

# Australian Democrats (ACT Division)

## Submission to the Joint Standing Committee on Electoral Matters

Inquiry into Representation of the Northern Territory and the ACT in the House of Representatives

Prepared by Llewellyn Reynders on behalf of the ACT Democrats

### Executive Summary

- The ACT Democrats believe that both the Australian Capital Territory and the Northern Territory are currently under-represented in the House of Representatives
- The ACT Democrats note that the constitutional restrictions on allocating House of Representatives seats prevents electorates in the States from becoming significantly larger than the national quota
- The ACT Democrats believe that the Territories should also be offered protection against their electorates becoming malapportioned
- The ACT Democrats do not support the specific proposal before the Committee, because it:
  - Does not address the underlying issue of what constitutes adequate and fair representation for small jurisdictions.
  - Does not address the long-term issue of determining a “fair” threshold at which a Territory should gain (or lose) a seat
  - Is ad hoc and appears to be solely addressed at a specific, short-term problem
  - Appears to discriminate in its differential effect on the ACT and NT
- The ACT Democrats instead propose that the *Commonwealth Electoral Act* should be amended to prevent electorates in the Territories from being more than 10% above the national quota, on average
- The ACT Democrats note that States can never have electorates that are more than 10% above quota, and that the Commonwealth Electoral Act uses a figure of 10% to determine malapportionment
- The ACT Democrats note that this proposal would result in two HoR seats for the Northern Territory, and three for the Australian Capital Territory

## Representing the States and Territories: The Current System

Currently, the arrangements for allocating Federal House of Representatives (HoR) seats to the states is done by a method specified in the constitution. This method determines a quota ("the quota") by dividing the population of the Australian States by twice the number of Senators (section 24). This section also specifies that after dividing the population of each state by the quota, any remainders should be rounded off to determine the number of members for each state, and that each original state will have a minimum of five members. At the last determination the Australian Electoral Commission (AEC) found the quota to be 133,369.375.

This determination gave the following results:

Table 1: Seats allocated to Australian Jurisdictions

<b>State/Ter.</b>	<b>Population</b>	<b>Result</b>	<b>Seats</b>
NSW	6,657,478	49.9176	50
Vic	4,888,243	36.6519	37
Qld	3,729,123	27.9609	28
WA	1,934,508	14.5049	15
SA	1,522,467	11.4154	11
Tas	473,371	3.5493	5
ACT	322,871	2.4209	2
NT	199,760	1.4978	1

If we interpret the current allocation system by the average population per seat in each jurisdiction, we get the following results:

Table 2: Average Size of Electorates

<b>State/Territory</b>	<b>Average Population per Seat</b>	<b>Quotas per Seat</b>
NT	199,760	1.4978
ACT	161,436	1.2105
SA	138,406	1.0378
Qld	133,183	0.9986
NSW	133,150	0.9984
Vic	132,115	0.9906
WA	128,967	0.9670
Tas	94,674	0.7099

It is clear from this analysis that both the Australian Capital Territory (ACT) and the Northern Territory (NT) have abnormally large populations in each of their electorates. The outcome of this result is that these two Territories are

under-represented in the House of Representatives, and that the representatives of these electorates have a proportionate higher number of constituents to represent. Thus, residents of the Territories are denied the same level of representation as other Australians.

Representation for the Territories is not specified in the constitution, unlike representation for the States. Thus, it is possible for the Commonwealth Parliament to alter the arrangements for representation in the Territories by legislation, whereas any change to representation for the states would require a constitutional referendum. This submission will not consider any changes to the arrangements in the states for that reason.

Representation in the Territories is currently determined on the same basis as is specified in the constitution for the states, with the exception that they are only guaranteed a minimum of 1 member. That is, the population of each Territory is divided by the quota, and then any remainder is rounded off. Currently, the ACT and NT have 2.4209 and 1.4978 quotas respectively, and hence have both been rounded down to 2 and 1 electorates.

### **The Representation Problem in Small Jurisdictions**

At first glance, this methodology appears procedurally fair. However, small jurisdictions have particular problems that become apparent on closer examination. Let us consider the issue of thresholds. How overpopulated do electorates have to be before a Territory can gain an additional seat. Consider the following:

<i>To qualify for a</i>	<i>it needs</i>	<i>when the average electorate is</i>
2 <sup>nd</sup> seat	1.5 quotas	50% over quota
3 <sup>rd</sup> seat	2.5 quotas	25% over quota
4 <sup>th</sup> seat	3.5 quotas	16.7% over quota
5 <sup>th</sup> seat	4.5 quotas	12.5% over quota

Thus we can see that despite having extremely large electorates, a Territory is not necessarily entitled to an additional seat. We see that a Territory's electorates need to be over 50% too large in order to gain a second seat, and more than 25% too large in order to qualify for a third. Compare this with the States:

Table 4: Thresholds for additional seats in the States (at current sizes)

<b>State</b>	<b><i>to qualify for a</i></b>	<b><i>it needs</i></b>	<b><i>when the average electorate is</i></b>
Tas	6 <sup>th</sup> seat	5.5 quotas	more than 10% over quota
SA	12 <sup>th</sup> seat	11.5 quotas	more than 4.5% over quota
WA	16 <sup>th</sup> seat	15.5 quotas	more than 3.3% over quota
Qld	29 <sup>th</sup> seat	28.5 quotas	more than 1.7% over quota
Vic	38 <sup>th</sup> seat	37.5 quotas	more than 1.3% over quota
NSW	51 <sup>st</sup> seat	50.5 quotas	more than 1% over quota

From tables 3 and 4 we can see that the threshold for an additional seat in a jurisdiction depends on its size. NSW, the largest state, will be granted its 51<sup>st</sup> seat when its electorates are, on average, merely 1% over the quota. Even the smallest state, Tasmania, only needs to be 10% over the quota, because it is constitutionally guaranteed five seats, so the threshold issue only becomes relevant for acquiring a sixth seat.

This leads to an important result. As a result of constitutional restrictions, no Australian State will ever have electorates that greater than 10% larger than the quota, on average. This means that the current situation, where both the ACT and NT have seats that are, on average, 21% and 49% larger than quota would be constitutionally impossible in an Australian State. The fact that this is tolerated in the Territories is fundamentally inequitable.

### **Fairness in representation**

By specifying that House of Representatives members must be allocated to particular states, the Constitution implicitly rules out the possibility that electorates might cross state boundaries. This means that if the Territories are to be represented in the House of Representatives, the Territories must be allocated a whole number of representatives, whose seats are wholly contained outside the States.

In the present situation, let us consider the impact of allocating an additional seat to each of the Territories, in order to bring them below a theoretical limit of 10% above quota. The result would be as follows:

Table 5: Representation in the Territories with an additional seat

<b>State/Territory</b>	<b>Average Population per Seat</b>	<b>Quotas per Seat</b>
ACT	107,624	0.8070
NT	99,880	0.7489

These figures show that in this case, both Territories would be significantly below quota, and have a higher level of representation than the mainland States. However, both would have electorates that are larger than the State of Tasmania, which currently has 94,674 people per electorate (0.7099 quotas). It is clear that the constitutional system for the States expressly allows for smaller electorates in small jurisdictions, but prevents electorates from ever being too large. It demonstrates a principle that proposes that if faced with a choice between under-representing and over-representing a small jurisdiction, it is more equitable to give it additional representatives. This must also be considered in context: while electorates would be significantly smaller in these jurisdictions, 2, 3, or even 5 members is not very many in a chamber composed of around 150.

It is also useful to note that the Commonwealth Electoral Act provides a definition of a malapportioned Division for the purposes of conducting electoral redistributions. It states that “A reference in this section to a malapportioned Division is a reference to a Division in a State or the Australian Capital Territory in which the number of electors enrolled differs from the average divisional enrolment of the State or Territory to greater extent than on-tenth more or one-tenth less.” [Section 59 (10)] The use of 10% as general rule of thumb is also generally used throughout other jurisdictions as an indication of malapportionment (e.g. the ACT Electoral Act, section 36 (a)). A rule specifying that Territory electorates should not be more than 10% over quota would be in keeping with this.

Thus, the ACT Democrats submit that the Commonwealth Parliament should amend the Commonwealth Electoral Act to make certain that a Territory will be allocated the smallest number of seats that ensures the average electorate will be no more than 10% greater than the quota. This would result, at present, in the Northern Territory being provided with 2 members, and the ACT with 3.

### **The Proposal Before the Committee**

The ACT Democrats do not support the specific proposal before the Committee, being to “increase the minimum representation for the Territories to provide for a minimum of two seats each for the Australian Capital Territory and the Northern Territory in the House of Representatives”. This proposal is equivalent to that in the Private Member’s Bill moved by David Tollner in the House of Representatives.

The ACT Democrats welcome the opportunity to discuss the issues of Representation in the Territories and believe that both the ACT and NT are under-represented in the House of Representatives. However, we do not believe that this specific proposal adequately addresses the issues.

We object to the proposal on four grounds:

- The proposal does not address the underlying issue of what constitutes adequate and fair representation for small jurisdictions.
- The proposal does not address the long-term issue of determining a “fair” threshold at which a Territory should gain (or lose) a seat
- The proposal is ad hoc and appears to be solely addressed at a specific, short-term problem
- The proposal appears to discriminate in its differential effect on the ACT and NT

The proposition to simply require a minimum of two seats for each Territory does not alleviate the problems that brought this issue into the public area, other than superficially. The fact that the Territories did not have two representatives apiece was not the cause of this issue. Indeed, there were certainly occasions in the past where it was appropriate for either Territory to be represented by a single member, and there may be so in the future. The proposal appears to be in ignorance of the demographic and mathematical causes of the inequity in representation, and a purely superficial response to the issue will no doubt cause continuing problems in representation, both in the present and the future.

The ACT Democrats remind the committee that the present under-representation of electors in the Territories stems from the application of the formula proscribed for the States to smaller jurisdictions, and in particular the appropriate threshold at which a Territory should gain (or lose) an additional seat. The resolution of this issue should be by establishing a new means of allocating HoR seats to the Territories, in which a different criterion is used to determine the threshold at which the number of seats will change. We respectfully suggest that this should be when electorates are more than 10% above the quota.

The ACT Democrats note that, if implemented, the proposal before the Committee would be likely to have only transitory effect in practical terms. Given the current population projections for the Territories, it is likely that both Territories will have 2 members of the House of Representatives in the 2007 elections (see Research note No.27, 18 March 2003, Department of the Parliamentary Library). In other words, the only real effect of the proposal will be to give the Northern Territory an additional seat for a single Parliamentary Term. This fact has led some in the Canberra community to speculate that the genesis of the proposal is rooted less in the principles of democracy and fair representation and more in specific political interests. The ACT Democrats believe that any legislation on this issue should address the whole issue, rather than a specific concern. The outcome of two seats per Territory will likely be realised regardless of any legislative action.

The issue of greatest concern is that the proposition before the Committee will address the problem of under-representation in one jurisdiction, and yet totally ignore it in the other. The fact that the two ACT seats are currently 21% above quota should not be dismissed. It is undeniably unfair that one of the smallest jurisdictions in the nation should also have the largest electorates. It is also hard to see the logic in positing that while it is equitable for the NT to have two seats of 99,880 people each, somehow three ACT seats of 107,624 is unjustified.

## **Conclusion**

The ACT Democrats believe that it is inequitable for the both the Australian Capital Territory and the Northern Territory to continue to have electorates that are clearly too large. This results in a lower level of representation for residents of the Territories and a disproportionately small influence in the National Parliament.

The ACT Democrats recommend that the *Commonwealth Electoral Act* be amended to set a maximum size for House of Representatives electorates in the Territories. We recommend that this maximum size be 10% above the quota.