SENATE STANDING COMMITTEE ON ENVIRONMENT, RECREATION AND THE ARTS

# REPORT ON THE CONSIDERATION OF THE AUSTRALIAN CAPITAL TERRITORY (ELECTORAL) AMENDMENT BILL 1991

MAY 1991

# MEMBERS OF THE COMMITTEE

| | |
|---|---|
| ***Chair:*** | Senator R.A. Crowley |
| ***Members:*** | Senator N.A. Crichton-Browne (Deputy Chair)<br>Senator V. Bourne<br>Senator I. Campbell<br>Senator A.W. Crane<br>Senator S. Loosley<br>Senator J. McKiernan<br>Senator S. West |
| ***Secretary:*** | Mr P.C. Grundy |
| ***Phone:*** | (06) 277 3525 |
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# REPORT

## AUSTRALIAN CAPITAL TERRITORY (ELECTORAL) AMENDMENT BILL 1991

### *Referral of the Bill*

The Bill was referred by the Senate after second reading on 11 April 1991; a reporting date of 28 May 1991 was set. (A recommendation against referral had been made in the Selection of Bills Committee Report No. 4 of 14 March 1991.)

### *Preliminary Matters*

The Committee met in private session on 10 May 1991 to receive a briefing from Senator the Hon. R.F. McMullan representing the Minister for the Arts, Tourism and Territories. He was accompanied by officers of the Department. Officers of the Australian Electoral Commission also attended.

### *Public Hearing*

On 17 May 1991 the Committee conducted a Public Hearing to consider the Bill. Senator McMullan (representing the Minister) tabled eighteen amendments to be moved by the Government. Senator Reid advised the Committee of a further amendment suggested by the Opposition.

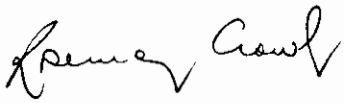
The Committee received documents relevant to this matter and resolved to publish the correspondence in Appendix 3.

At the invitation of the Chair, persons listed in Appendix 2 were invited to speak to documents that they had submitted to the Committee.

The Committee having considered the Bill and the amendments voted on a resolution by Senator Loosley that the amendments, including the Opposition amendment, be taken as a whole; the Committee so resolved. The Committee further resolved, on a motion by Senator Loosley, that the Bill as amended be agreed to.

***Recommendation***

The Committee recommends the Australian Capital Territory (Electoral) Amendment Bill 1991 as amended in accordance with Appendix 1 to the Senate.



Rosemary Crowley
**Chair**

# APPENDIX 1

## AMENDMENTS ON BEHALF OF THE GOVERNMENT

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

# AUSTRALIAN CAPITAL TERRITORY (ELECTORAL) AMENDMENT BILL 1991

*(Amendments to be moved on behalf of the Government)*

(1) Page 1, after clause 2, insert the following new clause:

**Heading to Part 1**

"2A. Before section 1 of the Principal Act the following heading is inserted:

'PART 1 — PRELIMINARY'.".

(2) Clause 3, page 1, lines 10 and 11, omit the clause.

(3) Page 1, after clause 2, insert the following new clause:

**Heading to Part 2**

"2B. After section 7 of the Principal Act the following heading is inserted:

'PART 2 — ELECTIONS'.".

(4) Page 2, line 4, after clause 4, insert the following new clause:

**Application of Commonwealth Electoral Act**

"4A. Section 16 of the Principal Act is amended:

(a) by inserting in subsection (2) 'and Schedules 2 and 3' after '(inclusive)';

(b) by omitting paragraph (2)(a);

(c) by adding at the end of paragraph (6)(b) 'and';

(d) by omitting from paragraph (6)(c) '; and';

(e) by omitting paragraph (6)(d).".

(5) Clause 5, page 2, lines 5 to 15, omit the clause, substitute the following new clause:

**Voting at general elections**

"5. Section 18 of the Principal Act is amended by adding at the end the following subsections:

'(2) Paragraph (1)(a) does not prevent the making of special provisions exempting certain persons who are in Antarctica or overseas from the compulsory voting requirement.

Note: See section 245 of the Electoral Act.

'(3) Paragraph (1)(b) does not prevent the making of special provisions for persons who are so sight impaired or physically incapacitated or illiterate that they cannot vote without assistance.

Note: See section 234 of the Electoral Act'.".

(6) Clause 6, page 2, lines 16 to 41, and page 3, lines 1 to 17, omit the clause, substitute the following new clause:

**Counting votes: transfer of preferences of provisionally unsuccessful candidates etc.**

"6. Section 21 of the Principal Act is amended:

(a) by omitting paragraph (1)(a);

(b) by omitting subsection (2).".

(7) Page 3, after clause 6, insert the following new clauses:

**Heading to Part 3**

"6A. After section 25 of the Principal Act the following heading is inserted:

'PART 3 — MISCELLANEOUS.'.

**Regulations**

"6B. Section 28 of the Principal Act is amended by adding at the end the following section:

'(4) The regulations may amend, omit or add to the modifications of the *Commonwealth Electoral Act 1918* set out in Schedule 1.'.

"6C. After section 29 of the Principal Act the following Part is inserted:

'PART 4 — REFERENDUM TO CHOOSE ELECTORAL SYSTEM

**Definitions**

'30. In this Part, unless the contrary intention appears:

"**declaration vote**" means any of the following:

(a) a postal vote;

(b) a pre-poll vote;

(c) an absent vote;

(d) a provisional vote;

"**election ballot paper**" means a ballot paper for the election;

"**referendum**" means the referendum referred to in section 31;

"**referendum ballot paper**" means a ballot paper for the referendum;

"**the election**" means the election whose polling day is the same day as voting day for the referendum;

"**voting day**" means the day when the votes are to be taken for the purposes of the referendum.

**Referendum to choose electoral system**

'31.(1) A referendum is to be held to enable the electors of the Territory to choose which of 2 voting systems is to be used at future elections.

'(2) The 2 systems are the single member electorates system and the proportional representation (Hare-Clark) system, more fully described in the Referendum Options Description Sheet set out in Schedule 3.

'(3) Votes for the purposes of the referendum are to be taken on the same day as polling day for the next general election to be held after the commencement of this Part.

**Administration**

'32.(1) The Electoral Commission is to conduct the referendum.

'(2) A person who holds an office or appointment under this Act for the purposes of the election is taken to hold that office or appointment also for the purposes of the referendum.

'(3) The Electoral Commission may, on behalf of the Commonwealth, engage such temporary staff as it thinks necessary for the purposes of the referendum. A person so engaged is taken to be an officer for the purposes of this Part.

'(4) The Australian Capital Territory Electoral Officer may give directions to officers about the conduct of the referendum on matters not provided for by or under this Part.

**Distribution to electors of Referendum Options Description Sheet and arguments for and against different options**

'33.(1) The Electoral Commissioner must, not later than 14 days before voting day, cause to be printed and to be posted to each elector, as nearly as practicable, a copy of the Referendum Options Description Sheet set out in Schedule 3.

'(2) The Electoral Commissioner must:

(a) print the Referendum Options Description Sheet so that the descriptions of the 2 systems appear side by side in 2 vertical columns; and

(b) determine by lot which option is to occupy the left-hand vertical column in the Sheet and print the Sheet accordingly.

'(3) If, within 2 weeks after the commencement of this Part, there is forwarded to the Electoral Commissioner:

(a) an argument in support of the single member electorates system option, consisting of not more than 2,000 words, authorised by the Minister; or

(b) an argument in support of the other option, consisting of not more than 2,000 words, authorised by the Leader of the Opposition in the House of Representatives and the Leader of the Australian Democrats in the Parliament;

the Electoral Commissioner must, not later than 14 days before voting day, cause to be printed and to be posted to each elector, as nearly as practicable, a pamphlet containing the argument.

'(4) If both arguments are forwarded to the Electoral Commissioner in accordance with subsection (3), the Electoral Commissioner must:

(a) print both arguments in the same pamphlet; and

(b) print those arguments side by side in 2 vertical columns, so that the left-hand column is occupied by the argument in support of the option whose description occupies the left-hand column in the Referendum Options Description Sheet.

'(5) The Commonwealth and the Territory must not spend money in respect of the presentation of the argument in support of either of the options except in relation to:

(a) the preparation, printing and distribution of the Sheet and pamphlet referred to in this section, or the preparation and distribution of translations into other languages of material contained in that Sheet and pamphlet;

(b) the preparation and distribution of presentations of that material in forms suitable for the visually impaired;

(c) the provision by the Electoral Commission of other information relating to either of the options; or

(d) the salaries and allowances of members of the Parliament, of members of the staff of members of the Parliament, of members of the Legislative Assembly, of members of the staff of members of the Legislative Assembly, or of persons who are officers or employees within the meaning of the *Public Service Act 1922*.

**Entitlement to vote**

'34.(1) A person is entitled to vote at the referendum if he or she is entitled to vote at the election.

'(2) A person must not vote more than once at the referendum.

**Compulsory voting**

'35.(1) A person who:

(a) is entitled to vote at the referendum; and

(b) fails to vote at the referendum without a valid and sufficient reason for the failure;

is guilty of an offence punishable, upon conviction, by a fine not exceeding $50.

'(2) Subsection (1) does not apply to an Antarctic elector or an eligible Territory overseas elector.

**Ballot papers**

'36.(1) The ballot papers are to be in the alternative formats set out in Schedule 4, one format with one option appearing first, the other format with the other option appearing first.

'(2) So far as is practicable, ballot papers are to be issued to voters so that no 2 consecutive voters at a particular place where ballot papers are issued will receive ballot papers of the same format.

'(3) Ballot papers are to bear an official mark approved by the Electoral Commission by notice published in the *Commonwealth Gazette*.

**Scrutineers**

'37.(1) Subject to subsection (2), a person appointed as a scrutineer for the election is taken also to be appointed for the referendum.

'(2) At each place where referendum ballot papers are being counted, the number of scrutineers for a candidate must not exceed the number of officers engaged in the counting.

**Procedures for polling**

'38.(1) The same polling booths are to be used for the election and the referendum.

'(2) The same ballot boxes may be used for the election and the referendum.

'(3) The hours of polling for the referendum are to be the same as for the election (including any adjournment or resumption of polling).

'(4) Subject to subsection (6), a person must be issued with a referendum ballot paper at the same time as he or she is issued with an election ballot paper.

'(5) The provisions of the Electoral Act relating to the issue of fresh election ballot papers in substitution for spoilt election ballot papers apply in the same way in relation to referendum ballot papers.

'(6) A person who is issued with a fresh election ballot paper because the ballot paper has been spoilt need not be issued with a fresh referendum ballot paper.

'(7) A voter who is entitled to assistance in marking an election ballot paper is entitled to the same assistance in marking a referendum ballot paper.

'(8) A person who casts a vote (other than a declaration vote) for the election must cast his or her vote for the referendum in the same way.

**Declaration voting**

'39.(1) A person who casts a declaration vote for the election must cast his or her vote for the referendum in the same way.

'(2) The marked referendum ballot paper of a declaration voter must be placed in the same envelope as the election ballot paper.

'(3) The referendum ballot paper of a declaration voter is to be admitted to further scrutiny for the referendum if, and only if, the election ballot paper is admitted to further scrutiny for the election.

'(4) A voter who is entitled to assistance in casting a declaration vote for the election is entitled to the same assistance in casting a declaration vote for the referendum.

**Marking a ballot paper**

'40. A voter must mark his or her ballot paper in accordance with the directions on it.

**Informal ballot papers**

'41.(1) A ballot paper is informal if, and only if:

(a) it:

(i) does not bear the official mark; or

(ii) is not authenticated by the initials of the issuing officer;

and the Australian Capital Territory Electoral Officer is not satisfied that it is an authentic ballot paper; or

(b) it has no vote marked on it or the voter's intention is not clear; or

(c) it has on it any mark or writing (other than a mark or writing authorised by law or placed on the ballot paper by an officer) by which, in the opinion of the Australian Capital Territory Electoral Officer, the voter can be identified.

'(2) Effect is to be given to a ballot paper according to the voter's intention, so far as that intention is clear.

**Scrutiny**

'42. The Australian Capital Territory Electoral Officer must:

(a) cause the number of votes in favour of each option, and the number of informal votes, to be counted; and

(b) as soon as practicable after the count is concluded, publish a notice in the *Commonwealth Gazette* setting out the numbers so counted.

**Close of the polling in Antarctica**

'43. The procedure on and after the close of the poll in Antarctica is the same for the referendum as for the election.

**General offences**

'44.(1) The provisions of the Electoral Act creating offences in relation to the election apply in the same way, subject to paragraph (2)(b), in relation to the referendum.

'(2) For the purposes of subsection (1):

(a) the relevant period defined in section 322 of that Act is the same period for the referendum as for the election; and

(b) **"electoral matter"** means matter that is intended or likely to affect voting in the referendum, and includes any matter that contains an express or implied reference to the referendum or to either of the options.

**Bribery**

'45.(1) A person must not give or confer, or promise or offer to give or confer, any property or benefit of any kind to another person:

(a) in order to influence the vote of any person at the referendum; or

(b) in order to induce any person not to vote at the referendum.

Penalty: Imprisonment for two years.

'(2) Subsection (1) does not apply in relation to a declaration of public policy or a promise of public action.

**Badges or emblems in polling booths**

'46. An officer or scrutineer who wears or displays in a polling booth on voting day any badge or emblem in support of or in opposition to either of the options is guilty of an offence.

Penalty: $1,000.

**Errors, etc.**

'47. The provisions of the Electoral Act providing for the correction of delays, errors and omissions, and the extension of times, in relation to the election apply in the same way in relation to the referendum.

**Disputed Returns**

'48.(1) The validity of the referendum or of any statement showing the voting at the referendum may be disputed in accordance with this section and not otherwise.

'(2) The validity of the referendum or of any statement showing the voting at the referendum may be disputed by a person who was qualified to vote at the referendum by petition addressed to the Supreme Court of the Australian Capital Territory.

'(3) For the purposes of such a dispute, Part VIII of the *Referendum (Machinery Provisions) Act 1984* applies with the necessary changes.

'(4) In particular, that Act applies for the purposes of this section as if:

(a) references to the High Court were references to the Australian Capital Territory Supreme Court; and

(b) the reference in paragraph 101(1)(c) of that Act to the various Attorneys-General were a reference to the petitioner; and

(c) references to the Electoral Commissioner or to an Electoral Officer were references to the Australian Capital Territory Electoral Officer; and

(d) section 105 of that Act were omitted; and

(e) the reference in section 106 of that Act to the Commonwealth, a State or the Northern Territory were omitted; and

(f) the reference in paragraph 107A(a) of that Act to Schedule 4 were a reference to Schedule 3 to the Electoral Act; and

(g) the references to that Act and the regulations were references to the law relating to the referendum.

'(5) The referendum or any statement showing the voting at the referendum is not invalidated merely because the Electoral Commissioner may not have strictly complied with a provision of section 33.

**Regulations**

'49. The regulations may prescribe all matters necessary or convenient to be prescribed for carrying out or giving effect to this Part and, in particular, prescribe penalties not exceeding $500 for offences against those regulations.'.".

(8) Clause 7, page 3, lines 32 and 33, omit subclause (5).

(9) Page 3, after clause 7, insert the following new clause:

**Addition of Schedules 3 and 4**

"7A. The Principal Act is amended by adding at the end the Schedules set out in Schedules 5 and 6 of this Act.".

(10) Schedule 1, page 5, modification of subsection 4(1), omit paragraph (c).

(11) Schedule 1, page 6, modification of subsections 239(1) and (2), omit paragraphs (b) and (c).

(12) Schedule 1, pages 6 and 7, omit all words from and including "Modification of paragraph 273(2)(c)" to the end of the Schedule.

(13) Schedule 2, page 8, item relating to the modification of sections 211, 211A and 212, omit the item.

(14) Schedule 2, pages 8 and 9, item relating to the modification of section 216, omit the item.

(15) Schedule 2, pages 9 and 10, item relating to the modification of section 270, omit the item.

(16) Schedule 4, page 12, item inserting modifications after the modification of subsection 192(1), omit the item.

(17) Schedule 4, pages 12 and 13, item inserting modification after the modification of subsection 273(1), omit the item.

(18) Page 13, at the end of the Bill add the following Schedules:

"SCHEDULE 5 Section 7A

NEW SCHEDULE 3 TO BE ADDED TO PRINCIPAL ACT

'SCHEDULE 3 - REFERENDUM OPTIONS DESCRIPTION SHEET Section 31

COMMONWEALTH OF AUSTRALIA

*Referendum Options Description Sheet*

The following brief descriptions of a model single member electorates system and a model proportional representation (Hare-Clark) system have been prepared to assist ACT electors to determine their preferred electoral system.

## MODEL SINGLE MEMBER ELECTORATES SYSTEM

. The ACT will be divided into 17 separate electorates. Each electorate will elect one member to the Legislative Assembly.

. No candidate will be allowed to stand in more than one electorate at a general election.

. The ballot paper used will look like this:

**BALLOT PAPER**

LEGISLATIVE ASSEMBLY
FOR THE
AUSTRALIAN CAPITAL TERRITORY

ELECTORAL DIVISION OF ....

**Number the boxes from 1 to ....**

☐ CANDIDATE'S NAME
PARTY

☐ CANDIDATE'S NAME
PARTY

☐ CANDIDATE'S NAME
PARTY

☐ CANDIDATE'S NAME
PARTY

☐ CANDIDATE'S NAME
PARTY

☐ CANDIDATE'S NAME
PARTY

. Voting will take place in each electorate in accordance with the system of voting used to elect members of the House of Representatives.

  - Instructions on the ballot paper will require voters to show preferences (1, 2 and so on) for all of the candidates standing in the electorate.

  - Candidates to be elected will have to receive a majority (ie 50% plus 1) of the formal votes in the electorate.

  - If no candidate has obtained a majority of votes after first preference votes have been counted, the candidate with the fewest votes will be excluded and his or her votes will be transferred to the remaining candidates who stood next highest in the relevant voters' preferences.

  - This process of excluding candidates with the fewest votes will continue until one candidate has obtained a majority of the votes still in the count.

. If a member dies, or resigns, or otherwise vacates his or her seat, the vacancy will be filled by a by-election in his or her electorate.

. The boundaries of electorates will be drawn by bodies independent of the Commonwealth and ACT governments. The criteria which govern the drawing of the boundaries of House of Representatives divisions will apply as nearly as practicable to the drawing of the boundaries of Legislative Assembly electorates.

. A redrawing of boundaries should take place in the first 12 months after each general election of members of the Legislative Assembly.

## MODEL PROPORTIONAL REPRESENTATION (HARE-CLARK) SYSTEM

. The ACT will be divided into 3 separate electorates, of which two will elect 5 members each, and one will elect 7 members, to the Legislative Assembly.

. No candidate will be allowed to stand in more than one electorate at a general election.

. The ballot paper used will look like this:

**BALLOT PAPER**

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY
ELECTORAL DIVISION OF ....

# Number the boxes from 1 to ....

| PARTY | PARTY | GROUPED NON-PARTY CANDIDATES | UNGROUPED CANDIDATES |
|---|---|---|---|
| ☐ CANDIDATE'S NAME | ☐ CANDIDATE'S NAME | ☐ CANDIDATE'S NAME | ☐ CANDIDATE'S NAME |
| ☐ CANDIDATE'S NAME | ☐ CANDIDATE'S NAME | ☐ CANDIDATE'S NAME | ☐ CANDIDATE'S NAME |
| ☐ CANDIDATE'S NAME | ☐ CANDIDATE'S NAME | ☐ CANDIDATE'S NAME | |
| ☐ CANDIDATE'S NAME | ☐ CANDIDATE'S NAME | | |
| ☐ CANDIDATE'S NAME | ☐ CANDIDATE'S NAME | | |
| ☐ CANDIDATE'S NAME | ☐ CANDIDATE'S NAME | | |
| ☐ CANDIDATE'S NAME | ☐ CANDIDATE'S NAME | | |

. The names of candidates within party groups will not be printed in the same position within the group on every ballot paper. Instead, a particular candidate's name will be printed at the top of the group on some ballot papers, in the second position within the group on other ballot papers and so on, so as to share out the positions.

. The same principle will apply to the printing of independent candidates' names in the column for independents on the ballot paper.

. Instructions on the ballot paper will require voters to show preferences (1, 2 and so on) for as many candidates as there are vacancies to be filled in the electorate concerned. Voters will have the option of showing as many further preferences as they wish. Seats will then be allocated to the candidates using the Hare-Clark system of proportional representation, as used at elections for the Tasmanian House of Assembly:

  - Candidates will have to achieve a quota of votes in order to be elected. The quota will be determined by dividing the number of formal votes by 1 more than the number of vacancies to be filled, and adding 1 to the number so obtained (disregarding any remainder).

  - If an elected candidate obtains surplus votes (ie votes in excess of the quota), the votes will be transferred to other candidates in the count.

  - If vacancies remain to be filled after surplus votes have been transferred, the candidates standing lowest on the count will be excluded and their votes transferred to the remaining candidates who stood next highest in the relevant voters' preferences.

  - This process of distributing the surplus votes of elected candidates and of excluding candidates will continue until all the vacancies have been filled.

. If a member dies, resigns, or otherwise vacates his or her seat, the vacancy will be filled by a fresh examination of the ballot papers bearing the votes which elected him or her, to determine which of the available candidates who failed to be elected was most preferred by the voters who chose the former member.

. The boundaries of electorate(s) will be drawn by bodies independent of the Commonwealth and ACT governments. The criteria which govern the drawing of the boundaries of House of Representatives divisions will apply as nearly as practicable to the drawing of the boundaries of Legislative Assembly electorates.

. A redrawing of boundaries should take place in the first 12 months after each general election of members of the Legislative Assembly.

## SCHEDULE 6 Section 7A

NEW SCHEDULE 4 TO BE ADDED TO PRINCIPAL ACT

## 'SCHEDULE 4 - BALLOT PAPERS Section 35

### FORMAT 1

Please put the number "1" in one of the boxes below to show which electoral system you believe should be used to elect members to the Australian Capital Territory Legislative Assembly. Leave the other box empty.

**EITHER**

**A single member electorates system** ☐
(as outlined in the Commonwealth's *Referendum Options Description Sheet*)

**OR**

**A proportional representation (Hare-Clark) system** ☐
(as outlined in the Commonwealth's *Referendum Options Description Sheet*)

## FORMAT 2

Please put the number "1" in one of the boxes below to show which electoral system you believe should be used to elect members to the Australian Capital Territory Legislative Assembly. Leave the other box empty.

**EITHER**

**A proportional representation (Hare-Clark) system** ☐
(as outlined in the Commonwealth's *Referendum Options Description Sheet*)

**OR**

**A single member electorates system** ☐
(as outlined in the Commonwealth's *Referendum Options Description Sheet*)

# APPENDIX 2

## PERSONS INVITED TO SPEAK TO THEIR DOCUMENTS

- Professor A. Burns, private citizen;
- Mr L. Dunne, Policy Convenor, Liberal Party of Australia, ACT Division;
- Mr G. Evans, Australian Democrats, ACT Division;
- Mr J. Gagg, Residents Rally for Canberra and Hare-Clark Campaign Committee; and
- Dr M. Kirschbaum, Convenor, Proportional Representation Society of Australia.

# APPENDIX 3

## CORRESPONDENCE AUTHORISED FOR PUBLICATION

- From Mr B. Musidlak, Proportional Representation Society of Australia, dated 13 May 1991;
- From Mr L. Dunne, Liberal Party of Australia, dated 14 May 1991;
- From Professor A. Burns, dated 15 May 1991;
- From Dr M. Kirschbaum, Proportional Representation Society, dated 15 May 1991;
- From Mr G. Evans, ACT Division, Australian Democrats, dated 15 May 1991;
- From Mr J. Gagg, Hare-Clark Campaign Committee, dated 15 May 1991; and
- From Mr J. Gagg, Residents Rally for Canberra, dated 16 May 1991.

# PROPORTIONAL REPRESENTATION SOCIETY OF AUSTRALIA


13 May 1991 274 6833 (w)

B. Musidlak
National Research Officer
14 Strzelecki Crescent
Narrabundah 2604
A.C.T.

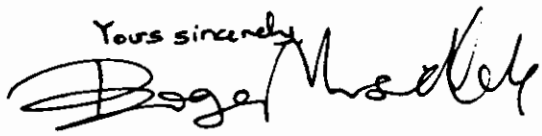
Dear Mr Grundy

As National Research Officer for the Proportional Representation Society of Australia, I have pleasure in forwarding to the Senate Standing Committee on Environment, Recreation and the Arts a three-part submission dealing with the reference it received from the Senate on 11 April, and in indicating my availability to give oral evidence.

First, there is a brief description of the elements of a quota-preferential (single-transferable-vote) scrutiny and how these provide benefits to voters. Next there is a recent paper prepared by the Society to explain why d'Hondt schemes are inherently inferior to quota-preferential systems, and to give a practical example of how their unavoidable failings would have produced a parliamentary majority for a party receiving under 36 per cent of first preferences. That paper also compares how the Hare-Clark procedures would cope with the anomalies described and points out how the Robson rotation prevents the larger parties from undermining the efforts of their own supporters.

In the light of this evidence, it should not be surprising that the Society recommends the use of the Hare-Clark system in an undivided ACT electorate next time. The Society also sets out a confidence-building procedure under which the Federal Parliament would undertake to entrench the key elements of the system chosen at referendum before handing over powers to the ACT Legislative Assembly, and to formalise the preferred positions of the proponents of the systems being put before the people.

Yours sincerely



## WHY QUOTA-PREFERENTIAL SYSTEMS OF PROPORTIONAL REPRESENTATION?

Primarily because these maximise the effective participation in elections by voters. First, some basics which might make it easier to think or talk about what is desirable in these beasts.

When you number preferences, you are indicating the order in which you are prepared to give candidates access to what is left of your single vote, no more and no less. You cannot harm the prospects of those whom you most want to see elected by marking further preferences.

The (Droop) quota is the lowest number of votes which mathematically guarantees that you must get elected. This is why you always start by dividing the number of formal votes by one more than the number of vacancies and go up to the next whole number.

Quota-preferential methods eliminate wastage of votes on candidates who do not need them and hence keep the number of ineffective votes to a minimum. This is where they are clearly superior to all d'Hondt schemes, no matter how much the latter might be modified.

Candidates are declared elected as soon as their progress total equals or exceeds the quota. Any surplus they might have above the quota is distributed to continuing (i.e. neither elected nor excluded) candidates in accordance with the wishes (i.e. further preferences) expressed by those voters who contributed to the candidate's election.

Surpluses are transferred in the order of election of candidates. If at some stage in the scrutiny, there is no surplus to distribute, the candidate with fewest votes is excluded and each ballot-paper is transferred to the next available preference (i.e. the continuing candidate whom the voter clearly supports most strongly).

HARE-CLARK ALWAYS BEATS d'HONDT

The Second Reading Speech on the initially-proposed amendments to the ACT electoral system started by claiming they were "designed to overcome the inadequacies of the existing heavily modified d'Hondt system". However it soon became clear that the government had chosen to try to throw out the baby and keep the bathwater.

The Minister tried to draw respectability for his crude d'Hondt method by mentioning its use in parts of Europe. What he failed to mention is that continuing unfair results have led to different heavy modifications of d'Hondt in most parts of Europe and Scandinavia.

He also neglected to mention Australia's use of preferential voting for the last seventy years (apart from Queensland elections between 1944 and 1960) and the ACT's long use of quota-preferential methods before the d'Hondt debacle. Australians are not used to having to falsify their vote in order to try to have an effective say. Many Canberrans would have been forced to consider this extreme step under the guided democracy proposal originally on offer.

Simpler but even more unfair

Our shambles of 1989 arose from a convoluted process which

- set an arbitrary 5.56 per cent survival hurdle for parties and independents
- married incompatible seat allocation procedures and generally defied logical justification
- could even cold-bloodedly set aside the order of a voter's expressed preferences for some other.

Despite the vigorous defence of the system by Senator Richardson in the Senate the previous year, naturally the

scrutiny had to go around in circles before producing a result that was plainly unfair.

In the event over 91 per cent of those who voted formally had some say in the distorted outcome which saw five parties gain representation and gave one a seat for every 6,735 adjusted votes it received while requiring 12,433 votes of another.

The Simmons starting proposal didn't give us a chance to mark preferences other than within one party. The number of informal votes was to be increased by knocking out any ballot-papers leaving uncertainty over the voter's intention (as opposed to what happens in Senate elections).

As a result fewer than 85 per cent of those voting formally in 1989 would have played a part in seat allocation. One independent and eight parties would have been successful, one party obtaining a seat for every 5,425 first preferences and another needing 10,641 votes. This step backwards was noisily passed off as an improvement in democracy.

Such a poor result actually flatters the d'Hondt mechanism which is quite capable of producing grotesque distortions no matter how much it is tarted up.

What goes wrong in d'Hondt schemes

There is often no attempt to limit the number of votes which fail to play a role in the election of candidates. Votes can also be wasted after being piled on elected independents as there is no means of transferring surpluses to other candidates. Voters are driven to guess where their efforts will be most effective and to decide whether this factor is to prevail perhaps even over their real wishes. Finally, there's the crude averaging technique for seat allocation which makes some parties extremely lucky (that taking the last seat for 5,425 votes, in the 1989 example) and forces others to obtain nearly twice as many votes for theirs.

This mixture of deliberate vote wastage and the luck of the number of vacancies opens up the practical possibility of as few as one-third of the voters determining the government.

While a less stark distortion rightly drew vitriolic criticism when it applied in Queensland apparently being the fruit of a "simplified, democratic and efficient" electoral system made it all right for the ACT. Obviously some parties and some voters are more equal than others.

An illuminating insight into what crude d'Hondt and its offspring can produce comes from filling 17 vacancies on the votes in the nine-member electorate of Canberra at the 1974 Legislative Assembly quota-preferential elections. The table below compares the vote and seat outcomes for the seven highest gatherers of first preferences.

| | votes (%) | seats | seats (%) |
|---|---|---|---|
| Party A | 35.6 | 9 | 53 |
| Party B | 24.2 | 6 | 35 |
| Ind C | 16.4 | 1 | 6 |
| Ind D | 9.0 | 1 | 6 |
| Party E | 3.9 | - | - |
| Party F | 3.7 | - | - |
| Party G | 1.9 | - | - |
| Others | 3.6 | - | - |

In the allocation of seats just about every type of unfairness can be found:

- over 13 per cent of first preferences are put aside as worthless right at the outset, yet less than twice that many votes is enough to elect six candidates
- there are more supporters for the two independents than for Party B, yet their votes contribute to the election of only one-third the number of members
- the combination of wasted votes, excess votes for independents and the lucky break of taking the last

seat turn 36 per cent of votes into an unqualified right to govern alone.

It is certainly a strange form of one vote, one value or even proportional representation which allows 60 per cent of voters to elect 15 members while the other 40 per cent elect just 2 members. And it is exactly this remarkable double standard which holds out the prospect of turning a modest minority vote into a parliamentary majority.

It's not difficult to obtain worse results from other sets of figures. There's also no guarantee of achieving anything sensible or fair from the mere grafting of a preferential component onto a system which is inherently non-preferential in the way it operates.

Excess votes can still be lodged with independents because surpluses are not recognised. Major distortions can still be created by the luck of who gets the last two or three seats after a transfer of votes from unsuccessful parties and candidates takes place. Second or further transfers can also beget further incongruities as the last stages of the 1989 scrutiny showed. On top of this, many voters have to exercise the judgement of Solomon to have any chance of seeing their vote do what they really wanted it to.

The point is that d'Hondt schemes cannot be rehabilitated because they do not start from the premise of trying to do something for voters. They must retain flaws of varying degrees of patency. If a majority in the Senate is tempted to inflict another version of d'Hondt on us Canberrans, it should at least have the decency to allow a brief period for public comment on the specific changes proposed. That way some of the unintended consequences can be flushed out before polling day and its aftermath. Better still, though, to use at the next election a tried and proven system which is completely responsive to voters' wishes, namely the Hare-Clark scrutiny provisions with the ACT taken as a single electorate.

## Putting voters first

Quota-preferential systems such as the Tasmanian Hare-Clark start by asking voters to list the order in which they want candidates to have access to what of their single vote still remains unused. The marking of further preferences by any voter cannot adversely affect the prospects of those already rated more highly. There are no reasons for falsifying one's wishes when filling in the ballot-paper.

Candidates mathematically certain of election are declared elected and any surplus votes they might have are transferred to continuing candidates (those not yet elected nor excluded) in accordance with the wishes of those whose ballot-papers contributed to their election. These surpluses are transferred in the order of election of candidates.

If at some stage in the scrutiny there is no surplus to distribute, the candidate with fewest votes is excluded and those votes are transferred to the continuing candidate marked as next available choice on each ballot-paper.

This efficient mechanism puts all successful candidates on an even footing and keeps wasted votes to a minimum. It produces a result which is demonstrably fair.

In Tasmania, where it has been in use continuously since 1909, the Hare-Clark system has been refined over the years to fill casual vacancies by re-examination of the quota of ballot-papers responsible for the election of the outgoing member. It has also incorporated a mechanism for rotating names on the ballot-paper which simultaneously enhances voter influence, treats all candidates fairly and prevents the larger parties from undermining the efforts of their supporters.

## The Robson rotation

The Private Member's Bill of Liberal Neil Robson for rotation of names within party columns on the ballot-paper was given unanimous endorsement in the Tasmanian Parliament in 1979 at a time of political drama over campaign over-expenditure.

The then Labor Minister in charge of the Electoral Act, Mr Terry Aulich, said in his appraisal of the legislation

* This Bill will make the Hare-Clark system the fairest in the world.
* You cannot give anyone a safe seat.
* The Hare-Clark system gives us a healthy balance between parties and individualism. The party chooses people at endorsement time and therefore the party has a say. The party helps to promote a candidate during the election but basically, the electorate chooses. So it is a balance between the parties and individuals that is the strength of the Hare-Clark system.

All candidates endorsed by a political party get equal access to the best places (at or near the top or bottom) within that party's column on the ballot-paper. In other words, at every polling place each of these candidates appears in the favoured positions on the same number of ballot-papers. This means that no-one can expect to derive an advantage from those voters who just number straight down the party column because they do not have strong individual preferences. Naturally preselection rows are avoided by this fairness to candidates.

The 1974 election figures examined earlier also give an indication of why, under Hare-Clark, the larger parties avoid handicapping themselves as they do in Senate elections.

If there are 17 vacancies, candidates are certain of election once their progress total passes one-eigthteenth of the first preferences. The quota for election is therefore just under 5.56 per cent.

Under the Senate practice of encouraging voters to endorse a given order of candidates, Party B would have its first four candidates elected one after the other. Their quotas would require around 22.2 per cent of first preferences, leaving the fifth candidate with just 2 per cent and the prospect of being excluded towards the end of the scrutiny.

Similarly Party A would use around 33.3 per cent of first preferences in the election of its first six candidates, leaving just 2.3 per cent for the seventh.

Where one larger party gets nearly an exact number of quotas, the remainder of its candidates are likely to be excluded without any opportunity to attract votes transferred from independents and candidates from smaller parties. This can leave the way open for someone like Robert Wood with less than 2 per cent of first preferences in the NSW Senate elections of 1987 to then accumulate a quota of votes from all the remnants.

It is important to note that such results are not inherent in quota-preferential methods but stem from the poor decisions made by the larger parties. Such inept strategy is not found in Eire or Malta where quota-preferential methods have been in use for nearly seventy years without any attempt to have party supporters mark their ballot-papers with a fixed order of numbers.

How does the Robson rotation save major party supporters from any machine malfunction? Consider Party B with its 24.2 per cent of the vote. It will certainly get four candidates elected because it has four full quotas and its supporters generally mark all its candidates' squares. Five and perhaps six of its candidates may have a progress total exceeding 3

per cent in the middle part of the scrutiny and hence have sound prospects of attracting votes from excluded candidates or the transfer of surpluses. The longer you remain in the scrutiny the better are your chances of election!

The other distinction worth noting from the 1974 example is that under Hare-Clark (or any quota-preferential system), excess votes are not tied up with independents. In this case just 11.1 per cent of first preferences is required for the election of the two independents, and so the remaining 14.3 per cent is available for transfer to continuing candidates in accordance with the wishes of those who supported the independents.

If these votes go predominantly to candidates of Party A, along with some from excluded candidates, Party A has established majority support and hence is quite entitled to the majority representation it achieves. On the other hand, if Party A does not attract much additional support, it can't reasonably complain about the six or seven seats which it obtains. In contrast, crude d'Hondt gives it an Assembly majority even if nearly two-thirds of voters oppose it!

Both quota-preferential and d'Hondt methods arose from a recognition of the winner-take-all unfairness which bedevils the operation of single-member-district systems. The absence of any natural preferential element within d'Hondt schemes, and the failure to consciously limit wasted votes make them inherently inferior.

Given the nurturing and development of Tasmania's Hare-Clark system by Labor governments over many decades, we ought to be hearing from the government why Hare-Clark is suitable for Tasmania but not for the ACT. We have yet to hear of any benefits d'Hondt can bring voters but Hare-Clark can't. The onus is on the government to put up, or shut up and stop blocking our access to the fairest system in the world.

## THE WAY AHEAD

Despite the prior claims of various political participants and commentators, the 1989 ACT election turned into a complete shambles because of unavoidable voter confusion about how best to have their strongest wishes implemented in the course of the scrutiny, and the protracted circuitous charade inflicted upon hapless electoral officials once the votes were in. The outcome was widely seen as patently unfair, and in an environment of significant resistance to the very concept of self-government, exacerbated the aura of illegitimacy about the Legislative Assembly.

In the view of the Proportional Representation Society of Australia, it would do another monstrous disservice to the people of the Australian Capital Territory, and to self-government itself, to yet again inflict upon the voters a demonstrably absurd electoral system. To move further and announce that power over future ACT elections will simply be handed over to a body elected in such circumstances would add insult to what has been a cruel and unusual punishment.

Another part of this submission shows comprehensively that all d'Hondt schemes are inherently inferior to quota-preferential systems. Consequently the Proportional Representation Society of Australia recommends to the Committee and to the Senate that at the next election, the Hare-Clark provisions embodied in the Tasmanian Electoral Act be applied to the Australian Capital Territory as a single electorate.

This will maximise vote effectiveness and guarantee one vote, one value while the people choose between the two options before them for the future. It will also minimise administrative burdens prior to the election and during the course of the subsequent scrutiny.

Once a decision is made not to further inflict an unwarranted and unwanted electoral system upon the people of the ACT, the attention of the Parliament needs to focus on whether the process of choosing a future electoral system is to be a referendum or plebiscite. The distinction between the two is that only the outcome of a referendum is binding.

In the light of the tergiversation and chicanery which has marked the ACT's road to self-government so far, the Society believes strongly that there should be no further room for double-dealing after the next judgement delivered by the voters. The question becomes one of how best to ensure that the will of the people is not again ignored in some scramble for apparent partisan advantage.

The best course of action appears to be that the Federal Government guarantee to enshrine in its own legislation the key elements of the electoral system chosen by the people, before any handover to the ACT Legislative Assembly. In other words, while the Assembly is permitted significant flexibility to settle or vary the details of the system, it will have to do so within the guidelines endorsed at referendum until these are amended or revised by referendum at some later date.

In relation to the Hare-Clark proposal, the Society believes it would be sufficient to specify

* the single transferable vote
* a requirement that in any division of the ACT into more than one electorate, each electorate return an odd number of members no fewer than five, and that there be a specified maximum permissible tolerance in the anticipated quotas for election
* the Robson rotation of names within party columns

and

* the re-examination of ballot-papers to determine the replacement for a vacating candidate

A similar set of guidelines would have to be developed for the unlikely eventuality that a majority in the ACT expressed preference for the incessant safe-seat scramble that accompanies single-member electorates, and the guaranteed distortions between voter support and parliamentary representation flowing from the recognition of only crude local majorities. Its components would probably include

* the maximum permissible deviation between enrolments in individual electorates at some appropriate time
* any forlorn attempt at inserting a fairness criterion under which a redistribution aimed to avoid minority-support governments, as well as other factors to be considered by a Redistribution Commission
* either a requirement for a draw for places on the ballot-paper or endorsement of the use of the Robson rotation to deal equitably with the donkey vote

and

* the minimum requirement for a formal vote

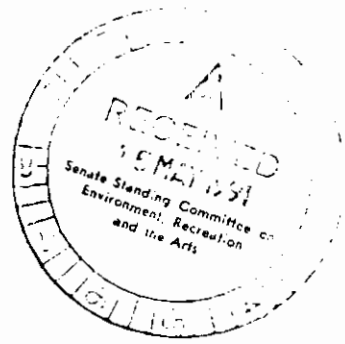
Beyond this confidence-building structure and undertaking at the federal level, there is scope for the development of Sample Bills that would outline to the people of the ACT what the proponents of the two referendum proposals specifically have in mind.

For instance, agreement has been reached among a number of political parties that the Hare-Clark system comprise three electorates of respectively five, five and seven members, and generally follow the Tasmanian legislation, particularly in using the Robson rotation and the countback procedures. It should not be difficult to quickly have drafted proposed legislation which would incorporate these features and be available for consideration by the ACT Legislative Assembly as soon as the Federal Parliament had entrenched the guiding principles before its handover of power over the detail of the electoral system.

Similarly one would expect the advocates of single-member electorates to be capable of having drafted proposed legislation to adequately describe the detail of what they wished to put before the people of the ACT, and perhaps to produce one or more sets of boundaries which could readily arise from the application of the redistribution criteria being advanced.

The Federal Parliament should facilitate the process of community debate and decision by attaching some formal recognition to two such detailed proposals even though it will not be in a position to ensure that the subsequent legislation follows word for word, if the Minister's announced proposal takes effect. Such a step would limit the scope for misrepresentation leading up to the referendum, and an announcement that the guidelines adopted will be entrenched prior to handover will further invite public credence in an area where previous activity has not been conducive to its nurture.

Once these steps have been taken in relation to the referendum's guarantees and the Sample Bills, it is time for the Federal Parliament to step back from the disasters it has inflicted to date, and to allow the people of the Australian Capital Territory to determine the future shape of an extremely important facet of their democracy.




Peter Grundy
Secretary
Environment, Arts & Recreation Committee
Dept. of the Senate
Parliament House
ACT 2600

Dear Mr Grundy,

I am writing to you on behalf of the Liberal Party, as I believe the Australian Capital Territory Electoral (Amendment) Bill has been referred to your committee for examination and comment.

I understand the Committee will be considering amendments to delete the sections amending the rules for transfer of preferences under d'Hondt, and inserting sections providing for a referendum on electoral systems in the ACT.

If this is correct, the amended Bill would provide for

A) Changes to membership qualifications and deposits for parties and candidates, and to the closing date for postal votes, for the 1992 election, which would be the last held under the d'Hondt system; and

B) A "referendum" to be held in conjunction with the 1992 election, whereby voters would choose either the Hare-Clark or Single-member Electorate system as the basis for subsequent elections.

In relation to A), it is unfortunate that there must be yet another election under the discredited d'Hondt system; nevertheless if there must be one, the ACT Liberal Party's view is that these changes would improve its operation somewhat (unlike the other changes in the present Bill, which would have the opposite effect).

In relation to B), I would like to make the following points:

1) We support the holding of such a referendum, and the selection of the two choices named to be presented to the electors. In our view, they are the only options likely to attract significant support within the Canberra community, and the inclusion of others would only confuse voters.

2) Because of the complexities of the issues involved, voters must be provided with as much information as possible regarding the two options as they would operate in the ACT.

In our view it would be totally inappropriate to expect the voters to make this decision in effect on the names of the

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systems alone, or even on the basis of descriptions of how the systems work in general. Voters have a right to know precisely how each system would be implemented in the ACT, and in particular:

- number of electorates;
- number of candidates each will return;
- how, and by whom, boundaries are to be drawn;
- whether voting will be preferential;
- whether it will be mandatory to number all squares;
- how casual vacancies are to be filled;
- how votes will be counted, and preferences and surpluses distributed; and
- formality rules.

In addition, voters have a right to an assurance that whichever system they democratically choose will be implemented accurately and swiftly after the result is determined.

It is the opinion of the ACT Liberal Party that for these two rights to be guaranteed it is necessary for the legislation which would be used to implement each to be drafted and made available for public scrutiny in advance of the referendum.

Further, unlike Referenda for Constitutional change, the outcome of this "referendum" is not binding on any government. The Bill should be amended in such a way that the government is required to implement the referendum decision within (or it automatically becomes law after) a fixed time from the declaration of the outcome.

The Minister, Mr Simmons, has indicated that control over the ACT electoral system will be "repatriated" to the ACT Government after the next ACT election - i.e. after the referendum. It is not clear whether this will happen immediately after the next election (in which case the newly-elected ACT government would have responsibility for implementing the referendum outcome) or the Commonwealth will retain this power until the outcome is implemented. If the former, it would be possible (and, in our submission, appropriate) for the Commonwealth to insert into the Bill a provision requiring the new ACT Government to implement the referendum outcome faithfully. If the latter, the Bill should if possible provide that whichever system is chosen becomes the ACT electoral system, without need for further Commonwealth Legislation. In either case, it would be necessary for both systems to be spelt out in detail in advance.

If, on the other hand, voters are provided with little or no detail about how the systems will work in the ACT, this gives rise to the possibility of lengthy debate after the referendum about whether the outcome has been faithfully implemented - especially if Hare-Clark is successful.

2) The question which logically follows is that of how each system is to be enshrined in legislation.

As regards Hare-Clark, the system favoured by the Liberal Party, our view is that it should be implemented with the following features:

a) Three electorates returning five, five and seven members;

b) Robson rotation of the order of candidates within party columns;

c) Filling of casual vacancies by countback;

d) Numbering of boxes to be optional beyond the number of members to be returned from an electorate.

This is the implementation endorsed by ourselves, the Residents' Rally and the Australian Democrats in the ACT - i.e. by most of the major parties likely to be contesting ACT elections in the foreseeable future.

The Liberal Party supports this implementation for a number of reasons:

a) It does not change the number of members of the Assembly. We believe decisions on this issue should be made by the Assembly itself, on behalf of its electors, as happens in every other Australian legislature. (It follows, therefore, that we consider the Single-member-electorate option should also be for a 17-member Assembly; above all, both should be for the same number of members, lest the issues be clouded by a debate on the optimum size of the Assembly, and the framing of the referendum be seen as biased.)

b) It retains odd numbers of members to be returned from each electorate, and an odd number of electorates: this avoids the possibility of a "hung parliament", and the possibility of some electorates effectively playing no part in determining the overall election result.

c) Subject to a) and b) above, it produces electorates about the same size, and returning about the same number of members, as in Tasmania.

d) Apart from this "scaling down", it retains all the important characteristics of the Tasmanian system.

3) We support the preparation, and distribution at public expense, of cases for each system, along the lines of referenda to amend the Constitution. We note Senator McMullan's statements in the Senate on 11 April that the government has not yet decided whether this will be done, and strongly urge your Committee to

recommend an amendment to this effect to the Senate. Should the legislation not incorporate such a provision, it will provide grounds for the accusation that it has been written in such a way as to prejudice the outcome in favour of the better-known option.

While we are happy to co-operate with our Federal colleagues in the preparation of such a case, we question the appropriateness of referring this task in the first instance to Parties in the Federal Parliament, who have many claims on their time, are not directly affected by the outcome, and in the past have displayed limited interest in matters affecting the ACT. As well, parties with a legitimate interest in the process may have difficulty with this process.

4) In order to avoid a "donkey vote" resulting from the order of the options on the ballot paper, we suggest two sets of ballot papers be printed, half with Hare-Clark first and half with Single-member Electorates first.

I would be happy to appear before the Committee to give evidence on the above, and on any other matters relating to the Bill.

Lyle Dunne
Policy Convenor
14 May 1991.

HANDWRITTEN ORIGINAL TYPED WITHOUT ALTERATION

Mr Phillip Grundy
Senate Committee -
Environment, Recreation and the Arts
Houses of Parliament
Canberra ACT

Fax (06) 277 5706
Attention - Mr Phillip Grundy

Dear Mr Grundy,

I'd hoped that these two pages would be the first, then followed by the others in the order in which I handed them in yesterday. Shall phone tomorrow, Thursday. Much regret delay.

Faithfully yours,

Arthur Burns
15 May - Wed.

**Submission to Senate ER and A Committee: ACT Electoral System**

From A.L. Burns Litt.D (Melb), Emeritus Professor of Political Science, ANU

These documents are submitted for three purposes:-

I To foreshadow that no form of d'Hondt, however modified, is capable of providing self-government for any part of Australia. It can only confirm existing major parties in government. It can only return many of the incumbent MLAs. It is everything that the House of Representatives system of single-member electorates and the full-preferential ballot is not. The H.of.R system is ideally suited to ACT self-government.

II To urge substitution of an immediate referendum between Tasmanian Hare-Clerk and the H.of.R. system. By receiving the November 1989 Report of the JSCEM, the Commonwealth Parliament seemed to Canberrans to have promised to introduce and to pay for such a referendum, during 1990-91. Even now, the Australian Electoral Commission could conduct the referendum, and could determine electoral boundaries for whichever result, in time for the February 1992 election to be held on them. If Parliament is unwilling to pay, as promised, the $660,000 cost, then the 1992 ACT government could be made to pay, in whole or in part. In any case, Australia's foreign debt would not be increased!

III To show that the 3rd and 4th Hawke Labor governments have deliberately averted the practical possibility of an H.of.R. system for the ACT. A referendum would have made it possible, if held in 1990-91, whereas one held in conjunction with the referendum will be seen by Canberrans to be a face-saving trend. Even if H.of.R. were to win, and even if the d'Hondt-elected 1992 legislative Assembly took any notice, H.of.R. could not be used before 1995. Cabinet has taken good care to postpone the referendum, so that it should be too late for the 1992 election. Instead, Cabinet has reimposed the system intended for the ACT from late 1989 at the outset.

A.L. Burns 14 May 1991

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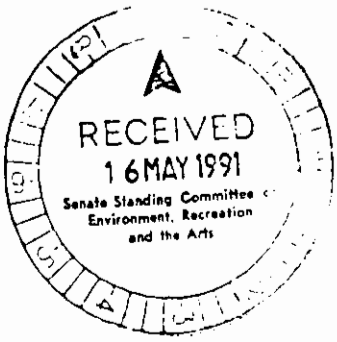
CURTIN ACT 2605
Ph (06) 282 1132




Dr Miko Kirschbaum, Convenor
Proportional Representation Society
3 Baines Place
Lyneham, ACT 2602
ph. 2724279 (w); 2571015 (h)
15 May 1991

Peter Grundy
The Secretary
COMMITTEE ON THE ENVIRONMENT,
RECREATION AND ARTS
Parliament House
CANBERRA ACT 2600

Dear Mr Grundy,

Please accept the following document as a submission into the Inquiry into proposed changes to the ACT electoral system and the possibility of holding a referendum to decide the future electoral system for the ACT.

I am also prepared to give any evidence in person should that be requested.

Yours sincerely,

(Dr Miko Kirschbaum)

## Electoral system for the next election

The ACT electoral system has been an unfortunate saga that has been dragging on for far too long. It is now more than two years since the first ACT election was held, and almost 1½ years since the report by the Standing Committee on Electoral Matters on the ACT Election and Electoral System was realeased.

Yet, the question of the electoral system should never have become such a major issue. Canberra had had its Advisory Council elected by proportional representation for a long time before the introduction of self-government into the ACT. I think it is fair to say that the quota-preferential system used for the election of that Council was generally regarded as fair, equitable and suitable by the voters in the ACT.

The d'Hondt system, on the other hand, has always been regarded as a woeful mixture of incompatible elements that follow no discernible electoral principles, that is awkward for voters and so complicated to count that the length of the count became a major issue in itself. The deficiencies of the system have been aptly demonstrated by the Joint Standing Committee on Electoral Matters in their report on the ACT election and electoral system. **We regarded it as highly inappropriate that the voters of the ACT should once again be subjected to another election under this system.**

Furthermore, the last election saw the election of a number of candidates with little electoral support. The Residents Rally, in particular, was able to win 23.5% of seats on less than 10% of primary votes. Such a large distortion in the distribution of seats is highly undesirable and this has contributed to the low opinion with which the people of the ACT regard the ACT Assembly and self-government itself. Basically, the d'Hondt system allows a large element of chance to come into the distribution of seats. It would be highly unfortunate if the ACT Assembly should experience another election with similarly highly distorted outcomes.

**The suggested changes to the d'Hondt system, as proposed by the Hon. David Simmons, would constitute no improvements.** They do not tackle the basic flaw of the d'Hondt system, namely the incompatibility of a list voting system, like d'Hondt, with the Australian practice of voting for individuals.

Voting for individuals can only be fair and effective in conjunction with allowing the full expression of preferences by voters. In the version of d'Hondt used for the ACT election, the free flow of preferences was artificially curtailed by party lines. This caused major distortions. In the proposed version, that would be even further distorted by disallowing any preference flow at all to candidates of other parties.

Further, the preference flow within a party column is likely to be quite meaningless, as one would have to expect that under all practical circumstances the order given on the ballot paper would be the order in which candidates would be elected, especially as that would be aided by both voting above the line and the pervasive deeming provisions.

The suggested changes also fail to address some of the other problems with d'Hondt, such as the bias in favour of larger parties. Due to the workings of the electoral quotient, the candidates from small parties would, on average, represent 50% more voters than candidates of larger parties. No justification for such a bias has ever been given by any proponent of d'Hondt.

**All in all, the d'Hondt system is irretrievably flawed, and none of the suggested tinkering can overcome any of its basic deep structural faults.** The system should be abandoned and not be used again for even one more election in the ACT. The election of legislators is just too important to be distorted by an inadequate electoral system.

## The Need for a Referendum

The politically aware public of the ACT has for a long time supported independent candidates and a variety of small political groupings. This was allowed to happen under the quota-preferential system used to elect the ACT Advisory Council, but would be effectively squashed under single-member electorates. Because of that, there has long been a strong resistance by many people in the ACT community against the introduction of the system of single-member electorates to Canberra.

This is backed up by the large number of submissions in favour of proportional representation that were made to the Joint Standing Committee on Electoral Matters' Inquiry into the ACT electoral system. More recent support has come from an ABC phone-in poll that resulted in a 2:1 majority of support for Hare-Clark.

The question must be asked whether it is really necessary to conduct yet another election with the discredited d'Hondt system and to conduct a costly referendum when the eventual outcome can already be predicted with reasonable confidence.

Certainly, should Hare-Clark win the referendum, as all pundits are predicting, it would settle the issue of the electoral system for the ACT. Should single-member electorates win the referendum, unlikely though that may be, it would not even settle the issue in the ACT. Single-member electorates is just so totally unsuitable for the ACT that even a referendum win would be unlikely to put the issue to rest.

Once an Assembly were to be elected with 17 Members of one party and not a single Opposition Member, public unease with single-member electorates would be sure to surface again. Even slightly less extreme results, with, say, a 13:4 majority would not be much more acceptable.

Also the virtually assured absence of candidates from any other than the two major parties would be hardly acceptable to the people of the ACT. At the last election, more than 62% of votes were cast for Independents or parties other than the Labor and Liberal Parties. We could expect massive public disquiet should these 62% of people effectively be denied future representation.

## Comments on Other Suggested Changes

The requirement for a party to have 100 members before being allowed to register as a political party for the ACT election seems an overly tight restriction. While the basic move to restrict the running of 'frivolous' parties has its merits, the requirement for 100 members seems overly harsh, and would be difficult to meet for newly emerging genuine alternative parties. A requirement for only 25 or 50 members should still achieve the purpose of keeping out real frivolous parties without restricting the emergence of genuine new alternative parties.

The raising of deposits for candidates seems unwarranted and unjustifiable. Restricting the running of candidates through financial hurdles clearly restricts the political arena to candidates with substantial financial backing. This is irreconcilable with the democratic notion that election should be equally open to all candidates irrespective of their fiancial disposition.

The provision to prevent individuals from being the registered officer of more than one political party, makes obvious sense, and has our full support.

The provision for the close of the receipt of postal votes to be moved forward to coincide with the close of polls on polling day, is a significant departure from the practice for other Australian elections. While there are both positive and negative aspects to this

provision, it would be unfortunate if that change were rushed into purely to deal with the difficulties of counting another election with the d'Hondt system.

It seems to be a more cautious approach to allow the receipt of postal votes as long as they have been posted before the close of the polls on polling day. This would be a theoretical sound position that should also achieve the purpose of avoiding any undue delay in the electoral outcome at least for any system other than d'Hondt.

## The Referendum on Choosing the Future Electoral System

While we regard the holding of a referendum as unnecessary in this instance, we nonetheless support it if it is the only way of reaching a decision on the matter that is acceptable to both Houses of Parliament.

On the question of details of the holding of a referendum, we generally support the position taken and outlined by the Hare-Clark Campaign Committee. In particular, we support the same details of the Hare-Clark option that are also supported by the Liberal Party, Australian Democrats and Residents Rally. The main features are:

**A subdivision of the ACT into three electorates, with 5, 5 and 7 Members, rspectively.**

**Inclusion of 'Robson Rotation' in line with the Tasmanian legislation.**

**Filling of casual vacancies by count-back of the ballot papers of the last election as outlined in the Tasmanian legislation.**

To ensure fairness in the conduct of the referendum, **Robson rotation should be used for choosing the order of the two referendum questions on different ballot papers.**

To ensure that the public can make an informed decision about the referendum question, full public discussion of the pros and cons of the competing options is essential. This can only really be ensured through **public funding of the respective cases for the two referendum options.**

Dr Miko Kirschbaum, Convenor
Proportional Representation Society (ACT Branch)
15/ 5/ 1991

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ACT Division
Australian Democrats

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c/- 66 Bindaga Street
Aranda A.C.T. 2614

15th May 1991

Mr Peter Grundy
Secretary
Standing Committee on Environment,
Recreation and the Arts
Parliament House
CANBERRA A.C.T. 2600

Dear Mr Grundy,

Enclosed is a short submission from the Division relating to the Australian Capital Territory (Electoral) Amendment Bill 1991.

You will understand that little time has been available for the preparation of a submission. I believe it is to be regretted that submissions have not, so far as I know, been publicly invited. I expect that many members of the A.C.T. community would wish to convey trenchant views to be taken into account by the Committee.

Should the Committee wish me to appear before it to expand on matters dealt with in the submission, or to respond to questions on other matters, I would be pleased to do so.

Yours sincerely

SIGNED

(Graeme Evans)

Submissions to the

STANDING COMMITTEE ON ENVIRONMENT, RECREATION AND THE ARTS (one line)

from the

A. C. T. DIVISION OF THE AUSTRALIAN DEMOCRATS

relating to the

AUSTRALIAN CAPITAL TERRITORY (ELECTORAL) AMENDMENT BILL 1991 (one line)

May 1991

## A. RECOMMENDED COURSE

1. The Division believes the Committee should recommend that:

   (a) the idea of modifying the present d'Hondt system be abandoned;
   (b) the proposed referendum to be held in conjunction with the next A.C.T election be abandoned; and
   (c) the government proceed forthwith to introduce legislation implementing a Hare-Clarke electoral system for the next A.C.T. election.

2. The Division believes this is to be appropriate because:

   (a) the standing of the Parliament suffered as a result of the imposition of the d'Hondt system, and further "tinkering" with it will compound the damage, causing unacceptable injury to the institution of Parliament in the eyes of the A.C.T residents;
   (b) wider media comments on occasions cause this damage to extend interstate;
   (c) it is increasingly clear that Hare-Clark would be the system chosen in the referendum and it is not appropriate for the Parliament to be seen as further delaying implementation of this choice;
   (d) holding a referendum in conjunction with an election will distort the outcome of the election, almost certainly to the disadvantage of the ALP, and to a degree not consistant with fair electoral practice.

3. The form of Hare Clark implemented should have the characteristics listed by the Hare-Clark Campaign Committee.

## B. FALL - BACK POSITION

1. Two acceptable "fall-back" positions are considered to exist. These are:

   (a) to re-introduce, for the next A.C.T. election, the electoral system used for elections to the former A.C.T House of Assembly, and to continue with the concurrent referendum as presently proposed;
   (b) to introduce a slightly modified Senate voting system for the next election, as already proposed to the Committee, but adding to the proposal the essential feature of Robson Rotation, the package in this instance, also, being combined with a referendum as currently proposed.

2. While not as efficacious in restoring the standing of the Parliament and the Government in the eyes of the people of the A.C.T., either of these courses would do far more in this direction than would an attempted further modification of the d'Hondt system so thoroughly despised by A.C.T. residents.

## C. PREPARATION IF REFERENDUM PROCEEDS

1. It is believed the Committee should strongly recommend that, in event of the referendum proceeding, the A.C.T. Hare-Clark Campaign Committee should be recognised as the body to prepare the Hare-Clark case for circulation to voters.

2. It is believed that anything less than this would be inconsistent with the claimed underlying objective of making A.C.T. residents responsible for their own electoral system.

## D. MODIFYING "MODIFIED D'HONDT"

1. If the Committee determines to recommend that one more attempt be made to salvage the discredited d'hondt system, it is urged that minimum impediments be put in the way of persons contesting who do not already have standing as a parliamentary party.

2. It is already clear that the "crazy" number of nominations for the first election was an aberrant situation wholly connected with the circumstances specific to that election, and that the situation would not recur even if the present rules relating to candidacy were unchanged.

3. However, it would be a sensible precaution to change the legislation to prevent one person sponsoring more than one party.

## E. ELECTORAL FUNDING

1. As the Parliament has chosen to retain responsibility for the A.C.T. electoral

system for one more election, it would be appropriate for electoral funding to be provided by the Australian Government on one more occasion.

2. In other words, the principle should be recognised that responsibility for electoral funding should rest with the body accepting responsibility for the electoral system.

Hare-Clark Campaign Committee
GPO Box 2443
Canberra City
ACT 2601
15 May 1991

Peter Grundy
Secretary
Standing Committee on the
Environment, Recreation and the Arts
Parliament House
Canberra, ACT 2600

Re: Inquiry into ACT electoral system.

Dear Mr Grundy,

Please accept the accompanying submission as input into your Inquiry into the proposed legislation into the ACT electoral system and associated matters.

We are also happy to give any oral evidence to the Committee should that be requested.

Yours sincerely,

John Gagg for the
Hare-Clark Campaign Committee

# SUBMISSION TO THE JOINT STANDING COMMITTEE ON THE ENVIRONMENT, RECREATION AND THE ARTS

on the

# ACT ELECTORAL SYSTEM

by the

## HARE-CLARK CAMPAIGN COMMITTEE

**BACKGROUND**: The Hare-Clark Campaign Committee was formed on 11 April 1991 following the announcement by the Minister for Territories, Mr Simmons, that a referendum is to be held to decide on the future electoral system for the ACT. It was formed to provide a channel through which the local people of the ACT can have an input into parliamentary decisions on the future electoral system for the ACT. The Hare-Clark Camapign Committee is backed by the Liberal Party, Australian Democrats, Residents Rally and Proportional Representation Society.

**OFFICIAL PROPONENT OF THE HARE-CLARK OPTION**: The Hare-Clark Campaign Committee seeks to be accredited as the official proponent of the Hare-Clark position. We are backed in this respect by the Liberal Party, the Australian Democrats and the Residents Rally, the three most significant political parties in the ACT that are in support of Hare-Clark and by the Proportional Representation Society, a community group that pursues the introduction of systems of proportional representation for the conduct of future elections in Australia.

As the people of the ACT are the ones that are ultimately affected by the outcome of the referendum, it is appropriate to allow local interested people to have an input into the planning for and the eventual conduct of the referendum. Because of our broad support, it would be appropriate for the Hare-Clark Campaign Committee to be the channel through which a local input into the decision making can be made.

**DETAILS OF THE HARE-CLARK OPTION**: The decision to hold a referendum presumably follows from the Inquiry of the Joint Standing Committee on Electoral Matters into the ACT election and electoral system. That Committee recommended the holding of a referendum to decide between Hare-Clark and single-member electorates. However, it did not make any recommendation as to details of the Hare-Clark option.

Therefore, we recommend the following details of the Hare-Clark option:

1. The size of the Assembly to be maintained at 17 Members.

2. The ACT to be sub-divided into three electorates, electing 5, 5 and 7 Members.

3. 'Robson Rotation' to be included.

4. Casual vacancies to be filled by count-back of the ballot papers that had elected the vacating Member.

5. Voting to be optionally preferential with a minimum number of preferences required that is equal to the number of Members to be elected from each district.

These details have been formally endorsed by the Liberal Party, Australian Democrats, Residents Rally and Proportional Representation Society.

3

To ensure that voters will be certain what constitutes the options that they are voting for, and to ensure that the winning option can be implemented without ambiguity, we recommend that the two options be fully drafted before the holding of the referendum so that the referendum would constitute a choice between two alternative bills. Drafting the bills should be relatively easy, as they can be copied almost entirely from legislation in force in Tasmania (in the case of the Hare-Clark option) and other States or the Federal legislation (in the case of single-member electorates).

**LAY-OUT OF REFERENDUM BALLOT PAPERS**: To avoid the outcome of the referendum being dominated by donkey votes, it would be essential that the order of the two referendum questions be rotated - that is, each referendum option should appear as the first of the two options on exactly half of all ballot papers.

That is a very important requirement for the conduct of this referendum. Without it, even this referendum may not permanently settle the question of the electoral system. If the option that is placed second on the ballot paper were to lose by less than a very substantial margin, then its supporters would no doubt claim that the result was simply due to the bias inherent in the holding of the referendum. The campaigning and lobbying for a change in the electoral system would then continue.

**PUBLIC FUNDING**: It is probably fair to say that despite frequent discussion in the media, the vast majority of the people of the ACT are still poorly informed on the details of the electoral system options that are to be put before them.

If the level of public understanding of the issues is not going to improve in time for the referendum, the referendum itself will be a rather meaningless exercise. At the same time, groups such as ourselves and the Labor Party will put up their own public campaigns in support of one or the other of the two options. It would be unfortunate if the final outcome would be significantly affected by a competition between the main protagonists as to who would be able to raise more money for their respective campaigns. In the interest of having a fair competition public funding of the respective cases would be essential.

# RESIDENTS RALLY FOR CANBERRA

Residents Rally for Canberra P O Box 557 Civic Square ACT 2608

Mr Peter Grundy
Secretary
Standing Committee on the
Environment, Recreation and the Arts
Parliament House
CANBERRA ACT 2600

16 May 1991

Dear Mr Grundy,

Please accept the accompanying submission as input into your inquiry into the A.C.T Electoral System.

The Rally would be pleased to support this submission by oral evidence to the Committee if requested.

Yours sincerely


J.E.S.Gagg
Secretary
Residents Rally for Canberra.

PH: 2493481
2825435

*SUBMISSION TO THE JOINT STANDING COMMITTEE*

*ON THE*

*ENVIRONMENT, RECREATION AND THE ARTS*

*ON THE*

***ACT ELECTORAL SYSTEM***

***BY***

***THE RESIDENTS RALLY FOR CANBERRA***

*The Residents Rally for Canberra notes the decision of the Commonwealth Government to hold a Referendum to decide between the Hare-Clark system and a System of Single Member electorates as the Electoral System for the Australian Capital Territory.*

*The Rally is concerned that a referendum option of 'Hare-Clark System' is insufficiently specified and therefore recommends that the Hare-Clark proposition be of the following form;-*

1. *The A.C.T Legislative Assembly to be composed of 17 Members.*

2. *The A.C.T to have three electorates electing 5,5 and 7 members.*

3. *'Robson Rotation" to be included in the system.*

4. *Casual vacancies to be filled by countback of the ballot papers that had elected the vacating member.*

5. *Voting to be optionally preferential with a minimum number of preferences required that is equal the number of members to be elected from each district.*

# APPENDIX 4

## DETAILS OF MEETINGS

***Private Meeting***

10 May 1991
8.30 a.m. - 9.30 a.m.
Committee Room 1S4

*Attendance*

Senator R.A. Crowley (Chair)
Senator V. Bourne
Senator I. Campbell
Senator A.W. Crane
Senator J. McKiernan

Senator R. Bell (by invitation)

*Ministerial Representation*

Senator the Hon. R.F. McMullan representing the Minister for the Arts, Tourism and Territories.

*Officials Present*

- Mr G. Willcox, Department of the Arts, Sport, the Environment, Tourism and Territories; and
- Mr M. Maley and Mr P. Green, Australian Electoral Commission.

***Public Hearing***

17 May 1991
8.30 a.m. - 9.30 a.m.
Committee Room 1S4

*Attendance*

Senator R.A. Crowley (Chair)
Senator V. Bourne
Senator I. Campbell
Senator S. Loosley
Senator J. McKiernan

Senator M. Reid

*Ministerial Representation*

Senator the Hon. R.F. McMullan representing the Minister for the Arts, Tourism and Territories.

*Officials Present*

- Ms C. Santamaria, First Assistant Secretary, Department of the Arts, Sport, the Environment, Tourism and Territories; and
- Mr G. Willcox, Department of the Arts, Sport, the Environment, Tourism and Territories.

*Other Witnesses*

- Professor A. Burns, private citizen;
- Mr L. Dunne, Policy Convenor, Liberal Party of Australia, ACT Division;
- Dr M. Kirschbaum, Convenor, Proportional Representation Society of Australia;
- Mr G. Evans, Australian Democrats, ACT Division; and
- Mr J. Gagg, Residents Rally for Canberra and Hare-Clark Campaign Committee.