THE SENATE
LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE

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

SUBMISSION BY THE CANBERRA LIBERALS
March 2011

EXECUTIVE SUMMARY

The Canberra Liberals submit that the *Australian Capital Territory (Self-Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill 2010*, which Senator Brown has asked the Australian Parliament to consider, is a piecemeal, even opportunistic, approach that fails to look at the broad range of issues affecting the autonomy of the ACT.

We further submit that there are a number of matters that could, and should, be reviewed in the broader analysis. We believe the ACT community agrees it is time to review the self government arrangements. However, that is not the substance or intent of the Bill in question.

A comprehensive review of the autonomy of the ACT is needed which should consider all of the relevant issues, including the consequences of any changes.

REFORM OPPORTUNITIES

The Canberra Liberals submit that it is time for the autonomy of the ACT to be reviewed comprehensively. The opportunity for such a review should not be lost because of the narrow focus of the Senator Brown Bill. Indeed we fear that if the Bill is dealt with in its current form, the Federal Parliament will not consider the need for broader reform for many years, if ever.

In considering a broader reform agenda, in addition to consideration of the current Bill, any such review should, as a minimum, consider:

- Giving the ACT Assembly the ability to determine its own size through a special majority;
- Whether the Governor-General should retain the arbitrary ability to dissolve the Assembly;
- Whether the conflict of interest provisions in the ACT Self Government Act in any way inhibit the ability of the Assembly and its members to conduct its and their work on the Territory's behalf;
- Whether it is clear that the Assembly can determine the size of its Executive;
- The matters outlined in a motion, agreed to by the Assembly on 17 June 2009, which called for a joint ACT/Commonwealth review of the ACT's self-

government Act, "to determine whether it continues to provide the best model for effective and democratic self-government for the ACT"; and

- Whether it is still appropriate for the Commonwealth to continue to have planning jurisdiction over parts of the ACT not connected to the Parliamentary Triangle or National Institutions.

A BRIEF HISTORY

The ACT celebrated 20 years of self-government on 11 May 2009.

Before introduction, the people of Canberra comprehensively rejected proposals for self-government. Their view was twofold: firstly, that Australia was over-governed already and did not need another one and, secondly, that Canberra, as the nation's capital and owned by the people of Australia, should be governed by the national parliament, on behalf of those people.

The ACT's first Assembly was a turbulent one. The people of Canberra had protested the imposition of self-government by electing a minority government, along with members of parties such as the Abolish Self-Government Party and the No Self-Government Party. In that first Assembly, the government changed twice.

Since then, the Assembly has had only one term (the 6th Assembly, from 2004-2008) in which the people of Canberra returned a majority government.

The ACT Legislative Assembly has since grown to be a mature legislature, with the government enjoying full voting rights in the Council of Australian Governments and managing a budget of over $3 billion. This budget covers all the administrative units that a state legislature would cover, including health, education, police and a full range of municipal services. However, it does have some unique legislative arrangements that should be considered in this debate.

A UNIQUE JURISDICTION

The ACT Legislative Assembly is structured on the Westminster traditions.

For example, it accommodates a structure of government and opposition, along with a cross bench.

Separation of powers is an important element, including an Executive branch of government. The Territory's governing laws are subject to the Australian Constitution.

The ACT Legislative Assembly is unique in that it has responsibility for functions at both state and local government level, and does so without a vice-regal appointment.

In the ACT, the enactment of laws does not wait upon royal assent, and the ACT does not have an administrator or governor. A law is considered enacted when it passes on the floor of the chamber, or by statutory construction at a later agreed date.

Further, the ACT's legislature is a unicameral parliament, whose only "upper-house"-style process is through a committee structure, which does not have binding powers.

Combined, this creates a genuinely unique jurisdiction with remarkable self determination within a very small Assembly.

LISTENING TO COMMUNITY FEEDBACK

Much of the limited feedback we have received see the Senator Brown Bill as being the catalyst for amendments to the ACT's current civil union laws, even to the extent of allowing same-sex "marriage" ceremonies. They also see it as laying the path towards laws allowing the practice of euthanasia in the Territory.

These are highly emotive and complex issues that should be debated on their own merits, not in the context of reforms to the ACT's self-government Act.

The ACT Greens' parliamentary convenor, has flagged already that the passing of the Senator Brown Bill would enable the ACT to revisit its civil union laws[1].

The ACT's Chief Minister, too, has linked the Senator Brown Bill with the issue of civil unions, saying that same-sex marriages was "unfinished business" for the Territory[2].

It is regrettable that Senator Brown's short-sightedness in putting forward his single-issue Bill has diverted attention from the need for a holistic review of the ACT's enabling legislation. Indeed, his attempt now would seem to be somewhat in conflict with his stand in 2003 when he proposed two motions in the Senate calling on the Executive to seek a veto on the route for the Gungahlin Drive Extension[3], or his championing of Federal intervention in relation to the Franklin Dam.

CONCLUSION

Given the history of self-government in the ACT, the view of the Canberra Liberals is that it is only rarely that the opportunity presents itself to review the ACT's enabling legislation, in effect its constitution. Any such opportunity, therefore, should not be squandered on a single-issue of an individual political party.

This is impossible to achieve under the cloud of the narrow focus of the Bill in question and without the appropriate consultation of the people of the ACT and the peoples representatives in the Legislative Assembly.

[1] Interview, ABC666 Canberra, 2 March 2011, approx 8.30am
[2] The Canberra Times, "Work still to do on same-sex marriage" - 3 March 2011, p7
[3] Senate Hansard, 19 August 2003 and 13 October 2003

This is especially so when the Bill is proposed without due process of consultation, either with all of the Parties represented in the ACT Legislative Assembly or, more broadly, the people of Canberra.

Any reforms of the ACT's "constitution" should be developed and proposed as a package that has the backing of the ACT community through all of its political representatives in the ACT Legislative Assembly, and the community at large.

We therefore request that the Committee recommend that the Bill not be passed and instead call for a broader examination of changes to the ACT's self-government Act, including a consultation process that engages not only the ACT Legislative Assembly, but also the people of Canberra.