

Determining Representation in the House of Representatives

The Formula

3.1 Section 24 of the Constitution sets out the formula for determining the entitlement of each of the States to seats in the House of Representatives as follows:

(i) A quota¹ shall be ascertained by dividing the number of the people of the Commonwealth, by twice the number of the Senators.

(ii) The number of Members to be chosen in each State shall be determined by dividing the number of the people of the State, as shown by the latest statistics of the Commonwealth, by the quota; and if on such division there is a remainder greater than one-half of the quota, one more Member shall be chosen in the State.

3.2 Section 48 of the *Commonwealth Electoral Act 1918* gives effect to section 24 of the Constitution and also sets out the process for

1 “Quota” is not defined but it refers to the number of people needed to obtain a House of Representatives seat.

- 3.3 determining the representation of the Territories in the House of Representatives. It provides that:
- Representation of each Territory² in the House of Representatives is to be determined by dividing the population of each Territory by the quota determined for the States.
 - If the result of the division is less than or equal to 0.5, no Member is to be chosen in a Territory, however, at least one Member for both the ACT and the NT must be chosen.
 - If the result of the division is greater than 0.5 and less than or equal to 1.5, one Member is to be chosen in that Territory.
 - In any other case, the number of Members to be chosen is the whole number ascertained by the division, and if there is a remainder greater than 0.5 of the quota then one more Member for the Territory is to be chosen.
- 3.4 As is the case with the States, the Territories' entitlements to seats in the House of Representatives are determined by the result after dividing the population of the Territories by the quota. When the division returns a remainder greater than one half of the quota, a Territory is entitled to an additional House of Representatives seat.

Population of the Commonwealth

- 3.5 To determine State and Territory entitlements to House of Representatives seats, the Australian Electoral Commissioner must first ascertain the population of the Commonwealth and the population of each State and Territory.

- 3.6 Section 46 of the Electoral Act states:

(1) Where a House of Representatives has continued for a period of 12 months after the day of the first meeting of that House, the Electoral Commissioner shall, within one month after the expiration of the period of 12 months, if that House is still continuing, ascertain the number of the people of the Commonwealth and of the several States and Territories in accordance with the latest statistics of the Commonwealth.³

2 Territory means the Australian Capital Territory, the Northern Territory or an external territory other than Norfolk Island. See Division 1 AA(38A) of the *Commonwealth Electoral Act 1918*.

3 Amendments to the *Representation Act* in 1977 provided that the determination of State and Territory entitlements to seats take place in the 12th month after the first meeting of

- 3.7 In summary, section 46 of the Electoral Act requires the Australian Electoral Commissioner to ascertain the population of the Commonwealth and of the States and Territories within the 13th month following the first sitting of a new House of Representatives.
- 3.8 Section 47 of the Electoral Act states:
- The Australian Statistician shall, on request by the Electoral Commissioner, supply the Electoral Commissioner with all such statistical information as he or she requires for the purpose of this Division.
- 3.9 The process by which the Australian Statistician determines the population of Australia, and the concept of the “latest statistics of the Commonwealth”, is discussed in chapter five.
- 3.10 For the purpose of determining entitlements to seats in the House of Representatives, the population of the Commonwealth does not include the population of the Australian Territories. Similarly, to determine the quota, the population of the Commonwealth is divided by twice the number of Senators from the States (ie, Territory Senators are excluded). As noted in chapter two, this exclusion of the population of the Territories and of Territory Senators was upheld in *McKellar v Commonwealth (1977)*.
- 3.11 Also tested in *McKellar v Commonwealth (1977)* were amendments to the *Representation Act 1905* made in 1964 which removed the words ‘greater than one-half of the quota’ (from the equivalent of section 48 of the *Commonwealth Electoral Act 1918*), so as to provide that an extra House of Representatives seat be obtained when there was *any remainder* after dividing the quota into the population of the State. The High Court held that permitting an extra seat based on *any remainder* was invalid as this would not satisfy the requirement in section 24 of the Constitution that the number of Members chosen in the States be “as nearly as practicable, twice the number of the Senators”.⁴

a new House of Representatives. (The provisions of the *Representation Act* were incorporated into the Electoral Act in 1983.) In 1987, the *Commonwealth Electoral Amendment Act* provided for the determination to be in the 10th month. In 1998, the Electoral Act was amended to shift the determination to the 13th month after the first sitting of a new House of Representatives.

4 Attorney-General (NSW) (at the Relation of Roderick Duncan McKellar) v. the Commonwealth of Australia and Others. *Australian Law Journal Reports, 1977, vol 51, p 328.*

41st Parliament

3.12 In February 2003, the Australian Electoral Commissioner determined the number of Members of the House of Representatives for each State and Territory for the next Parliament - the 41st Parliament. The quota for the 2003 determination was 133,369.375:

Population of the Commonwealth:	19,205 190
Twice the number of Senators from the States:	72 x 2 = 144
= Quota:	133,369.375

3.13 The table below shows the determination of the number of House of Representatives Members for each State and Territory.

Table 3.1. 2003 determination of State and Territory entitlements in the House of Representatives

State/Territory	Population as at February 2003	Quotas ¹	No. of HoR Members	Change
New South Wales	6,657,478	49.9176	50	none
Victoria	4,888,243	36.6519	37	none
Queensland	3,729,123	27.9609	28	+1
Western Australia	1,934,508	14.5049	15	none
South Australia	1,522,467	11.4154	11	-1
Tasmania	473,371	3.5493	5 ²	none
Northern Territory	199,760	1.4978	1	-1
Australian Capital Territory	322,871	2.4209	2	none

Source: Australian Electoral Commission, *Electoral Newsfile No. 110 April 2003*.

¹ This is calculated by dividing the population of a State or Territory by the quota.

² Tasmania, as an original State, is guaranteed a minimum of 5 House of Representatives seats.

3.14 For the purpose of determining entitlements in the House of Representatives, the populations of the external Territories - Cocos (Keeling) Islands (600 people), Christmas Island (1,436 people) and Jervis Bay (554 people) - are included in the populations of the NT⁵ and the ACT⁶.

5 Pursuant to sub-section 48(2C) of the *Commonwealth Electoral Act 1918*.

6 Pursuant to section 4 of the *Commonwealth Electoral Act 1918*. See submission # 12 from the Australian Electoral Commission, p 9.

7 Provisions pertaining to Norfolk Island electors were included in the *Commonwealth Electoral Act 1918* following recommendations made by the House of Representatives

- 3.15 Under section 38A of the Electoral Act, Norfolk Island is not considered to be a Territory for the purposes of determining entitlements. However, under sub-section 45(2) of the Act, a Norfolk Island resident who is one of the people of a State is included in the population of that State (and the Commonwealth). Similarly, under sub-section 46(2), a Norfolk Island resident who is enrolled to vote in a Territory – pursuant to section 95AA of the Act - is also included in the population of that Territory.⁷

Standing Committee on Legal and Constitutional Affairs in its report, *Islands in the Sun: the Legal Regimes of Australia's External Territories and the Jervis Bay Territory*, 1991. The Committee recommended that Australian citizens living on Norfolk Island be given the right of optional enrolment for the purposes of representation in the Australian Parliament. The Act provides for residents of Norfolk Island to enrol in the State where an association can be made. If an association to a State can not be made Norfolk Island residents can enrol to vote in a division of the ACT or the NT provided that the division does not include other Territories – see section 95AA of the Electoral Act. Also see *Norfolk Island (Electoral and Judicial) Amendment Act 1992*.

