

Submission No. 4
Date Received

NHT.

Senate Representation for the Northern Territory

Statehood Seminar : 15 November 06

RECEIVED
16 NOV 2006
BY: LACA

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I welcome the opportunity to examine one of the many dilemmas in moving towards statehood for the Northern Territory – how we should be represented in the Senate.

In undertaking some research on this matter I have found that it is difficult to discuss the Senate representation in the Northern Territory without also discussing the House of Representatives.

The Northern Territory Legislative Council had sought Senate representation a number of times, most recently in 1969, when it passed a resolution requesting the representation of the Territory by two senators.

The last time the federal parliament examined Senate representation for the Territories was in 1974 during the joint sittings of both houses following the double dissolution election called by the Whitlam Government.

Up for debate was the Senate (Representation of Territories) Act giving the Territories Senators for the first time.

The former Country Party House of Representatives member for the Northern Territory Sam Calder crossed the floor on the issue at that time; despite the fact the Coalition opposed Territory representation in the Senate.

The Bill was passed 97-90.

In introducing the legislation, it was argued that it would be 'proper' to have an even number of senators for the Territories. This was based on the claim that if only one Senator represented a Territory, 'almost certainly one party would

be represented for long periods' and it would be 'more democratic' to have an even number elected at each election:

This had also been recommended by the Commonwealth Parliament's Joint Committee on Constitutional Review 1959.

The politics of this was that in announcing the creation of two Senate positions for each Territory both parties were clearly aware that a proportional representation election, such as for Senate elections, would almost certainly see the return of one Labor and one non-Labor senator at Senate elections.

As we know a vote of 66.6% is needed to win two seats and would, in normal circumstances, be impossible for either party to achieve.

The return of one Labor and one non-Labor senator at every Territory election has in fact occurred. This has confirmed a view in the major parties at the time that the creation of two Senate seats for each Territory would mean that each party's success in winning one seat, would cancel out the others. In the matter of party control of the Senate, neither major party would gain any advantage over the other.

Unlike Senators from other States, Territory Senators have terms the same as House of Representatives' terms—a maximum of three years, but shorter if parliament is dissolved earlier. The shorter terms also mirrored the recommendation of the 1959 Joint Committee.

If the terms of the two Territory senators were the same as those of State senators, there would only be one position to be filled in each Territory at a half-Senate election and in that situation the party which maintained a majority of voter support, however small, would retain both seats denying the electors of that Territory proportional representation.

According to s. 121 of the Constitution, the Commonwealth Parliament may 'admit' or 'establish' new States with 'the number of senators which it thinks fit'.

The word 'may' suggests that had the 1998 Statehood referendum been carried in the Northern Territory, the Commonwealth would not have been obliged to take the process any further at that time.

The act to establish a new State will be primarily a political rather than a constitutional matter.

Whether a new State would have a constitutional position equal to the Original States depends on the 'terms and conditions' that were imposed by federal parliament.

Statehood can also be granted by way of a national referendum under section 128 of the Constitution. If this is the method adopted, then the terms of the national referendum question should, if the referendum is successful, outline the extent of the parliamentary representation of the new State.

The Senate options would seem to include:

- Equality with the Original States. However, with the small size of the Northern Territory population, such a decision would probably produce a great deal of criticism, particularly from the larger states.
- The present allocation of two senators remains causing great disappointment for Territorians.
- The new State could be granted more than the current two senators, but fewer than the 12 of the Original States — four, for example.

The terms and conditions of admission of the new State could contain a formula for an increase in the number of senators as demographic and economic circumstances warranted. For example, the Parliament could confer four senators on the Northern Territory upon a grant of Statehood, one half of them having a three-year term coinciding with the next half-Senate election

and the other half a six year term in order to commence the section 13 rotation of Senators.

A further four senators could be added say in twelve years time, and a further four senators similarly added in a further twelve years time. This would then result in equality with the Original States based on the present figure of twelve senators for each State but take at least 25 years to achieve.

I began by saying that it is difficult to talk about Senate representation without referring to the number of House of Representative seats as well.

As we know an Original State was guaranteed a minimum number of 5 Members of the House of Representatives. It would be highly unlikely that the Northern Territory (111,140 registered voters, Sept. 2006) would initially be granted House of Representatives equality with Tasmania (339,690 voters) at the time statehood was granted.

Accordingly, two other options would seem to be possibilities:

- If s. 24 of the Constitution were to be relied on—‘The number of members chosen in the States shall be in proportion to the respective numbers of their people’—current population would seem to justify just a single MHR.
- If s. 121 of the Constitution were relied on—‘The Parliament may admit to the Commonwealth or establish new States and ... make or impose such terms and conditions, including the extent of representation in either House of the Parliament, as it thinks fit—there could be more than one MHR.

The second of these would appear to be the most likely, especially given the changes to the Commonwealth Electoral Act that were passed in 2004 and that the practise following each federal election is to accept membership in the House of Representatives on the basis of whatever the s. 24 quota arrangements decreed was appropriate.

Section 24 of the Constitution says: The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such member shall be, as nearly as practicable, twice the number of the senators.

The High Court has said that members and senators representing the Territories of the Northern Territory and the A.C.T. are not to be counted for the purpose of determining this 2:1 nexus.

The issue arises as to whether the Senators from a new state would be counted in determining the number of members in the House of Representatives. If they were, then it would probably result in some extra members of the House of Representatives for some, at least, of the existing States.

For example, if statehood were to be conferred, giving the Northern Territory 4 Senators, then on my calculations there would be an extra 4 members in the House of Representatives in accordance with section 24.

These would be allocated to the States in accordance with their population and result in an increase in one seat from NSW, Victoria, Queensland, and South Australia.

Perhaps if we pointed that out to them, we might get Statehood sooner than we thought!

So what is fair Senate representation for the NT?

Some might say fairness does not come into Senate representation with NSW having 12 Senators - the same number Tasmania.

Tasmania has about 340,000 voters and NSW almost 4 million more

- or more than 12 times the population of Tasmania

- or almost 40 times the population of the NT.

Australia currently has 76 Senators for a bit over 13 million voters.
Shared out equally that would be about 173,000 voters per senator.

The NT would be entitled to point six (0.6) of a Senator, Tasmania just under two Senators while NSW would have 24 Senators.

However we are a federal system meaning the rights of regions, in our case states, are to be protected even at the cost of some imbalance favouring the smaller jurisdictions. No doubt in the NT we would fight vigorously to make sure we maintain, if not increase our share of representation.

A formula that might be acceptable would be basing our number of senators on our population compared to Tasmania, the smallest state.

Our population is roughly a third of Tasmania's so as a starting point we should have four Senators, a third of their number of Senators

There is, of course, no requirement for this to be followed, but the fairness of such an arrangement can be supported. It would be politically easy for a government to put such an arrangement in place and defend it.

In conclusion

The words of Alistair Heatley are a reminder that in such a matter as the granting of Commonwealth Parliament representation for a new state of the Northern Territory, it would seem that nothing can be taken for granted:

"Charting the future course of development of the Northern Territory is, like similar exercises in other regions, a necessarily speculative operation ... Indeed, there are a number of possible scenarios that could be entertained, each dependant upon a particular combination of circumstances and each capable of being interpreted differently according to the political perspective from which it is viewed."