Dear Secretary

Inquiry into Australian Capital Territory (Self-Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill 2010

The Bill deserves support as an overdue change to correct what has become an anachronism in the Australian system of government. It should apply at least to the Northern Territory and the Australian Capital Territory.

These Territories are self-governing polities with democratic institutions responsible to their electors. Their systems of government are broadly equivalent to those of the States and the Commonwealth. Elsewhere in Australia, we entrust such institutions with the power to make decisions that reflect the views of their respective electorates, subject to the overall constitutional framework. So it should be in relation to the Territories. In this regard it should be noted that for most other purposes, including intergovernmental arrangements, the Territories are treated under Commonwealth legislation and in practice as being akin to the States.

Because the Territories do not formally have statehood, they are subject to overriding legislation, on any subject, enacted by the Commonwealth Parliament. But this at least is an open process, requiring the executive to explain the reasons for the action that it wishes to take in the forum of the Parliament, which is designed to subject them to public scrutiny and debate. By contrast, disallowance of Territory legislation by the Commonwealth executive, acting through the Governor-General, is an outmoded procedure that is insulting to Territory voters and for which there is insufficient accountability at the Commonwealth level, given the significance of the action.

The disallowance procedure in the Self-Government Acts is modelled on colonial practice. In colonial times, the imperial authorities retained power over colonial legislatures through a power of the Monarch to disallow colonial enactments on the advice of the British executive. There are remnants of this still in section 59 of the *Constitution*, which has long since fallen into disuse. There is no justification for continuing to use a practice of this kind in 21st century Australia.

Much has been made in media commentary about the difficulties of securing legislation, with particular reference to the composition of the current Parliament after the end of June and divisions of opinion over same-sex marriage. But these are short-term political considerations. The proper division of authority between the executive and the Parliament lies at the heart of our system of government. The need for legislation on important matters and the occasional difficulty of securing it is the inevitable consequence of federal parliamentary government, which we take in our stride in other contexts.

Yours sincerely,

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