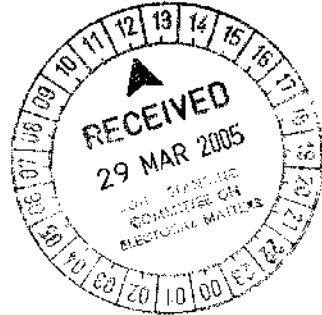


SUBMISSION NO. 55

Joint Standing Committee on Electoral Matters
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**The 10% system:
A fairer system for Territory entitlements**

A proposal to reduce discrimination against Territories when determining their entitlement to Members in the House of Representatives

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Executive Summary

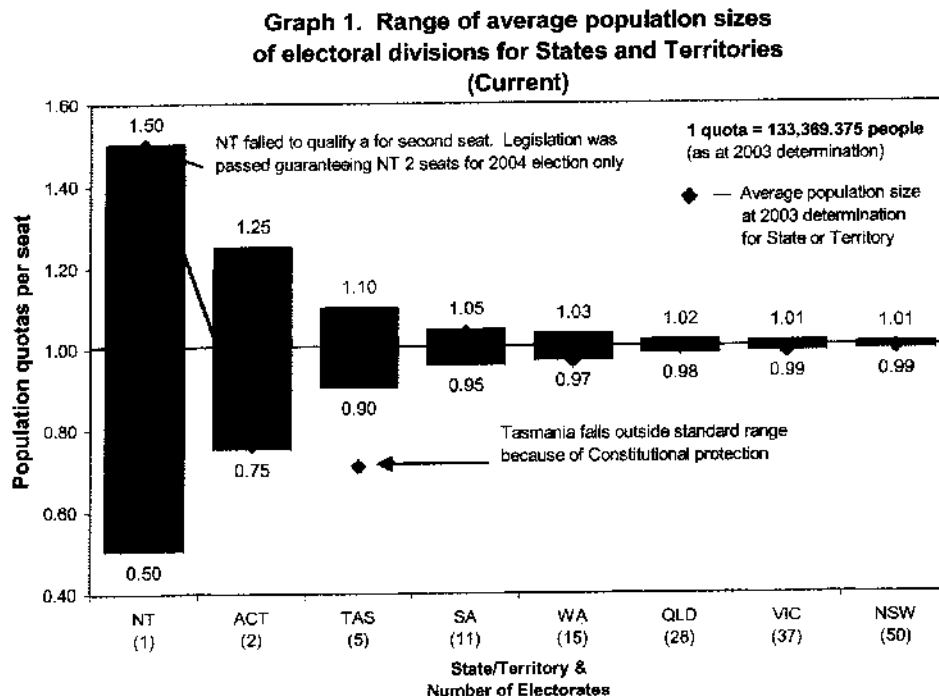
When the original Constitution of Australia was drafted, States were guaranteed an equal number of Senators and a minimum of five (5) members in the House of Representatives. This provision guaranteed that the more populous States could not disregard the will of the less populous States.

Australian Territories have no such guarantees in the Constitution. Instead, Commonwealth legislation decides Territory representation in the Federal Parliament. For most of their history, Territories have been under-represented despite the implicit constitutional goal of providing all States and Territories with fair rights to representation.

In 2002, the Northern Territory was going to lose its second member because its population fell below the 1.5 quotas required to qualify for a second seat. To avoid the absurd situation of having an electorate with a population of 200,000, special legislation was passed to guarantee the Territory a second seat for the 2004 election.

This legislation was a “Band-Aid” fix to a deeper structural problem. Some projections show that similar legislative intervention may be required to prevent the Northern Territory losing its second seat again for the next election.

As shown in Graph 1, Territory electoral divisions will remain susceptible to being oversized unless a fairer system is adopted:

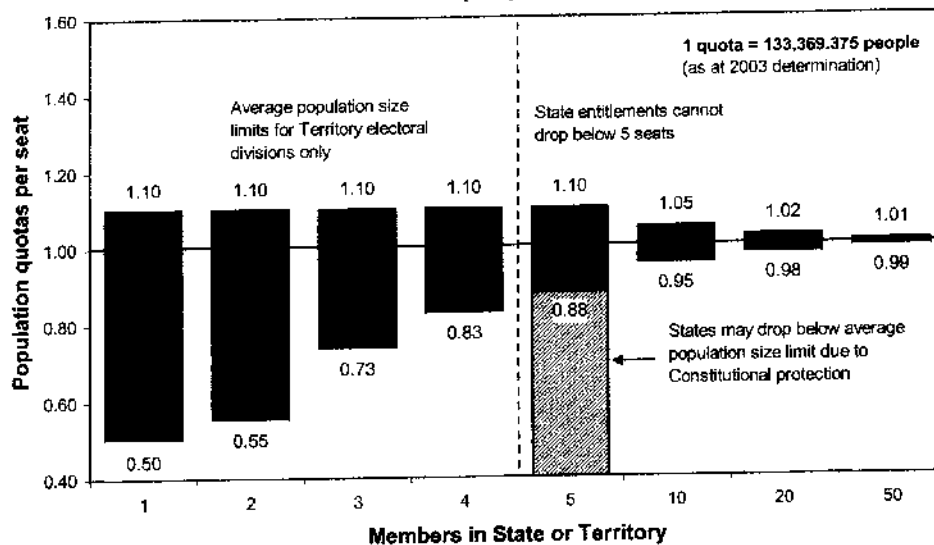


In particular, the following features are of interest:

- Territory electoral divisions can be far larger than the constitutionally protected electoral divisions of the States (and particularly Tasmania);
- Without legislative intervention, the Northern Territory electoral division would have had a population 50% larger than the average electoral division;
- ACT electoral divisions are also oversized with an average population 20% larger than the seats in the States.

To fix the problem of oversized electoral divisions, a modified entitlement system is proposed for the Territories that **caps population size of electoral divisions to a maximum of 1.1 quotas** (see Graph 2):

Graph 2. Range of average population sizes of electoral divisions for States and Territories (Proposed)



Quota requirements would not be dramatically changed. Rather, the new system would simply reduce the quotas required by Territories to a more equitable level:

Table 1. Comparison of quota requirements for new and old entitlement systems

Number of seats	New quota requirement	Old quota requirement
1	0.5	0.5
2	1.1	1.5
3	2.2	2.5
4	3.3	3.5
5	4.4	4.5
6	5.5	5.5
7+	as per normal quota system	

This system has many advantages, including that it:

- Ensures Territory electoral divisions are never substantially more populous than the national average without the need for legislative intervention (like the legislation of 2004);
- Complements the State formula for member entitlements, allowing growing Territories to transition to the formula used by the States without the need for additional legislation; and
- Would be relatively simple to implement.

Introduction

When the original Constitution of Australia was drafted, States were guaranteed an equal number of Senators and a minimum of five (5) members in the House of Representatives. This provision guaranteed that the more populous States (NSW and Victoria) could not disregard the will of the less populous States — Tasmania and Western Australia in particular. At present, Tasmania is the only Original State that still benefits from this clause in the Constitution.

Australian Territories have no such guarantees in the Constitution and rely exclusively on Commonwealth legislation to determine Territory representation in the Federal Parliament. For many years, Territories had no representation in Parliament whatsoever. Even when legislation allowed for elected representatives in the Northern Territory (in 1922) and the ACT (in 1948), their rights were severely circumscribed – not gaining full voting rights until 1968 and 1966 respectively. Even today, the NT and ACT are disadvantaged because they can have *oversized electorates* far greater than those possible in any of the Original States.

This submission outlines a modification to the Territory entitlement system that addresses this issue without disadvantaging the States. However, a quick recap on the current entitlements system and its shortcomings is required to explain the proposal properly.

Current entitlement system

The Constitution specifies a two-step process to determine federal entitlements in the House of Representatives for Original States:

1. **Population quota** = $\frac{\text{Population of the six states}}{2 \times \text{No. of senators}}$
2. **MP entitlement** = $\frac{\text{Population of State or Territory}}{\text{Population Quota}}$ (*rounded to nearest whole no.*)

Notes:

- The 'population of the six states' in (1) excludes the ACT, NT and other Territories.
- The 'MP entitlement' in (2) is rounded up for fractions of 0.5 or greater; otherwise the figure is rounded down.

Once the number of seats for the State have been determined, electoral boundaries are drawn up according to certain enrolment quota limits¹ and guidelines, including the consideration of economic, social and regional interests.²

Originally, Territories had a single elected representative irrespective of population size. While the ACT received a second member in 1974³, it was only after a Joint Committee inquiry in 1986⁴ that the state entitlement system was extended to the Territories through the *Electoral and Referendum Amendment Act 1989*.

Issues with the current system

While the quota system works well for large States, it becomes far less effective in smaller Territories where electorates can become *oversized*. For example, after the 2003 determination the Northern Territory failed to qualify for a second seat. Without special legislative intervention (discussed further below), the following situation would have arisen for the 2004 election:

	Population	Members	Ave population per seat	Quotas per seat ⁵
SA	1 522 467	11	138 406	1.038
QLD	3 729 123	28	133 183	0.999
NSW	6 657 478	50	133 150	0.998
VIC	4 888 243	37	132 115	0.991
WA	1 934 508	15	128 967	0.967

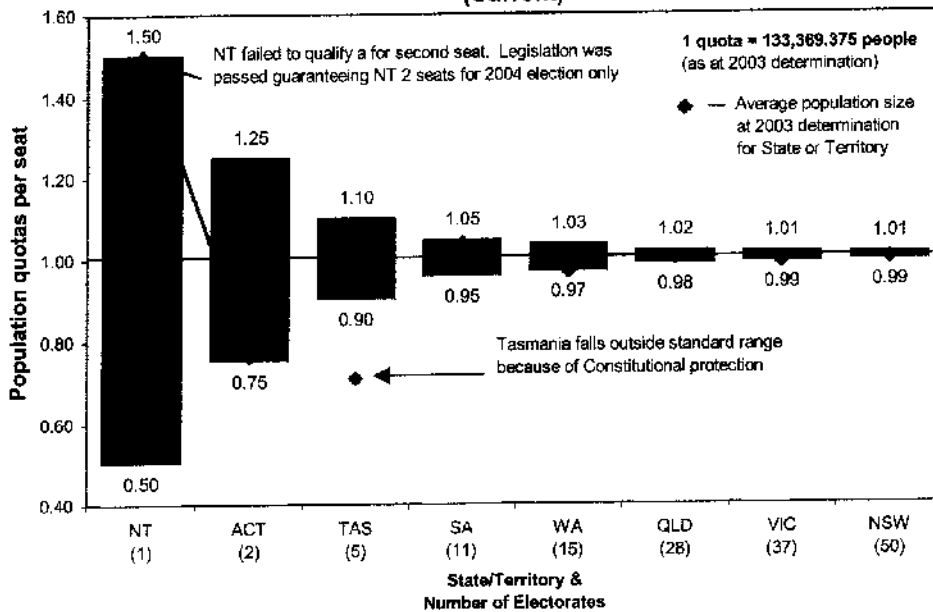
* NT actually received 2 seats in the 2004 election due to the *Commonwealth Electoral Amendment (Representation In The House Of Representatives) Act 2004*.

There are several noteworthy features about this table:

- The average population of ACT and NT electoral divisions is far greater than the national average, while Tasmania's is far below the average.
- All other states have a comparatively small variance in average population sizes for electoral divisions.

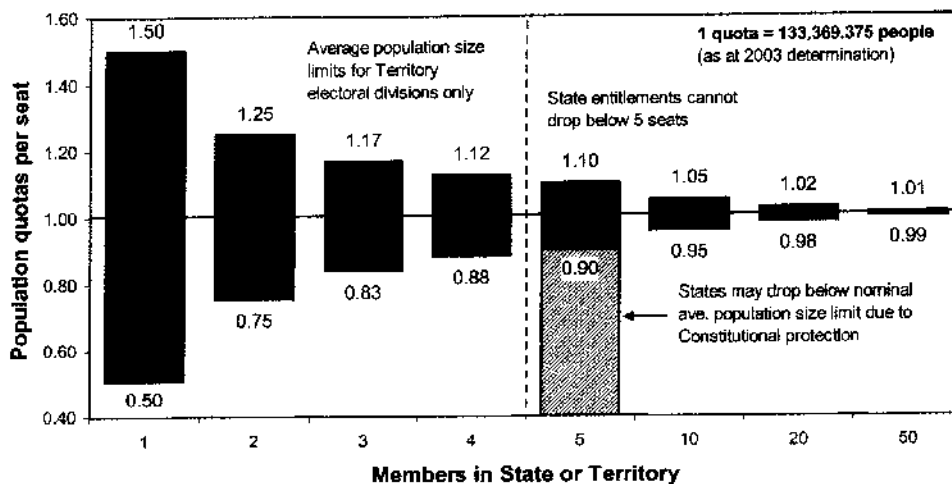
To illustrate the reasons for this variance more clearly, Graph 3 shows the current limits on average population size for electoral divisions in each of the States and Territories, and the actual average size of these divisions as at the 2003 determination:

Graph 3. Range of average population sizes of electoral divisions for States and Territories (Current)



As you can see, electoral divisions in Territories such as the ACT and NT have the potential to be much larger or smaller, on average, than the States. By comparison, no state will ever have an average electoral division size greater than 1.1 quotas (a population of approximately 147,000 per division as at the 2003 determination). This limit applies because all states are guaranteed a minimum of five seats (see Graph 4).

Graph 4. Range of average population sizes of electoral divisions (Current)



When Territory electorates are oversized, voters are at risk of disenfranchisement. Some have argued that Territories are already underrepresented since all States are entitled to a full set of twelve (12) senators, regardless of size, as illustrated in Table 2:

Table 2. Representation in Parliament for Territories compared to Tasmania

State/Territory	Enrolled Population	Members	Senators	Total Representation
Tas	342 809	5	12	17
NT	112 930	2	2	4
ACT	227 541	2	2	4

Tasmania's population is barely above that of the NT and ACT combined, and yet has more than twice as many Federal representatives. To meet the Constitution's implicit aims of balancing the interests of voters with those of States and Territories are to be met, a more equitable solution *must* be found.

When the 2003 determination found that the Northern Territory should return to having only one seat, a Parliamentary Committee made recommendations which led to the introduction of legislation that:

- Guaranteed the Northern Territory two seats for the coming election (in other words, for the 2004 election); and
- Relaxed the quota rules slightly so that if either the ACT or NT population fell marginally short of a quota ("within twice the standard error of the census"⁶), they would be granted the extra seat.

While the changes help, they still ignore the structural unfairness of the quota system and only "paper over the cracks" until the next time the problem emerges. A more permanent solution is required.

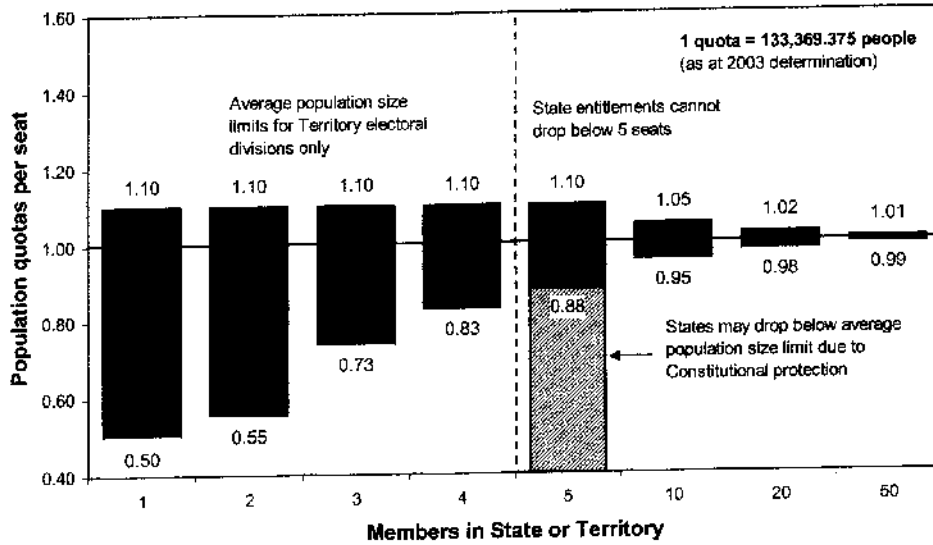
Finding a fairer system for the Territories

Over the years, various attempts have been made to increase the minimum representation of the Territories. Since the Constitution simply provides for representation "to the extent [Parliament] thinks fit",⁷ these changes could be enacted by a simple act of Parliament.

However, these moves have generally been resisted since any guaranteed minimums could be seen as unfairly advantageous if long-term population growth in the Territories does not keep up with the rest of Australia,⁸ in the same way that Tasmania benefits from its Constitutional protection now.

A better long-term proposal is to modify entitlement rules for Territories so that average population sizes of electoral divisions can never exceed 1.1 quotas. This is fair because the maximum average size of populations in States can *also* never exceed 1.1 quotas, as illustrated by Graph 5 below:

Graph 5. Range of average population sizes of electoral divisions for States and Territories (Proposed)



This modification of the quota system reduces the problem of oversized electorates in the Territories, putting them on a more even footing with the States. When determining entitlements for the Territories, the relevant quotas required would be as shown in Table 3:

Table 3. Comparison of quota requirements for new and old entitlement systems

Number of seats	New quota requirement	Old quota requirement
1	0.5	0.5
2	1.1	1.5
3	2.2	2.5
4	3.3	3.5
5	4.4	4.5
6	5.5	5.5
7+	as per normal quota system	

Implementing these changes would not be difficult. For example, calculations used to determine when electorates are oversized can be found in Appendix A.

Conclusion

When originally drafted, the Australian Constitution aimed to uphold *representational equality*. This concept was not only about creating a system of “one vote, one value” — it was also about ensuring that smaller States and Territories are not drowned out by the larger States.

The proposed measures to cap average population sizes in electoral divisions at 1.1 quotas will put the system on a more secure footing for the future and will prevent the necessity for future stop-gap measures like the legislation passed in 2004.

Appendix A: Oversize fraction calculations

1. Australian Capital Territory

$$\begin{aligned} \text{ACT population} &= 322\,871 \\ \text{Population quota} &= 133\,369 \\ \text{ACT quota calculation} &= 2.4209 \quad (2 + \text{remainder } 56132) \\ \text{Oversize fraction} &= \left(\frac{\text{Remainder}}{\text{Population Quota}} \right) \div \text{MP entitlement} \\ &= \frac{56132}{133\,369} \div 2 \\ &= 21.0\% \end{aligned}$$

As the oversize fraction is > 10%, the ACT would receive 3 seats.

2. Northern Territory

$$\begin{aligned} \text{NT population} &= 199\,760 \\ \text{Quota size} &= 133\,369 \\ \text{NT quota calculation} &= 1.4978 \quad (1 + \text{remainder } 66\,390) \\ \text{Oversize fraction} &= \frac{66\,390}{133\,369} \quad (\text{No division if whole} \\ & \quad \text{number is } \leq 1) \\ &= 49.8\% \end{aligned}$$

As the oversize fraction is > 10%, the NT would receive 2 seats.

3. South Australia

This example illustrates how States are not at a disadvantage under this system. Since all States are guaranteed 5 seats, they will receive an extra quota before the oversize fraction reaches 10 per cent:

$$\begin{aligned} \text{SA population} &= 1\,522\,467 \\ \text{Quota size} &= 133\,369 \\ \text{SA quota calculation} &= 11.4154 \quad (11 + \text{remainder } 55403) \\ \text{Oversize fraction} &= \frac{55\,403}{133\,369} \div 11 \\ &= 3.78\% \end{aligned}$$

Notes

¹ Note that 'quota' has two meanings in terms of the *Commonwealth Electoral Act 1918*. Section 48(2) defines a quota in terms of the population required for an entitlement in the House of Representatives (the 2003 determination set this as 133,369.375 people). The second meaning of quota is the 'enrolment quota' used in section 65 that sets limits on the number of enrolled people allowed for an electorate. It is calculated as follows:

$$\text{Current quota} = \frac{\text{Current no. of electors}}{\text{MP entitlement}} \pm 10\%$$

$$\text{Projected quota} = \frac{\text{Projected no. of electors}}{\text{MP entitlement}} \pm 3.5\%$$

² As defined by subsection 66(3) of the *Commonwealth Electoral Act 1918*.

³ The second guaranteed seat was legislated by the *Australian Capital Territory (House of Representatives) Act 1973*, but subsequently repealed and replaced by the *Electoral and Referendum Amendment Act 1989*, in which the state quota system was extended to the Territories.

⁴ Parliamentary Paper no. 1/86, "Determining the entitlement of Federal Territories and new States to representation in the Commonwealth Parliament".

⁵ The calculation for the population quota in 2003 was:

$$\begin{aligned} \text{Population quota} &= \frac{\text{Population of the six states}}{2 \times \text{No. of senators}} \\ &= \frac{19\,205\,190}{2 \times 72} = 133\,369.375 \end{aligned}$$

⁶ cf. *Commonwealth Electoral Amendment (Representation In The House Of Representatives) Act 2004*, inserted sections (2E) and (2F).

⁷ Australian Constitution, s.122.

⁸ Parliamentary Library Research Note 8 2000-01, "Territory Representation in the Commonwealth Parliament", <http://www.aph.gov.au/library/pubs/rn/2000-01/01RN08.htm>