Australian Capital Territory (Electoral) Bill 1988

Date Introduced: 19 October 1988
House: House of Representatives
Presented by: Hon. Clyde Holding, M.P., Minister for the Arts and Territories

Digest of Bill

Purpose
To establish an electoral system for elections to the Legislative Assembly (the Assembly) of the Australian Capital Territory (the ACT).

Background
Section 122 of the Constitution gives the Australian Parliament power to make laws for any Territory and gives Parliament virtually unrestricted sovereignty over Federal Territories. The ACT is a special instance of a Federal Territory as it is recognised in sections 52 (i) and 125 of the Constitution as Australia’s seat of government. Section 125 of the Constitution especially directs that the seat of Government will be within a Territory vested in the Commonwealth. The Seat of Government (Acceptance) Act 1909 confirmed an agreement between the Commonwealth and the New South Wales Governments on the surrender of some 2358 square kilometres of land for the seat of government. As a result of its special status, the ACT has been the subject of direct control and administration by the Australian Government, especially as regards finance.

The Seat of Government (Administration) Act 1924 established a statutory corporation, the Federal Capital Commission (FCC), to plan, develop and administer the ACT. The FCC was widely criticised by Territory residents, who complained of the lack of local participation in government. The strains of the Depression, a reduction in development expenditure and the resignation of the Chairman led to the disbanding of the FCC in 1930. Administration of the ACT became the responsibility of the Attorney-General and the Ministers for Home Affairs, Health and Works. In 1932 the functions of the Department of Home Affairs were transferred to the Department of the Interior. Responsibility for the ACT has, most recently, been transferred to the Minister for the Arts and Territories.

The Advisory Council Ordinance 1930 provided for the establishment of a partly elected council to advise the Minister for Home Affairs on matters affecting the ACT including the creation, amendment or repeal of ordinances. When the Advisory Council Ordinance 1930 became law, it was generally understood that self-government would be granted within 12 months. However, self-government was not introduced and the Council carried on as an advisory body for some 44 years.
In 1957 the National Capital Development Commission (the NCDC) was established as a statutory authority to be responsible for the total planning and development of Canberra as the national capital. The NCDC is currently responsible to the Minister for the Arts and Territories and continues to have considerable freedom in the carrying out of its functions.

A report presented to Parliament in May 1967 by the Minister for the Interior, titled Self-Government for the ACT — a Preliminary Assessment, concluded that self-governments of the ACT was possible within the framework of the Constitution and was desirable. Similarly, a report titled Self-Government and Public Finance in the Australian Capital Territory, presented in December 1974, recommended that self-government be granted to the ACT.

In 1974 a unicameral House of Assembly was established. However, the House of Assembly had advisory powers only, and largely took over the role of the defunct Advisory Council. In its Advice to the Minister in 1984, the Task Force on Implementation of ACT Self-Government sets out the results of a 1978 referendum held on the issue of self-government. Of the ACT residents who voted, 63.75% favoured the continuation of the arrangements then in operation for governing the ACT.¹

In 1986 the Government proposed an electoral system for the ACT modelled on the practice of mainland Australian State lower Houses.² The ACT was to be divided into Electoral Districts, with one candidate being elected from each Electoral District through a ‘preferential’ voting system. This proposition was not accepted. The Government then proposed an electoral system which provided for half of the members to be elected from single electorates using a preferential voting system, with the balance being elected using a system of proportional representation. This proposition was also not accepted.

There are many types of electoral systems, with the most common systems varying from simple first-past-the-post to the more complex proportional representation systems. The key feature of each system is the formula by which the seats are attributed to winning candidates on the basis of votes cast by the electorate. In many countries a simple majority of votes cast is sufficient to win a seat; in others, this is raised to an absolute majority; and in others, to a majority achieved by the preferential vote system, which is a variation of the majority system but conferring on it characteristics of proportional representation.

Under systems of proportional representation, the number of votes that a candidate or list of candidates must obtain is determined by the electoral formula. The formulas differ from country to country. The main types include: the d'Hondt highest average, found in Spain, Argentina and Belgium, and the Hagenbach-Bischoff method found in Italy and Switzerland. Some countries (for example, Denmark and the Netherlands) combine those systems, and the electoral systems of West Germany and Japan combine features of both majority and proportional systems.³
Basically, the d'Hondt system, as proposed by this Bill, allocates seats one by one. Seat allocation depends on the combined vote, and the number of seats already won. Thus, if a party wins seats, its vote will be divided by the number of seats won (plus one) to calculate its average vote for the next round of seat allocation. This is best shown by an example. In the example below, there are four parties and five seats to be filled.

<table>
<thead>
<tr>
<th>Round 1</th>
<th>Round 2</th>
<th>Round 3</th>
<th>Round 4</th>
<th>Round 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Party</td>
<td>Total Vote</td>
<td>Divisor</td>
<td>Average Vote</td>
<td>Divisor</td>
</tr>
<tr>
<td>A</td>
<td>8700*</td>
<td>2</td>
<td>4350</td>
<td>2</td>
</tr>
<tr>
<td>B</td>
<td>6800</td>
<td>1</td>
<td>6800*</td>
<td>2</td>
</tr>
<tr>
<td>C</td>
<td>5200</td>
<td>1</td>
<td>5200</td>
<td>1</td>
</tr>
<tr>
<td>D</td>
<td>3300</td>
<td>1</td>
<td>3300</td>
<td>1</td>
</tr>
</tbody>
</table>

* Seat won

On the first round no party can have yet won a seat, so the divisor for each party is one. Party A wins the seat in the first round. In the second round Party A’s divisor is two, whereas all the others remain the same. Party B now has the highest average and wins the seat. In the third round, party C has the highest average. Party A wins its second seat in the fourth round. In round five, party A is at a disadvantage because it has won two seats. Party B takes the fifth seat because it has the highest average.4

Main Provisions
Clause 5 excludes the Jervis Bay Territory from the operation of the proposed Act.

Clause 7 provides that for the purposes of general elections, the ACT shall be one electorate.

General elections will be held every four years (clause 9).

The Commonwealth Electoral Act 1918 will generally apply to general elections for the Assembly (clause 15).

Clauses 17 – 19 establishes the electoral system for the Assembly. The proposed system is a modified version of the d’Hondt system.

Electors will be able to vote, in a method similar to the Senate, for a single independent candidate, a single registered party, or indicate an order of preference within one registered party (clause 17).
Seats are distributed among parties and independents under the d'Hondt electoral formula (clause 18). The following additional rules will apply to this procedure:

if a vote is cast for a party or for one or more candidates of a party, that party is treated as having received a single vote (sub-clause 18(1));

if two averages on different rounds are equal, the average on the earlier round is taken to be the higher average (sub-clause 18(4));

if two or more averages on the same round are equal, the ACT Electoral Officer will decide by ballot their order for the purposes of allocating seats (sub-clause 18(5));

When the number of seats received by a party is equal to the number of candidates it has nominated, and when a independent candidate receives a seat, any further average is disregarded (sub-clauses 18(7) and (8)).

Clause 19 provides for the election of a candidate once seats have been allocated. If the number of candidates of a party exceeds the number of seats received by the party, the candidate or candidates of the party will be elected to those seats by distributing the votes in accordance with the Commonwealth Electoral Act 1918 (the Electoral Act) (i.e. by a method similar to that used for Senate elections (sub-clause 19(3) and paragraphs 273(5)(c) & (d) of Schedule 1).

This Bill will amend the Electoral Act as set out in Schedule 1. Schedule 1 provides the machinery for the conduct of general elections of the Assembly.

Amendments of Part I of the Electoral Act - Preliminary

A definition of 'preference mark' is inserted to mean the number 1, a tick or a cross.

Modifications of Part XIV of the Electoral Act - Nominations

Section 173 of the Electoral Act will be be amended to provide that the deposit ($100) is forfeited if the total number of votes received by an independent candidate, or in the case of a party, the sum of the votes received by a party is less than 4% of the total number of formal votes in the election.

Amendments to Part XVI of the Electoral Act - Polling
Sub – sections 209 (1) and (2) of the Electoral Act will amended to provide that the ballot – paper will be such that;

there is a horizontal line across each ballot – paper;

that above the line from left to right are the names of each party, followed by the name or names of each independent candidate under a heading of 'Independent Candidates'; or

that below the line and below the name of each party, is the name of the candidate, or a vertical list of names of candidates nominated by the party.

Section 239 of the Electoral Act will be amended to provide that a voter may mark the ballot – paper:

by placing the number 1 in the square opposite the name of a political party or independent candidate;

by placing the number 1 in the square opposite the name of a candidate in the list of the party and, if the voter wishes, where there is more than one party candidate in the list, the numbers 2, 3 (and so on) in the squares opposite the names of the other candidates for whom the voter wishes to indicate a preference.

Section 268 of the Electoral Act will provide that a ballot paper is informal where:

it has no vote indicated on it; or

a preference mark has been placed in more than one square above the ballot – line; or

preference marks have been placed in squares below the ballot – line opposite the names of candidates of different parties.

Section 294 of the Electoral Act will provide that 50 cents is payable to a party or independent candidate for each vote received in a general election.

Amendments to Part XXI of the Electoral Act – Electoral Offences

Section 351 of the Electoral Act will provide that it is an offence for a person, without written authority, to expressly or implicitly advocate or suggest that a party or independent candidate is the party or independent candidate for whom a vote should be given.
References


For further information, if required, contact the Law and Government Group.

9 November 1988

Bills Digest Service
Legislative Research Service

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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