

Joint Standing Committee on Electoral Matters
Inquiry Into the Commonwealth Electoral Amendment (Ensuring Fair
Representation of the Northern Territory) Bill 2020

Submission by Graeme Orr, University of Queensland

Bill's Intent

The bill would guarantee 2 members of the House (MHRs) to represent the people of the Northern Territory (NT) into the future.¹ It responds to fact that fluctuations in population estimates, applied to the upcoming redistribution, would deny the NT the second MHR it has enjoyed since 2001.

I support the spirit of the bill, but will also discuss its form.

Principles and Statistical Butterflies

Our system has come to embrace the concept of one-vote, one-value, with regular redistributions and low tolerances around the quota for electors per seat. However there is no single principle of representation. Not only is one-vote, one-value not constitutionally guaranteed, in a constitutional sense it is trumped in some respects by other values and historic interests.² This is the case in many parts of the world. And it is not necessarily a case of 'left' versus 'right' – despite the history in Australia of conservatives supporting zonal or rural weighting and social democrats supporting one-vote, one-value. In the UK, for instance, the Conservative Party has pushed for more equality in electoral enrolments, whilst parties of the left (Labour, the non-English nationalist parties) have supported regional diversity.³

It would be a travesty to let the NT fall back to a single MHR on several grounds:

1. **Arbitrariness.** As a result of fluctuations in estimate statistics and rounding issues.
2. **Overkill.** Whilst 2 MHRs would overrepresent the NT in statistical terms compared to say New South Wales, 1 MHR would lead to the NT being massively under-represented.
3. **Non-demographic factors.** The NT, and in particular the seat of Lingiari, have special characteristics that are relevant and inter-related. First is size and geography; second is Indigeneity. Respecting, even only minimally, the Uluru Declaration on Indigenous Voice, it would be a serious thing to abolish one of a handful of electorates with significant proportions of Indigenous voters. Community of interest and means of communication and travel (ie interaction) have long been key aspects of drawing electoral boundaries in Australia.⁴ Currently there is a neat split between Solomon (urban) and Lingiari (remote and regional).
4. **Electoral competitiveness.** Each NT electorate is marginal. Amalgamating them reduces competitiveness.

The form of the bill is to put a floor under the NT's representation. It is a private members' bill of 2 ALP MPs. It is hard to ignore the fact that the ALP currently holds both NT seats. People may judge the motivation of the Bill on that basis. However, principled law-making should (a) judge a proposal on its objective intent, that is, on its effects, whilst (b) being guided by stable principles, rather than partisan motivations and counter-motivations or by knee-jerk reactions to events.

¹ Bill, proposing new *Commonwealth Electoral Act* s 48(2BAA)

² G Orr, *The Law of Politics* (2nd ed, 2019) ch 2 especially 26-31.

³ G Orr, 'The Law of Electoral Democracy: Theory and Purpose' in A Bogg et al (eds), *The Constitution of Social Democracy* (2020) 161 at 166-7.

⁴ *Commonwealth Electoral Act* s 66(3)(b).

This is not the first time Parliament has encountered this issue. It arose in 2003-04. Then, a Country Liberal Party member proposed putting a floor under the NT's two seats.⁵ At that time, this committee preferred a compromise, which the major parties embraced. The NT's second seat was guaranteed for one term, but tweaks were made to statistical calculations to make it less likely that butterfly wings of population estimates would affect representation.⁶

Here we are, however, 17 years later. The problem remains of having a large 'numerator' (population quota) relative to the denominator (Territory population). The issue has re-arisen not due to any noticeable decline in NT population. I note that, at the time of the 2003-04 consideration of the issue, some people in the ACT were upset that the NT was being protected in ways the ACT was not.

Solutions

I understand Antony Green may be making a submission to advocate changing the detail of the formula for Territory representation and, for that matter, for States.⁷ The idea is to replace the crude arithmetic mean with a harmonic mean, using 'Dean's formula'. Others of similar statistical expertise may propose alternative formulae. I support their efforts to provide a mathematical solution to the ongoing issue.

There is *also* merit in simply amending the floor under House representation for *both* mainland Territories. We already have such a floor: a minimum of one MHR for those Territories as a whole.⁸ Each Territory suffers the risk of butterfly wings mentioned above. Both have very sizeable and stable populations: NT 250 000, ACT over 427 000 (ABS estimates, end 2019). It would be in some ways be more honest, and simpler to explain to citizens generally, to amend the bill to provide that each Territory have a floor of 2 and 3 MHRs respectively. As to actual and future calculations, Antony Green's suggested formula could also be added to the bill.

The drafters of our Constitution did not employ statistical niceties. They plumped on a floor of 5 for each original State; which has meant 5 MHRs for Tasmania with a population not considerably greater than the ACT and barely double the NT's (ABS estimate of 537 000 for Tasmania).

It was clearly the intent of the Constitution that such measures be considered. It is also consistent with the federalist principle in the Constitution, that understands regions to have unique demographic and geographic interests. In particular, it is consistent with the guarantee of 5 MHRs to a state like Tasmania. Indeed something similar underlies the now bipartisan agreement, for over 40 years, to guarantee two senators per Territory. We also find a parallel in Canada, whose Constitution otherwise protects a strong version of one-vote, one-value. In Canada, smaller provinces are guaranteed no fewer members of the House of Commons than they had in 1985 and, after a quota is applied, there is a 'rounding up of any fractional remainder [of an MP] to one'.⁹

Summary

- I commend the intent of the bill, to avoid the loss of a second NT seat.
- I recommend putting a floor under the number of MHRs for both the NT (2) and ACT (3).

⁵ Commonwealth Electoral Amendment (Territories Representation) Bill 2003 (Mr Tollner). The Bill would also have put a floor of 2 under the number of electorates in the ACT.

⁶ *Commonwealth Electoral Amendment (Representation in the House of Representatives) Act 2004*: amending *Commonwealth Electoral Act* s 48 and inserting new s 48A.

⁷ See *Antony Green's Election Blog*: '2020 Apportionment of Seats: Part 2 – Allocating to the Territories', 9 June 2020: <https://antonygreen.com.au/2020-apportionment-of-seats-part-2-allocating-to-the-territories/> and '2020 Apportionment of Seats: Part 3 – Changing the Formula for States', 17 June 2020: <https://antonygreen.com.au/2020-apportionment-of-seats-part-3-changing-the-formula-for-states/>

⁸ *Commonwealth Electoral Act* s 48(2B), introduced in 1990. Beginning in 1922, they had been entitled to one MHR each, albeit with limited voting rights in the House until the late 1960s.

⁹ *Canada Constitution Acts* ss 51-52. Canada stresses one-vote, one-value by then adjusting larger provinces representation (ss 51(3)-(4). Everyone is kept happy! I do not suggest we borrow their methods – our Constitution puts a spanner in the works by requiring the Senate to be half the size of the House.

- On top of such a floor, I support adding any suitable statistical measure such as that mooted by Antony Green, to smooth future rounding of MHR numbers for each jurisdiction.

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