricted to the United Kingdom, Canada and the United States of America. Plurality systems are commonly used for the election of Heads of State where only one candidate is to be elected.

2.13 The variation of the first-past-the-post system used in Japan is referred to as the single non-transferable vote. This system is used to elect constituency members to both the House of Representatives and the House of Councillors. In both chambers members are elected from multi-member constituencies. Electors have one vote and candidates with the highest number of votes are elected. In the following example three members are to be elected. Candidates B, C and E are elected.

Candidate	Votes	%
A	500	2.4
B	6 000	28.6
C	5 500	26.2
D	1 000	4.8
E	4 000	19.0
F	2 500	11.9
G	1 500	7.1
Total	21 000	100.00

2.14 Other variations of the first-past-the-post system involving multi-member constituencies are the block vote and the limited vote systems. In the block vote system the elector has as many votes as there are candidates to be elected. Once again the candidates with the highest votes are elected regardless of whether they receive a majority of votes. The block vote system is mainly used in some local authority elections in Britain. The block vote system works best when the candidates are independents. When the candidates are members of parties, and

party voting is strong, the block vote system tends to exaggerate the characteristics of plurality systems for giving a bonus to the largest party. If three candidates are to be elected it is possible for all three candidates from the same party to be elected with only a small plurality. In the limited vote system the elector has fewer votes than there are candidates to be elected. The intention of this is to limit the number of seats that can be won by one party. However, the system does not overcome the problems of the block vote and can be manipulated by parties estimating the number of votes their candidates expect to gain and by nominating an optimal number of candidates.

2.15 An American initiative designed to overcome some of the problems of plurality systems for single member constituencies is approval voting. As the name suggests this system allows voters to vote for as many candidates as they approve of. Thus if five candidates are standing and a voter approves of three but not the other two candidates then he or she can vote for the three candidates he or she approved. Only one vote can be cast for each approved candidate. The candidate approved by the most voters, ie with the most votes, wins. A majority of votes is not required for election. The perceived advantages of approval voting over other plurality systems are: increased flexibility given to voters as voters can vote for all candidates they find acceptable, not just one candidate; increased voter turn-out as voters are better able to exercise a choice; would help elect the candidate with the greatest overall support not just the candidate with the largest number of votes; would give greater due to minority candidates as voters would be more likely to vote for minor party candidates knowing that their vote would no longer be wasted; not affected by the number of candidates standing.² A version of approval voting is used in Australia for the Norfolk Island Assembly.

2.16 The first-past-the-post system is widely seen to be unfair and many attempts have been made to improve or replace it in countries where it is in use. However, the system does have a number of advantages. First, when operated with single member constituencies it provides for a direct relationship between the member of the legislature and the local constituency. Second, because elections are contested at the constituency level there can be a degree of local control over the party's choice of candidate and parties must take some account of the constituency's wishes when selecting a candidate. Third, the system elects the candidate who receives the largest number of votes. Candidates cannot be elected as a result of the transfer of a third or fourth preference, thus defeating the candidate with the largest number of first preference votes. Fourth, the system is straightforward and easy to understand. Electors are not required to choose from vast lists of candidates or to

exercise preferences they may not have. The system is uncomplicated and produces a speedy outcome. Fifth, the system allows electors to directly choose the government and not be subject to backroom wheeling and dealing that can occur when a large number of parties are elected to the legislature. Sixth, there is less opportunity for minority parties to be given power disproportionate to their electoral support. Seventh, there is less likelihood of a proliferation of minor parties which may make the formation of stable government difficult. Finally, because elections are contested at the constituency level there is a greater possibility of outstanding candidates being elected regardless of party support.³

2.17 The main criticisms of the first-past-the-post system are that it cannot be relied upon to provide a legislature reflecting the various shades of opinion expressed at the election and it does not necessarily place in power a government supported by the majority of the electorate.

2.18 The first-past-the-post system is a winner take all system that can deny representation in the legislature to quite substantial levels of minority opinion and can provide large differences in the number of representatives elected with only a small difference in the number of votes obtained through the operation of the winning bonus. The Liberal Party in the United Kingdom has fought a singularly unsuccessful campaign against the first-past-the-post system in that country. The reason for the campaign is easily understood when the following results are possible. In the 1987 general election the Liberal Social Democratic Alliance polled 22.6% of the vote but received only 3.4% of the seats in the House of Commons. The 1987 general election results demonstrated both the under-representation of minority parties and the effect of the winning bonus.

UK House of Commons Election 1987

Party	Votes %	Seats No	Seats %
Conservatives	42.2	375	57.7
Labour	30.8	229	35.2
Liberal Social Democratic Alliance	22.6	22	3.4
Others	4.4	24	3.7
TOTAL	100.0	650	100.0

Source: The Times Guide to the House of Commons, June 1987, Times Books Ltd, London 1987.

2. S. Brams and P Fishburn, Approval Voting, Birkhauser, Boston, 1982.

3. P Hain, Proportional Misrepresentation, Wildwood House, Hants, 1986.

2.19 In 1987 the Conservative Party was the recipient of the winning bonus characteristic of the first-past-the-post system and the Liberal Social Democratic Alliance was the victim of the under-representation of minor parties. The other parties shown in the above table are primarily located in Northern Ireland. This result demonstrates a quirk of the first-past-the-post system that allows minor parties to gain representation commensurate with their level of support if that support is concentrated in a specific area rather than spread over the whole country.

2.20 The first-past-the-post system can also result in the election of a government that does not receive support from a majority of the electorate, or even by the largest number of votes. In countries with a strictly two party system there is a reasonable chance that the first-past-the-post system will result in the party receiving the majority of votes being elected to government. However, where significant third parties are present this possibility becomes remote. The situation can also occur where the party receiving the largest number of votes does not win sufficient seats to form a government. In New Zealand the Labour Party has been the victim on at least two recent occasions, 1978 and 1981.

NZ House of Representatives Elections, 1978 and 1981

Party	1978		1981	
	% Votes	% Seats	% Votes	% Seats
Labour Party	40.4	43.5	39.0	46.7
National Party	39.8	55.4	38.8	51.1
Others	19.8	1.1	22.3	2.2

Source: T. Mackie and R. Rose, The International Almanac of Electoral History, 2nd ed, Facts on File Inc. New York 1982

2.21 A further consequence of the first-past-the-post system is the tendency of the system to limit the range of candidates available through fear of splitting the vote. Thus two separate political parties with similar, but not the same policies, might decide to divide the constituencies between them rather than contesting all constituencies and splitting the vote. This tendency can provide a limitation to the choices facing an electorate.

Majoritarian systems

2.22 Majoritarian systems as the name suggests require the winning candidate to receive a majority (more than half) of the vote to ensure election. This can be achieved either through a second ballot or by means of preference voting (alternative

vote). The second ballot systems are restricted to electing members from single member constituencies while the alternative vote system can be used for both single and multi-member electorates.

2.23 In the second ballot system a second election is held a short time after the first election if no candidate gains more than 50% of the votes in the first election. Where second ballot systems are used the number of candidates eligible to enter the second election is restricted either by number - the two candidates who receive the highest vote - or by some threshold - only candidates receiving over a set percentage of the vote. Second ballot systems are more likely to be used in presidential elections rather than for legislative elections. Of the six Western European countries with a directly elected Head of State, three, including Austria, France and Portugal, use the second ballot system.

2.24 The second ballot system prevents the election of any candidate without a majority of the vote, thus overcoming one of the main criticisms of plurality systems. However, the second ballot system introduces a complication into the voting system. The requirement for a second ballot results in greater expense for the candidates and parties involved, greater inconvenience to the electors and delays the result of the election causing uncertainty. The requirement for a second ballot may also influence the final result as electors may use the first ballot as a form of protest vote.

2.25 The alternative vote system is familiar to all Australians as it is the system used to elect members to the House of Representatives and the lower houses of all State Parliaments except Tasmania. The alternative vote system removes the cumbersomeness of the second ballot system by asking the voter to indicate how he or she would vote if their first choice candidate were defeated and another choice had to be made from the remaining candidates.

2.26 The system operates by asking voters to number the candidates in order of their choice. If no candidate receives a majority, more than 50% of first preference votes, then the candidate with the lowest first preference vote is eliminated and that candidate's votes are redistributed to the remaining candidates on the basis of the second choices. Further candidates are eliminated until one candidate reaches a majority.

2.27 In the following example no candidate receives a majority of first preference votes. Candidate B received the lowest number of first preference votes and is eliminated first and B's preferences are distributed to the two remaining candidates. Candidate C is elected having received a majority of votes, after the distribution of candidate B's preferences, even though C did not receive the highest number of first preference votes.

Alternative Vote System

	First Preference Votes	Distribution of Candidate B's	Total
Candidate A	10 000	500	10 500
Candidate B	4 000
Candidate C	8 000	3 500	11 500
Total	22 000	4 000	22 000

2.28 In Australia the alternative vote system is now only used in single member constituencies. The system was used for multi-member constituencies to elect members of the Senate prior to 1949. The alternative vote system does not work well when applied to multi-member constituencies because of the propensity of the system to return members of the same party to all positions.

2.29 In multi-member electorates the alternative vote system requires electors to indicate an order of preference for all candidates. A candidate receiving a majority of first preference votes is elected. If no candidate receives a majority then the candidate with the lowest vote is eliminated and that candidate's votes are distributed. Candidates are eliminated until one candidate receives a majority. The votes of the first elected candidate are then distributed (all votes being used again) and if no candidate receives a majority then the process of elimination starts over again. The process continues until all vacancies are filled. The system can result in the election of members of the one party to all positions as the votes used to elect the first member are used again to elect the second and subsequent members.

2.30 In the following example, simplified by assuming that one candidate receives a majority of first preference votes, all three vacancies are filled by members of the same party.

Alternative vote - Multi-member constituency

	First Vacancy	Second Vacancy Distributed from Candidate A1	Total	Third Vacancy Distributed from Candidate A2	Total
Party A					
Candidate A1	200 000
Candidate A2	5 000	195 000	200 000
Candidate A3	2 000	1 000	3 000	194 000	197 000
Party B					
Candidate B1	180 000	3 000	183 000	4 000	187 000
Candidate B2	4 000	500	4 500	1 000	5 500
Candidate B3	1 000	500	1 500	1 000	2 500
TOTAL	392 000	200 000	392 000	200 000	392 000

2.31 Under the alternative vote system representation in the Senate was grossly unequal. On three occasions 1925, 1934, and 1943 all Senators elected were from the same party or coalition of parties. In every other election there were large discrepancies between support for individual parties and the number of Senators elected from each party. The system was changed in 1949 to the current single transferable vote form of proportional representation.

2.32 The main advantage of the alternative vote system (for single member constituencies) over plurality systems is that it requires the winning candidate to secure a majority of the vote. It thus avoids the situation where a candidate can be elected on a little over one third of the vote, where there are three relatively evenly supported candidates. The system also overcomes the problem of vote splitting. With the alternative vote system voters can exercise a choice between two similar candidates without the fear that a third, unacceptable, candidate may be elected. Thirdly the alternative vote system provides some dampener on the plurality system's characteristics of concentrating party representation on a geographical basis and of providing exaggerated majorities. Although party representation under the alternative vote system is more clearly aligned to voter support than under plurality systems the alternative vote system still produces working majorities and thus provides for stable government. The alternative vote system is relatively easy to understand and can produce relatively speedy results.

2.33 The principle disadvantage of the alternative vote system, and of plurality systems, is that the system does not necessarily reflect the wishes of the electorate. The degree of proportionality (i.e. members elected in proportion to voter support) is greater under alternative vote than under plurality but does not achieve the degree of proportionality of proportional representation systems. The system is still subject to the winning bonus phenomenon and can also result in the party winning the highest number of votes not receiving the largest number of seats. Although this factor is largely dependent upon the geographic spread of party support and on the mix of parties contesting the election.

2.34 The alternative vote system can often be capricious in its practical application and can result in the election of the least unfavoured rather than the most popular candidate. In a political situation consisting of a left, right and centre party, the centre party could receive preferences of both the left and right parties on the basis of being the least unfavourable option available.

2.35 The capriciousness of the alternative vote system can often be witnessed in Australia in what are termed three cornered contests. Here the winning party is often more dependent upon which party polls the least first preference votes rather than which party polls the most.

2.36 In the following example Lusher, National Party, was eliminated first and his preferences elected Fife, Liberal Party. However, if approximately 550 voters changed their first preference vote from Fife to Lusher then Lusher would have been elected. Thus, in this example the main contest was between which party would be placed second and which third.

House of Representatives Election 1984, Hume Electoral Division

		First Preference Votes		After Distribution of Lusher's Preferences	
		No.	%	No.	%
Milliken	ALP	24 342	39.3	26 221	42.3
Lusher	NP	18 245	29.5		
Fife	LIB	19 331	31.2	35 695	57.7

Source: Australian Electoral Commission, Election Statistics 1984: House of Representatives: Full Distribution of Preferences, AGPS Canberra 1985.

2.37 The alternative vote system has also been criticised because it requires voters to express a preference for candidates where the voter may not wish to do so. This situation can be overcome by allowing voters the option of not expressing preferences if they so desire. The optional preferential system has been used for New South Wales Legislative Assembly elections since 1981.

Proportional representation

2.38 To overcome the proportionality problems associated with single member constituencies using either plurality or majoritarian systems a bewildering number of proportional representation systems have been developed. Proportional representation systems are used widely in Europe, and in Australia for upper houses.

2.39 Proportional representation systems attempt to relate the allocation of seats as closely as possible to the distribution of votes. By definition, this requires more than one vacancy, so multi-member constituencies are necessary. Constituencies can range from the whole country or state to parts of the country.

2.40 Proportional representation systems can be broadly grouped into two categories: list systems and the single transferable vote system. List systems can be further divided into largest remainder and highest average categories.

2.41 List systems may or may not allow the elector to choose between candidates of the same party. List systems can be either closed; allowing no choice at all; flexible, where the voter can vote for the party or a candidate; open, where there is no party vote but candidates listed in order; or free where the candidates are not placed in any order by the parties.

2.42 The basic concept of proportional representation systems is to allocate seats in the legislature in a proportional relationship with the votes cast at the election. To achieve this requirement a number of different and quite complex computational arrangements have been devised. These may or may not include the use of a quota. A quota in this context is the number of votes required to obtain a seat.

2.43 The simplest method of determining a quota is to divide the number of valid votes by the number of seats to be allocated. This method is often referred to as the Hare⁴ quota. Three alternatives to the Hare quota exist; the Hagenbach-Bischoff quota, in which the number of votes is divided by the number of seats plus one; the Droop⁵ quota, in which the number of votes is divided by the number of seats plus one and adding one to the quotient; and the Imperiali quota, in which the number of votes is divided by the number of seats plus two. In the following examples 60000 valid votes are cast and 5 seats are to be allocated.

<u>Quotas</u>				
Hare =	$\frac{\text{Votes}}{\text{Seats}}$	=	$\frac{60000}{5}$	= 12,000
Hagenbach-Bischoff =	$\frac{\text{Votes}}{\text{Seats}+1}$	=	$\frac{60000}{6}$	= 10,000
Droop =	$\frac{\text{Votes}}{\text{Seats}+1} + 1$	=	$\frac{60000}{6} + 1$	= 10,001
Imperiali =	$\frac{\text{Votes}}{\text{Seats}+2}$	=	$\frac{60000}{7}$	= 8,571

2.44 The simplest method of allocating seats under proportional representation is the largest remainder system. Under this system a quota is established, usually Hare quota, and

4. Thomas Hare (1806-91), English lawyer.

5. Henry Richmond Droop (1831-84) English mathematician and barrister.

is used to determine each party's allocation. A seat is allocated for each quota that the party obtains. However, this system does not always provide for the allocation of all seats as a number of votes will be left over after the allocation of full quotas and some small parties will not gain sufficient votes to obtain a full quota. The remaining seat or seats are allocated on the basis of the largest remaining votes after the allocation of full quotas. In the following example five seats are to be allocated but only three parties receive a full quota. The remaining seats are allocated on the basis of the highest remaining votes.

Largest remainder

Party	Votes	Hare Quota	Seats	Remainder	Seats	Total Seats
A	8700	4800	1	3900	1	2
B	6800	4800	1	2000	0	1
C	5200	4800	1	400	0	1
D	3300	-	0	3300	1	1
Total	24000				5	

Source: T. Mackie and R. Rose, op.cit.

2.45 The above example demonstrates one of the limitations of the largest remainder system in ensuring proportionality of representation. In the example Party D receives the same representation as Parties B & C even though its vote is substantially lower, and in the case of Party B only half. The largest remainder system favours smaller parties over larger parties when using the Hare quota. The relative importance of remainders in the allocation of seats can be reduced by the use of a lower quota (Hagenbach-Bischoff or Droop). Lower quotas result in more seats being allocated on the basis of parties receiving a full quota and less being allocated by remainders. However, the use of a lower quota does not always overcome the proportionality problem of the largest remainder system. Using the example above the Droop quota produces exactly the same result as the Hare quota.

2.46 To overcome problems associated with the largest remainder system the highest average system was devised.⁶ The object of the highest average system is to ensure that when all seats have been allocated the average number of votes required to win one seat shall be as near as possible the same for each party. The highest average system can be used with or without a

quota. When used with a quota the system is sometimes referred to as a Hagenbach-Bischoff system. The system derives its name from the method of allocation of seats to parties. Under the system each party's votes are divided by a series of divisors to produce an average vote. The party with the highest average vote after each stage of the process is allocated a seat. After a party has been allocated a seat its votes are then divided by the next divisor. The highest average system has a number of different variations, depending upon the divisors used and whether a quota is used or not.

2.47 The d'Hondt version uses the numbers one, two, three, four etc as its divisors. In the following example the d'Hondt is used without a quota. As in the previous example five seats are to be allocated.

d'Hondt Version Highest Average System

Party	Votes	1st Seat Division	2nd Seat Division	3rd Seat Division	4th Seat Division	5th Seat Division	Total
A	8700	8700(1)	4350	4350	4350(4)	22225	2
B	6800	6800	6800(2)	3400	3400	3400(5)	2
C	5200	5200	5200	5200(3)	2600	2600	1
D	3350	3350	3350	3350	3350	3350	0
Total	24000						5

Source: T. Mackie and R. Rose, op.cit.

2.48 In the above example the first seat divisor is one for all parties. Party A has the highest vote and is allocated a seat. In the second round, votes for Party A are divided by two, while all others are divided by one. Party B has the highest vote and is allocated the second seat. The process continues with the divisor for a party increasing by one each time that party is allocated a seat. The above example illustrates the highest average concept of the d'Hondt version. An alternative presentation of the above, that is easier to comprehend, is shown below. In this example votes of all parties are divided by the series of divisors. From the resultant matrix, seats are allocated to parties with the highest votes.

Alternative Presentation of the d'Hondt Version

	Party A	Party B	Party C	Party D	Total
Votes	8700	6800	5200	3350	24000
Divide by 1	8700(1)	6800(2)	5200(3)	3350	
Divide by 2	4350(4)	3400(5)	2600	1675	
Divide by 3	2900	2267	1733	1117	
Seats	2	2	1	0	

6. Also known as the D'Hondt Rule, after its inventor Victor D'Hondt, Belgian lawyer.

2.49 A comparison of the examples shown under the d'Hondt version of the highest average system and the largest remainder shows a different distribution of seats and illustrates a characteristic of the d'Hondt version to favour major parties at the expense of minor parties. This can be modified by choosing different divisors. The Sainte-Lague version and the modified Sainte-Lague versions increase the size of the divisors, thus making it more difficult for a party to win each additional seat. The Sainte-Lague divisors are odd numbers beginning at one (eg 1,3,5,7, etc.). The modified Sainte-Lague numbers are 1.4,3,5,7,9. The Sainte-Lague divisors make it harder for major parties to gain each additional seat while the modified Sainte-Lague divisors maintain this characteristic as well as making it more difficult for smaller parties to gain representation through the 1.4 first divisor.

2.50 The following examples illustrate the Sainte-Lague characteristics of making it more difficult for major parties to obtain additional seats.

Sainte-Lague Version

	Party A	Party B	Party C	Party D	Total
Votes	8700	6800	5200	3350	24000
Divide by 1	8700(1)	6800(2)	5200(3)	3350(4)	
Divide by 3	2900(5)	2267	1733	1117	
Divide by 5	1740	1360	1040	670	

Source: T. Mackie and R. Rose, op.cit.

Modified Sainte-Lague Version

	Party A	Party B	Party C	Party D	Total
Votes	8700	6800	5200	3350	2400
Divide by 1.4	6214(1)	4857(2)	3714(3)	2393(5)	
Divide by 3	2900(4)	2267	1733	1117	
Divide by 5	1740	1360	1040	670	

Source: T. Mackie and R. Rose, op.cit.

2.51 In the above example both the Sainte-Lague and modified Sainte-Lague versions produce the same distribution of seats. However, the two versions provide representation for the smallest party at the expense of the second largest party.

2.52 In addition to varying the first divisor to make the election of smaller parties more difficult a threshold can also be used in list systems to achieve the same result. Thresholds require a party to achieve a certain percentage of the vote before they can be eligible to have members elected.

2.53 List systems of one variety or another are used widely throughout Western Europe (see Table 2). Australia's first exposure to list systems occurred with the ACT Legislative Assembly elections in March 1989. The system used, termed modified d'Hondt, is described in greater detail in Chapter 4. The system used d'Hondt divisors with a Droop quota as a threshold and a flexible list. However, the ACT system was complicated by the use of a single transferable vote system (Senate system) to determine the individual candidates elected. The single transferable vote addition to the d'Hondt system was employed to overcome one of the main criticisms of the list systems ie the reliance of party lists to elect individual candidates rather than voter choice. However, in attempting to overcome this problem the system became so complex that voters had difficulty in understanding it and the scrutiny took two months to produce a result.

2.54 The form of proportional representation familiar to most Australians is the single transferable vote system used in elections for the Senate, the Legislative Councils of New South Wales, South Australia and Western Australia and the Tasmanian House of Assembly. The Tasmanian system, referred to as Hare-Clark⁷, differs from the system used for the Senate and States' Upper Houses in a number of ways. However, the basic concepts are the same.

2.55 In the single transferable vote system voters are required to rank individual candidates according to their preference. A candidate must receive a Droop quota in order to be elected. Any candidates whose first preference votes equal or exceed the quota are declared elected. Votes surplus to the quota cast for successful candidates are transferred amongst the remaining candidates according to the second preference recorded by the voter. The questions of which votes actually elect the first elected candidate and which votes are surplus and hence distributed can either be resolved by sampling or conducting a full count to determine the proportions favouring particular candidates. The proportions are then applied to the first preference votes of the successful candidate. As each candidate receives a quota he or she is elected and that candidate's surplus votes are distributed. If all surplus votes have been distributed and not all vacancies have been filled then the candidate with the smallest number of votes is eliminated and his or her votes distributed. This process continues until all vacancies are filled. (See Appendix D for a detailed explanation of the Senate system and Appendix E for a detailed explanation of the Hare-Clark system).

2.56 The single transferable vote system can be explained simply in the following terms. If a voter wished to vote for a particular candidate but the candidate was either so popular as to have no need for his or her vote or so unpopular as to have no chance of election, then the vote was not wasted but used to elect the voters' second choice candidate.

7. Thomas Hare, English lawyer and Andrew Inglis Clark, Tasmanian Attorney-General.

2.57 The need for the Droop quota in the single transferable vote system may require some explanation. The Droop quota represents the smallest number of votes that will ensure election. This can be illustrated best in the case of an election for one vacancy with two candidates. One candidate is required to poll only one more vote than half to ensure election. Thus with 100 votes, 51 votes would ensure election. This can be expressed in the following formula:

$$\text{Quota} = \frac{\text{Votes}}{\text{Vacancies}+1} + 1 = \frac{100}{1+1} + 1 = 51$$

2.58 Similarly, in a five member constituency, six candidates can each receive one-sixth of the vote, but only five can get any more votes; therefore any candidate who polls one more vote than one-sixth of the total must be elected.⁸

$$\text{Quota} = \frac{100}{5+1} + 1 = 17$$

2.59 If five candidates receive 17 votes (85 votes in total) then the remaining candidate must receive 15 votes. Thus 17 votes is the smallest number of votes that ensure election.

2.60 A simplified example of the operation of the single transferable vote system is shown below. In this example four candidates are standing to fill three vacancies. The quota is 76. Candidates A1 and A2 are from the same party. Candidate A1 receives a quota on first preferences and is elected. A1's surplus votes are distributed. Candidate A2 receives the vast majority of Candidate A1's surplus and also achieves a quota, and is elected. Candidate A2's surplus is distributed and results in the election of Candidate C.

Single Transferable Vote System

	Candidate A1	Candidate A2	Candidate B	Candidate C	Total
First Preference Votes	150	20	68	62	300
	Elected				
Distribution of A1 Surplus	-74	68	1	5	
Total	76	88	69	67	300
		Elected			
Distribution of A2 Surplus	0	-12	2	10	
Total	76	76	71	77	300
			Elected		

8. *ibid.*

2.61 The main differences between the two forms of the single transferable vote system (Senate and Hare-Clark) used in Australia are outlined below:

- Technical differences in the treatment of transferred votes from candidates elected on the first count and candidates eliminated. These differences, while important in the scrutiny process, do not represent a significant conceptual difference.
- The Senate system allows for ticket voting (ie voters may vote for a party ticket and have their preferences distributed in accordance with a registered party ticket rather than indicating individual candidate preferences) while under the Hare-Clark system voters must express a preference for individual candidates.
- The Hare-Clark system uses a rotating ballot paper⁹ so that each candidate's name appears at the top of the party's Group the same number of times while under the Senate system the order of candidates' names is determined by the party.
- Casual vacancies are filled by a recount of ballot papers under the Hare-Clark system while they are filled by nomination under the Senate system.

2.62 Proportional representation systems were developed primarily to overcome the weakness of plurality and majoritarian systems in providing representation for minority opinions. Use of proportional representation systems is widespread throughout Western Europe where the political landscape is typified by a large number of political parties. The principal advantage of proportional representation is to provide representation to those parties in proportion to their electoral support. Proportional representation systems thus overcome the main criticism of plurality and majoritarian systems.

2.63 Some form of proportional representation would provide a solution to the problem found in the United Kingdom where the Liberal Social Democratic Alliance polled 22.6% of the vote at the 1987 House of Commons election yet only won 3.4% of the seats. Democratic principles would suggest that this situation is unfair as nearly one quarter of the electorate is denied representation in the Parliament.

9. Termed Robson Rotation after N W Robson, Liberal member of the Tasmanian House of Assembly whose Private Members' Bill, resulting in The Electoral Amendment Act 1979, introduced the concept in 1979.

2.64 The arguments against proportional representation are based on the consequences of the system in providing representation to smaller parties. The proliferation of minor parties in legislatures as a result of proportional representation systems can result in unstable government, and in minor parties being in a balance of power situation. The election of a number of parties with no one party having a majority in the legislature may result in unstable government and uncertainty as parties trade with each other to form coalitions and alliances. The behind-the-scenes manoeuvring and bargaining can lead to situations where the resultant government follows policies that bear only a slight resemblance to the policies placed before the electorate by the parties concerned. A minor party may be able to take advantage of this situation and hold major parties to ransom by imposing its wishes on the other parties in recompense for its support. In this political environment governments are more susceptible to the whims of party officials rather than the wishes of the electorate. However, proportional representation systems do not necessarily result in unstable governments and in the problems outlined above. Experience in Western Europe suggests that other political factors are also important.

2.65 Proportional representation systems by their very nature involve large multi-member electorates thus breaching the direct relationship between an electorate and its representative in the legislature. The important electorate based work undertaken by local representatives may be undermined by the lack of identification by a representative with a defined area. Representatives may appear remote from the local constituency and owe their allegiance more to the central party authority than to the local electorate.

2.66 Other disadvantages of proportional representation systems depend upon which particular form is used. Problems such as lack of choice of individual candidates, complicated voting and scrutiny procedures, delays in counting and declaring a result, lack of community understanding of the procedures, can all be found in some forms of proportional representation.

Mixed systems

2.67 The three types of electoral systems outlined so far in this chapter (plurality, majoritarian and proportional representation) all display a range of advantages and disadvantages. Logic would suggest that the best electoral system should consist of a combination of individual systems so that the disadvantages of one system can be overcome by the advantages of the other and vice versa. Such a combined system is the additional member system which is used in the Bundestag of the Federal Republic of Germany.

2.68 The additional member system involves the election of individual candidates from single member constituencies and the election of candidates from multi-member constituencies by proportional representation. The requirement for direct constituency representation is met by the election of a single member constituency representative while the requirement for representation of all political opinion is met by the election of representatives under proportional representation. In order that the total number of candidates elected is in proportion to the votes cast, the candidate elected under the proportional representation component of the system "top up" candidates elected from single member constituencies.

2.69 The following outline of the West German system provides the basic features of the system without detailing all the specific complications:

- The Bundestag consists of 496 members, half elected from single member constituencies using the plurality (first-past-the-post) system; and the other half elected from multi-member constituencies using the d'Hondt version of proportional representation.
- Each voter has two votes. The first elects the single member constituency representative and the second the proportional representative candidates. It is the overall proportion of second votes that determine the total number of seats allocated to each party.
- Constituency members are topped up from party members elected from the second vote. For instance, in 1983 the SPD won 38.2% of second votes, which entitled it to 193 seats. They had won 68 seats on the first (constituency) vote, so they were able to add 125 more representatives.
- To qualify for representation in the Bundestag a party must win either three constituency seats or five percent of the second vote at the national level.
- If a party wins more constituency seats than it is entitled to under the second vote, then it keeps those seats and the Bundestag is temporarily increased.

2.70 The electoral system used to elect members to the Japanese House of Councillors (upper house) is a combined system but cannot be referred to as an additional member system, as no provisions exist for representation to be adjusted to achieve proportionality. The House of Councillors has 252 seats, half of which come up for re-election each three years. Constituencies are of two types: 152 members are elected from prefecture constituencies while the remaining 100 members are elected from the country as a whole. Electors have two votes, one for the prefecture constituency and one for the national constituency.

Conclusion

2.71 This chapter outlines just some of the various electoral systems in use throughout the world. There are many systems and an almost infinite number of variations of systems and also many proposed electoral systems that have not as yet found a practical expression that have not been examined in this paper.

2.72 To determine which of the available electoral systems is the best for an electorate is a difficult task. No one electoral system is the best for all countries and in all contexts. A good electoral system can be defined as one that performs a range of tasks reasonably well in a specific context even at the expense of doing none of these tasks superbly well.¹⁰ The range of tasks required of an electoral system include the requirements listed at the beginning of this chapter. Conversely a bad electoral system is one which performs none of these tasks satisfactorily.¹¹

2.73 Proponents of particular electoral systems maintain that their particular electoral system is the best and all others fail to measure up. However, it should be stressed that there is no such thing as the best electoral system. No single system satisfies all possible requirements. The most appropriate system for an electorate is that system that best satisfies those requirements that are considered to be the most important by the electorate.

10. M Harrop and W Miller, *Elections and Voters: A Comparative Introduction*, Macmillan, London, 1987.

11. *ibid*.

CHAPTER 3

THE EVOLUTION OF A UNIQUE ELECTORAL SYSTEM

- . The introduction of the Bill
 - . Hare-Clark and Senate systems considered unsuitable
 - . Special features of the original Bill
 - . Hastening towards self-government
 - . The Bill goes to the Senate
 - . Further amendments considered by the Senate
 - . Debate on the 'Hill' amendments
 - . Reminder: the system is a compromise
 - . Democrats attempt to substitute Senate count
 - . The amended Electoral Bill is passed
- WHENCE A D'HONDT SYSTEM?
- . Discussion paper
 - . First modifications to a d'Hondt System
 - . Proposed amendments arouse concern of Electoral Commission
 - . No reply from ACT Administration
 - . All care and no responsibility

The introduction of the Bill

3.1 On 13 April 1988 the then Minister for the Arts, Tourism and Territories, the Hon. Gary Punch, announced that he had prepared a draft proposal for ACT self-government. The electoral system proposed was based on the d'Hondt system widely used throughout Western Europe. The origin of this proposal is discussed in paragraphs 3.46 to 3.64.

3.2 The Australian Capital Territory (Electoral) Bill 1988 (the Electoral Bill) was introduced in the House of Representatives on 19 October 1988 by the new Minister for the Arts and Territories, the Hon. Clyde Holding. The two other Bills which formed the self-government package, the Australian Capital Territory (Self-Government) Bill 1988 and the Australian Capital Territory (Planning and Land Management) Bill 1988, were also introduced at the same time.

3.3 In his second reading speech on the Electoral Bill, Mr Holding expressed regret that neither of the Government's two earlier proposals for a unicameral legislature in the ACT had been accepted. The two systems which had been rejected were, first, House of Representatives style single-member electorates, and second, a mixed system consisting partly of members from single electorates and partly of members chosen in a proportional, Senate style election from the one electorate.

3.4 Because, Mr Holding said, electoral systems familiar in Australia had been rejected, the government had been obliged to look further afield. The d'Hondt system embodied in the Bill, was a proportional representation system popular in Europe where it was widely used for people's houses. In Australia it would be a unique system for a unique city-state.

3.5 Mr Holding acknowledged that the system was a compromise but asserted that:

The hallmark of this system is a concern for both democracy and stable government.¹

He described the primary objectives of an electoral system as being:

to accurately reflect the electoral wishes of the people in the composition of their government; and

to provide for stable government.²

1. H of R Hansard, 19 October 1988, p. 1926.

2. *ibid*

Hare-Clark and Senate systems considered unsuitable

3.6 Mr Holding accused those people who advocated the Hare-Clark system for the ACT of having 'vested interests'. He said the Government would make '... no apology for rejecting a system that is specifically designed for a House of review'.³

While it is true that systems of proportional representation are used to elect most upper houses in Australia, in fact the Hare-Clark system has been used since 1907 to elect the Tasmanian lower house and since 1920 to elect the Irish Dail (also a lower house).

3.7 Mr Holding claimed that because seats under the Hare-Clark system may only be decided after many distributions of preferences:

'Under its rules, seats may be literally decided by chance on the preferences of voters who may well have had no idea - or wish - that their vote would elect particular candidates.'⁴

3.8 Mr Holding considered the Australian Senate system also to be unsuitable because of the results it could produce:

'In the last Senate election, a candidate with less than 1.5 percent of the primary vote was elected. Yet others with more than double this primary vote were not.'⁵

However, Mr Holding was not simply concerned that a candidate could be elected via the Senate system with a mere 1.5 per cent of the vote, but that members of minor parties could be elected in this fashion, and thereby

... create instability in a people's House where such members may hold the balance of power.⁶

Special features of the original Bill

3.9 Mr Holding spoke positively about the virtues of the d'Hondt system enumerating its virtues, which he listed as follows:

A very simple mathematical calculation ensures the direct and accurate reflection of the voters' intention in the composition of the house [by making sure that] ... as closely as mathematically possible, each and every member in the House is supported by the same number of voters.

3. *ibid*, pp. 1926-7.

4. H of R Hansard, 19 October 1988, p. 1927.

5. *ibid*

6. *ibid*

- . It is immune from gerrymander.
- . Every vote has equal value.
- . It is the most direct system of proportional representation that one can get.⁷

3.10 The original Bill, provided for a slight variation on a party list d'Hondt electoral system: voters could either vote for an independent candidate (treated as a party) or for a party, in which case they could determine their own preference ordering of candidates within that party.

3.11 The Bill also stipulated that there would be no minimum membership requirement for the registration of political parties, a provision which would have significant consequences for the conduct of the first poll. The term of the Assembly was to be fixed at four years.

3.12 From the previous chapter on electoral systems it is clear that Mr Holding's assessment of the d'Hondt system's characteristics is not universally shared. Similar systems such as the St Laague, whose formula involves larger divisions of the base vote, produce smaller variations in the number of votes per seat. Some argue that the d'Hondt system favours large parties at the expense of small.

Hastening towards self-government

3.13 When the Bill was read a second time on 3 November 1988, the Minister announced that the Government was keen to have the self-government legislation moved to the Senate as soon as possible. Hence, in a number of respects the Government was 'prepared to negotiate both the principle and some of the details proposed.'⁸

3.14 The Hon. Neil Brown, on behalf of the Opposition, agreed to assist the Government in this aim as:
... in politically active circles the general view seems to have emerged that the time for self-government is nigh ... it is obviously time that legislation was put in place to achieve that result.⁹

3.15 However, the Opposition made it clear that there were certain aspects of the Bill it could not support and it was concerned that it would not have adequate time to consider the substantial amendments which the Government had only just circulated. Commenting on the need for time Mr Neil Brown, said prophetically,
Even a lifetime of electoral bills often leads one astray.¹⁰

7. ibid

8. H of R Hansard, 3 November 1988, p. 2422.

9. Mr N A Brown, Hansard, 3 November 1988, p. 2423.

10. ibid.

Nevertheless, the debate continued.

3.16 Mr Neil Brown's subsequent remarks suggest a reason for the Government amendment at this stage:

The short point about it is this: the system set out in the Bill is not one that we can support because ... it does not provide for a proper and effective system of preferential voting or for the distribution of the proper effect of preferences cast by voters voting at the elections in the Territory.¹¹

3.17 The Opposition was circulating its own amendments but decided that it would not force a division on a number of contentious points because of its agreement with the Government that further negotiations would take place before the legislation was dealt with in the Senate.

3.18 After the Second Reading of the Bill, the House voted on its clauses.

3.19 Mr Neil Brown's amendments to provide for a 3 instead of a 4 year fixed term for Assembly members and to omit many of the Bill's modifications to the Commonwealth Electoral Act on election funding and financial disclosure, were defeated.

3.20 Mr Holding's modifications:

- . to enable optional cross preferential voting;
- . inserting a threshold (a Droop quota) for participation in the allocation of seats;
- . providing deeming rules for interpreting next available preferences where the same number had been repeated by the voter;
- . providing for the registration and display in polling booths of party voting tickets; and
- . providing that where no next available preference was recorded by the voter, preference would be deemed to be in accordance with the registered party ticket,

were adopted and the Bill was read a third time.

11. H of R Hansard, 3 November 1988, p. 2426.

The Bill goes to the Senate

3.21 On 7 November 1988 the Bill with the amendments agreed by the House, together with the other two Bills in the self government package were transmitted to the Senate. Senator Richardson, Minister for Arts, Sport, the Environment, Tourism and Territories, in moving the second reading speech repeated many of the claims made by Mr Holding about the Hare-Clark and the d'Hondt electoral systems. The debate was adjourned and resumed on 23 November 1988.

3.22 Senator Hill, the Opposition spokesman on the ACT, acknowledged that the d'Hondt system was primarily intended to be party based. He said that the Opposition, being comprised of individualists, considered that the system should be modified to 'allow an adequate expression of the preference of individuals.'¹²

3.23 He said that after long negotiations, the Opposition had reached a compromise with the Government on three amendments. They were to enable:

- the transfer of preferences from small parties or independents excluded by the threshold; and¹³
- the counting of preferences for candidates within parties; and
- one 'expression of preference' for individual candidates across party lines.

Senator Hill thought that:

*'ultimately we have produced a form of the system, much compromised to meet the Australian political background, psychology and culture, that will be satisfactory.'*¹⁴

3.24 Australian Democrat spokesperson on ACT matters, Senator Jenkins, whilst applauding the Government's genuine determination to achieve self-government for the ACT and its agreement to base the ACT electoral system on proportional representation, was nonetheless critical. She said:

*'... the Government has identified and has proposed the only obnoxious form of proportional representation that I have ever heard of.'*¹⁵

12. Senate Hansard, 23 November 1988, p. 2595.

13. Senator Hill was under the common misapprehension that a Droop quota was an integral part of the d'Hondt system but he was correct in thinking that a pure d'Hondt system did not allow for the transfer of preferences.

14. Senate Hansard, 23 November 1988, p. 2596.

15. Senate Hansard, 23 November 1988, p. 2597.

3.25 The system proposed by the Government was one, averred Senator Jenkins, which contravened Resolution No.32 of the Labor Party's *Platform Resolution and Rules of 1988* because, she said, it was not a system in which all votes remained valid while the voter's intention was clear.¹⁶

3.26 Senator Jenkins also pointed out that although the proposals had been known in broad outline for many months, their substance had been known for too short a time to allow for proper consideration.¹⁷ She read part of an article by Mr Geoffrey Goode, President of the Australian Proportional Representation Society, which had recently been published in *The Canberra Times*. Mr Goode criticised the proposed concept of a threshold and urged the Senate to amend the Electoral Bill to adopt a Senate style voting system.

Further amendments considered by the Senate

Robson rotation¹⁸

3.27 Debate resumed on 24 November 1988 when Senator Jenkins moved a motion to defer further debate on the Electoral Bill to enable the Government to introduce an amendment providing for the use of the Robson rotation with whatever system of scrutiny might ultimately be employed. The motion was defeated as were three Bills concerning various aspects of ACT government which had been introduced by the Democrats. The Senate then considered the self-government Bills in committee.

3.28 Senator Richardson described the d'Hondt system as: *'the end product of ... exhaustive negotiations.'*¹⁹ He pointed out that it was the Government's third choice, the first two being single member constituencies and a mixed single member/Senate system respectively. Senator Richardson reported that Senator Jenkins had *'... given him a number of scenarios which would circumvent ... the d'Hondt system and render it difficult for Canberra democracy.'*²⁰ He said that he had asked departmental officers to look at the points which had been raised. Although there had been insufficient time to provide an exact and exhaustive answer to each of her questions, he concluded that:

*'... the possibility of the scenarios raised ever occurring is so remote as to enable us to disregard them out of hand.'*²¹

16. Senate Hansard, 23 November 1988, p. 2598.

17. *ibid.*, p. 2599.

18. A ballot paper in which the names of the candidates within the parties are rotated on a series of ballot papers so that each appears at the top the same number of times. See footnote 9 in Chapter 2.

19. Senate Hansard, 23 November 1988, p. 2726.

20. *ibid.*

21. *ibid.*

3.29 The Deputy Leader of the Australian Democrats, Senator Macklin, spoke at the committee stage flagging two problems with the Electoral Bill. He considered the legislation poorly drafted because it could not guarantee the election of the requisite number of Assembly members. He asked whether the advice of the Australian Electoral Commission had been sought on the Bill.

Senator Richardson said:
It is my understanding that the Electoral Commissioner was involved in the drafting of the Bill, in so far as it was to reflect government policy, to make sure that that government policy was translated into the Bill. But the Electoral Commissioner was not involved in giving policy advice on the Bill. As far as I am aware, that is what the Electoral Commissioner wanted'.²²

3.30 Senator Richardson successfully moved amendments to determine formality of preferences where votes had duplicated on the ballot paper; and to provide for an election 3 years after the last ordinary election.

3.31 Senator Hill moved an amendment to the effect that public funding would not apply for the first election. It was defeated.

3.32 Senator Richardson then moved an amendment to clarify the manner in which a formal vote could be cast: i.e. by optional preferential voting for parties or candidates.

3.33 Senator Harradine spoke in support of the amendment and argued that optional preferential voting should be applied to the Senate system via amendment of the Commonwealth Electoral Act.

Debate on the 'Hill Amendments'²³

3.34 Senator Richardson proposed a number of new clauses which, he said, reflected amendments suggested by the Opposition.²⁴ These clauses concerned:

- the threshold (the section was rewritten to tidy up an amendment already passed by the House of Representatives);
- the provisional election of candidates
 - seats distributed amongst parties according to the d'Hondt formula;
 - seats distributed amongst candidates of a party according to a Senate formula;

²². Senate Hansard, November 24, p. 2825.

²³. The provisions of the ACT Electoral Act which give rise to the provisional election of candidates and the subsequent transfer of votes to and from provisionally elected candidates are popularly known as 'the Hill amendments'. Stages to 8 of the scrutiny result from these provisions.

²⁴. Senate Hansard, 24 November p. 2828.

• the transfer of votes from provisionally unsuccessful candidates to the next available preference; and

- election of candidates
 - seats distributed amongst parties by applying the d'Hondt formula to the new tallies for each party
 - seats distributed to candidates within parties according to the Electoral Act.

3.35 Senator Macklin questioned the need for the proposed system. He said:

This is certainly a novel system to be used on the Australian electoral scene. It does not have to be used. Alternative systems that are currently in place could be used. The only basic reason that has ever been provided to us is the argument about having a predictable House of Assembly with regard to the Executive'.²⁵

3.36 Senator Macklin regarded this argument as specious because at that time the only mainland parliament, state or federal, where the 'executive of the day' had total control, was that of Queensland where, he said... 'there is one House in a rorted system'²⁶. He considered that this demonstrated only too clearly the dangers of an electoral system which enabled the entrenchment of political power.

3.37 Senator Macklin opposed the threshold on the basis that it seemed designed to disenfranchise voters who did not follow the major parties. He warned

'There is a real possibility of excluding at this level people who receive a higher percentage of votes than people who at a later point will win seats. This points to the arbitrariness of the exercise.'²⁷

3.38 Senator Macklin asked the Minister to say what provision had been made for the possibility that insufficient candidates might reach the threshold to fill all the vacancies. He expressed the view that the amended electoral system lacked integrity.

What is going on here in terms of this amendment is the essential fallacy of the problem of trying to introduce this preferential system into the d'Hondt system without rewriting it from top to bottom.²⁸

²⁵. Senate Hansard, 24 November 1988, p. 2828.

²⁶. *ibid.*

²⁷. *ibid.*

²⁸. *ibid.*

Reminder: the system is a compromise

3.39 Senator Richardson reminded Senator Macklin that this system was not the Government's first choice. He said it was a workable compromise and important for achieving self-government. If the threshold excluded too many candidates, Senator Richardson said, then a supplementary election would have to be held to fill the remaining vacancies.²⁹ On the question of executive control he said:

*The reality is that in every State of Australia the executive government is entitled to expect the confidence of the people's House, and that is what we are going to get here.*³⁰

3.40 Since he spoke both the Tasmanian and the ACT Houses of Assembly have acquired minority governments. At the time of writing these minority governments have been in power for almost six months. It appears South Australia may also have a minority government.

3.41 There was some argument between Senators Macklin and Richardson on the force of the proposed amendment (subclause 19A(1)) which provided for the possibility that an independent or party which passed the threshold might nevertheless fail to gain a seat. Senator Macklin said this was not mathematically possible. Senator Richardson maintained that it was, albeit, perhaps, unlikely; Senator MacGibbon (Liberal, Queensland) said that the Opposition did not understand the argument over this clause.³¹

Democrats attempt to substitute Senate count

3.42 Senator Jenkins expressed surprise that the Labor and Liberal parties, which she said, were:

*'on record as supporting systems which are both proportional and preferential'*³²

should be advocating the modified d'Hondt electoral system. She moved an amendment to have a Senate count replace the system proposed by the Government.

3.43 When the amendment was defeated Senator Jenkins moved a further amendment that the count be conducted along modified Senate lines. This would have allowed for optional preferential voting and permitted a threshold equal to half a Droop quota to be applied Senate fashion, so that the lowest polling candidate would be excluded first and votes from that candidate would be transferred prior to the next exclusion.

3.44 This 'fall back position' was also rejected as was Senator Jenkins' proposed amendment to provide for the ACT Assembly to hold a referendum concerning electoral systems before its second election.

29. Senate Hansard, 24 November 1988, p. 2830.

30. *ibid.*

31. *ibid.*, p. 2834.

32. *ibid.*, p. 2838.

The amended Electoral Bill is passed

3.45 Eventually the remaining Government-moved amendments were passed, and the amended Bill was returned to the House of Representatives. On 29 November 1988 the Senate amendments were approved by the House and the Bill was passed.

WHENCE A D'HONDT SYSTEM?

3.46 The Government's previously unsuccessful attempts to introduce self-government to the ACT were described in Chapter One. The major obstacle to success appears to have been inability to achieve agreement about a suitable electoral system rather than opposition to self-government *per se*.

3.47 In 1986 Gary Whitely, who was working in an area of the Department of Territories which was concerned with developing self-government for the ACT, travelled overseas to look at the administration of city states, particularly those which, like Canberra, had national capital status. A number of the places he visited in Europe employed the d'Hondt electoral system.

3.48 When the Hon. Gary Punch became Minister for Territories in January 1988, Mr Whitely briefed him on the apparently defunct self-government issue. Mr Whitely told the Inquiry:

*'I was virtually given the charter to see if we could resurrect it. The framework against which I operated, after discussions with the Minister, was that no Australian electoral system, or combination of electoral systems would be successful in getting passed. So the charter I was given was to see if there were alternative arrangements which might bring self-government to Canberra.'*³³

3.49 Mr Whitely described his meeting with the Electoral Commissioner on 8 February 1988 at which he had raised the possibility that a d'Hondt electoral system might be introduced for the ACT. This was, in his words,

*'Before, d'Hondt was ventilated at all to any one.'*³⁴

3.50 Mr Whitely said that the Australian Electoral Commissioner, Dr Hughes, had confirmed that a d'Hondt system of the sort used in Europe (that is a party list system of proportional representation with no preferential voting) would be compatible with Australian electoral legislation.³⁵

33. Evidence, p. 123.

34. Evidence, p. 125.

35. Evidence, p. 125.

3.51 Mr Whitely told the inquiry he had not looked at electoral systems 'in a direct way' on his trip overseas although he had discussed 'the viability of the proportional representation systems as they had evolved in Europe'³⁶ with peak local government peak bodies in some European countries. He said that he had not sought information about the d'Hondt system from the Electoral Commission but had consulted books.

Discussion paper

3.52 On 13 April 1988 the ACT Administration, then a Division of the Department of Arts and Territories, circulated for discussion a new proposal for self-government. The paper contrasted features of the new and the unsuccessful 1986 proposals. It covered the full range of items which constitute the machinery of government. Under the heading 'Election of Members' the paper described almost a 'pure' d'Hondt electoral system with a single electorate consisting of the Territory at large. This system allowed voters to cast a single vote for an independent or for a party. Parties would select the order of their candidates.

First modifications to a d'Hondt System

3.53 Mr Whitely said his group had proposed consolidated d'Hondt as a means of satisfying community demand for a provision to allow voting for a particular party candidate as well as for a party.³⁷

3.54 He said that on 30 June 1988, he had held discussions with Dr Hughes on the feasibility of accommodating this change. He said that the Commission had been unwilling to comment on the policy advice being given to the government because it did not wish to exceed its statutory responsibilities:

At that meeting, in a subsequent letter to me and in a subsequent telephone conversation Dr Hughes made it quite clear that he did not see it as his role to provide policy advice to the Government.³⁸

Consequently,

The legislation was drafted without any formal comment from Dr Hughes to the Government, at Dr Hughes' request, but with very effective technical support in terms of developing the drafting instructions.³⁹

Proposed amendments arouse concern of Electoral Commission

3.55 On 31 October 1988 Dr Hughes wrote to the ACT Administration raising concerns about proposed amendments to the Electoral Bill.

3.56 Dr Hughes considered that if the amendments proceeded the character of the d'Hondt system would be distorted beyond recognition, with undesirable consequences. He said:

... the original proposal for a d'Hondt system has been so substantially changed, first by the introduction of voting for candidates as well as parties and now by "consolidation", that any plausible justification there may be for it in terms of underlying principles is now invisible behind the veil of compromises and trade-offs.⁴⁰

3.57 He was particularly disturbed by the 'arbitrary' choice of the Hare-Clark quota⁴¹ as a threshold and thought that the system was becoming so complex that it would be difficult to devise sensible instructions for voters which could be printed on ballot papers.

3.58 He concluded

... In the Commission's views "consolidated" d'Hondt is a system in which the whole is less than the sum of the parts.⁴²

and warned

that if there is any suggestion made publicly that consolidated d'Hondt has the Commission's approval, we will be obliged to repudiate it.⁴³

No reply from ACT Administration

3.59 The letter was addressed to the Associate Secretary, Central Office, ACT Administration and marked to the attention of Mr Whitely. Mr Whitely was then First Assistant Secretary, ACT Government Unit. The Committee tried to establish the role of Mr Whitely and the ACT Administration in monitoring the development of the electoral legislation. Mr Whitely was asked whether it would be fair to assume he had main carriage of this task. He replied:

... it would be more accurate to say that I had carriage, from a bureaucratic viewpoint, to the time that the Government's proposal entered the House of Representatives.⁴⁴

40. Evidence, p. S66.

41. The same as a Droop Quota.

42. Evidence, p. S67.

43. *ibid.*

44. Evidence, p. 122.

36. Evidence, p. 124.

37. Evidence, p. 127.

38. Evidence, p. 127.

39. Evidence, p. 127.

3.60 He said in evidence that his only response to Dr Hughes' letter had been to make it available to his Minister as soon as he received it.⁴⁵ He said that the letter had been the first intimation of Dr Hughes' attitude and

*By that time, of course, the matter was in the hands of politicians and not in mine.*⁴⁶

All care and no responsibility?

3.61 A further letter from the Commission, this time from the Deputy Electoral Commissioner, Mr Cirulis, was sent to the ACT Administration, marked for Mr Whitely's attention, on 18 November 1988. The Deputy Commissioner said that the effect of the most recent amendments was to create

*... an electoral system unknown to mankind*⁴⁷ which would cause difficulties at the counting stage. He expressed the view that *'the time frame apparently contemplated'* for the drafting of the amendments was insufficient to allow the legislation to be evaluated properly.⁴⁸

3.62 The ACT Administration had not responded to that letter either. Mr Whitely said that it too had been passed on to his Minister.

*The matter was in a political arena at that stage; there was no input I could make to it.*⁴⁹

3.63 Asked whether he considered his action the most appropriate, Mr Whitely said

*That is certainly my view, yes, under the Westminster system.*⁵⁰

45. Evidence, p. 125.
46. Evidence, p. 127.
47. Evidence, p. S68.
48. Evidence, p. S68.
49. Evidence, p. 130.
50. Evidence, p. 130.

CHAPTER 4

SPECIFICATIONS OF THE MODIFIED D'HONDT ELECTORAL SYSTEM

- . Broad typology
- . Deposits, registration and ballot papers
- . The method of voting and formality rules
- . Interpreting the voter's intention
- . The scrutiny

Broad typology

4.1 In terms of the classification system set out in Chapter 2, the modified d'Hondt electoral system is a proportional representation hybrid of party list and single transferable vote systems. The type of party list system on which it was based is a highest average system which uses the d'Hondt formula to allocate seats amongst parties.

4.2 Although the modifications to the system allow voters to indicate preferences for independent candidates or for candidates of parties, the system in fact treats independent candidates as parties and, up until the final stages of the count, counts votes for a party candidate as votes for that party.

4.3 The procedures to be followed in ACT elections are jointly specified in the *Australian Capital Territory (Electoral) Act 1988* (ACT Electoral Act) and a specially modified version of the *Commonwealth Electoral Act 1918*.

Deposits, registration and ballot papers

4.4 Persons who wish to stand for election must pay a deposit of \$100, refundable upon election or if the candidate, in the case of an independent, or the candidate's party, gains 4 per cent of the total formal vote.

4.5 Political parties do not have to satisfy minimum membership requirements for registration. In fact a party need comprise no more than the registered officer, who is required to sign the nomination form of any party candidate. There is nothing to prevent the registered officer and the party candidate from being the same individual. By contrast, independent candidates must be nominated by two qualified electors.

4.6 Ballot papers are divided, like Senate ballot papers by a 'ballot line'. The names of registered parties contesting the election, appear above the line to the left; the names of independent candidates appear above the line and to the right of the parties. The names of party candidates appear below the ballot line, grouped in columns under the name of their respective parties.

The method of voting and formality rules¹

4.7 Paragraph 18(d) of the ACT Electoral Act provides that at a general election a voter shall vote only by:

- (i) expressing a first preference for one independent candidate;
- (ii) expressing a first preference for one registered party; or,
- (iii) expressing a first preference for one candidate of one registered party

and, if the voter wishes, expressing subsequent preferences for other candidates or parties for which the elector has not expressed a first preference. In other words, an elector can vote 1 for Party A and give subsequent preferences for Party C, candidate Jones of Party D, Party E, candidate Smith of Party B etc., in any order. This represents a marked difference from the Senate system, where the voter is required to mark a party box above the ballot line or to number all candidates consecutively.

4.8 The formality rules may be placed in two categories. The first concern the authenticity and anonymity of the ballot paper and are the same as those which apply at a Commonwealth election. The second concern the patterns of markings which will be accepted as constituting an interpretable and thus a valid or a transferable vote. The term 'preference mark' in electoral parlance means 'first preference'. 'A preference mark' can be a tick, cross or the number 1.² If there is no preference mark, or if preference marks have been placed in more than one square above the ballot line, or in squares below the ballot line opposite the names of candidates of different parties, the vote is informal.

Interpreting the voter's intention

4.9 Where a vote qualifies as formal but does contain duplicated preference marks 'deeming' rules are employed to interpret the voter's intention. These rules can differ at various stages of the scrutiny as the focus changes from counting preferences for parties to counting preferences for candidates within parties. Under modified d'Hondt a vote can be formal if it contains duplicated preference marks for different parties only one of which is above the ballot line. In that case and for the purposes of counting first preferences for parties and independents, all markings below the ballot line are treated as not having been made.³ However, if there are duplicated preference marks above and below the ballot line, but for the

1. This part of the Chapter draws heavily on Chapter 2 of the *Australian Electoral Commission submission* (Evidence, pp. S24-36.)
2. *Australian Capital Territory (Electoral) Act*, s.4(4).
3. *Commonwealth Electoral Act 1918*, s.269(1) as modified by the *Australian Capital Territory (Electoral) Act*.

same party, then, after first preferences for parties and independents have been counted, the mark above the ballot line is ignored.

4.10 Preferences after the first can be indicated by any ascending unrepeatable series of numbers (e.g. 1, 8, 20, 10 000). In House of Representatives or Senate elections, the series of numbers must be consecutive and unrepeatable.

4.11 If, before the provisional allocation of seats to unexcluded parties and independent candidates, the next available preference cannot be determined because the same number appears in more than one square, then the ACT Electoral Act provides that:

- if only one square is above the ballot line, then the ballot paper is transferred to the party or independent candidate (as appropriate);
- if the two squares are above the ballot line, the ballot paper is not transferred;
- if all squares are below the ballot line and opposite the names of candidates of a particular party, the ballot paper is transferred to that party; and
- if all squares are below the ballot line and two or more are opposite the names of candidates of different parties, the ballot paper is not transferred.⁴

4.12 If the voter has shown no preferences except for an excluded party (or its candidates), and that party has a registered party voting ticket, the ballot is transferred in accordance with preferences shown on that voting ticket. Otherwise a ballot paper showing no next available preference would not be transferred.

The scrutiny

4.13 There are eight stages of the scrutiny under the modified d'Hondt system:

- (i) The formality check: at this stage, any ballot papers which fail to satisfy the criteria for formality are excluded from further consideration.
- (ii) The count of first preference votes for each party and independent candidate (see paragraph 4.9 for deeming rules)

(iii) The initial round of exclusions: at this stage, which is not always required, all parties which, and independent candidates who, have failed to poll a prescribed number (approximately 5.56%) of first preferences⁵ are excluded in bulk, and such of their ballot papers as indicate or are deemed to indicate an available preference beyond the first are transferred in accordance with those preferences to the unexcluded parties and independent candidates. The vote totals of the unexcluded parties and independent candidates are then adjusted accordingly (see paragraph 4.12 on registered party voting tickets).

(iv) The provisional allocation of seats to the unexcluded parties and independent candidates: this is done on the basis of their adjusted vote totals, according to a specified formula.⁶ Any independent candidates allocated seats at this stage are said to be 'provisionally elected', as are the candidates of any party which is allocated a number of seats greater than or equal to its number of candidates.

It should be noted that the sum of the adjusted vote totals is less than the sum at the end of the initial count of first preferences, as some ballot papers of excluded parties and independent candidates will not show a next available preference.

(v) The identification of provisionally elected party candidates: this stage is only required if there is a party which has been provisionally allocated at least one seat, but still fewer seats than it has candidates. In that case, the seats are distributed among the candidates of the party according to the preferences for those candidates shown or deemed to be shown on the votes polled by or transferred to that party, using the Senate system of proportional representation⁷. The candidates to whom the seats are distributed are the ones provisionally elected.

This stage of the scrutiny differs substantially from the previous stages in that votes explicitly cast for or transferred to parties or to candidates of parties, are no longer treated as votes for the parties but as preferences for particular candidates within each party.

- 5. The 'Threshold' is a Droop quota. For 17 vacancies it is approximately equal to 5.56% of first preferences.
- 6. The d'Hondt formula, see Chapter 2, paragraphs 2.46-2.49 for description of how it operates.
- 7. See Senate Scrutiny procedures, Appendix D.

4. ACT Electoral Act 1988, s.5.

Special deeming provisions apply, for interpreting:

- (a) ballot papers received by a party or its candidates as first preferences;
 - (b) ballot papers transferred to a party according to preferences shown by the voter; and
 - (c) ballot papers transferred to a party through the operation of a party voting ticket. (Appendix F.)
- (vi) The transfer of votes from candidates not provisionally elected: at this stage, such of these votes as indicate or are deemed to indicate next available preferences are transferred in accordance with those preferences to the unexcluded parties and independent candidates, and the vote totals of the unexcluded parties and independent candidates are adjusted accordingly.

Candidates not provisionally elected are not excluded and they may receive votes from other candidates who are not provisionally elected as well as losing the votes which they have previously accumulated. Here again special provisions apply in order to determine whether an elector has shown a next available preference in the case of:

- (a) ballot papers received by a party or its candidates as first preferences;
 - (b) ballot papers transferred to a party or one of its candidates after the threshold exclusions, according to preferences shown by the voter; and
 - (c) ballot papers transferred to the party or to one of its candidates following the initial round of threshold exclusions, through the operation of a party voting ticket (Appendix G.)
- (vii) The final allocation of seats to the unexcluded parties and independent candidates:

Adjusted vote totals are calculated for each unexcluded party and independent candidate by taking the figure used for the provisional allocation of seats, and adding to it the number of ballot papers transferred to the

party or independent candidate and subtracting from the resulting total, the number of ballot papers transferred from the party or independent candidate, at the previous stage.

The d'Hondt formula is applied to the resulting totals to determine the final number of seats won by each unexcluded party and independent candidate.

(viii) The final allocation of seats to party candidates:

This stage is only required if there is a party which has won at least one seat, but still fewer seats than it has candidates. In that case, the seats are distributed among the candidates of the party according to the preferences for those candidates shown or deemed to be shown on the votes polled by or transferred to that party, using the Senate system of proportional representation.

Elaborate provisions are used to determine a next available preference in five different cases:

- (a) ballot papers received by a party or its candidates as first preferences and not subsequently transferred from a provisionally unsuccessful candidate of the party to another candidate of the party;
- (b) ballot papers transferred to a party following the threshold exclusions, according to preferences shown by the voter and not subsequently transferred from a provisionally unsuccessful candidate of the party to another candidate of the party;
- (c) ballot papers transferred to a party or one of its candidates from a provisionally unsuccessful candidate of another party or from another party with no provisionally elected candidates, according to preferences shown by the voter;
- (d) ballot papers transferred from a provisionally unsuccessful candidate of a party to another candidate of the same party, according to preferences shown by the voter; and
- (e) ballot papers transferred to a party or one of its candidates following the initial round of exclusions or from a provisionally unsuccessful candidate or party according to a party voting ticket.

Details of these provisions are contained in Appendix H.

4.14 A critical examination of the system can be found in Chapter 6.

CHAPTER 5

THE CONDUCT OF THE ELECTION

- . Statutory responsibility

THE 'EDUCATION CAMPAIGN'

- . Commission puts ACT
Administration on notice
- . Effectiveness of public
information campaign

THE SCRUTINY

- . Reports of the scrutineers
- . The Electoral Commission
responds to criticism
- . Conclusions

5.1 On 4 March 1989 electors in the ACT went to the polls to elect their first Territory government. The electoral system, known as 'modified d'Hondt' had never previously been used. There was great interest in the election and 117 candidates nominated, giving rise to a 1.0 x .35 metre ballot paper. The declaration of the polls took place on 8 May 1989.

Statutory responsibility

5.2 Under the *Australian Capital Territory (Electoral) Act 1988* (ACT Electoral Act) and the modified *Commonwealth Electoral Act 1918*, the Commonwealth Electoral Commission is responsible for the conduct of general elections for the ACT Legislative Assembly. Under paragraph 12(b), of the ACT Electoral Act the Commission also has the following function:

to promote public awareness of matters relating to general elections and matters relating to the Assembly by means of the conduct of education and information programs and by other means.

5.3 Following the inaugural ACT Legislative Assembly elections the Commission attracted criticism on the grounds that:

- (a) it had failed to educate voters about the manner in which the modified d'Hondt electoral system worked; and
- (b) its inefficiency had caused delay in the count.

These two charges will be examined separately below.

THE 'EDUCATION CAMPAIGN'

Commission puts ACT Administration on notice

5.4 In his letter to the ACT Administration of 31 October 1988 the Electoral Commissioner expressed strong reservations about the electoral system which would emerge from the amendments to the Electoral Bill then being contemplated. Dr Hughes said these reservations were such that:

While Clause 11(b) of the Bill gives the Commission the function of conducting education and information campaigns to promote public awareness of matters relating to Assembly elections, we are also, however, bound to exercise due economy, and for that reason I would have to say that we would be disinclined to spend money on a campaign to justify or even explain 'consolidated' d'Hondt because of the impossibility of achieving the goal.¹

1. Evidence, pp. S66-7.

5.5 The Commission's responsibility was discussed at a meeting between Commission and officers of the ACT Administration on 1 December 1988. They agreed that the Commission's role vis a vis public information 'would be limited to answering questions about the conduct of the election and the responsibility of the electors' and would not include 'any explanation or defence of the electoral system.'²

5.6 This agreement was confirmed in a letter from the Minister for Arts and Territories, Mr Holding, to the Electoral Commissioner on 14 December 1988. The Minister concluded: *I should add that the Government requires no more of you than to ensure that voters have sufficient information to be able to cast a valid vote for the party or candidate of their choice. It does not look to the Commission to explain or justify 'consolidated' d'Hondt any more than it would to do the same in relation to the Senate system of voting.³*

5.7 Soon after the passage of the legislation the Commission produced a brief description of the electoral system in a 14 page booklet (Incorporated as Chapter 2 of the Commission's submission).⁴ The booklet was criticised for being too lengthy and too difficult to understand but the Committee is satisfied that the description is no more complex nor lengthy than the electoral system demands.

5.8 The Commission released Candidates and Scrutineers Handbooks on 21 December 1988 and a Scrutiny Procedures Handbook on 24 January 1989. A pamphlet 'This is how to do it' was distributed to ACT electors on Tuesday, 28 February 1989. It gave polling details, a sample ballot paper and instructions on how to cast a formal vote. As a result of its agreement with the ACT Administration the Electoral Commission gave only the shortest description of the electoral system:

When Federal Parliament granted self-government to the ACT, it introduced an electoral system not previously used in Australia. It is a variation of the d'Hondt system, a form of list proportional representation used in several Western European countries.

In this election the ACT will vote to elect 17 members of the Assembly. They will be elected by a system based on the proportion of the total votes political parties and independent candidates received.

Voters may show as few or as many preferences as they like.⁵

2. Evidence, p. S452.

3. Evidence, p. S455.

4. Evidence, pp. S24-36.

5. Evidence, p. S77.

5.9 The Commission also set up a display at the Royal Canberra Show at the weekend prior to polling day. It included an information stand with staff continually in attendance.

5.10 In evidence the Commission said that its expenditure on the information campaign for the ACT Election Campaign compared more than favourably with that for a Referendum where approximately 50 cents per head could be spent on 10 million voters. In this case \$179 00 was spent, close to \$1 per head. Of the total, \$130 000 was spent on advertising, \$45 000 on production and distribution of the pamphlet and \$4 000 on 'minor printing'.⁶

5.11 The Committee notes that national averages and ACT only costs are not directly comparable.

5.12 In February 1989 the ACT Administration (then still a unit of the Department of the Arts, Sport, the Environment, Tourism and Territories) published a pamphlet entitled, 'The New ACT Government: Your Questions Answered.' Under the heading 'Electoral Arrangements: a brief description' it referred to 'An Election Fact Sheet' prepared by the Australian Electoral Commission, which, it said, covered the voting and scrutiny aspects of the ACT election.

5.13 The 'Fact Sheet' put out by the Commission was entitled 'The Voting System for the ACT Legislative Assembly Election'. It pointed out that the d'Hondt system upon which the ACT system was based, was a 'form of list proportional representation used for elections in several Western European democracies', described the ballot paper and its division by the ballot line, gave instructions for casting a formal vote and went on to say:

While voting is easy, the scrutiny, or count, is more complicated, and it could take some weeks before a final result is known.

5.14 It also drew attention to the fact that the contest was initially between parties and independents and that members of parties could only win seats as a consequence of their parties having won seats. A very brief outline of the scrutiny followed:

1. *Ballot papers are checked and informal ones excluded.*
2. *First preference votes are counted. If a ballot paper has the number 1 in the box beside a party or independent candidate this will be counted as a first preference vote for that party or candidate.*

If the ballot paper shows a number 1 for a particular party candidate that will be counted as a first preference for that candidate's party.

6. Evidence, p. 113.

3. *Parties and independent candidates who do not receive a quota (approx. 5.56%) of first preference votes are excluded from further counting. Their preferences are transferred to the remaining parties and candidates. The quota is calculated by dividing the total number of first preferences for all parties and independent candidates by one more than the number of vacancies being filled and adding one to the result.*

$$\frac{\text{Total first preference vote} + 1}{17 + 1} = \text{Quota}$$

4. *A d'Hondt scrutiny takes place. The new vote totals for each party/independent candidate are used to draw up a table to provisionally allocate seats. These totals are divided progressively by 1, 2, 3, 4 etc and the results are used for the provisional allocation of seats. The first seat goes to the party or independent candidate with the highest number on this table, the second goes to the party or independent candidate with the next highest, and so on until all 17 seats have been provisionally allocated.*
5. *When a party is provisionally allocated fewer seats than it has candidates, the Senate system of proportional representation is used to distribute preferences amongst its candidates to determine which of them will be provisionally elected.*
6. *Preferences from votes for candidates not provisionally elected, and from parties with no provisionally elected candidates are then distributed.*
7. *Following the transfer of preferences in Step 6, the final allocation of seats takes place, using the same formula as in Step 4. At this stage any independent candidate allocated a seat is elected.*
8. *If there are still parties which have won fewer seats than they have candidates, the procedure in Step 5 is repeated to determine which of their candidates are elected.*

5.15 The ACT Administration's pamphlet also attempted to cover some aspects of the scrutiny in its account of the electoral system:

Under the d'Hondt system in Europe, voters normally only mark the ballot paper once to indicate the party of their choice.

7. The example given was the one used in the legislation. It was reproduced in the Australian Electoral Commission's submission, evidence, p. S65.

Generally, the party and not the voter selects which candidates fill the seats. Also there is no capacity to transfer a vote if it is unsuccessful.

In the ACT the d'Hondt system has been modified to allow for the following:

- . Independent candidates to stand for election
- . Voters to show the order in which they want the party candidates of their choice to be elected
- . The provision for two opportunities for votes to be transferred

First: if the voters first choice does not attract a defined proportion of the vote (about 5.5%) it is excluded. So that the vote is not lost it is then transferred to the next choice that is still in the count.

Second: after a full count to provisionally determine the election result, if the voter's first choice at that stage of the count is unsuccessful, the vote is transferred to the next choice that was not excluded previously.

5.16 The Committee asked Mr Gary Whitely, who headed the self-government unit in the ACT Administration, what arrangements had been made to ensure that the public understood the new electoral system, given that the Electoral Commission had indicated it would not embark on any public awareness campaign. He replied:

We issued a "for information" pamphlet. Perhaps I should preface this by saying that educating the public and the conduct of the electoral campaign are clearly matters for the Electoral Commissioner and it was up to his judgement as to what activity he undertook in those areas.⁸

5.17 On 7 December 1988 an item on Capital 7 News reported that the Electoral Commission would conduct a campaign to explain the ACT voting system. Its source had been a senior officer in the ACT Administration. The following day the Electoral Commissioner wrote to the Minister for Arts and Territories, Mr Holding. Dr Hughes drew the Minister's attention to an agreement reached on 1 December 1988 whereby *'the Commission's role did not include any explanation or defence of the electoral system.'*⁹

8. Evidence, p. 128.

9. Evidence, p. S452.

5.18 Mr Holding replied on 14 December 1988 with the letter cited earlier.¹⁰ He said that Mr Whitely had been the source of the news item but had subsequently contacted the Commission and 'retraced' the agreement regarding the respective responsibilities of the Administration and the Commission. The Minister went on to confirm that the Commission would be required only to give voters sufficient information to ensure that they could cast valid votes (see paragraph 5.5.).

Effectiveness of public information campaign

5.19 The fact that many political parties and other participants in the electoral campaign placed electoral advertisements in the newspapers and distributed how to vote cards which were at odds with the ACT electoral legislation¹¹ suggests that there were shortcomings in the dissemination of public information. For example, the Democrats, National Party and the ACT Community Party all distributed how to vote material which advised placing a '1' in the relevant party box above the line as well as a '1' against the preferred party candidate.

5.20 The pamphlets distributed by the Electoral Commission enabled the Commission to fulfil its undertaking to instruct voters how to cast a valid vote for the party or independent candidate of their choice and also gave the barest possible outline of the scrutinies. ACT Administration had agreed to advise voters how the system worked. Its pamphlet went some way towards that. However, it was deficient in its failure to explain several important features of the system:

- . Deeming provisions whereby a voter who placed only a single mark against a candidate of a party would be deemed to have expressed subsequent preferences in accordance with that party's registered voting ticket;
- . formality rules, whereby duplicated preference marks would have different effects on the formality of a vote according to whether one or both occurred above or below the line; and,
- . the fact that this system, in some ways similar to that used in Senate elections, was quite different, particularly in having a threshold quota, which could not be filled on the transfer of preferences from lowest polling candidates, and in not providing for successive exclusions, transfer and election cycles within the whole count, (although candidates within parties would be elected on a Senate style count).

5.21 While not expecting the pamphlet to include a detailed explanation as to how the count would take place, the Committee believes that the ACT Administration was remiss in not adequately drawing to the attention of voters the unique nature of the system. The ACT Administration is now independent of the

10. See paragraph 5.6.

11. Australian Electoral Commission Submission, evidence, p. S51.

Commonwealth and is free to pursue its own arrangements with the Electoral Commission as to the conduct of future public information campaigns about the ACT electoral system, whatever that may prove to be. However, it would be well advised to seek advice from the Commission as to the sort of information which voters need in order to cast an effective vote.

THE SCRUTINY

5.22 In its submission the Commission said that as soon as the ACT legislation had been finalised it was able to estimate that the scrutiny might take over two months.¹² The Commission advised the ACT Administration of that likelihood on 1 December 1988 and held a media briefing session on 20 December 1988. As a result of the latter, an item appeared in *The Canberra Times* of 23 December 1988 headed 'Two-month wait for election result'.¹³

5.23 This contrasted with *The Canberra Times* Editorial of 6 April 1989 which stated that '... it could never have been foreseen that an election result could have been so painfully slow in coming.'

5.24 Mr Colin Ball, Chief Electoral Officer for Tasmania told the Inquiry:

Well prior to the recheck and scrutiny of votes at the A.C.T. Assembly election, I expressed the view to the Electoral Commissioner, that I estimated the total operation would take between 2 and 3 months to complete. This view was based on my experience over some 34 years in the conduct of PRU rechecks and scrutines combined with the number of political parties and candidates contesting the election and the inordinately complicated process prescribed in the legislation for the preference distribution process which was further exacerbated by the deeming provisions relating to ballot papers.¹⁵

Reports of the scrutineers

5.25 The Commission attracted considerable criticism for the delay in producing a result and the Committee considered it an important part of its terms of reference to ascertain the extent to which this criticism was justified. Accordingly, the Committee invited election scrutineers from the major parties to give evidence on the manner in which officers of the Commission had conducted the scrutiny.

12. Evidence, p. 851.
13. Evidence, p. 882.
14. proportional representation
15. Evidence, p. 8525.

5.26 Mr Treharne, of the Liberal Party, when asked to compare the scrutiny of the ACT election with previous elections at which he had scrutineered, said:

I think mind-boggling might be the best way to describe it. I think everybody involved in the scrutiny was flabbergasted at the difficulty caused by the size of the paper. I believe that this monster of a paper was responsible for the vast majority of problems that occurred during the scrutiny.¹⁶

5.27 Although he considered that the standard of people conducting the count was good, Mr Treharne thought that the Commission could have speeded up the process by training more staff to complete the recheck stage which, he estimated, took about 90 per cent of the total time.¹⁷

5.28 Ms Hemmings for the Labor Party reinforced Mr Treharne's claim that the scrutiny had been understaffed; *It was obvious that the Electoral Commission management did not address the aspect of adequate staffing. That would seem to me to be the primary way of facilitating a better election count in the future.¹⁸*

However, she too considered that 'the people operating on the floor were very diligent and very helpful'.¹⁹

5.29 Mr Gazlay, also from the Labor Party was critical of some of the procedures employed during the scrutiny. He thought matters could have been speeded up considerably by 'getting everybody to understand what the process is, when you have a problem. He thought that some officials could have been more helpful and suggested that, to the extent that they were not, *It was almost as if, to some extent, there was a self-fulfilling prophecy.²⁰*

5.30 Commenting on the speed and efficiency of the count, Mrs Jensen from the Residents Rally said

... I do not think they could have gone any faster. I did not want it to go any faster, really, because I thought it had to be done properly. In that respect, I thought the staff that were doing it were doing a very good job. If it had been a smaller paper it would have been a lot quicker.²¹

16. Evidence, p. 36.
17. Evidence, p. 36.
18. Evidence, p. 47.
19. Evidence, p. 46.
20. Evidence, p. 49.
21. Evidence, p. 59.

5.31 Mr Fleming from the Fair Elections Coalition said that his Party's scrutineers had been satisfied with the count:

They felt that if it had gone any faster, the complications of the system would have made it impossible for them to keep up.²²

5.32 This was supported by Mr Treharne who said that although he had been able to keep up with the pace he had observed others who 'had a lot of trouble'²³ although he attributed that to the length of the ballot paper and not to the electoral system itself.

The Electoral Commission responds to criticism

5.33 Mr Geoff Marles, who was appointed Australian Capital Territory electoral officer for the election, accepted nominations, administered the election and declared the election result. He said that staffing resources for polling day were calculated in accordance with a standard formula, allowing extra polling officials to assist with voter flow, and additional inquiry staff:

We assess the number of people we need on the basis of the electors who turn out at each and every polling booth. We take into account factors such as the number of ballot papers in the election or for this event, the size of the ballot paper and the difficulties that the electors will experience.²⁴

He considered that the number of staff allocated for the staffing of polling booths and the conduct of the scrutiny was adequate.²⁵

5.34 The Officer in Charge of the Scrutiny was Mr Phil Green. He said there were some similarities between the scrutiny for the modified d'Hondt system and a Senate scrutiny, commencing with the devotion of the first two weeks to checking declaration votes, counting postal, absentee and section votes and other post election checking.²⁶ However, once the recheck commenced the procedure for the modified d'Hondt system became much more complicated. Mr Green estimated that the modified d'Hondt system was 'weeks and weeks more complex' than the Senate system.

5.35 The size of the task can be seen in the fact that there were over 159,000 ballot papers with 139 boxes, every one of which had to be examined. In order to facilitate later stages, ballots were sorted into 209 different categories, including parties as well as candidates.²⁷

22. Evidence, p. 63.

23. Evidence, p. 38.

24. Evidence, p. 5.

25. Evidence, p. 6.

26. Evidence, p. 8.

27. Evidence, p. 9.

5.36 Counting of votes generally takes longer to complete in proportional voting systems than in single member electorate systems: the last Tasmanian House of Assembly count was completed within two weeks and two days, two days after the recently introduced 10 working day period for the close of postal and absentee votes; the NSW Senate Election of 1984, with 41 candidates, took almost two months, and that of 1987, with 49 candidates, took a month for the election of the first 11 candidates and a further 11 days for the final vacancy to be filled. Moreover, the Electoral Commission has pointed to three major features of the modified d'Hondt system which make it more complex to count than the Senate system. They are, first, the number of categories into which the ballot papers must be sorted. In this case there were 209 categories whereas, only 140 categories would have been required for a Senate count on the same ballot papers. Second, the formality rules of the modified d'Hondt system allow valid preferences to be cast both above and below the ballot line. The formality rules are such that:

... in some instances a ballot paper containing two preferences marks would be informal, in other instances a ballot paper could have as many as 18 preference marks and still be formal.²⁸

Third, under the Senate system 80-90% of ballot papers would normally be marked above the ballot line, while for the first ACT election over 60% of ballot papers followed 'no consistent pattern'.²⁹

5.37 The first two stages, the check of formality and check of first preference votes, took 17 working days. Mr Green said that in view of the Commission's estimate that with a large number of candidates the count would take two months, staff were not required to work on weekends or public holidays.³⁰ This was in accordance with normal Senate count practice.³¹

5.38 Work on the first two stages did not commence until checking of the declaration and postal votes had been completed because 'the available permanent staff were fully committed during this period'.³² Mr Marles explaining that this was because the checking of declaration votes was exacting and required experienced staff. Moreover postal votes could still be received up to 13 days after the polling date.³³

5.39 The initial choice of venue for the scrutiny, the Department of Administrative Services Conference Centre at Woden, was made before the number of candidates was known. It had been a satisfactory venue for previous Senate election counts but proved unworkable in this case. The operation was moved to the Woden Valley High School assembly hall, the largest venue available, which was still not quite large enough to permit easy handling of

28. Evidence, p. S53.

29. Evidence, p. S53.

30. Evidence, p. 13.

31. Evidence, p. S13.

32. Evidence, p. S31.

33. Evidence, p. S53.

the large number of bundles of metre-long ballot papers.

5.40 The recheck phase was completed on 14 April 1989. The remaining 6 stages of the scrutiny, (involving the initial round of exclusions, the distribution of preferences, provisional allocation of seats and further distribution of preferences and the final allocation of seats within parties) took 13 working days.

5.41 In a further submission the Commission summarised its reasons for limiting the number of staff on the scrutiny:

... the Commission did not have sufficient experienced casual staff to run extra teams; the premises were not big enough to have more teams sorting ballot papers; and scrutineers had to be able to be accommodated (all the scrutineers attested to the difficulty they had in fulfilling their functions). But, most importantly, the operation had to be kept to a manageable level to ensure effective control and accuracy.³⁴

5.42 This view was supported by the Tasmanian Chief Electoral Officer, Mr Colin Ball, who said:

The theory of the Mongol hordes may well sound a valid solution and perhaps in such operations as the digging of a large hole may have practical application. However in the operation of a scrutiny of ballot papers where exactness, accuracy and precision are required at all times and where an error in miss-sorting or the labelling or placement of ballot papers can result in many hours of lost time to rectify the error, then the concept of "more people less time", is to say the least of it, stupid and is generally only voiced by those with little or no understanding or experience of the procedures involved.³⁵

Conclusions

5.43 The Committee accepts that it would not have been productive for the Commission to have employed additional staff under the circumstances. The Commission said that it had written to several of its critics and invited them to suggest how the process could be hastened, but none responded. Furthermore, *None of the critics bothered, to the best of the Commission's knowledge, to visit the scrutiny centre or to obtain or read the Scrutiny Procedures Handbook.³⁶*

5.44 Only one person went on record to complain about the procedural standards employed by the Commission staff in the conduct of the scrutiny. Mr Dennis Gazlay, a Labor Party scrutineer said that

Some of the processes seemed to be a little bit slipshod initially when the counting was in the Community and Health Services building. It certainly appeared that there was no reconciliation on a daily basis of the number of absentee votes being opened.³⁷

5.45 In response, Mr Marles of the Commission gave the following assurance:

The Commission's procedures for the conduct of scrutines, particularly declaration vote scrutines, are very specific; and in this election they were followed to the letter. The balancing and bundling scrutines were carried out explicitly and to my knowledge there was absolutely no foundation to any statement that there was no reconciliation of any of the counts.³⁸

5.46 The evidence indicates that criticism of the Commission's performance was largely ill-informed and that allegations that the Commission indulged in a 'go-slow' campaign to fulfil its prophecy that finalising the election would take over two months, were without substance. The time taken for the ACT election scrutiny was comparable to that taken with the NSW Senate elections count in 1984 with less than half the number of candidates and a much more straightforward system.

5.47 As a final comment on the conduct of the election, this comment from the Electoral Commission's submission seems appropriate:

The scale of this election cannot be over emphasised. The number of candidates - 117 - had no precedent in Australia, and the ballot paper was consequently the largest ever seen at an Australian parliamentary election. Each elector had the option of numbering up to 139 squares on the ballot paper and because of the complex formality rules, scrutiny staff had to check every one of over 20 000 000 squares on 150 421 ballot papers.³⁹

34. Evidence, p. S409.

35. Evidence, p. S525.

36. Evidence, p. S57.

37. Evidence, pp. 47-8.

38. Evidence, p. 69.

39. Evidence, p. S53.

CHAPTER 6

EVALUATION OF THE MODIFIED D'HONDT ELECTORAL SYSTEM

- . Level of deposit and party registration
- . Comprehensibility
- . The threshold
- . Proportionality and vote values
 - other formulae

GIVING EFFECT TO VOTER INTENTIONS

- . Deciding rules
- . Party voting tickets
- . Coherence
- . Conclusion

Level of deposit and party registration

6.1 The purpose of requiring election candidates to pay a deposit, refundable upon election or upon securing a specified, minimum percentage of the vote, is to discourage those who are not 'genuine' from nominating.

6.2 Currently candidates for the ACT Legislative Assembly elections are required to pay a \$100 deposit. There are no minimum membership requirements for political party registrations in the ACT. It is not necessary for a party candidates to be nominated by a minimum number of eligible electors, although, independent candidates must be nominated by two eligible electors.

6.3 In the first ACT elections there were 117 candidates, 108 representing parties and 9 independents. The former included the 'Party! Party! Party!', the 'Sun Ripened Warm Tomato' and the 'Surprise Party.' The question of finding ways to reduce the number of frivolous candidates may not have arisen if the election count had been completed quickly. After a count lasting 9 weeks and two days, considered unacceptably long by most, it has assumed prominence.

6.4 The Committee has been presented with arguments both for and against raising the current deposit level. The arguments against raising the deposit are of four main types.

6.5 First, that wide participation in the democratic process should not be discouraged by setting the deposit at a prohibitively high level. This view was articulated by Mr Tony Fleming, unsuccessful Fair Elections Coalition candidate in the first ACT election:

This concept of increasing the deposit as a way of sorting out the problems is ridiculous: it is a system which discriminates against people who do not have much money. I see absolutely nothing wrong with having a lot of candidates.¹

6.6 Second, that to raise the level of the deposit might discourage only the 'frivolous poor'.²

6.7 Third, that it is unnecessary to raise the deposit because the level of interest at the first elections was very high and unlikely to be repeated. Moreover, the anti-self government groups would be expected to disappear as self-government becomes accepted as a *fait accompli*. Mr Craig Doby, MLA of the No Self-Government Party considered that 'many interest groups will find a commonality and as a result substantially less (sic) political parties and candidates will contest the next election'.³

6.8 Finally, the Australian Labor Party told the inquiry that it believed the deposit should not be increased, *as this does not seem to have been a deterrent to candidates in the past, and seems unlikely to be one in the future, unless the amount is set at such a high level that democracy itself is threatened.*⁴

6.9 The Australian Electoral Commission pointed out that the extraordinary length of the ballot paper, a factor which contributed to the duration of the count, was not caused by the number of candidates but by the number of parties, and by the requirement that independent candidates be listed horizontally above the ballot line.⁵ The Commission suggested that an increase in the deposit

may have had the effect of limiting the number of candidates fielded by some parties, but would not have had such an impact on the number of parties. ...⁶

6.10 There were several arguments advanced in favour of raising the level of deposit. First, if a deposit is to be used to discourage the frivolous candidate, it should be substantial.⁷

6.11 Second, the deposit in the ACT is much less than is required for state parliament elections in Australia with the exception of Western Australia, or for federal elections (See Table 6.1). The ACT deposit should be raised either to the minimum which applies to most state parliaments or to House of Representatives elections.

3. Mr Craig Doby, MLA, evidence, p. S110.

4. Evidence, p. S288.

5. Evidence, p. S35.

6. Evidence, p. S58.

7. E.g. Professor D Butler, evidence, p. S333.

1. Evidence, p. 68.

2. Australian Electoral Commission, evidence, S58.

TABLE 6.1 - ELECTORAL DEPOSITS

STATE	BODY	DEPOSIT	CONDITIONS FOR REFUND Candidate is elected or...
NSW	Legislative Assembly	\$500	gains more than 1/5th of total 1st preference votes gained by successful candidates.
NSW	Legislative Council	\$750	total 1st preferences by candidate or group is one to 1/2 quota or more.
VIC	Legislative Council or Assembly	\$250	gains at least 4% of 1st preferences
QLD	Legislative Assembly	\$250	gains at least 1/5th of 1st preferences of elected candidates
WA	Legislative Council or Assembly	\$100	poll more than votes or 1/10 of total votes or 1st preferences, in single member electorates, or otherwise candidates or group polls more than 1/2 of total 1st preference votes.
SA	Legislative Council or Assembly	\$200	gains more than 1/5th of 1st preferences polled by successful candidate
NT	Legislative Assembly	\$200	gains more than 1/5th of first preferences polled by successful candidate
TAS	Legislative Assembly	\$200	gains not less than 1/5 of quota
ACT	Legislative Assembly	\$100	Base number for candidate or his party is at least 4% of total formal votes.
FEDERAL	House of Representatives	\$250	More than 4% of the first preference votes.
FEDERAL	Senate	\$500	Candidates or party gets more than 4% of the first preference vote.

6.12 Mr Duby, suggested that the deposit should be increased but sought to modify the effect of that action on potential candidates by making the conditions for refund less stringent.⁸

6.13 Several groups opposed to raising the deposit considered that the objective of reducing frivolous candidates could be achieved more effectively and fairly by the introduction of minimum membership requirements for political party registration. In its submission the Australian Labor Party recommended a minimum membership level of 100 members:

The minimum membership requirement is reasonable in that it reflects the Commonwealth Electoral Act which provides for a minimum membership of 500. The figure of 100 would seem to be a reasonable level of community support, without which a party could not claim to represent any significant views within the community. The figure represents about 0.037% of the ACT population⁹

6.14 The Liberal Party recommended a minimum membership base of 25, the No Self Government Party 30, and the Residents Rally suggested 100 to 200 members.

6.15 The Committee agrees that the deposit should not be too high but considers that a level of \$250 should not be prohibitive to or discourage serious candidates. The Committee would not seek to alter the existing conditions for refund of deposits, namely, election or polling of 4% of the formal first preference vote by the candidate or the candidate's party.

The Committee recommends that:

- The level of deposit required for a candidate nominating for election to the ACT Assembly be raised to \$250. (Recommendation 1)

6.16 The above measure should, however, be taken in conjunction with action to require that political parties registering for ACT elections have a minimum number of members. The minimum number should be high enough to establish the parties as genuine but not so high as to discourage the emergence of new, or the continuation of minor, political associations. The Committee considers that a minimum of 100 members would satisfy these requirements.

The Committee recommends that:

- Political parties wishing to register for ACT elections be required to demonstrate a minimum membership of one hundred eligible ACT electors. (Recommendation 2)

8. Evidence, p. S119.

9. Evidence, p. S288.

6.17 The No Self Government Party, the Australian Labor Party and the Residents Rally advocated the introduction of restrictions so the same individual could register only one political party and be a registered officer of only one political party.

6.18 At the last election, one person, reputedly affiliated with one of the larger parties, registered and became the registered officer for six different parties. The Committee believes that such a situation is absurd and believes that action should be taken to prevent its recurrence.

The Committee recommends that:

- Restrictions be introduced to prevent the same individual:

- (a) from being able to register; or
- (b) from being the registered officer

for more than one political party in the ACT.
(Recommendation 3)

Comprehensibility

6.19 One of the major criticisms of the modified d'Hondt system is that it is so difficult to understand. It would appear that even persons with expert knowledge of electoral systems were unable to foresee the difficulties ahead. For example an article by well-known psephologist, Mr Malcolm Mackerras, in *The Canberra Times* of 11 November 1988¹⁰, was entitled 'ACT to have the fairest voting system of all.' In it Mr Mackerras said:

*The original d'Hondt proposed was a bad one and I was quick to condemn it, as did many others, however, this reasonable Government made a number of amendments and 'I am happy to count myself a supporter of the ACT's electoral system. You see, I know that there will be a stampede soon in its support so I want to get in ahead of the rest'. (Emphasis added).*¹¹

6.20 In a further article which appeared in *The Canberra Times* of 15 February 1989 Mr Mackerras said:
*The puzzling feature of the d'Hondt electoral system is that it should be so unpopular. When you know it quite as well as I do, you realise that it is really quite sensible.*¹²

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- 10. i.e. before the ACT Electoral Act had been passed.
 - 11. The timing of this article makes it uncertain as to whether Mr Mackerras was talking about the system prior to the 'Hill amendments' which added stages 6 to 8 of the scrutiny.
 - 12. *The Canberra Times*, 15 February 1989.

6.21 However, following the election Mr Mackerras revised his position. In an article submitted to the Inquiry he says:
*What is the logic behind modified d'Hondt? The answer is that there is no logic.*¹³

6.22 Many people submitted a range of criticisms of the ACT electoral system. The point about them is that they were made only after the system had been tested on a largely unsuspecting public. Only the Australian Electoral Commission, and individuals who cared to consult it, appear to have appreciated how complex and unpredictable the modified d'Hondt system was.

6.23 In evidence, Mr Phil Green of the Electoral Commission told the inquiry:
*The Senate system is by world standards, quite complicated. We know of nothing anywhere in the world that is anywhere near as complicated as modified d'Hondt.*¹⁴

6.24 Mr John Langmore, summed up the feelings of many other witnesses in his account of the ACT electoral system:
*The modified d'Hondt system is extremely convoluted and unsatisfactory. It is time-wasting, poorly understood and unpopular.*¹⁵

The threshold

6.25 The terms of reference for this inquiry ask the Committee to consider '*...whether the cut-off level for unsuccessful candidates is set at the most appropriate level.*' Consideration of questions concerning part of the electoral system such as the threshold would be superfluous if the Committee were to recommend that the electoral system itself be abandoned. Nevertheless, the threshold attracted considerable criticism which warrants independent examination.

6.26 The threshold is one of the many modifications to the d'Hondt system which make up the ACT electoral system. It seems to be commonly misunderstood. Some witnesses seemed to be under the misapprehension that any d'Hondt system implies a quota of some sort, i.e. a minimum proportion of first preference votes, necessary for a candidate to gain a seat.

6.27 The Australian Electoral Commission pointed out that one excluded independent candidate, Mr Mackey, and three excluded parties, the Fair Elections Coalition, Independent Haslem, and the ACT Community Party ... *were denied seats which, but for the initial round of exclusions, they would have won - an occurrence which at the same time reduced from 84.67% to 66.28% the percentage of voters represented by the party or independent candidate of their first choice.*¹⁶

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- 13. Evidence, p. S13.
 - 14. Evidence, p. 23.
 - 15. Evidence, p. S331.
 - 16. Evidence, p. S39.

6.28 Table 6.2 shows the outcome applying the d'Hondt formula to first preference votes at the ACT election.¹⁷

TABLE 6.2 - Outcome applying the d'Hondt formula to first preference votes at the ACT election

Party	First Preference votes polled (V)	Seats allocated (S)	V/S
ASG	10 641	1	10 641
NSG	16 274	2	8 137
LIB	21 088	3	7 029
RR	13 647	2	6 823
ALP	32 370	5	6 474
FEC*	7 765	1	7 765
HASLEM*	6 867	1	6 867
ACTCP*	5 777	1	5 777
MACKEY*	5 686	1	5 686

* Unsuccessful under modified d'Hondt system.

6.29 The Commission was concerned to clear up any misconception that it is possible to identify a cut-off level below which a candidate cannot win a seat under the d'Hondt formula. It said:

... it is possible in some circumstances for a candidate to be elected according to the d'Hondt formula with only one vote. Any choice of a quota (threshold) therefore must involve arbitrary assumptions about the patterns of voting which will occur (and if patterns of voting can be known in advance, it would seem pointless to hold elections).¹⁸

6.30 The threshold chosen for the ACT electoral system is a Droop quota, the same type used with the Senate and the Tasmanian Hare-Clark systems. It is calculated by dividing the total number of first preference votes by one more than the number of candidates and adding 1 vote to the total. For 17 vacancies this comes to approximately 5.56% of total first preferences. Its effect in the modified d'Hondt electoral system is quite different to its effect in the Senate and Hare-Clark systems

17. Australian Electoral Commission submission, evidence, p. S40.
18. Evidence, p. S41.

which allow quotas to be accumulated from the distribution of surplus votes as well as the transfer of votes from successive exclusions of low polling candidates. The ACT system excludes parties or independent candidates who fail to achieve the threshold. The result of this was that not all elected candidates achieved more votes than the candidates who were excluded by the threshold and were thus unsuccessful.

6.31 This formed the basis of much of the criticism which has been directed at the modified d'Hondt system.

6.32 The Fair Elections Coalition said:
The short-comings of the system are thus the disproportionate importance given to parties achieving more than 5.56% of first preference votes and the absence of any distribution of surplus votes. By only allowing the election of parties that obtained more than the cut-off percentage, the Residents Rally was allowed to win 4 seats, while all the parties that won just less than 5.56% were left without any representation.¹⁹

6.33 The Australian Labor Party listed as one of the major problems with the electoral system:

... the unfair and arbitrary nature of the 'cut-off quota', which resulted in the elimination of four candidates at the last election who would have been elected if 'pure d'Hondt (with independents)' had applied.²⁰

6.34 Some submissions favoured a lowering of the threshold. (e.g. the National Party to 4%²¹, and Mr Malcolm Mackerras to 5%²²). The Residents Rally was in favour of retaining a threshold at a 5% level or even less *... 'if only to ensure that a party or independent candidate is not elected with a small preference vote.'*

6.35 The Rally expressed the view that:
It is preferable for candidates from larger parties with small numbers of first preferences to have the benefit of the party vote as this more adequately reflects the intention of voters when they allocate their first preferences.²³

19. Evidence, p. S279.

20. Evidence, p. S284.

21. Evidence, p. S86.

22. Evidence, p. S84.

23. Evidence, p. S3.

but added a disclaimer:

This position does not mean that the Rally is trying to stop well supported independents from being elected.²⁴

The ALP said:

Although the cut-off point is arbitrary, it is vastly lower than the effective equivalent for a SMC²⁵ 26, and excluding candidates with very small primary votes from winning seats furnishes a measure of stability.

6.36 Mr David Lundberg took issue with this type of analysis. In reference to the concept of an arbitrary cut-off or threshold, he told the Inquiry:

Some have even suggested that this is a good thing, claiming that it is somehow improper for someone with a low first preference vote to win after distribution of preferences, but that conveniently ignores the fact that many candidates for the parties or groups who remain in contention get precisely that benefit from preference distributions. By contrast, none of the candidates eliminated after the counting of first preferences is permitted to accumulate support, as they could under Senate rules.

6.37 The Australian Electoral Commission said that it was 'not aware of any fundamental principle of democracy' which implies that '... a party or candidate with 5.56% or more of the vote deserves to win a seat, but that a party with fewer votes does not²⁷ and considered that in the absence of such a principle the choice of 5.56% would have to be regarded 'as either misconceived or purely arbitrary.²⁸ Either way, the Commission considered that it would have an adverse effect on the legitimacy of the election result.

6.38 The Fair Elections Coalition examined the effect of the threshold from the viewpoint of the voter.

This system does not explicitly disenfranchise voters. However, many voters who voted for candidates in groups that failed to gain 5.56% of the first-preference vote ended up not participating at all in the final distribution of seats. 8.9% of votes were exhausted after the initial round of exclusions.²⁹

24. Ibid.

25. Single Member Electorates.

26. Evidence, p. S224.

27. Evidence, p. S39.

28. Ibid.

29. Evidence, p. S276.

6.39 The 'exhausted votes' were those which had no next available preference either explicit or imputed. (See paragraphs 6.47 - 6.56)

6.40 Votes for all parties or independents failing to achieve the threshold are excluded in bulk. Perhaps the most telling criticism of this aspect of the modified d'Hondt system, is that it is theoretically possible, given an even spread of first preference votes over a large field, for so many candidates to be excluded that insufficient remain to fill all vacancies.³⁰ Senator Richardson when alerted to this possibility, replied that it could be solved simply by holding a further election to fill the remaining vacancies. (See paragraph 3.39).

6.41 The Committee considers that the 5.56% threshold is arbitrary. It certainly has not proven to be any guarantee of stable government. However, it is not appropriate to make any recommendation concerning the threshold in isolation from the ACT electoral system in its entirety.

Proportionality and vote values - other formulae

6.42 When introducing a d'Hondt type system the Minister, Mr Clyde Holding, explained how the d'Hondt formula ensured that the ratio of votes polled to seats won would be as close as possible for all parties.

6.43 Several witnesses told the inquiry that one of the effects of the threshold was to destroy proportionality and to cause an imbalance in the votes per seat ratio amongst parties. This is illustrated in the following table from the Fair Elections Coalition submission.³¹

TABLE 6.3 - Effect of threshold

Party/Cand.	1st Pref. Votes	Votes per Seat	Votes After Dist of preferences	Votes per Seat
Labor	32370	6474	38867	7773
Liberal	21088	5272	30061	7515
Residents R.	13647	3412	26939	6735
No Self-G	16274	5416	20953	6984
Abolish SG	10641	10641	12433	12433
Fair El. C.	7765	-	-	-
Haslem Ind.	6867	-	-	-
ACT Comm. P.	5777	-	-	-
B. Mackey	5686	-	-	-
Canb. 1st P.	4918	-	-	-
Family Team	3885	-	-	-

30. Australian Electoral Commission, evidence, p. S41.

31. Evidence, p. S277.

6.44 From the Table it can be seen that the number of first preference votes per seat ranges from 3412 for the Residents Rally to 10 641 for the Abolish Self Government Party. This divergence was a combined result of the application of the threshold and the absence of any distribution of surplus votes.

6.45 The Australian Electoral Commission pointed out that the d'Hondt formula was not the only one which could have been used to allocate seats amongst parties and independent candidates and that the Webster or Saint Lague formula (using odd integer divisors 1,3,5 etc...) would, on some analyses, lead to more equitable treatment of small and large parties.³²

6.46 These views are not shared by Mr Duby of the No Self-Government Party who said

*The d'Hondt system is without a doubt the fairest electoral system available for use with a multi-member electoral system.*³³

However, he noted that the system which 'works extremely well in European parliaments' is 'the original and not modified d'Hondt as applies in Canberra'.³⁴

GIVING EFFECT TO VOTER INTENTIONS

Deeming rules

6.47 Deeming rules are used to interpret a voter's intention when that intention is not absolutely clear. Without deeming rules votes may be wasted by being disregarded as informal or exhausted. The deeming provisions in the ACT electoral system are elaborate. Some of them have attracted substantial criticism on the grounds that they go beyond what could reasonably be inferred from the ballot paper.

6.48 The Australian Electoral Commission gave examples of the effects of deeming provisions which apply at different stages of the system.

6.49 First, under modified d'Hondt a non-consecutive but increasing and un-repeated sequence of numbers is taken to indicate successive preferences. In one case, a voter had placed a '1' next to candidate Mackey and a '10 000' next to candidate Follet and made no other marks on the ballot paper. When Mackey was excluded this voter was deemed to have a next available

32. The Commission cited H M Balinski and H P Young in *Fair Representation: Meeting the Ideal of One Man, One Vote* (Yale University Press, New Haven and London, 1982), who conclude that there is an inbuilt bias of about 20% against small parties in the d'Hondt formula. Evidence, p. S45.

33. Evidence, p. S112.

34. Evidence, p. S113.

preference for Follet and the ballot paper was transferred accordingly. The Committee agrees with the Electoral Commission that:

*Some would doubt whether this was what the elector intended.*³⁵

6.50 Second, the rules for interpreting preferences provide that where there are duplicated numbers (or preference marks), and only one of the duplicated numbers is above the ballot line, the ballot paper shall be transferred to the party or independent candidate opposite that square.

6.51 In the Electoral Commission's view:

This rule is purely arbitrary and has no basis in principle; its operation ... diminishes the extent to which the outcome of the election can be said to reflect the will of the electorate.

6.52 Third, where preference marks occur above and below the ballot line:

the markings below the ballot line are ignored if the preference mark below is against a candidate of a different party; the markings below the ballot line are ignored if there is a preference mark above for an independent and another below for a candidate of a party; and the markings above the ballot line are ignored if there is a preference mark above and below the line for a party and a candidate of that party.

The Electoral Commission noted:

*As it is possible under modified d'Hondt to express sequential preferences both above and below the ballot line, the operation of these rules has the effect of rendering inoperative preferences expressed by electors which might otherwise be capable of sensible interpretation, particularly in the case of ballot papers showing preference marks both above and below the ballot line for the same party.*³⁶

6.53 The Commission also pointed out that these rules were poorly understood prior to the election and several parties including the Australian Democrats and the National Party distributed how-to-vote material which advocated placing preference votes above and below the ballot line for the same party.³⁷

6.54 The decision to deem that a preference mark in a party box could override a preference mark below the line was one of the features of the modified d'Hondt system at which the

35. Evidence, p. S43.

36. Evidence, p. S44.

37. Evidence, p. S44.

Proportional Representation Society expressed 'abhorrence'.³⁸

Party voting tickets

6.55 The deeming provisions which drew most intense criticism were those concerning the use of the registered party voting ticket. They occurred at two different stages of the scrutiny. First, after the threshold exclusions, ballot papers which show a '1'³⁹, beside the name of an excluded party and no other mark, were deemed to have a next available preference in accordance with the registered party voting ticket of that party. Second, at the provisional election of party candidates stage, *provided an elector has not repeated a preference for a candidate belonging to the relevant successful party, any squares left blank by an elector next to the names of candidates in the party's list, are deemed to express continuing preferences after the last available preference expressed by the elector in the descending order of the party list.*⁴⁰

6.56 Third, and also at the provisional election of party candidates stage, ballot papers deemed not to have been marked below the ballot line (see Appendix F) *are deemed to express preferences ... straight down the relevant party ticket, regardless of any preferences which may have been expressed by the elector below the ballot line.*⁴¹

6.57 As the Electoral Commission observed, it seems unlikely that many voters would have been aware of the operation of these rules and the consequent effect on their votes.

6.58 The Committee understands that the rationale behind the deeming provisions was to eliminate vote wastage by maximising the formal vote. Accordingly where a voter's intention appeared to be clear the deeming rules were designed to give effect to that intention. The rules were devised by the ACT Administration, in consultation with the Australian Electoral Commission, after considering various possible permutations and combinations of marks on a ballot paper. The basic premise on which they were formulated, a premise not necessarily accepted by the Electoral Commission, was that as the electoral system was fundamentally a party list system, votes for candidates of parties should be interpreted primarily as votes for parties. Hence any ambiguities were to be resolved by reference to registered party voting tickets.

38. Evidence, p. S287.

39. i.e. a preference mark.

40. Australian Electoral Commission, Evidence, p. S46.

41. *ibid.*

6.59 The Committee understands that the Electoral Commission did point out to the ACT Administration a number of what it considered to be anomalies in the deeming provisions before the ACT Electoral Bill was passed. However, the ACT Administration did not consider that the proffered examples showed any inconsistency with the basic philosophy described above, but simply reflected a difference in perspective as to what the electoral system was all about.

6.60 The No Self-Government Party noted that Independent candidates did not enjoy the privilege of lodging a registered voting ticket and recommended that:

*In this matter, parties should be treated the same as independent candidates and not be permitted to lodge party voting tickets. The distribution of an elector's preference, if any, should be left to the elector. In many cases the elector will have a preference for one party alone and should that party fail to secure a seat he/she will not wish his/her vote to flow elsewhere. Should the elector have a second or third preference, it can be marked accordingly by the elector.*⁴²

6.61 The Liberal Party also could find no basis for discriminating between independent candidates and party's in this way, and recommended that consideration should be given to introducing 'Robson' provisions with whatever voting system is in force. That would mean the abolition of how to vote cards at polling booths and the adoption of rotating ballot papers.⁴³

6.62 The Committee considers that although it might appear to be fairer to treat parties and independent candidates in an identical manner, there are nevertheless good reasons for making some distinctions. If independent candidates were permitted to lodge registered voting tickets there would be nothing to prevent persons from standing with the primary purpose of benefiting a particular party through the distribution of their preferences.

6.63 The current ACT electoral legislation provides that independent candidates should be listed horizontally above the ballot line.⁴⁴ This requirement, which contributed substantially to the length of the ACT ballot paper, arises because under the modified d'Hondt scrutiny independent candidates are treated as parties. The legislation also requires that independent candidates be listed to the right of parties on the ballot paper. The Proportional Representation Society drew to the Committee's attention the rules regarding layout of the ballot papers used for Student Representative Council at the University of Sydney.⁴⁵ These rules permit several rows of columns containing large numbers of candidates to be set out on a ballot paper of moderate size.

42. Evidence, p. S115.

43. Evidence, p. 225.

44. Section 209 of the modified Commonwealth Electoral Act.

45. Evidence, p. S301.

6.64 The requirements of any alternative electoral system would affect how independent candidates could be treated in relation to parties. However, the Committee recommends the following principles.

The Committee recommends that:⁴⁶

- . No change should be made to the provisions whereby independent candidates are not permitted to lodge the equivalent of a registered party voting ticket. (Recommendation 4)
- . In order to make the ballot paper of a manageable size independent candidates should be grouped. (Recommendation 5)

6.65 More importantly, the Committee is strongly of the view that the deeming provisions of whatever electoral system is employed in the ACT should not permit unjustifiable inferences to be made about voter intentions. Democratic principles demand that voter intentions be interpreted and implemented as accurately as possible and that should be given every possible opportunity to have their votes counted. However, some of the deeming provisions in the ACT electoral system went to the extreme of imposing unreasonable interpretations upon voters' intentions in order to maximise the formal vote.

6.66 The Committee considers that the formality rules and deeming provisions which apply in the Senate system would provide a reasonable alternative for those used with the current system.

The Committee recommends that:

That where appropriate the Senate formality rules and deeming provisions serve as a model for the formality rules and deeming provisions of the ACT electoral system. (Recommendation 6)

Coherence

6.67 To allow votes to be cast in a meaningful manner, an electoral system should be constructed on solid democratic principles and it should be internally consistent. One of the major sources of criticism of the modified d'Hondt system is that it lacks integrity. A number of witnesses have expressed concern over structural anomalies within the modified d'Hondt system. These are listed below:

- . The threshold, already discussed in this chapter, is inconsistent with the fundamental aims of the

46. Note: Some recommendations would be redundant were the electoral system to be changed.

proportional system, party list d'Hondt, on which modified d'Hondt is based. It limits the extent to which parties will be represented in proportion to their vote.

- . By excluding in bulk parties and independent candidates who fail to achieve the threshold, the system runs the risk of not guaranteeing sufficient candidates will remain to fill all vacancies.
- . The system allows the transfer of first preferences from parties and independents who are excluded by the threshold, presumably so that those votes will not be wasted, but does not allow the distribution of surplus votes. At the provisional election of candidates stage, the system allows the transfer of votes to candidates who are already elected.
- . Candidates not provisionally elected at the provisional election of candidates stage, have all the votes they have accumulated up to that point transferred away from them but may also gain votes from other provisionally elected candidates.

6.68 In relation to the last point, the Australian Electoral Commission listed the following 'paradoxical' possibilities:

- . a party can gain a seat, although it receives no votes;
- . a candidate can be deprived of a seat though he or she has received additional votes;
- . a left-wing majority can be converted into a right-wing majority, even though no votes are transferred from left-wing candidates to right-wing candidates; and
- . the transfer of votes from a candidate not provisionally elected, far from saving them from being 'wasted', can serve to defeat a candidate of the same party for which the voters cast their first preferences, and elect a candidate of the party which those voters least prefer.⁴

Appendix I reproduces the Commission's example of how the anomalies listed above could arise.

6.69 The Commission's submission, at pages S71 and S72 of the evidence, sets out a proof that an independent candidate or party surviving the threshold would win 'at least one' seat. It is a further example of the lack of coherence of the system, that it provides for the mathematically impossible situation that an independent candidate or party might fail to win a seat despite having passed the threshold.

47. Evidence, p. S47.

Conclusion

6.70 Because of the problems with the modified d'Hondt system identified in this chapter, the majority of witnesses recommended that it be abandoned. Only the Liberal Party, the Residents Rally and the No Self Government Party considered that it could reasonably be given a further trial but without the so-called 'Hill amendments', stages 6 to 8 of the scrutiny.

6.71 The No Self Government Party suggested that a pure d'Hondt list system might as well be used as no candidate was elected outside of the order determined by the party. In its submission to the Inquiry the Labor Party also mentioned a pure d'Hondt, party list, system - but as a second best option (after single member electorates).⁴⁸ However, the strongest calls were for the rejection of the modified d'Hondt system as hopelessly ill-conceived and irredeemable.

6.72 The Fair Elections Coalition reported that:
*The ACT version of the d'Hondt system has been described as being a hotchpotch mixture of incompatible elements that achieves no discernible electoral principles.*⁴⁹

6.73 The Australian Electoral Commission concluded that it was
'an electoral system in which the whole is less than the sum of its parts'.⁵⁰

6.74 The Committee tried at length to find simplifications of the modified d'Hondt electoral system which would enable it both to address the concerns of the witnesses and to operate effectively. However, because of the difficulties associated with the first ACT election, namely the size of the ballot paper, the length of the count and the near impossibility of understanding how to cast an effective vote, the Committee was unable to come up with changes to the modified d'Hondt system which would be considered acceptable.

48. Evidence, p. S286.

49. Evidence, p. S281.

50. Evidence, p. S49.

CHAPTER 7

AN EXAMINATION OF ALTERNATIVES

- . Summarising the evidence
- . Conclusions

Summarising the evidence

7.1 Table 7.1 below shows a summary of the electoral systems which were favoured by witnesses and a coded list of the reasons they adduced in support of their choices.

7.2 Table 7.2 shows which electoral systems were considered unacceptable by witnesses, along with a coded summary of the perceived shortcomings of the respective systems.

7.3 The current system, called modified d'Hondt was considered unacceptable in its present form by all witnesses who expressed an opinion about the electoral system. Very few witnesses considered that any form of a d'Hondt electoral system would be acceptable. The Residents Rally and the No Self Government Party thought that a pure d'Hondt system, as was originally proposed by former Minister Punch, would have been a fair system i.e. one which would have provided an assembly which accurately reflected the pattern of electoral support.¹

7.4 Both the Rally and the No Self Government Party were under the misapprehension that a threshold based on the Droop quota is an integral part of a d'Hondt system.^{2,3} However, those parties were happy to see a quota used to ensure that groups with very small first preference votes would not be allocated seats.

7.5 The No Self Government Party proposed that what would amount to a pure d'Hondt system (except that independents would be treated as parties) should be used. It reasoned that there was no point in allowing voters to express preferences for candidates outside of the order determined by parties because no candidate was elected outside of that order. The deeming provisions for the system, based as they were on party-list principles, undoubtedly contributed to this outcome; to what extent it is difficult to estimate without conducting a recount with an alternative set of deeming rules.

7.6 The Residents Rally considered that preferences within parties should be retained but thought that *simpler proposals for final preference distributions*⁴ would need to be identified, so as to ensure that *each voter had a better than even chance to understand where their vote ends up*.⁵

1. Evidence, S1.
2. Evidence, S3.
3. Evidence, p. S121.
4. Evidence, S3.
5. ibid.

7.7 Not all witnesses commented on the electoral system or gave a preferred alternative. Of those that did, most approved of a proportional representation system: either the Senate or the Hare-Clark⁶ system with 3 x 7 multi-member electorates. The most commonly cited reasons in favour of such a system were that it:

- would allow for an accurate transformation of electoral support into representation in an assembly and thereby
 - ensure that the government reflected a suitable range of electoral opinion; and
 - permit change of government when electoral support fell below a reasonable level;
- was long established (in Tasmania); and
- would also provide an acceptable degree of local representation and an acceptable speed of counting.

7.8 In addition, the Hare-Clark system was popular because of the Robson rotation and the method of filling a casual vacancy on count-back. Some groups whose first choice was not the Hare-Clark system, advocated the use of the Robson rotation, regardless of what electoral system might ultimately be chosen.

7.9 The Liberal Party was unusual in citing stability of government as a feature of the Hare-Clark system. It pointed to the long history of stable government in Tasmania, broken only recently with the return of a minority Labor government in May of this year and observed that:

With three 7-member seats, a party would need to win about 48% of the vote after preferences in two of the three electorates to win a majority in the Assembly.¹

7.10 Hare-Clark was the choice of the Fair Elections Coalition, which initially recommended 3 x 7 multi-member electorates, but subsequently expressed preference for the alternative proposed by Mr I Buchanan. This consisted of an electorate of the whole using the Hare-Clark system, with 4 divisions. The names of all candidates would appear on all ballot papers, but those from the relevant local division would be rotated Robson style above the ballot line and the others could appear in party lists below the line.

6. That is, the Tasmanian Hare-Clark system as it is currently operating.
7. Evidence, p. S224.

Table 7.1 - ELECTORAL SYSTEMS FAVOURED

Systems Favoured	Organisation Witness	Electorate	No. of Members	Advantages Cited
Hare-Clark	Mackerras	3 x 7 multi-member	21	2,3,4,5,7,8
	Liberal Party	3 x 7 multi-member	21	2,13,16
	Fair Elect's Coalition	3 x 7 multi-member	21	2,6,7,8,9,10,13,14
	Buchanan	one but with 4 subdivisions	-	1,8,9
	Proportional Rep. Society Democrats	Discrete communities	-	2,5,8,10,14
Senate	AEC ⁸	-	-	1,2,3,(6),8,10
	National Party	-	-	2,4,13
	ACT Branch	-	-	2,16
	Liberal Party	3 x 7 multi-member	21	1,3,8,9,10,11,
	Rocke	2 x 7 multi-member (pro-rata)	17	12,14,16,17
	Pye	More than one multi-member electorate	-	1,2,7,22
	Hird	2 or 3 multi-member	-	4,8
	Proportional Rep. Society	one electorate or multi-member	-	2,8,10,14
Mixed Senate and H. of Reps.	Lundberg	2 x 8 multi-member + Chief Minister from whole electorate	17	2,13,16
	d'Hondt	Residents Rally ¹⁰ whole electorate	-	2,9,16 ⁹ ,22,23
Single Member Electorates	No Self-Govt. Party ¹¹	one	-	2
	Liberal Party ¹²	-	-	-
	Padgham-Purich	12 x 1	17	11,12
	MLA (NT) Independent	-	-	-
	Labor Party	17 x 1	17	1,3,8,9,10,11,12,14
	- ACT Branch - The Hon. Ros Kelly, MP - Senator McMullan - Mr John Langmore, MP	- - - -	- - - -	- - - -
Approval ¹³	Burns	17 x 1	17	14,17
	Gillespie	Whole	17	4,13,14

8. With changes: (see text)
 9. If Assembly members cooperate.
 10. With preferences for candidates within parties.
 11. With independents treated as parties and no transfer of preferences.
 12. Not first choice - modifications: repeal of the Hill amendments and addition of Robson rotation.
 13. Each voter can vote for the 17 candidates they prefer. The 17 highest polling candidates are elected.

Advantages of the Recommended/Acceptable Electoral Systems

1. Familiar in ACT
2. Proportionality: between seats and extent of electoral support / reflects wish of electorate / allows change of government / represents diversity of elector beliefs
3. Speed of result acceptable
4. Independents on equal footing with parties
5. Robson rotation
6. Optional preferential voting (in brackets means this is a recommended change)
7. Casual vacancies filled on count-back
8. Long-established/proven
9. Local Representation
10. Coherent and understandable
11. Very fast result
12. Used in NT and in all states except Tasmania
13. Fair
14. Simple
15. Minor parties excluded
16. Provides for stable government
17. Choice between government and opposition candidates means choice between alternative governments predictability
18. Accountability of local representatives
19. Preferred by the ACT residents¹⁴
20. Trusted
21. Allows special relationship between elected member and constituents on ballot paper
22. Allows constituent greater choice of representatives to consult.
23. Allows representation of minority views.

- 14. In her submission (p. S291) the Hon. Ros Kelly quoted a poll published in the Canberra Times of 20 November 1988, which she said resulted in 40.3% of respondents favouring single member electorates, 25.6% favouring a Senate style system, 5.1% who favoured the d'Hondt system and 29.0% who favoured another system or were undecided. A poll commissioned by the Canberra Times between 19 and 22 December 1988 asked voters:
 Which of the following methods of political representation would suit you, the ACT voters best: that each representative is elected to represent their own small area, OR that each representative is elected to represent the whole of the ACT.
 Approximately 57% of the 379 people surveyed favoured the former, 36% the latter and 7% didn't know.

Table 7.2 - ELECTORAL SYSTEMS REJECTED

Electoral Systems Rejected	Organisation / Witness	Disadvantages cited
Senate	Mackerras Residents Rally Burns* (Prefers pre-1984 system)	3,4,5,6 23
Modified d'Hondt	AEC Mackerras Ms Padgham-Purich, MLA (NT) National Party ACT Branch Gillespie No Self-Government Liberal Party Rocke Fair Elections Coalition Labor Party - ACT Branch - The Hon. Ros Kelly, MP - Senator MacMullan - Mr John Langmore, MP Proportional Representation Society Residents Rally Lundberg Hird Pye	2,4,6,8,10,11,12 13 14,15 2,6,7,11 5,8,10 2,3,7,8,11,13 7,11,19 2,3,6,11,19,20 1,4,11,14,15,16, 17,18,19,20,21 4,5,6,8,11,22 4,8,11,14 4,6,11,21 7,15 2,15
d'Hondt	Fair Elections Coalition	6,20
Single Member Electorates	AEC No Self-Government Liberal Party Fair Elections Coalition Residents Rally Proportional Rep. Society Hird Pye Democrats	9 6 17 6,17,20 17, 24 6 25 26 6

Disadvantages

1. Unfamiliar in ACT
2. Complex and obscure
3. Parties determine order of candidates on ballot paper
4. Lacks coherence
5. Complex and arbitrary deeming rules
6. Unfair / seats not in proportion to electoral support / Favours major parties at expense of small parties and independents
7. Independents not on equal footing with parties
8. Party voting tickets can be used without voter knowledge
9. Senate unlikely to accept
10. Count unacceptably slow
11. Arbitrary threshold
12. Unreasonable formality rules
13. Unacceptable time to complete count
14. Inefficient
15. Embarrassment to the ACT
16. Unnecessarily allows electors to rank candidates outside order of party ticket
17. Socio-demographic homogeneity in ACT would mean significant under-representation of minor parties in single member electorate system and mean lack of effective opposition
18. Small electorates unnecessary for adequate representation in ACT which is a small area
19. No local representation
20. Allows wastage of votes
21. Leads to unstable government
22. Allows votes to be transferred to candidates already elected
23. Allows election of minor parties with very small percentage of first preference vote
24. Undesirable in a unicameral system
25. Encourages parochialism
26. Encourages adversarial approach to government

7.11 The opponents of the proportional representation systems such as the Hare-Clark system claimed that:

- they do not permit the electors to vote for the Government of their choice as they might for example in a choice between government and opposition candidates in a single member electorate system;
- they can allow the election of candidates from parties which have exceedingly low levels of electoral support; and
- they are less likely to result in winning a majority of seats to form a stable government;
- they are complex and slower to count; and
- they don't offer the best form of local representation.

7.12 Representatives of the Labor Party and Ms Padgham-Purich, an independent MLA from the Northern Territory, supported a system of single member electorates. The reasons advanced in its favour were that the system:

- is used in every other state or territory in Australia with the exception of Tasmania;
- is simple, widely understood and trusted;
- allows the most effective form of local representation and a uniquely close relationship between a member and constituents; the converse is that a member is most directly accountable to the electorate;
- allows results to be known very rapidly; and
- historically, is most likely to result in stable government.

7.13 Concluding his arguments in favour of single member electorates, Senator McMullan said

*This reflects the expressed wish of the people of the ACT, would lead most often to a stable government which reflected the expressed preference of the majority of Canberra voters and would provide citizens with the level of local support to which they are accustomed and entitled.*¹⁵

7.14 The opponents of a single member electorate system said that:

- in a small geographical area such as Canberra, small constituencies hardly seemed necessary and might encourage parochialism;

15. Evidence, p. S235.

- such a system would mean a significant proportion of the electorate could be unrepresented by their preferred candidates;

- minority views would not gain representation on the Assembly.

7.15 It was claimed that these problems would be magnified by the even spread of different socio-economic groups throughout Canberra.

7.16 The patterns of political support also reflect this socio-economic homogeneity. The Liberal Party estimated that in the ACT single member electorates would enable the Labor Party to 'translate 35 or 40 per cent of the popular vote into between 60 and 100 per cent of the seats.'¹⁶ In a submission to the inquiry, the Liberal Party estimated that the number of seats out of a 17 member assembly which Labor could gain ranged from 17, with a little over 50% of the primary vote, to a majority of 9 with 41%.¹⁷

7.17 In reply, those advocating single member electorates pointed out that even if there were an initial landslide in favour of a major party, and the results of the first ACT election suggested this was unlikely, it would not repeated at subsequent elections unless the party candidates continued to attract the support of the electorate. Some questioned why voting patterns in the ACT, which traditionally show a widespread level of support for the Labor Party, should be used as an argument against the adoption of an electoral system which otherwise has so much to recommend it.

7.18 The Hon. Ros Kelly, also rejected the argument that single member electorates would discriminate in favour of the major political parties. She said:

*I do not support the theory that single member electorates would discriminate in favour of the major political parties. Under a system of single member electorates candidates would be judged on their own merits and on their response to local issues that voters are concerned about at this level. In other words, success at the local level (is determined by) the calibre of the candidate and his/her standing in the local district.*¹⁸

7.19 In her submission to the inquiry Mrs Kelly strongly favoured single member electorates on the basis that they promoted stability. In the light of recent signs of instability

16. Evidence, pp. 139-140.

17. The estimates were made on the basis of the two-party preferred vote in the 1982 House of Assembly elections and the 1987 Senate elections. For a full account of the assumptions see evidence, pp. S462-463.

18. Evidence, p. S291.

in the ACT Government Mrs Kelly has made a public call for the existing electoral system to be replaced by a single member system.¹⁹

7.20 The Proportional Representation Society pointed out that a single member electoral system cannot be guaranteed to produce stability²⁰, whilst Mr Humphries of the Liberal Party suggested that in some circumstances it could lead to stability despite the government's retaining the support of considerably less than 50% of the electorate.²¹ Mr Humphries considered that

*It is much more important to change government, even on an unstable basis with an unreliable partner, than it is not to have a change of government.*²²

7.21 This is the crux of the difference between the two major viewpoints put to the Committee: the comparative advantages of stable and workable government versus government which represents the fullest possible cross-section of interest groups and viewpoints. However, to couch it this way is to accept that the only effective government is a majority government. The outcome of experiments with minority governments in Tasmania and the ACT cannot be predicted, but there are already signs of instability in the ACT.

Conclusions

7.22 Many of the submissions have included the desirable features of acceptable electoral systems. As Chapter 2 of this report acknowledges, there is no perfect electoral system; the best system for any government system or polity depends upon the prevailing political and social circumstances. In evidence the recently retired Australian Electoral Commissioner, Dr Hughes drew attention to the view expressed by the Commission in its publications, that there had been 'an excessive proliferation'²³ of electoral systems in Australia. The Commission had two major concerns about the development of the modified d'Hondt system:

- (1) The development of yet another electoral system was contrary to the principle of parsimony; and
- (2) the system selected was 'an attempt to stick together two totally disparate streams of electoral development.'²⁴

Expanding on the second point, Dr Hughes said:

*One of those (streams) had proceeded in the Anglo-Saxon countries and had come up with Hare-Clark ... in its purest form in Australia and certainly had some modifications for the Senate but nevertheless was identifiable in that tradition.*²⁵

The other was the party list system which arose on the Continent. What emerged, in Dr Hughes' words:

*took off like Mrs Shelley's great monster creation and began to go its own way with a life of its own.*²⁶

7.23 The Committee acknowledges the validity of Dr Hughes' claims, particularly the view that it would be undesirable to develop yet another electoral system. The novel and interesting suggestions of Dr Lundberg and Mr Gillespie²⁷ have not been explored for that reason.

7.24 The Committee opinion on what alternative it should recommend is divided. The preferred system of the Labor Party members remains single member electorates, for the reasons cited above, namely, that it is a simple, trusted system, giving an unrivalled degree of local representation and most likely to result in stable government. The preferred system of the Coalition members and of the Democrat representative, Senator Jenkins and of the independent, Senator Harradine, is a Hare-Clark system with multi-member electorates, on the grounds that: proportional systems are inherently fairer; can also provide local representation; would be ideally suited to the circumstances of the ACT; and a system of proportional representation was overwhelmingly supported by the majority of groups giving evidence to the Inquiry.

7.25 The Committee is however unable to recommend either system as one that would at present be likely to secure passage through both Houses of Parliament. For that reason it recommends that the choice be put to the ACT electorate in a referendum. On the basis that the determination of the electoral system is a Commonwealth responsibility, the Commonwealth Government should provide the necessary funds for the conduct of the referendum by the Australian Electoral Commission and all parties should undertake to abide by the result.

19. Canberra Times, 25 November 1989, p. 1.

20. Evidence, p. 159d.

21. Evidence, p. 148.

22. Evidence, p. 149.

23. Evidence, p. 108.

24. Evidence, p. 119.

25. *ibid.*

26. *ibid.*

27. Approval voting is not unknown in Australia and has been used to elect the Norfolk Island 9 member Assembly since 1983.

The Committee recommends that:

A referendum be held in the ACT to establish which of the two following electoral systems would be preferred by the majority of voters

- . a system of single member electorates using the House of Representatives voting system
- . A system of proportional representation with multi-member electorates modelled on the Tasmanian Hare-Clark voting system. (Recommendation 7)

The Commonwealth government provide funds for the Australian Electoral Commission to conduct the referendum. (Recommendation 8)

All parties should agree to introduce at the earliest opportunity whichever of the two electoral systems is preferred by a majority of ACT voters. (Recommendation 9)

Michael J Lee, MP
Chairman
30 November 1989

APPENDICES

APPENDIX A

Submissions received for the Inquiry into the A.C.T. Election and Electoral System

Submission Number:

Individual/Organisation, Date:

1. Letter dated 28 July 1989 from the National Secretary, Australian Peoples Representative Council, Mr Rodney Van Wegen.
2. Letter dated 2 August 1989 from Dr S Rose.
3. Letter dated 3 August 1989 from Mr Philip du Rhone.
4. Letter (undated) from Senior Lecturer in Politics, Australian Defence Force Academy, Mr Malcolm Mackerras.
5. Letter dated 18 August 1989 and submission from the Electoral Commissioner, Australian Electoral Commission, Dr Colin A Hughes.
6. Letter dated 17 August 1989 from Member for Koolpinyah, Ms Noel Padgham-Purich, MLA.
7. Letter dated 18 August 1989 from Senior Lecturer in Politics, Australian Defence Force Academy, Mr Malcolm Mackerras.
8. Letter dated 23 August 1989 from the Chairman, National Party of Australia (ACT Branch), Mr Michael Mullins.
9. Letter dated 23 August 1989 from Mr L L Gillespie.
10. Letter (undated) from Mr R M Cannon.
11. Letter dated 25 August 1989 from Mr Harold Hird.
12. Letter (undated) from Mr Craig Duby, MLA, No Self Government Party.
13. Letter dated 23 August 1989 and submission from Australian Democrats, Senator Noel Sanders.
14. Letter dated 29 August 1989 and submission from the Deputy Leader of the ACT Opposition, The Liberal Party of Australia, Mr Gary J J Humphries.

15. Letter dated 22 August 1989 and submission from Dr Miko Kirschbaum.
16. Letter (undated) and submission from Mr John D Rocks.
17. Letter dated 25 August 1989 and attachments from Senior Lecturer in Politics, Australian Defence Force Academy, Mr Malcolm Mackerras.
18. Letter dated 25 August 1989 from Ms Moira Rowland and Dr Miko Kirschbaum, Fair Elections Coalition.
19. Letter dated 30 August 1989 and submission from the Secretary, (ACT Branch), Australian Labor Party, Mr David Wedgwood.
20. Letter (undated) from Member for Canberra, the Hon. Ros Kelly, MP.
21. Letter dated 25 August 1989 and submission from National President, Proportional Representation Society of Australia, Mr Geoffrey Goode.
22. Letter dated 6 September 1989 and submission from Senator Bob McMullan.
23. Letter dated 6 September 1989 from Mr T W W Pye, MBE.
24. Letter (undated) from Member for Fraser, Mr John Langmore, MP.
25. Letter dated 5 September 1989 and attachments from Dr David Butler, Nuffield College.
26. Letter dated 12 September 1989 and attachments from Mr Philip du Rhone.
27. Paper dated 24-27 September 1989 from Senior Lecturer in Politics, Australian Defence Force Academy, Mr Malcolm Mackerras.
28. Letter dated 15 September 1989 and submission from Mr S I Buchanan.
29. Letter dated 21 September 1989 and submission from the Electoral Commissioner, Australian Electoral Commission, Dr Colin A Hughes.
30. Letter dated 22 September 1989 and submission from Ms Moira Rowland and Dr Miko Kirschbaum, Fair Elections Coalition.

31. Letter dated 11 October 1989 and submission from the Deputy Leader of the ACT Opposition, The Liberal Party of Australia, Mr Gary J J Humphries, MLA.
32. Letter dated 16 October 1989 and submission from the President, Resident Rally, Mr Chris Donohue.
33. Submission dated 5 October 1989 from Dr David Lundberg.
34. Submission dated 21 October 1989 from Professor A L Burns.
35. Letter dated 1 November 1989 and submission from Mr R M Cannon.
36. Letter dated 3 November 1989 and attachments from ACT Spokesman, Proportional Representation Society of Australia, Mr Bogey Musidlak.
37. Letter dated 10 November 1989 and attachments from the Electoral Commissioner, Australian Electoral Commission, Dr Colin A Hughes.
38. Letter dated 16 November 1989 from the Acting Chief Electoral Officer, Tasmania, Mr A G Watkins.
39. Letter dated 24 November 1989 and attachment from the Acting Electoral Commissioner, Australian Electoral Commission, Mr Andre Cirulis.
40. Letter dated 29 November 1989 from the Chief Electoral Officer, Department of Administrative Services, Mr Colin Ball.

APPENDIX B

The witnesses who appeared before the Joint Standing Committee on Electoral Matters during the inquiry were:

Canberra, Monday 4 September 1989

- Mr Anthony Ian Fleming, Member, Fair Elections Coalition, 59 Macleay Street, Turner, ACT
- Mr Dennis James Gazlay, Australian Labor Party, Labor Resources Centre, Canberra Labor Club, Chandler Street, Belconnen, ACT
- Mr Phillip Charles Green, Administrative Service Officer, Operations Section, Australian Electoral Commission, Canberra, ACT
- Ms Fiona Hemmings, Scrutineer, Australian Labor Party, PO Box 26, Belconnen, ACT
- Mrs Wendy Ann Jensen, Scrutineer, Residents Rally, 29 Harbison Crescent, Wanniasa, ACT
- Mr Robert Edward MacDonald, Scrutineer, Residents Rally, 10/50 Embling Street, Wanniasa, ACT
- Mr Geoffery Paul Marles, Australian Capital Territory Electoral Officer, Australian Electoral Commission, Canberra, ACT
- Mr Edward-Llewellyn Treharne, Vice-President, Liberal Party of Australia, Australian Capital Territory Division, PO Box 66, Deakin, Canberra, ACT
- Mr David Kenneth Wedgwood, ACT Branch Secretary, Australian Labor Party, PO Box 26, Belconnen, ACT

Canberra, Monday 16 October 1989

- Mr Robert Maxwell Cannon, 26 Irwin Street, Yarralumla, ACT
- Mr Phillip Charles Green, Election Scrutiny Supervisor, Australian Electoral Commission, Canberra, ACT
- Mr Harold James Hird, 21 Callaghan Street, Evatt, ACT
- Dr Colin Anfield Hughes, Electoral Commissioner, Australian Electoral Commission
- Mr Gary John Joseph Humphries, MLA, Immediate Past President, ACT Division of the Liberal Party, ACT

- . Dr Miko Uwe Franz Kirschbaum, President, Fair Elections Coalition, ACT
- . Mr Malcolm Hugh Mackerras, 35 Creswell Street, Campbell, ACT
- . Mr James Scott Mahoney, Assistant Commissioner, Information and Education, Australian Electoral Commission, ACT
- . Mr Thomas Wilbur Washington Pye, 16 Angas Street, Ainslie, ACT
- . Mr John David Roche, 60 Baddeley Crescent, Spence, ACT
- . Mr Gary Spencer Whitley, 51 Barada Crescent, Aranda, ACT

Canberra, Tuesday, 17 October 1989

- . Mr Stuart Ian Buchanan, 44 Debenham Street, Mawson, ACT
- . Mr Bernard Collaery, MLA, Leader, Residents Rally for Canberra, ACT
- . Mr Chris Donohue, President, Residents Rally for Canberra, ACT
- . Mr Craig Duby, MLA, Party Leader, No Self Government Party, ACT
- . Mr Graeme Wheller Evans, Vice President, ACT Division, Australian Democrats, PO Box 438, Civic Square, ACT
- . Mr Norman Arthur Jensen, MLA, Member, Residents Rally for Canberra, ACT
- . Dr David Lundberg, 97 Blamey Crescent, Campbell, ACT
- . Senator Robert Francis McMullan, Australian Labor Party, ACT
- . Mr David Kenneth Wedgwood, Secretary, ACT Branch, Australian Labor Party, ACT

Canberra, Monday, 23 October 1989

- . Mr John Langmore, MP, Australian Labor Party, ACT

Alpha listing - submission makers and witnesses

<u>Names of submission makers and/or witnesses</u>	<u>Submission Number</u>	<u>Date of Appearance</u>	<u>Witness(es) representing Organisation</u>
AUSTRALIAN DEMOCRATS	13	17/10/89	Mr G Evans
AUSTRALIAN ELECTORAL COMMISSION	5, 29	4/9/89 16/10/89	Mr P Green Mr G Marles Mr P Green Dr C Hughes Mr J Mahoney
AUSTRALIAN LABOR PARTY	19	4/9/89 17/10/89 23/10/89	Mr D Wedgwood Senator McMullan Mr D Wedgwood Mr J Langmore
AUSTRALIAN LABOR PARTY (ACT BRANCH)		4/9/89	Mr J Gazlay Ms F Hemmings
AUSTRALIAN PEOPLES REPRESENTATIVE COUNCIL	1		
BUCHANAN, Mr Ian	28		
BURNS, Professor A L	34		
BUTLER, D	25		
CANNON, R M	10	16/10/89	
COLLAERY, Mr Bernard (Residents Rally)		17/10/89	
DONOHUE, Mr Chris (Residents Rally)	32	17/10/89	
DU RHONE, Mr Philip	3, 26		
DUBY, Mr Craig (No Self Government Party)	12	17/10/89	
EVANS, Mr Graeme W (Australian Democrats)			

<u>Names of submission makers and/or witnesses</u>	<u>submission number</u>	<u>Date of Appearance</u>	<u>Witness(es) representing Organisation</u>
FAIR ELECTIONS COALITION	15, 18, 30	4/9/89 16/10/89	Mr A Fleming Dr M Kirschbaum
FLEMING, Mr Anthony I (Fair Elections Coalition)		4/9/89	
GAZLAY, Mr Dennis J (Australian Labor Party - ACT)		4/9/89	
GILLESPIE, L L	9		
GOODE, Mr Geoffrey (Proportional Representation Society of Australia)	21	4/9/89 16/10/89	
GREEN, Mr Phillip C (Australian Electoral Commission)		4/9/89 16/10/89	
HEMMINGS, Ms Fiona (Australian Labor Party - ACT)		4/9/89	
HIRD, Mr Harold	11	16/10/89	
HUGHES, Dr Colin A (Australian Electoral Commission)	5, 29	16/10/89	
HUMPHRIES, Mr Gary J (Liberal Party - ACT)	14, 31	16/10/89	
JENSEN, Mrs Wendy A (Residents Rally)		4/9/89	
JENSEN, Mr Norman A (Residents Rally)		17/10/89	
KELLY, The Hon. Ros (Australian Labor Party)	20		

<u>Names of submission makers and/or witnesses</u>	<u>submission number</u>	<u>Date of Appearance</u>	<u>Witness(es) representing Organisation</u>
KIRSCHBAUM, Dr Miko U (Fair Elections Coalition)	15, 18, 30	16/10/89	
LANGMORE, Mr John (Australian Labor Party)	24	23/10/89	
LIBERAL PARTY OF AUSTRALIA (ACT DIVISION)	14, 31	4/9/89 16/10/89	Mr E Treharne Mr G Humphries
LUNDBERG, Dr David	33	17/10/89	
MACDONALD, Mr Robert E (Residents Rally)		4/9/89	
MACKERRAS, Mr Malcolm	4, 7, 17, 27	16/10/89	
MAHONEY, Mr James S (Australian Electoral Commission)		16/10/89	
MARLES, Mr Geoffrey P (Australian Electoral Commission)		4/9/89	
McMULLAN, Senator Robert F (Australian Labor Party)	22	17/10/89	
MULLINS, Mr Michael (National Party - ACT)	8		
MUSIDLAK, Mr Boguslaw C (Proportional Representation Society of Australia)	21	16/10/89	
NATIONAL PARTY OF AUSTRALIA ACT BRANCH	8		
NO SELF GOVERNMENT PARTY	12	17/10/89	Mr C Duby
PADGHAM-FURICH, Ms Noel	6		
PROPORTIONAL REPRESENTATION SOCIETY OF AUSTRALIA	21	16/10/89	Mr B Musidlak

<u>Names of submission makers and/or witnesses</u>	<u>submission number</u>	<u>Date of Appearance</u>	<u>Witness(es) representing Organisation</u>
RESIDENTS RALLY	32	4/9/89 17/10/89	Mrs W Jensen Mr R MacDonald Mr B Coliaery Mr C Donohue Mr N Jensen
ROCKE, Mr John D	16		
ROSE, Dr S	2		
ROWLAND, Ms Moira (Fair Elections Coalition)	18, 30		
SANDERS, Senator Norman K	13		
TREHARNE, Mr Edward-Llewellyn (Liberal Party of Australia - ACT)		4/9/89	
VAN WEGEN, Mr Rodney (Australian Peoples Representative Council)	1		
WEDGWOOD, Mr David K (Australian Labor Party - ACT)	19	4/9/89 17/10/89	
WHITLEY, Mr Gary S		16/10/89	

APPENDIX D

Senate System Scrutiny

(Adopted from information supplied by the Australian Electoral Commission)

- (i) For an elector to cast a valid vote, he or she must either place a mark (usually a figure 1) in one of the party ticket squares at the top of the ballot paper or by placing a series of numbers indicating a preference against the candidates listed in the bottom section of the ballot paper. (A series of formality checks exist to determine the validity of ballot papers which are incomplete).
- (ii) Party groups are identified on ballot papers. The position of party groups on the ballot paper is determined by lot. Candidates position within a group is determined by the party.
- (iii) To secure election, candidates must secure a Droop quota of votes.
- (iv) A candidate who gains an exact quota on first preferences, is declared elected and his or her ballot papers are set aside as finally dealt with.
- (v) For each candidate elected with a surplus of first preferences above the quota, commencing with the one with the largest surplus, a transfer value is calculated by dividing the successful candidate's number of surplus first preference votes by his or her total number of first preferences. All of the candidates ballot papers are then re-examined and the number of next available preference votes for each of the continuing candidates is determined and multiplied by the transfer value. The resulting numbers, rounded downwards to the nearest whole number, are added to the continuing candidates' respective numbers of first preference votes.
- (iv) Where a transfer raises the number of votes obtained by a candidate up to a quota, that person is declared elected. That particular transfer is then completed but no further votes of any other candidate are transferred to that elected candidate.
- (vii) In the case of a candidate who reaches a quota through transferred votes, surplus votes for the candidate above the quota are divided by the number of ballot papers received by the candidate as first preferences or transferred from any other elected or excluded candidate. The resulting fraction is the transfer value which is applied to the candidate's ballot papers, which are then transferred to continuing candidates according to the next available preferences which the ballot papers show.

- (viii) When transfers have been completed in respect of all candidates who obtained a surplus above a quota as a result of the above procedures, the candidate who has the fewest votes is excluded and his or her ballot papers are distributed to the remaining continuing candidates according to the next available preferences. The candidates own first preference votes are transferred first, retaining a value of one each. Ballot papers that have been transferred to the candidate are dealt with in the order of the transfers values at which they were obtained.
- (ix) Steps (v) and (viii) are continued, as necessary, until either all vacancies are filled or all candidates except a number equal to the number of vacancies remaining have been elected or excluded. In the latter case, unexcluded candidates not already elected are declared elected.
- (x) When at any stage of the scrutiny, it is found that a ballot paper expresses no next available preference for any candidate, the ballot paper is set aside as exhausted.

Hare-Clark System Scrutiny

(Adapted from Tasmanian Yearbook 1985 Australian Bureau of Statistics, Tasmanian Office)

- (i) For an elector to cast a valid vote, he or she must express at least seven preferences.
- (ii) Party groups are identified on ballot papers, with ungrouped candidates listed together on the right of the ballot paper. Candidates' positions within groups are determined by a system of rotation so that all candidates appear on the same number of ballot papers in designated 'preferred' positions.
- (iii) To secure election, candidates must secure a quota in accordance with the Droop formula (i.e. the total first-preference votes in the constituency divided by eight, plus one vote).
- (iv) A candidate securing an exact quota on first preferences, is declared elected and his or her voting papers are set aside as finally dealt with.
- (v) Any candidates who secure a surplus of first preferences above the quota are declared elected.
- (vi) For each elected candidate, commencing with the one with the largest surplus, a transfer value is calculated by dividing the successful candidate's number of surplus first preference votes by his or total number of first preferences. All of the candidates voting papers are then re-examined and the number of next available choice votes for each of the non-elected candidates, determined and multiplied by the transfer value. The resulting numbers are added to the non-elected candidates' respective numbers of first preference votes.
- (vii) Where a transfer raises the number of votes obtained by a candidate up to a quota, the candidate is declared elected. That particular transfer is then completed but no further votes of any other candidate are transferred to the elected candidate.
- (viii) In the case of a candidate who reaches a quota through transferred votes, the candidate's surplus votes above the quota are divided by the number of voting papers transferred to the candidate in the last transfer. The resulting fraction is the transfer value which is applied to voting papers the candidate obtained in the last transfer which are then transferred to remaining unelected candidates according to the next available choices.
- (ix) When transfers have been completed in respect of all candidates who obtained a surplus above a quota as a result of the above procedures, the candidate who is lowest on the poll is excluded and his or her voting papers are distributed to the remaining non-elected candidates according to the next available choices. The candidate's own first preference votes are transferred

- (x) first, retaining a value of one each. Voting papers that have been transferred to the candidate are dealt with in the order of the transfers already carried out and retain the respective values at which they were obtained. Steps (iv) and (ix) are continued, as necessary until either seven candidates are elected or all candidates except seven have been excluded. In the latter case, unelected candidates not already elected are declared elected.

APPENDIX F

Deeming Rules (i) - Scrutiny under Modified d'Hondt of Ballot papers received by a party or its candidates as first preferences

(Taken from Australian Electoral Commission submission - Evidence pp. S30-32)

2.25 The preferences indicated for the party's candidates on these ballot papers are determined according to the following rules:

- (i) Ballot papers marked only above the ballot line are deemed to show preferences for the party's candidates in the order in which they appear on the ballot papers [CEA, s.270(1)].
- (ii) Where a ballot paper has only been marked below the ballot line, and has a preference mark against only one of the party's candidates, it is counted as a first preference vote for that candidate. The later preferences shown on that ballot paper are identified as follows:
 - (a) Any numbers written against candidates of other parties are ignored.
 - (b) Preferences are then taken to be shown by any ascending sequence of unrepeatd numbers greater than one marked against the other candidates of the party; consecutive numbering is not required [CEA, s.270(5)]. Repeated numbers, and any numbers greater than the smallest number repeated, are taken not to indicate preferences [CEA, s.270(7)].
 - (c) Where preferences are marked for some but not all of the party's candidates, and there are no repeated numbers of the type referred to in (b), preferences are deemed to have been shown for the remaining candidates of the party in accordance with their position in the party's list of candidates on the ballot paper [CEA, s.270(6)].
- (iii) Where a ballot paper has only been marked below the ballot line, but has a preference mark against two or more of the party's candidates, it is taken not to express any preferences [CEA, s.270(7)]; it is included in the total number of votes of the party for the purpose of calculating the quota a candidate needs to be provisionally elected to one of the party's seats [CEA, s.273(8B)], but is set aside as exhausted at the first count.
- (iv) Where the ballot paper has been marked both above and below the ballot line, then:

- (a) if it has a preference mark above the ballot line, and a preference mark below the ballot line opposite a candidate of another party, it is treated as if it had not been marked below the ballot line [CEA, s.269(1)(a)], and is deemed to show preferences for the candidates of the party marked above the ballot line in the order in which they appear on the ballot paper; but
- (b) in any other case:
 - (A) any number written against candidates of other parties are ignored;
 - (B) any numbers written above the ballot line are ignored;
 - (C) preferences are then taken to be shown by any ascending sequence of unrepeatd numbers marked against the candidates of the party; consecutive numbering is not required [CEA, s.270(5)]. Repeated numbers, and any numbers greater than the smallest number repeated, are taken not to indicate preferences [CEA, s.270(7)]; and
 - (D) where preferences are marked for some but not all of the party's candidates, and there are no repeated numbers of the type referred to in (C), preferences for the remaining candidates of the party are deemed to have been shown in accordance with their position in the party's list of candidates on the ballot paper [CEA, s.270(6)].

Ballot papers transferred to a party according to preferences shown by the voter

2.26 The preferences indicated for the party's candidates on these ballot papers are determined according to the following rules:

- (i) Where a ballot paper:
 - (a) was transferred to the party because of the indication of a next available preference in a square above the ballot line; and
 - (b) has no marks below the ballot line, or has below the ballot line a preference mark against a candidate of a party other than that for which the ballot paper was counted as a first preference vote,

it is deemed to show preferences for the candidates of the party to which it was transferred in the order in which they appear on the ballot paper [CEA, ss.269(1), 270(1), 270(2)].

- (ii) Where a ballot paper:
 - (a) was transferred to the party because of the indication of a next available preference in a square above the ballot line; but
 - (b) does not have below the ballot line a preference mark against a candidate of a party other than that for which the ballot paper was counted as a first preference vote,
it is treated as if the voters had written the number 1 in the square referred to in paragraph (a), and any other preference marks on the ballot paper are thereafter ignored [CEA, s.270(2)]. Preferences for the party's candidates are identified as follows:
 - (c) Any numbers written against candidates of other parties are ignored.
 - (d) Any numbers written above the ballot line are ignored.
 - (e) Preferences are then taken to be shown by any ascending sequence of unrepeatd numbers marked against the candidates of the party; consecutive numbering is not required [CEA, s.270(5)]. Repeated numbers, and any numbers greater than the smallest number repeated, are taken not to indicate preferences [CEA, s.270(7)].
 - (f) Where preferences are marked for some but not all of the party's candidates, and there are no repeated numbers of the type referred to in (e), preferences are deemed to have been shown for the remaining candidates of the party in accordance with their position in the party's list of candidates on the ballot paper [CEA, s.270(6)].
- (iii) Where a ballot paper was transferred to the party because of the indication of a next available preference in a square below the ballot line, preferences for the party's other candidates are identified as follows:
 - (a) Any numbers written against candidate of other parties are ignored.
 - (b) Any numbers written above the ballot line are ignored.

- (c) Preferences are then taken to be shown by any ascending sequence of unrepeatd numbers marked against the candidates of the party; consecutive numbering is not required [CEA, s.270(5)]. Repeated numbers, and any numbers greater than the smallest number repeated, are taken not to indicate preferences [CEA, s.270(6)].
- (d) Where preferences are marked for some but not all of the party's candidates, and there are no repeated numbers of the type referred to in (c), preferences are deemed to have been shown for the remaining candidates of the party in accordance with their position in the party's list of candidates on the ballot paper [CEA, s.270(7)].

Ballot papers transferred to a party through the operation of a party voting ticket

2.27 A ballot paper transferred to a party in accordance with a party voting ticket is deemed to show preferences for the candidates of the party to which it is transferred in the order indicated by that party voting ticket [CEA, s.270(4)].

APPENDIX G

Deeming Rules (ii) - The transfer of votes from candidates not provisionally elected

(Taken from Australian Electoral Commission Submission - Evidence, pp. S32-33)

2.28 After the identification of all provisionally elected candidates, there is a further transfer of ballot papers bearing votes held by candidates not provisionally elected [ACTEA, s.211]. It should be noted that in contrast to the procedures described in paragraphs 2.15 to 2.20 above¹, the candidates involved are not regarded as having been excluded; the significance of this is that while votes are being transferred away from them, votes can also be transferred to them as part of the same process.

2.29 In determining, for the purposes of the transfer of ballot papers from candidates not provisionally elected, whether an elector has shown a next available preference, a number of separate cases arise.

Ballot papers received by a party or its candidates as first preferences

2.30 The following rules apply to ballot papers received by a party or its candidates as first preferences rather than on a transfer following the initial round of exclusions:

- (i) If a ballot paper marked both above and below the ballot line has above the ballot line a preference mark against a party and below the ballot line a preference mark against a candidate of another party, all markings below the ballot line are ignored [CEA, s.269(1)(a)].
- (ii) If a ballot paper marked both above and below the ballot line has above the ballot line a preference mark against an independent candidate and below the ballot line a preference mark against a candidate of a party, all markings below the ballot line are ignored [CEA, s.269(1)(b)].
- (iii) If a ballot paper marked with preference marks both above and below the ballot line has below the ballot line a preference mark against a candidate of the party for which the ballot paper was counted as a first preference vote, all markings above the ballot line are ignored [CEA, s.269(2)].
- (iv) Any numbers or marks placed against excluded parties, candidates of excluded parties, or excluded independent candidates, are ignored.

1. See Evidence, pp. S27 - S29.

- (v) Preferences after the first are taken to be indicated by any ascending sequence of unrepeatd numbers greater than one; consecutive numbering is not required.
- (vi) Where a next available preference cannot be determined because the same number appears in more than one square, then, subject to paragraphs (i) to (iii) [ACTEA, s.5]:
 - (a) if only one of those squares is above the ballot line opposite the name of a party or independent candidate, the ballot paper is transferred to that party or independent candidate;
 - (b) if two or more of those squares are above the ballot line, the ballot paper is not transferred;
 - (c) if all those squares are below the ballot line opposite the names of candidates of a particular party, the ballot paper is transferred to that party; and
 - (d) if all those squares are below the ballot line and two or more of them are opposite the names of candidates of different parties, the ballot paper is not transferred.
- (vii) A ballot paper counted to a party can be transferred to another party or to an independent candidate, but is not transferred if the next available preference shown is for a candidate of the same party [ACTEA, s.21(1)]. However, a ballot paper counted to a candidate of a party can be transferred to another candidate of that party, but cannot be transferred to the party itself in pursuance of a next available preference shown above the ballot line [ACTEA, s.21(3)].

Ballot papers transferred to a party or one of its candidates following the initial round of exclusions, according to preferences shown by the voter

2.31 The following rules apply to ballot papers transferred to a party or independent candidate following the initial round of exclusions in accordance with preferences marked by the voter:

- (i) If a ballot paper marked both above and below the ballot line has above the ballot line a preference mark against a party and below the ballot line a preference mark against a candidate of another party, all markings below the ballot line are ignored [CEA, s.269(1)(a)].
- (ii) If a ballot paper marked both above and below the ballot line has above the ballot line a preference mark against an independent candidate and below the ballot line a preference mark against a candidate of a party, all markings below the ballot line are ignored [CEA, s.269(1)(b)].

- (iii) If a ballot paper marked with preference marks both above and below the ballot line has below the ballot line a preference mark against a candidate of the party for which the ballot paper was counted as a first preference vote, all markings above the ballot line are ignored [CEA, s.269(2)].
- (iv) Where a ballot paper was transferred to the party because of the expression of a next available preference in a square above the ballot line, it is treated as if the number expressing that preference were the number 1, and any other preference marks on the ballot paper are taken not to have been made [CEA, s.270(2)].
- (v) Where a ballot paper was transferred to a party because of the expression of a next available preference for a candidate of a party, the ballot paper is treated as if the elector had expressed a first preference for the candidate in question [ACTEA, s.21(4)(a)].
- (vi) The ballot papers covered by paragraphs (iv) and (v) are then transferred in accordance with the further preferences shown on them, ascertained (subject to paragraphs (i) to (iv)) as follows:
 - (a) Any numbers or marks placed against excluded parties, candidates of excluded parties, or excluded independent candidates, are ignored.
 - (b) Preferences after the first are taken to be indicated by any ascending sequence of unrepeatd numbers greater than one; consecutive numbering is not required.
 - (c) Where a next available preference cannot be determined because the same number appears in more than one square, then [ACTEA, s.5]:
 - (A) if only one of those squares is above the ballot line opposite the name of a party or independent candidate, the ballot paper is transferred to that party or independent candidate;
 - (B) if two or more of those squares are above the ballot line, the ballot paper is not transferred;
 - (C) if all those squares are below the ballot line opposite the names of candidates of a particular party, the ballot paper is transferred to that party; and

- (D) if all those squares are below the ballot line and two or more of them are opposite the names of candidates of different parties, the ballot paper is not transferred.

- (vii) A ballot paper counted to a party can be transferred to another party or to an independent candidate, but is not transferred if the next available preference shown is for a candidate of the same party [ACTEA, s.21(1)]. However, a ballot paper counted to a candidate of a party can be transferred to another candidate of that party, but cannot be transferred to the party itself in pursuance of a next available preference shown above the ballot line [ACTEA, s.21(3)].

Ballot papers transferred to a party or one of its candidates following the initial round of exclusions, through the operation of a party voting ticket

2.32 A ballot paper falling into this category is treated as if the elector had marked it with the preferences shown on the party voting ticket, and is further transferred in accordance with those preferences [ACTEA, s.21(4)(b)].

APPENDIX H

Deeming Rules (iii) - The final allocation of seats to party candidates

(Taken from Australian Electoral Commission Submission - Evidence pp. S34-36)

2.35 This stage of the scrutiny arises only if there is a party which has won at least one seat, but still fewer seats than it has candidates. In that case, the party's seats are allocated among its candidates according to the preferences shown on the first preference and transferred ballot papers received by that party and its candidates, using the Senate system of scrutiny [ACTEA, s.22(4); CEA, s.273].

2.36 This process once again involves not only the scrutiny of the markings used by the voters, but also the application of elaborate deeming provisions. Five separate cases arise.

Ballot papers received by a party or its candidates as first preferences, and not subsequently transferred from a provisionally unsuccessful candidate of the party to another candidate of the party

2.37 The preferences indicated for the party's candidates on these ballot papers are determined according to the rules set out in paragraph 2.25.¹

Ballot papers transferred to a party following the initial round of exclusions, according to preferences shown by the voter, and not subsequently transferred from a provisionally unsuccessful candidate of the party to another candidate of the party

2.38 The preferences indicated for the party's candidates on these ballot papers are determined according to the rules set out in paragraph 2.26.²

Ballot papers transferred to a party or one of its candidates, from a provisionally unsuccessful candidate of another party, or from another party with no provisionally elected candidates, according to preferences shown by the voter

2.39 The preferences indicated for the party's candidates on these ballot papers are determined according to the following rules:

(i) Where a ballot paper:

- (a) was transferred to the party from a provisionally unsuccessful candidate or party because of the indication of a next available preference in a square above the ballot line; and

1. See APPENDIX F.

2. See APPENDIX F.

- (b) has below the ballot line a preference mark against a candidate of a party other than that for which the ballot paper was counted as a first preference vote,

it is deemed to show preferences for the candidates of the party to which it was transferred in the order in which they appear on the ballot paper [CEA, ss.269(1), 270(1), 270(2)].

(ii) Where a ballot paper:

- (a) was transferred to the party from a provisionally unsuccessful candidate or party because of the indication of a next available preference in a square above the ballot line, but does not have below the ballot line a preference mark against a candidate of a party other than that for which the ballot paper was counted as a first preference vote; or
- (b) was transferred to the party from a provisionally unsuccessful candidate or party because of the indication of a next available preference in a square below the ballot line,

preferences for the party's candidates are identified as follows:

- (c) Any numbers written against candidates of other parties are ignored.
- (d) Any numbers written above the ballot line are ignored.
- (e) Preferences are then taken to be shown by any ascending sequence of unrepeatd numbers marked against the candidates of the party; consecutive numbering is not required [CEA, s.270(5)]. Repeated numbers, and any numbers greater than the smallest number repeated, are taken not to indicate preferences [CEA, s.270(7)].
- (f) Where preferences are marked for some but not all of the party's candidates, and there are no repeated numbers of the type referred to in (e), preferences are deemed to have been shown for the remaining candidates of the party in accordance with their position in the party's list of candidates on the ballot paper [CEA, s.270(6)].

Ballot papers transferred from a provisionally unsuccessful candidate of a party to another candidate of the same party, according to preferences shown by the voter

2.40 Where a ballot paper:

- (i) bears a first preference for a candidate of the party who was not provisionally elected, or was transferred to that candidate following the initial round of exclusions; and
- (ii) shows a next available preference for another candidate of that party

it is treated as if the number expressing that next available preference were the number 1, and any other squares on the ballot papers containing preference marks (including the square in which the preference mark expressing the first preference referred to in paragraph (i) was placed) are treated as if the voter had left them blank. Subsequent preferences for the party's candidates are identified as follows:

- (iii) Any numbers written against candidates of other parties are ignored.
- (iv) Any numbers written above the ballot line are ignored.
- (v) Preferences are then taken to be shown by any ascending sequence of unrepeatd numbers greater than one marked against the candidates of the party; consecutive numbering is not required [CEA, s.270(5)]. Repeated numbers, and any numbers greater than the smallest number repeated, are taken not to indicate preferences [CEA, s.270(7)].
- (vi) Where preferences are marked for some but not all of the party's candidates, and there are no repeated numbers of the type referred to in (v), preferences are deemed to have been shown for the remaining candidates of the party in accordance with their position in the party's list of candidates on the ballot paper [CEA, s.270(6)].

Ballot papers transferred to a party or one of its candidates, following the initial round of exclusions or from a provisionally unsuccessful candidate or party, according to a party voting ticket

2.41 The preferences indicated for the party's candidates on these ballot papers are determined according to the rules set out in paragraph 2.27.³

APPENDIX I

Paradoxes in the voting system for the Australian Capital Territory Legislative Assembly

(Taken from the Australian Electoral Commission Submission - Evidence, pp. S73-S75)

1. The paper uses a hypothetical election to illustrate a number of paradoxes which arise from the provision made in the *Australian Capital Territory (Electoral) Act 1988* for the transfer of votes from candidates not provisionally elected, and from parties none of the candidates of which were provisionally elected. The figures are taken from the example set out in Schedule 2 in the Act.

Voting patterns

2. Seventeen vacancies are to be filled. There are assumed to be three parties (ALP, Liberals and Communists), each of which has eight candidates; and two independent candidates, one a right winger and the other a left winger. The Liberals poll 12 000 first preference votes, and the Communists 5 000, and in each case all their votes are "above the line" votes for the party. The left wing independent polls 2 800 first preferences, and the right wing independent polls 2 200. The ALP polls 8 000 first preference votes. Of these, 7 000 are "above the line" votes for the party; 1 000 are first preference votes for the candidate in the sixth position on the ballot paper.

Initial exclusions

3. Because the first preference totals of all three parties, and both independent candidates, are above the prescribed 5.56% threshold, there is no need for an initial round of exclusions.

First d'Hondt allocation

4. The first application of the d'Hondt formula therefore proceeds as follows:

Divisor	LIB	ALP	COM	LEFT IND	RIGHT IND
1	<u>12 000</u>	<u>8 000</u>	<u>5 000</u>	<u>2 800</u>	<u>2 200</u>
2	<u>6 000</u>	<u>4 000</u>	<u>2 500</u>	1 400	1 100
3	<u>4 000</u>	<u>2 666</u>	<u>1 666</u>	933	733
4	<u>3 000</u>	<u>2 000</u>	1 250	700	550
5	<u>2 400</u>	<u>1 600</u>	1 000	560	444
6	<u>2 000</u>	1 333	833	466	366
7	<u>1 714</u>	1 142	714	400	314
8	1 500	1 000	625	350	275
Seats Allocated	7	5	3	1	1

5. The underlined figures in the table indicate those quotients which lead to the allocation of a seat to a party or independent candidate. On these figures, there is a left wing majority in the Assembly.

Allocation of seats to candidates

6. Because all their votes are party votes "above the line", the Liberal and Communist candidates allocated seats are respectively the first seven and first three on the party ticket. Similarly the two independent candidates are allocated seats. The ALP sees the first five candidates on its ticket elected; although its sixth candidate received 1 000 first preferences in his own right, these are still insufficient to enable him to unseat any of the ALP candidates placed higher on the ticket. In the absence of the provisions for the transfer of votes from candidates not provisionally elected, and from parties none of the candidates of which were provisionally elected, that would have been the end of the matter.

Additional steps required under the proposed amendments

7. Under those provisions, however, the candidates identified in paragraph 6 as having been allocated seats are treated as only having been "provisionally elected". The first preferences polled by any candidate not "provisionally elected" are then transferred further; a fresh allocation of seats according to the d'Hondt procedure then takes place, and those seats where necessary are allocated to party candidates.

8. Proceeding therefore with the hypothetical election, the only candidate with first preference votes of his own who was not provisionally elected was the sixth ALP candidate. Assume that of his 1 000 votes, 50 show a second preference for the ALP's fifth candidate, 500 show a second preference for the Communist party, and 450 show a second preference for the left wing independent; and that in the subsequent preferences shown on those votes, the Liberals are always placed last. The second application of the d'Hondt formula proceeds as follows, with "winning" quotients again underlined:

Divisor	LIB	ALP	COM	LEFT IND	RIGHT IND
1	<u>12 000</u>	<u>7 050</u>	<u>5 500</u>	<u>3 250</u>	<u>2 200</u>
2	<u>6 000</u>	<u>3 525</u>	<u>2 750</u>	1 625	1 100
3	<u>4 000</u>	<u>2 350</u>	<u>1 833</u>	1 083	733
4	<u>3 000</u>	<u>1 762</u>	1 375	812	550
5	<u>2 400</u>	1 410	1 100	650	444
6	<u>2 000</u>	1 175	916	541	366
7	<u>1 714</u>	1 007	785	464	314
8	<u>1 500</u>	881	687	406	275
Seats Won	8	4	3	1	1

9. Because of the predominance of party ticket votes, seats are won by the first eight Liberals, the first four ALP candidates, the first 3 Communists and both independents. However, these results are paradoxical because:

- (1) the Liberals have gained an additional seat, although no votes were transferred to them.
- (2) the fifth ALP candidate has been deprived of his seat, even though he had 50 votes transferred to him.
- (3) a left wing majority in the Assembly has been converted into a right-wing majority, even though there were no votes transferred from left wing candidates to right wing candidates; and
- (4) the transfer of the votes of the sixth ALP candidate, far from saving them from being "wasted", has served to defeat a candidate of the party for which the voters cast their first preferences, and elect a candidate of the party which those voters least prefer.

PART 1

Write the number 1 in any box, either above or below

Then you may show as many further preferences by writing numbers from

<input type="checkbox"/> INDEPENDENT HASLEM	<input type="checkbox"/> PARTY! PARTY!	<input type="checkbox"/> SOCIALIST WORKERS PARTY	<input type="checkbox"/> FAMILY TEAM	<input type="checkbox"/> NATIONAL PARTY	<input type="checkbox"/> DISABLED & REDEPLOYED WORKERS PARTY	<input type="checkbox"/> ABOLISH SELF- GOVERNMENT COALITION	<input type="checkbox"/> FAIR ELECTIONS COALITION	<input type="checkbox"/> HOME RULE OK	<input type="checkbox"/> RESIDENTS RALLY	<input type="checkbox"/> A BETTER IDEA	<input type="checkbox"/> CHRISTIAN ALTERNATIVE PARTY	<input type="checkbox"/> AUSTRALIAN LABOR PARTY	<input type="checkbox"/> SLEEPERS WAKE	<input type="checkbox"/> NO SELF GOVERNMENT PARTY	<input type="checkbox"/> AUST DEMO
<input type="checkbox"/> HASLEM JOHN	<input type="checkbox"/> CALL AMANDA	<input type="checkbox"/> WHITTAKER KRISTIAN	<input type="checkbox"/> CAINS BEV	<input type="checkbox"/> ADAMS DAVID	<input type="checkbox"/> BURROWS PETER	<input type="checkbox"/> STEVENSON DENNIS	<input type="checkbox"/> FLEMING TONY	<input type="checkbox"/> BOYE TONY	<input type="checkbox"/> COLLAERY BERNARD	<input type="checkbox"/> SCURFIELD MICK	<input type="checkbox"/> STIRLING NATHAN	<input type="checkbox"/> FOLLETT ROSEMARY	<input type="checkbox"/> BELLAMY JOHN	<input type="checkbox"/> DUBY CRAIG	<input type="checkbox"/> RYA ARMITAGE
<input type="checkbox"/> HASLEM CARYL	<input type="checkbox"/> McMILLAN SHANE		<input type="checkbox"/> CASLEY-SMITH DAWN	<input type="checkbox"/> MULLINS MICHAEL	<input type="checkbox"/> ROBINSON DEREK	<input type="checkbox"/> GRANT FLO	<input type="checkbox"/> HUNCEMAN ALAN		<input type="checkbox"/> JENSEN NORM		<input type="checkbox"/> IBELL BERNADETTE	<input type="checkbox"/> WHALAN PAUL		<input type="checkbox"/> MAHER CARMEL	<input type="checkbox"/> MACK BILL
			<input type="checkbox"/> GANE RON	<input type="checkbox"/> MACKINNON BRUCE		<input type="checkbox"/> DICKSON GLADYS	<input type="checkbox"/> KIRSCHBAUM SARAH		<input type="checkbox"/> MOORE MICHAEL			<input type="checkbox"/> BERRY WAYNE		<input type="checkbox"/> PROWSE DAVID	<input type="checkbox"/> JEFF HEATH
			<input type="checkbox"/> FEARON BILL			<input type="checkbox"/> TAZREITER CHRIS	<input type="checkbox"/> McALLISTER GORDON		<input type="checkbox"/> KINLOCH HECTOR			<input type="checkbox"/> GRASSBY ELLENOR		<input type="checkbox"/> TAYLOR JOHN	
			<input type="checkbox"/> MEAGHER DENNIS			<input type="checkbox"/> BUSH NEROLIE	<input type="checkbox"/> PETERSILKA GUS		<input type="checkbox"/> KELLETT JOAN			<input type="checkbox"/> WOOD BILL		<input type="checkbox"/> HENRY NORMAN	
			<input type="checkbox"/> JUST DREW			<input type="checkbox"/> DOEPEL GEOFF	<input type="checkbox"/> McCARRON- BENSON JULIE		<input type="checkbox"/> DONOHUE CHRIS			<input type="checkbox"/> FORD DI		<input type="checkbox"/> ALABASTER PETER	
						<input type="checkbox"/> ORTON TRISH			<input type="checkbox"/> LE MARION			<input type="checkbox"/> GILL KEVIN		<input type="checkbox"/> CUNNINGHAM JOHN	
						<input type="checkbox"/> AIKEN GAIL			<input type="checkbox"/> GILES KELVIN			<input type="checkbox"/> ROBINSON ANNA		<input type="checkbox"/> ELWORTHY CHRIS	
						<input type="checkbox"/> TREVEATHAN MIKE			<input type="checkbox"/> ROSSITER CATHERINE			<input type="checkbox"/> ATTRIDGE MARTIN		<input type="checkbox"/> LINDH ELMA	
						<input type="checkbox"/> HAYWARD REG						<input type="checkbox"/> BEELEN PETA		<input type="checkbox"/> AUROUSSEAU NEV	
						<input type="checkbox"/> BEATON COLIN						<input type="checkbox"/> REID BARRY		<input type="checkbox"/> CANTLON JOHN	
						<input type="checkbox"/> HERKETH JOHN								<input type="checkbox"/> DURIE KEN	
														<input type="checkbox"/> SMYTHE BOB	
														<input type="checkbox"/> SALES LINDSAY	
														<input type="checkbox"/> MEREDITH PHILIPPA	
														<input type="checkbox"/> WIGHT JACK	
														<input type="checkbox"/> HAMMOND YVONNE	

You must number at least one box



Ballot Paper

Australian Capital Territory.
Legislative Assembly. Election of 17 Members.

ox, either above or below the line, beside the party or candidate of your choice.

as many further preferences as you wish for parties or candidates
by writing numbers from 2 onwards in other boxes.

		NO SELF GOVERNMENT PARTY		AUSTRALIAN DEMOCRATS		THE A.C.T. COMMUNITY PARTY		CANBERRA FIRST PARTY		LIBERAL PARTY		SUN-RIPENED WARM TOMATO		TONY SPAGNOLLO INDEPENDENT FOR CANBERRA		SURPRISE PARTY		INDEPENDENT CANDIDATES																	
																		CRNKOVIC FRANK		MACKEY BILL		REID BOB		WISE KEVIN ROBERT		PEAD GARY JAMES		PYE BILL		ROCKE JOHN		HIRD HAROLD		GILLESPIE LYALL L	
BELLAMY JOHN	DUBY CRAIG	RYAN ARMINEL	FRY KEN	NELSON ALLAN	HUMPHRIES GARY	BRUNDOR EMILE	SPAGNOLLO TONY	BURNS C J																											
	MAHER CARAMEL	MASON BILL	MICO DOMENIC	BYRNES BERYL	KATNE TREVOR	KENNY RICK																													
	PROWSE DAVID	JEFFCOAT HEATHER	DOYLE LORNE	McMAHON JOHN	NOLAN ROBYN																														
	TAYLOR JOHN			BROWN JEFF	STEFANIAK BILL																														
	HENRY NORMAN			APPS MICHAEL	CORNWELL GREG																														
	ALABASTER PETER			BROGAN BARRY	DUNNE LYLE																														
	CUNNINGHAM JOHN			BOOTH JENNIE	KOBOLD PETER																														
	ELWORTHY CHRIS			HETHERINGTON ARTHUR	DOWSON JUDITH																														
	LINDH ELMA			APPS ELISABETH	JANSEN PETER																														
	AUROUSSEAU NEV			McCOLL MIKE	WINNELL BOB																														
	CANTLON JOHN			CAMPBELL MATT																															
	DUNNE KEN			BEHAN GARRY																															
	SMYTHE BOB																																		
	SALES LINDSAY																																		
	MEREDITH PHILIPPA																																		
	WRIGHT JACK																																		
	HAMMOND YVONNE																																		

t number at least one box — anywhere on the ballot paper.