



CANBERRA
BUSINESS COUNCIL

Canberra Business Council

**Submission to the Senate
Legal and Constitutional Affairs Legislation Committee
Inquiry into
*The Australian Capital Territory (Self-Government)
Amendment (Disallowance and Amendment Power of the
Commonwealth) Bill 2010.***

March 2011

Committed to the Growth and Development of Canberra and the Capital Region

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INTRODUCTION

Canberra Business Council (CBC) welcomes the opportunity to provide a submission to the inquiry being undertaken by the Senate Legal and Constitutional Affairs Legislation Committee (the Committee) into ***The Australian Capital Territory (Self-Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill 2010***. (the Territories Bill)

This submission has been prepared by Canberra Business Council with the input and support of the Council's Kindred Organisations which are listed at the end of this submission.

The Council supports the Territories Bill being examined by the Legal and Constitutional Affairs Legislation Committee. While the Territories Bill focuses narrowly on the capacity of the Commonwealth Executive to administratively overturn a law validly made by the ACT Legislative Assembly, the Committee has a unique opportunity, to look more broadly at the Territory self governance and to make recommendations relating to the repatriation of other powers to the ACT and the general modernisation of the ACT Self Government Act. In particular, the size of the Assembly and the size of the ACT Executive are two areas where the ACT should have the right to control its own future.

CBC encourages the Committee and the Government to ensure that any decision made on the Territories Bill does not constrain, but rather enhance the economy of the Australian Capital Territory (ACT) and the Capital Region in the medium to long-term. In that context, we recommend consideration of the fundamental issues in this debate in a broader context of the guiding principles of self government and democracy.

Executive power to over-ride ACT laws is undemocratic

The Territories Bill has the support of business in the ACT.

As you are aware, a decision taken in 1980s gave the Federal Executive power to override Territory legislation. That means that laws passed in the ACT (and the Northern Territory and Norfolk Island) can be administratively overturned by a Federal Minister without a debate or a vote in Federal Parliament.

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This last occurred under Prime Minister John Howard, when the *Civil Unions Act 2006* was disallowed by the Governor-General on advice of the Federal Executive Council.

This approach is both patronising and denigrating to the people and businesses of the ACT. It would not be tolerated by the Governments in NSW, Victoria, Queensland, Western Australia, South Australia or Tasmania or by the millions of Australians living in those states – all of whom have the right, through their democratically elected representatives, to determine their own laws.

If the Territories Bill is passed, Section 35 of the *ACT (Self Government) Act 1988* will be amended to give the people of the ACT the same right which other Australians living in the states have enjoyed since Federation. The Territories Bill would remove the power of a Minister to veto legislation passed in the Australian Capital Territory and replace this executive veto with a vote by both Houses of the Federal Parliament, ensuring that only Federal Parliament can override Territory legislation, via an Act of Parliament. This would provide for greater scrutiny, transparency and debate than the administrative procedures currently set out in section 35 of the *Self Government Act*.¹

Retention of the power of the Commonwealth Parliament to legislate for Territories

Canberra Business Council supports the Commonwealth Parliament's retention of the power to legislate for Territories, particularly in relation to the role the ACT plays as seat of the national capital. The power of the Commonwealth Parliament to make laws for the Territories, found in section 122 of the Constitution, is retained by the Territories Bill. The Council argues however that a legislative “disallowance” process would provide for greater scrutiny, transparency and debate than the administrative procedures set out in section 35 of the *Self Government Act*.

Canberra Business Council agrees with the Federal Attorney-General, Robert McClelland, who stated that it is preferable for the Australian Parliament to have the power to override Territory legislation as opposed to an individual minister.²

¹ *Governing the City State- One ACT Government, One ACT Public Service*. Dr Allan Hawke. ACT Public Service Review Final Report, February 2011. P.32

² ABC Radio, 7 March 2011

Canberra Business Council submission to the Senate Legal and Constitutional Affairs Legislation Committee into ***The Australian Capital Territory (Self-Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill 2010*** – March 2011.

Perhaps the most logical and coherent arguments against retaining the status quo comes from the *Final Report of the Review of the ACT Public Service* which was released in February 2011 which states:

“The Self Government Act contains provisions that, while understandable precautions at the time, now look out of place in light of the maturity and acceptance of the ACT’s self government arrangements”.³

Similarly, Professor George Williams, Anthony Mason Professor of Law at the University of New South Wales, recently advocated greater responsibilities being given to the ACT Legislative Assembly:

As a matter of democratic principle and good governance, the Commonwealth should not remove power from a self-governing jurisdiction. Removing power is a blunt instrument that prevents the making of any laws on a subject, whether for good or ill. It also calls into question the good faith of the Commonwealth in granting self-government to the territories in the first place.⁴

Size of the Assembly

There is an overwhelmingly sound case for increasing the size of the ACT Legislative Assembly and the size of the ACT Executive.

Section eight of the Self Government Act currently provides that the Commonwealth Government may, by regulation, increase the size of the Assembly, but can only do so with the concurrence of the Assembly.

Successive inquiries, Task Forces and Parliamentary Committees have all found that the ACT community is the most under-represented in Australia. At a combined state and local government level, representation in the ACT is 1:14,285 compared to Tasmania at 1:1,110, the Northern Territory (NT) at 1:685 and a national average of 1:1,720.

³ *Governing the City State- One ACT Government, One ACT Public Service*. Dr Allan Hawke. ACT Public Service Review Final Report, February 2011. P.31

⁴ Williams, G. (2010) “Euthanasia Bill Needed for Healthy Democracy”, *Sydney Morning Herald*. 9 November 2010.
<http://www.smh.com.au/opinion/politics/euthanasia-bill-needed-for-healthy-democracy-20101108-17kh8.html?skin=text-only>

Table 1 - Elected Members at Each Level of Government⁵

	Commonwealth		State/Territory		Local Gov	Total reps	Enrolment at 30/06/2010	Ratio all levels of Government	Ratio local and state Government
	House of Reps*	Senate	Lower House	Upper House					
NSW	49	12	93	42	1,518	1,714	4,552,976	1:2,656	1:2,754
VIC	37	12	88	40	631	808	3,506,844	1:4,340	1:4,620
QLD	29	12	89	0	553	683	2,684,538	1:3,931	1:4,181
WA	15	12	59	36	1,278	1,400	1,341,005	1:958	1:977
SA	11	12	47	22	715	807	1,099,031	1:1,362	1:1,402
TAS	5	12	25	15	281	338	356,203	1:1,053	1:1,110
ACT	2	2	17	0	0	21	242,842	1:11,564	1:14,285
NT	2	2	25	0	148	177	118,401	1:669	1:685
TOTAL	150	76	443	155	5,124	5,948	13,901,840	1:2,337	1:2,429

The size of the ACT Executive is limited to the Chief Minister and up to four Ministers by section 41 of the Self Government Act. While that number could be increased by enactment of the Assembly, in a chamber of only seventeen members where minority government is the norm, increasing the size of the ministry without increasing the size of the Assembly itself is not practical given the need for government Members to fulfil other parliamentary roles, including backbenchers participating fully and properly in the ongoing work of the Assembly and its Committees.⁶

It is interesting to note that the Northern Territory (Self-Government) Act 1978 (Cwlth)⁷ provides for the Executive's size to be set by the NT Administrator. When the NT Legislative Assembly was faced with the same challenges confronting the ACT of size and capacity it considered moving to a committee system of government but ultimately enlarged its

⁵ Data from Electoral Commissions as at 30 June 2010. * reflects redistribution at the 2010 Election.

⁶ *Governing the City State- One ACT Government, One ACT Public Service*. Dr Allan Hawke. ACT Public Service Review Final Report, February 2011. P.34

⁷ See <http://www.comlaw.gov.au>

Legislature from 19 to 25 in 1983.⁸ The NT Government currently has eight Ministers including the Chief Minister.⁹

Thirty five years ago, the Joint Parliamentary Committee on the ACT in its Report *Self-Government and Public Finance in the ACT* in 1975¹⁰, recommended that the size of the Assembly should be increased to 19 members. The Taskforce on the Implementation of ACT Self Government supported 19 or 21 Members. In its 1990 report, the Assembly Select Committee on Self Government considered 17 members for 170,000 electors to be the minimum number required for a the Westminster system with a Government, Opposition and parliamentary committees.¹¹ The Population of the ACT is now in excess of 360,000. In 2002, the Assembly Standing Committee on Legal Affairs reported “a majority of the committee recommends that the Legislative Assembly for the ACT be increased to twenty-one members based on three electorates of seven members each”.¹²

Canberra Business Council in its submission to the Hawke Review of the ACT Public Service recommended an increase in the ACT Legislative Assembly to 25. The Council regarded this increase as necessary to achieve adequate constituent representation given the ACT’s current population of over 360,000 and projected growth to 400,000 by 2022. Of equal importance, this increased size of the ACT Legislative Assembly is necessary to facilitate appropriate parliamentary contribution on committees and for sound Executive governance, given the unique breadth and volume of ministerial responsibilities in the ACT where a single unicameral government is responsible for both “state” (e.g. health, education, justice) and municipal matters that are typically dealt with by local government in other jurisdictions.¹³

⁸ See *Electoral Amendment Act (1982) (NT)*.

⁹ *Governing the City State- One ACT Government, One ACT Public Service*. Dr Allan Hawke. ACT Public Service Review Final Report, February 2011. p.34

¹⁰ See Parliament of Australia (1975) *Report on Self-Government and Public Finance in the ACT*. Canberra.

¹¹ See <http://www.parliament.act.gov.au/committees/index1.asp?committee=137&inquiry=846&category=19>

¹² Legislative Assembly for the ACT (2002) *Report No. 4 of the Standing Committee on Legal affairs - The Appropriateness of the Size of the Legislative Assembly for the ACT and Options for Changing the Number of Members, Electorates and Any Related Matter*. Canberra, p. 32.

¹³ CBC Submission to the Review of the ACT Public Service. November 2010

The case for increasing the size of the Assembly is encapsulated in the ACT Public Service Review Final Report, February 2011 which states¹⁴:

In light of the importance of robust and accountable democratic processes in the ACT – characterised by high standards of parliamentary debate, a legislative program covering a range of complex issues, and an active Assembly Committee process – and the significant under-representation of the citizens of the ACT, there is an overwhelmingly sound case for increasing the size of the Assembly. This would enable Members to serve their constituents better, allow the Ministry to be expanded to seven thereby establishing a more reasonable spread of responsibilities, and enhance the capacity of the Legislature to scrutinise the activities of the Executive through a more active committee process.

Ideal time to review and modernise the ACT Self Government Act

The lead up to the Centenary of Canberra in 2013 provides an ideal opportunity for the Australian Government to review and update the *ACT Self Government Act* to remove the inappropriate and out of date powers.

Announcing such a review and reform in the lead up to the Centenary of Canberra would be a significant symbolic vote of confidence in the maturity of the self governance arrangements for the ACT.

This is not a debate about sensitive and emotional issues

The argument has been made that, if the Territories Bill is passed, it could open the door for the Territories to legislate for “radical social agendas” such as euthanasia and same sex marriage. This line of reasoning is spurious. The reality is that existing Federal laws would make this virtually impossible because such Territory laws would be inconsistent with Federal legislation and therefore invalid under s109 of the Constitution. For example, the Territories Bill would not allow the Territories to reintroduce legislation on voluntary euthanasia because this has been banned by a separate piece of Federal legislation imposed by the 1997 Andrews Bill, which passed both Houses of Parliament. In addition, the

¹⁴ *Governing the City State- One ACT Government, One ACT Public Service*. Dr Allan Hawke. ACT Public Service Review Final Report, February 2011. p.34.

Territories Bill would still leave the **Australian Parliament** able to overrule the ACT (and Northern Territory and Norfolk Island) Parliaments.

The other flaw in this argument is that any of the states - NSW, Victoria, Queensland, Western Australia, South Australia or Tasmania – could decide at any time that they wanted to legislate on “radical social agenda” issues, for example, for same sex marriage as long as those laws were not inconsistent with valid Commonwealth laws. .

This is not a debate about euthanasia or same-sex marriage. It is a debate about a clear principle – that people living in the ACT should have the same democratic rights as people living in NSW, Victoria, Queensland, Western Australia, South Australia or Tasmania to determine, through their respective elected representatives, their own laws – without the threat of being overturned by Executive fiat. The issue of reinstating democratic rights to people in the ACT must not be allowed to be hijacked by groups focussing on specific issues or by factional infighting within political parties.

It is time for people in the ACT to be given the same rights as other Australians.

It is time for all of the ACT Federal representatives to stand up for the people of the ACT on this issue.

It is also way past time for the Australian Government to demonstrate its commitment to the fundamental principles of our Federation – including democracy and self governance - and to the ACT as an independent legislature elected by the people of the ACT to govern for the people of the ACT.

Recommendations

The report of the inquiry being undertaken by the Senate Legal and Constitutional Affairs Legislation Committee into ***The Australian Capital Territory (Self-Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill 2010*** should include recommendations that:

- the power of the Commonwealth Executive to administratively overturn an enactment of the Assembly should be removed

- the power of the Commonwealth Parliament to overturn an enactment of the Assembly by legislation, when the legitimate interests of the Commonwealth require such action, should be retained
- the ACT Legislative Assembly be granted the power to determine its own size and the size of its Executive

Conclusion

Efficient and effective government is fundamental not only to democracy. It is also critical to the ability of governments to legislate for sustainable economic growth and for oppositions to review policies and the implications of policy outcomes on the community and the ability of businesses to operate competitively in jurisdictions.

Canberra Business Council representing the business community in the ACT, believes that the Commonwealth Government should demonstrate its confidence in self-government in the ACT by moving to put the ACT on the same footing as other jurisdictions to determine, through their respective elected representatives, their own laws.

CANBERRA BUSINESS COUNCIL

Canberra Business Council is the leading business body of the Australian Capital Territory and Capital Region, representing over 400 individual members and the interests of more than 35 industry organisations known as Kindred Organisations.

Directly and through its Kindred Organisations Canberra Business Council represents more than 5,000 businesses across the Capital Region. In 2007 the Council entered into an affiliation arrangement with the NSW Business Chamber which represents over 30,000 businesses in NSW and connects over 100,000 businesses across Australia through the State and Territory Chamber Network.

Canberra Business Council provides business leadership in the promotion of economic and business development of the Capital Region by:

- + providing a forum for business, industrial, commercial and professional organisations in the Capital Region;
- + liaising with and representing the interests of business to all governments, departments, agencies, organisations and persons whose functions and responsibilities affect businesses in the Capital Region;
- + leading, or participating in, key initiatives that further the interests of economic and business development in the Capital Region;
- + providing the services and facilitating relationships to meet the needs of its members.

The Council and its Kindred Organisations remain committed to working with the Australian Government to ensure outcomes that are conducive to stimulating growth in the private sector in the ACT and Capital Region of southeast NSW.



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