
The Parliament of the Commonwealth of Australia

Advisory report:

Territories Self-Government Legislation Amendment (Disallowance and Amendment of Laws) Bill 2011

House of Representatives
Standing Committee Social Policy and Legal Affairs

September 2011
Canberra

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Membership of the Committee

Chair	Mr Graham Perrett MP
Deputy Chair	The Hon Judy Moylan MP
Members	Mr Shayne Neumann MP
	Ms Michelle Rowland MP
	Ms Laura Smyth MP
	The Hon Dr Sharman Stone MP
	Mr Ross Vasta MP

Committee Secretariat

Secretary

Dr Anna Dacre



Terms of reference

On 25 August 2011 the Selection Committee of the House of Representatives referred the Territories Self-Government Legislation Amendment (Disallowance and Amendment of Laws) Bill 2011 to the Committee for inquiry and advisory report.



List of abbreviations

ACT	Australian Capital Territory
DAPC Bill	Australian Capital Territory (Self-Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill 2011
NT	Northern Territory
Senate inquiry report	Report of 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, together with the amendments on sheet no. 7031, circulated by the Australian Greens.
the Bill	Territories Self-Government Legislation Amendment (Disallowance and Amendment of Laws) Bill 2011



Recommendation

Recommendation

The Committee recommends that the House of Representatives pass the Territories Self-Government Legislation Amendment (Disallowance and Amendment of Laws) Bill 2011.

Advisory report: Territories Self-Government Legislation Amendment (Disallowance and Amendment of Laws) Bill 2011

Bill referral and progress

- 1.1 On 25 August 2011 the Selection Committee of the House of Representatives referred the Territories Self-Government Legislation Amendment (Disallowance and Amendment of Laws) Bill 2011 (referred to in this report as the Bill) to this Committee for inquiry and advisory report.
- 1.2 The Bill was first introduced to the Senate in September 2010 as the Australian Capital Territory (Self-Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill 2011 (referred to in this report as the DAPC Bill).
- 1.3 The DAPC Bill, together with amendments proposed by Senator Bob Brown, was referred to the Senate Legal and Constitutional Affairs Legislation Committee for inquiry and report. The Senate Committee tabled its report in May 2011¹ (referred to as Senate inquiry report) and made two recommendations.

1 Senate Legal and Constitutional Affairs Legislation Committee, Australian Capital Territory (Self-Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill 2010, together with the amendments on sheet no. 7031, circulated by the Australian Greens, May 2011, www.aph.gov.au/Senate/committee/legcon_ctte/actterritory_self_government/index.htm accessed 19 September 2011.

- 1.4 These recommendations were implemented as part of a suite of Government proposed amendments to the DAPC Bill which were agreed in the Senate in August 2011. Amendments agreed included changes to the scope of the proposed legislation and notably an extended application to the Northern Territory. Accordingly the title was amended to the Territories Self-Government Legislation Amendment (Disallowance and Amendment of Laws) Bill 2011.
- 1.5 This Bill passed the Senate on 18 August 2011.

Outline of the Bill

- 1.6 The Bill aims to provide greater independence to certain territory governments by removing the power of the Governor-General to disallow enactments of the Australian Capital Territory (ACT) and the Northern Territory (NT) Legislative Assemblies.
- 1.7 The objects of the Bill are:
- (a) to remove the Governor-General's power, under section 35 of the *Australian Capital Territory (Self-Government) Act 1988*, to disallow an enactment (or part of an enactment) of the Legislative Assembly for the Australian Capital Territory or to recommend amendments of any enactments; and
 - (b) to remove the Governor-General's power, under section 9 of the *Northern Territory (Self-Government) Act 1978*, to disallow a law (or part of a law) of the Legislative Assembly for the Northern Territory or to recommend amendments of any laws of the Northern Territory.²
- 1.8 The Bill does not propose changes to the powers of the Governor-General in relation to Norfolk Island or territories other than the ACT and the NT.
- 1.9 Regardless of changes to the powers of the Governor-General proposed in the Bill, the Commonwealth legislature retains the power to make laws 'for the government of any territory', which is provided for under section 122 of the *Australian Constitution*.

2 Territories Self-Government Legislation Amendment (Disallowance and Amendment of Laws) Bill 2011, p.4.

Senate inquiry

- 1.10 The Senate committee inquiry, which was conducted over nine weeks, received 209 submissions and heard from a number of organisations and individuals as part of its public hearing program.
- 1.11 The Senate inquiry report notes that ‘Many of the substantive submissions received by the committee expressed strong support for the Bill and its objectives’.³
- 1.12 The Senate report also notes that:
- Most submitters and witnesses who favoured the Bill emphasised the democratic right of territory citizens to be governed by their elected representatives, without a federal executive override.⁴
- 1.13 At public hearings, the Senate inquiry heard evidence from Members of the Legislative Assembly from both the ACT and the NT who expressed strong support for the Bill and for parliamentary, rather than executive, override of territory legislation.
- 1.14 There was some concern that changes proposed in the Bill should form part of a broader review and reform process.⁵ However, the Bill as proposed, does not impede further reforms should these be developed for consideration in the future.
- The need for a broader reform agenda was noted in the dissenting report and in the additional comments provided to the Senate report.⁶
- 1.15 A number of the submissions from individuals and lobby groups were concerned about the impact of the Bill on the capacity for territories to legislate on particular issues. The Senate report notes that:
- Certain legal experts provided comment on whether the Bill would enable the territories to more easily legislate in the areas of euthanasia and same-sex marriage, and were clear that the Bill would have no direct or relevant effect in that regard.⁷

3 Senate inquiry report, p.15.

4 Senate inquiry report, p.15.

5 Senate inquiry report, pp.24-26.

6 See Additional Comments and Dissenting Report in Senate inquiry report.

7 Senate inquiry report, p.27.

- 1.16 The Senate inquiry recommended that the DAPC bill be passed with amendments. Accordingly, the Bill as currently proposed fully enacts the recommendations of the Senate inquiry.

Committee considerations

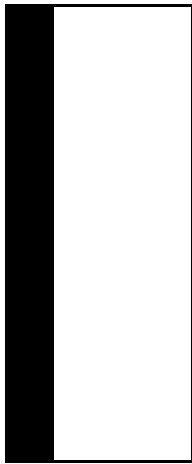
- 1.17 The Committee notes the importance of the independence of both Houses of the Parliament and consequently the capacity for committees of both Houses to inquire into a bill.
- 1.18 While this may be a beneficial component to the debate of a bill in some circumstances, it is important to ensure that work is not duplicated and that the community is not unduly called on to provide submissions to multiple inquiries.
- 1.19 The Committee has reviewed the process of the Senate inquiry, the report produced, and the amendments made to the DAPC bill following the Senate inquiry recommendations.
- 1.20 The Committee notes all the views expressed during the Senate inquiry through submissions and public hearings.
- 1.21 The Committee is assured that the Bill has clearly already undergone sound community consultation and scrutiny during the Senate inquiry.
- 1.22 Further, the Committee is satisfied that the Senate report fairly represents the views and evidence of submitters and witnesses to that inquiry. The Committee concludes that a further call for submissions or series of public hearings would duplicate processes without any discernible gain.
- 1.23 The Committee notes the evidence of legal experts that the Bill does not amend or enhance in any way the capacity of the territories to legislate on same-sex marriage or euthanasia.
- 1.24 The Committee also notes that the Bill does not impede any broader review or reform of territory self-government powers.

- 1.25 The Committee concludes that the Bill is an important reform for self-government in the ACT and the NT and recommends that it be passed by the House of Representatives.

Recommendation 1

The Committee recommends that the House of Representatives pass the Territories Self-Government Legislation Amendment (Disallowance and Amendment of Laws) Bill 2011.

**Chair
Graham Perrett MP
September 2011**



Dissenting report: Hon Dr Stone MP and Mr Vasta MP

- 1.1 We do not support this legislation amendment which aims to:
 - remove the Governor-General's power to disallow or amend any Act of the Legislative Assembly of the ACT and NT.
- 1.2 The sections in the self-government Acts that would be repealed by the Bill provide as follows:
 - The Governor General may disallow a law or part of a law made by the relevant Legislative Assembly within six months after it is made;
 - The Governor General may recommend to the Administrator of the NT or the ACT Legislative Assembly any amendments of a law or of another law affected by that law within six months of the passing of the first law;
 - If amendments are recommended, the time within which the law may be disallowed is extended by six months from that date;
 - Once the disallowance is published on the Federal Register of Legislative Instruments, the law is considered to be repealed, and any law that was amended or repealed by the disallowed law comes back into force.
- 1.3 We do not support this Bill, although we agree that the matter of the Territories moving closer to statehood is very important. Such matters should, however, be carefully debated free of the Greens' own political agenda in relation to, for example, changes in marriage or euthanasia legislation.
- 1.4 Senator Brown has twice previously attempted to introduce Bills involving the disallowance of laws in the ACT, in 2006 and in 2009. There is little

evidence however that he has made any accommodation for the different circumstances in the NT, at the same time that it has been included in this Bill.

- 1.5 The issues of the Territories' statehood and greater independence should be the subject of careful, transparent and comprehensive debate leading to a detailed set of recommendations that include consideration of all of the constitutional complexities involved in self determination.

Hon. Dr Sharman Stone MP

Mr Ross Vasta MP