

# Putting New Wine into an Old Bottle

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Created in 1989 the Australian Capital Territory Legislative Assembly comprised 17 members elected from a single electorate across the Territory. Both the system of voting and electoral representation underwent changes until, in 1995, the current arrangement was established with three multi-member electorates selecting seven, five and five members respectively using the Tasmanian Hare–Clark with Robson. Following its sixth election in October 2004 it is instructive to examine a particular *Party* problem that has emerged under the current election method.

Essentially, how do we introduce new blood into our small local legislature?

Over the ten year history<sup>1</sup> (and four elections) of the three electorates, the voters of the ACT always have returned two members of each major party in the five member seats and with one exception — three members of these parties in the larger seven member electorate. The balance of Assembly members until the 2004 election were independents or minor party representatives. In 2004 the Labor Party had three members elected in the two five members seats with Liberals taking the other two places. Only in the seven member central seat was the status quo of three Labor, three Liberal and a crossbench member (Green) maintained.

Further, over the ten year period since 1995, whilst there have been the usual resignations, retirements and electoral defeats among the 37 members who have represented the electorates, only four full-term members and three members filling casual vacancies have been defeated in an election by another member of their own Party — testimony to the enormous advantage incumbency has for candidates standing in multi-member electorates.

Of course it can be argued a sitting member of any parliament always enjoys an advantage over challengers. However in larger legislatures there is greater scope for

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<sup>1</sup> This article was written in 2005.

new blood due both to the normal changes mentioned above and the greater volatility of the voting systems employed.

In a small legislative body under the Hare–Clark system if all sitting members decide to stand again, their re-election is virtually guaranteed as figures quoted above show.

This is not entirely the fault of the system itself. Indeed under Robson rotation, whereby candidates' names are rotated on the ballot paper, no one person is consistently top of the ballot (as say, occurs in Senate voting) and the donkey vote is evenly distributed. It is a system designed to be fairer but regrettably it doesn't work.

Name recognition is a powerful factor, after Party affiliation, in choosing members from multiple choice candidates and unless an outstanding local identity nominates, incumbents with several years public exposure have the advantage. Even any threat posed by an outstanding local identity stems not necessarily from suitability but from the same public name exposure, albeit in another field.

Such a situation can breed complacency among sitting members who need only to spend the years between elections self-publicising then make a strong effort in the campaign itself to achieve re-election. The ACT's recent introduction of four-year terms enhances the opportunity for increased name recognition.

This can result in prospective quality candidates being dissuaded from nominating when faced with entrenched members in each electorate, because most serious aspirants for political preferment want to have a real chance. This is particularly so with people of stature or status who would be reluctant to offer their services only to experience the embarrassment or humiliation of defeat.

Apart from new ideas and enthusiasm being lost, the democratic pre-selection process itself can be reduced to farce, even to the extent of last minute efforts to find 'filler' candidates to make up the numbers on the Party tickets in each electorate because *bona fide* candidates will not risk standing. At its most manipulative, it is possible to have sitting members pre-selected at the expense of good candidates simply upon the formers better known name and face.

So what can be done to improve the quality of representation and give all Party candidates standing for the ACT Legislative Assembly an equal chance of being elected?

There is no possibility the Assembly can move to single member electorates nor have its number of members increased because these changes require Commonwealth approval under the *Australian Capital Territory (Self-Government) Act 1988*, so we must seek a local solution.

One suggestion is to ensure Party pre-selectors are better prepared for the responsibilities they hold: more discerning, better informed of the community's opinion of individual sitting members and candidates, aware of the issues of the campaign and of the territory itself and of all aspirants capacity to address them. We wish.

In truth, this detailed approach to pre-selection will only succeed in a single seat contest: the House of Representatives, State Assemblies and, in the ACT, the Senate (because with two senators to be elected the territory traditionally has elected one from each major Party). In our multi-member electorates no matter how thorough and how knowledgeable the pre-selectors are if existing sitting members are included as Party candidates those members normally will be elected because the final decision rests with the *electorates'* voters, who are heavily influenced by name recognition.

An alternative strategy could be to pre-select teams of outstanding local identities for each multi-member seat. While this certainly would give each candidate an equal chance of being elected it still wouldn't work because inevitably some aspirants must fail and therefore would not stand for reasons outlined earlier.

Utopian dreams aside, there appears to be two options to overcome the overwhelming advantage of incumbency.

The first is withdrawal of Party support in the pre-selection — a messy but effective means of overcoming the problem as no defector nor unsuccessful major Party candidate to date has been successful in a subsequent ACT election. The difficulty here however, is the bad blood which inevitably is created among Party supporters of the unsuccessful sitting member and the danger that that ex-member will run in the election as an independent or minor Party candidate and, even if unsuccessful, take votes from the major Party concerned. In a multi-member electorate such a loss of votes could be crucial in determining the number of seats a Party wins.

The second option is for members to serve a fixed term.

Members serving fixed terms are a feature of over 20 of the United States of America's state legislatures since being introduced in the early 1990s. The term limits range from 6 to 12 years and in at least seven states the fixed term is a lifetime limit.

Not surprisingly, term limits have been hotly debated by incumbents and would-be career politicians and a number of arguments support a case against their introduction. The limit as initially occurred in several U.S. states was too short, preventing members from proving their worth and also discouraging quality candidates from standing. There were unforeseen problems too, such as the loss of staff in a politician's final year of the term, but by far the strongest argument against term limits was their arbitrary removal of both good and mediocre members alike.

The loss of popular and effective members forced to step down prematurely needs not be the fate of incumbents however, if the limits are applied sensibly and flexibly.

For example, as mentioned earlier, the ACT Legislative Assembly recently extended its electoral term, which itself is fixed, from three to four years. Therefore why not have a term limit of twelve years, three terms, for members?

This would be sufficient to enable members to acquire superannuation and any other legal entitlements and also provide these incumbents with the certainty of maximum tenure — minimum being in the hands of the voters.

It could be argued that twelve years is time enough to make your mark but some flexibility could be built in to allow for say, a change of government or indeed, a performance review of individual members if it was believed their continuing service was desirable. Allowance also would have to be made for term limits of new members filling casual vacancies, who come into the legislature as a result of the count-back system which applies to select a successor to an incumbent who resigns without finishing the term.

Term limits would not be necessary in large legislatures where turnover occurs as a matter of course due both to the number of members and the single member electorate system. However, in the multi-member electorates of the ACT Legislative Assembly where the existing system allows incumbency alone to usually ensure re-election because of name recognition, the inherent flaw could cost the major Parties, the community and democracy dearly. ▲