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JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

Reference: Representation for the territories in the House of Representatives

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JOINT COMMITTEE ON ELECTORAL MATTERS

Monday, 18 August 2003

Members: Mr Georgiou (*Chair*), Mr Danby (*Deputy Chair*), Senators Bartlett, Brandis, Mason, Murray and Ray and Mr Forrest, Mr Melham and Ms Panopoulos

Senators and members in attendance: Senators Brandis, Mason, Murray and Ray and Mr Danby, Mr Georgiou, Mr Melham and Ms Panopoulos

Terms of reference for the inquiry:

To inquire into and report on:

Increasing 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.

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Committee met at 9.34 a.m.

CORR, Mr Patrick, Director, Demography Section, Census, Demography and Geography Branch, Population and Statistics Group, Australian Bureau of Statistics

EDWARDS, Mr Rob, Acting Australian Statistician and Deputy Australian Statistician, Economic Statistics Group, Australian Bureau of Statistics

WILLIAMS, Mr Paul, Assistant Statistician, Census, Demography and Geography Branch, Population and Statistics Group, Australian Bureau of Statistics

CHAIR—I declare open this public hearing of the Joint Standing Committee on Electoral Matters inquiry into representation for the territories in the House of Representatives. Under the Constitution, each state is guaranteed at least five House of Representatives seats, while the two territories are currently guaranteed one seat each by the Commonwealth Electoral Act.

Subject to these minimum entitlements, a combination of the Constitution and the Electoral Act sets out a manner for determining how many members of the House of Representatives each state and territory will return at a federal election based on official population figures. In February this year, the Northern Territory was deemed to be just a few hundred persons below the population deemed to retain the second seat it gained for the first time in 2001.

The House of Representatives Northern Territory members and others have called for minimum representation of the territories in the House to be increased. On 9 July 2003 the Special Minister of State asked this committee to examine whether the Northern Territory and the Australian Capital Territory should each be guaranteed a minimum of two House of Representatives seats. To date the committee has received 17 submissions, including submissions from the witnesses who will be appearing today.

Resolved (on motion by **Mr Danby**):

That the submissions numbered 1 to 17 be accepted into the committee's inquiry and authorised for publication.

CHAIR—This morning we will hear from a number of witnesses who will give evidence on the process for determining representation in the House of Representatives and the experiences of the states and territories. Following today's hearing the committee will travel to Darwin to take further evidence for the inquiry on Friday, 29 August 2003.

I remind witnesses that, although the committee does not require you to give evidence under oath, this hearing is a legal proceeding of the parliament and warrants the same respect as the proceedings of the parliament. The giving of false or misleading evidence is a serious matter and may be treated as a contempt of parliament. The evidence today will be recorded by *Hansard* and will attract parliamentary privilege.

I welcome the witnesses from the Australian Bureau of Statistics to today's hearing. The committee has received your submission. It has been numbered 6 and has been authorised for publication. Are there any corrections or amendments you would like to make to your submission?

Mr Edwards—No.

CHAIR—Would you like to make a brief statement in opening?

Mr Edwards—Thank you, Chairman, for the opportunity for the Australian Bureau of Statistics to make a submission and to give evidence to this inquiry. Our submission consists of two parts. Part A describes the methodology and the data sources used in the compilation of estimated resident population statistics. Part B of our submission addresses three particular issues on which we have been asked to comment.

The estimated resident population statistics for 30 September 2002 were used by the Australian Electoral Commissioner in making the electoral determination on 20 February 2003. As our submission makes clear, those estimated resident population numbers are subject to measurement error. They will not be finalised until the 2006 population census results are available. I stress, though, that those statistics are the best estimates that can be made, given our current methodologies and available data sources.

CHAIR—Can you take us through the steps that you use to derive the population of the Northern Territory?

Mr Corr—There are, effectively, two stages for the estimates that we prepared for 30 September. Firstly, we calculate the estimated resident population at 30 June in the census year. That becomes our base estimate for all subsequent estimates until after the next census. The census count is based on where people were on census night, so some people may be counted away from home. We put people back to where their place of usual residence is; in this case the Northern Territory. People that were counted in other states are put back into the Northern Territory and the residents of other states who were counted in the Northern Territory are taken out. We take out overseas visitors, we make an adjustment for net undercount—which is estimated from a survey run immediately after the census—and we add in residents who were temporarily overseas on census night.

That gives us an estimate of the population on census night. We then roll that estimate back to 30 June by adjusting for births, deaths and migration between the states. We then have a 30 June estimate for a census year. For quarters after the census, it is a simple mathematical equation of adding births, subtracting deaths, adding net overseas migration and, for the states and territories, we have a model that estimates what the net interstate migration is, which we factor in as well. That gives us a preliminary estimate of the population at whatever quarter it is after the census date.

CHAIR—Your estimates have a number of assumptions built into them. Can you tell us about the undercount and where you take that into consideration, starting from census night?

Mr Corr—We conduct a survey three weeks after the census. We run a survey across a sample of about 38,000 households. We ask, ‘Where were you on census night? Were you counted in the census?’ and a whole series of questions to identify potential addresses where people may be counted. We then take those survey forms and match them up with the survey responses for those addresses and identify whether the person was counted and, if they were, if they were counted more than once. Occasionally, you get people who were counted more than

once and you also get cases where people were not counted at all. We net those two figures off and arrive at an undercount.

In the Northern Territory we arrived at an estimate of 7,800 as the net undercount. There were a few people who were counted in the Northern Territory, where it was assumed that that was their place of usual residence. We had subsequent information that it was not, so those 300 people were moved to another location.

CHAIR—What do you do with the 7,800?

Mr Corr—You add that into your population.

CHAIR—You add that back?

Mr Corr—Yes.

CHAIR—Is the 30,000 sample across Australia or the Northern Territory?

Mr Corr—It is across Australia.

CHAIR—From that, you derive a notion of undercount for the Northern Territory?

Mr Corr—That is right.

CHAIR—How do you deal with the issue that you raise in your submission, that Indigenous populations are very difficult to enumerate?

Mr Williams—In terms of the Indigenous populations mentioned in the submission in remote communities, we do not conduct a separate Post Enumeration Survey there, because we are not in a position to undertake that independently of the census count. The main issue there is that, because of the intensity of the census operation within these communities, we basically use all the available resources to do such a task. In the Indigenous communities we expend a huge amount of extra resources well above what we spend in the rest of the community by comparison. It is about 10 times the amount of money. It is one collector for every 10 households, so we believe we have very good coverage in the remote Indigenous communities.

CHAIR—This is when you are conducting the census.

Mr Williams—That is when we are conducting the census. That is exactly right.

CHAIR—So you invest up-front and you do not think there is a need for a separate PES?

Mr Williams—We do know, from our own analysis, that we miss some people. We are able to use indirect methods to get some sort of handle on the undercount that we might have in these communities. It is not through a direct count; it is through demographic analysis techniques. We do know we miss young babies; we know that we miss young males in particular. We make adjustments by using an underenumeration rate calculated for the whole of the Northern Territory, plus a rate calculated for missing Indigenous people from urban areas. We believe that

that more than compensates for people we might be missing through our census enumeration in remote communities.

Mr Corr—Effectively we combine the net undercount for the Northern Territory, which is about four per cent, and we know at the national level Indigenous people are undercounted at the rate of about 6.1 per cent. We use those together to synthetically estimate what the Indigenous remote net undercount is. It is greater than four per cent and it is greater than 6.1 per cent. It more like an addition of over six per cent.

CHAIR—So at the end of all these processes—and I do appreciate how sophisticated they are—how far out can your numbers be in the Northern Territory?

Mr Edwards—That is a difficult question to answer. The Post Enumeration Survey we have been talking about is subject to sampling error. In our submission we have indicated the magnitude of that sampling error. At the 95 per cent confidence interval the standard error is plus or minus 2,600.

CHAIR—Can you point out where that is in your submission?

Mr Corr—Page 6, table 1, Northern Territory, and the third column along is the standard error, which is 1,300. We say that we can be 95 per cent confident that it is within two times that estimate. The net undercount for the Northern Territory could be as low as 5,200 or as high as 10,400.

Mr MELHAM—What is the standard of error for New South Wales?

Mr Corr—It is 13,200. It has a range of 103,700 to 156,500.

Mr MELHAM—Each state and territory has a standard of error.

Mr Corr—Yes.

Senator MURRAY—Are there no circumstances in which you could have an overcount?

Mr Williams—There certainly are. Australia has never measured an overcount in its census. The Post Enumeration Survey does measure both undercount and overcount and, when we talk about undercount, we are talking about net undercount. In fact, we overcounted about 0.8 per cent or 0.9 per cent of the population, who were counted twice at the last census. In terms of adjusting census population, we use a net figure.

Mr MELHAM—Given the figures for each of the states, the relativity in relation to determining the entitlement would roughly remain the same, wouldn't it?

Mr Edwards—Yes, that is right.

CHAIR—Can you explain that, please, because the standard error changes.

Mr Williams—It is the sample size of the population.

CHAIR—Sorry, I do not follow. The indications are that you are most likely to be wrong in the Northern Territory. Sorry, I take back the ‘wrong’. You are most likely to be out—

Mr Corr—There is an undercount.

Mr Williams—No, there is a wider range in the measure, that is all we can say. It is a bigger spread.

Mr Corr—The situation in the Northern Territory with the Post Enumeration Survey is that we conduct interviews with twice as many households, relatively, so that we can get a more precise estimate than we would normally do with our normal standard counts on surveys.

CHAIR—Explain to the innumerate why the percentage standard error is 0.6 in the Northern Territory and 0.2 in New South Wales.

Mr Corr—Because there is greater variability in the results of the survey in the Northern Territory.

CHAIR—Your estimates in New South Wales are more reliable than your estimates in the Northern Territory.

Mr Williams—Yes, that is right.

Senator ROBERT RAY—Is that the reason why you adjust your figure in the Northern Territory?

Mr Corr—No, it is because we have a net undercount measure which is higher in the Northern Territory relative to the population.

Senator ROBERT RAY—The bottom line on this: is there anything to suggest that the quarterly figures that you deliver, having made all these adjustments and balancing, would be more inaccurate for the Northern Territory than any other place in Australia?

Mr Williams—There are two ways we might answer that: the first is the standard error on the Post Enumeration Survey adjustment is slightly higher than for the other states, as we have just discussed, so that could—

Senator ROBERT RAY—That is why you balance it off with double the survey. The question is: when you get to the point of delivering your quarterly population growth or decline, is there any reason after all the adjustments to believe that the Northern Territory is likely to be more inaccurate than any other state or territory in Australia?

Mr Edwards—I was then going to go on and talk about other sources of error in our population estimates. It may be the case that some of those other sources of error are potentially of more importance in the Northern Territory. I am thinking here, for example, of the estimates that we make for interstate migration between the Northern Territory and the rest of Australia. Potentially the error on those estimates may be higher for the Northern Territory. That is something which, at this stage, we cannot quantify. We will get a much better handle on our

interstate migration estimates after we conduct the next population census and we are able to calibrate our results in light of that.

Senator ROBERT RAY—Is there anything to suggest that a variable of interstate migration would in any way inevitably undercount or overcount the figures for the Northern Territory?

Mr Edwards—As our submission makes clear, we use information on Medicare changes of address as the basis for our interstate migration estimates. There is some evidence that some subgroups of the population are less likely to advise Medicare of changes of address, one particular subset of is young adult males. It could be, to the extent that there is interstate migration of that category to and from the Northern Territory, that that perhaps could give us some indicator that the interstate migration numbers for the Northern Territory may be slightly less accurate than for other states.

Senator ROBERT RAY—Are you saying there is something about young males who go to the Northern Territory that differ from young males who go from Victoria to New South Wales? It seems to me otherwise everything would balance out. It is not a special factor of the Northern Territory unless young men moving to the Northern Territory have some sort of special psychological profile.

Mr Edwards—No, what I am theorising here is that perhaps the proportion of interstate migration to and from the Northern Territory represented by that category of persons might be higher than perhaps between Victoria and New South Wales.

Senator ROBERT RAY—But when we are thinking about how many people migrate between states, how many would fit that subcategory? We are starting to talk about smallish numbers, aren't we?

Mr Williams—Part of the issue is that with interstate migration the Northern Territory already has a comparatively small population, so you are talking about flows of migration which can have quite a significant impact on such a small population. When you are talking about figures of 200 or 300, it can have that sort of impact.

CHAIR—My understanding—and please correct me if I am wrong because it is quite important, for me at least—is that after you have done all these adjustments, after you have put into play your specialised knowledge, it is still the case that your standard error, plus or minus, in your figures for the Northern Territory is 0.6. Is that right or wrong? This is what I think the senator was getting at. After you do all the processes you still believe that your error in New South Wales is 0.2 and your error in the Northern Territory is three times that.

Mr Williams—Yes.

CHAIR—After you have done everything you are left with this error.

Mr Williams—It is level of confidence, rather than error.

Mr Corr—It is not an error.

Mr Williams—It is trying to measure how confident we are in the statistics.

CHAIR—Let me be more precise: the standard error then.

Mr Williams—We use the words ‘standard error’ but really it is trying to reflect the level of confidence that we have in the statistics.

Mr Corr—The whole science of statistics is about understanding error. We use the word ‘error’ but it does not mean it is a mistake; error is different to mistake.

CHAIR—For the simple parliamentarian, I would say what you are saying is that in the Northern Territory you could be underestimating by 1,300 or overestimating by 1,300.

Mr Williams—That is right.

Mr Edwards—At the 95 per cent confidence level you would double that.

Mr Corr—Yes. It would be 2,600.

CHAIR—But you know what I am striving for, so help me.

Mr Corr—To give you an example, in the Northern Territory we have a range that it could be. In Western Australia, which is 5,300, we have a much larger range of what the number could be. New South Wales, with a larger population, has a larger range numerically. When we are talking about the standard error on the rate of net undercount, what we see is the Northern Territory’s is fairly large. but as we get to a larger population, we end up with a smaller percentage.

Mr MELHAM—Even with that error, because of the potential standard errors in the other states it does not lead to a change of entitlement in relative terms does it? But it does if you look at it in isolation.

Mr Corr—Yes, in isolation.

Mr MELHAM—The argument is that you strike a quota as a result of the error being within a particular margin.

Mr Corr—You need to consider what the standard error on the quota is as well.

Mr MELHAM—But I am looking at relativities here—my quick calculations.

Senator MURRAY—I would like to put the proposition to you slightly differently. I see that the committee is going to have three options: (1) leave the law as it is; (2) introduce tolerance into the existing method—in other words, state that there should be no movement of seats within a tolerance of errors, for instance 2,600; (3) enshrine a base number of seats because of the case that is put before us. The issue of what you could be out by—just naturally, through the process and not through mistakes—and what tolerance could be introduced to the legislation is very germane. That is why you would have to have the same view for any other state. For instance, South Australia is going to lose one. What would be the tolerance there? It needs to come back

to a fairly simple understanding. Let people know, for every 100,000 voters in South Australia or New South Wales or in the Northern Territory, what the tolerance level would be within which you should not be jumping to the conclusion that you knock off a seat because there is no longer the population to cover it. That is the simple way I interpret it all.

Senator MASON—Senator, you could increase the tolerance and you could always just miss out.

Senator MURRAY—As I understand standard error, that is regardless, it is common and then you adjust for particular circumstances. For any statistical activity, as I understand it—and you should tell me if I am correct—there is a standard error and that is the starting tolerance point to which you add or subtract according to the circumstances. Am I right?

Mr Corr—There is a standard error on any sample estimate but some of our inputs into this are not sample; they are direct counts of complete populations.

Senator ROBERT RAY—The figure that you gave to the Electoral Commission was as you would normally do it under the act, wasn't it?

Mr Corr—It is the best estimate of the population.

Senator ROBERT RAY—You cannot tell us, even on a best guess, whether that is an underestimate or an overestimate, can you?

Mr Corr—Not until 2007.

Senator ROBERT RAY—Exactly.

Mr Edwards—That is correct.

Senator ROBERT RAY—Given that it has taken you 16 pages to explain your methodology, if we had to amend the Electoral Act to take into account that methodology, given modern drafting techniques it would be about 100 pages, wouldn't it?

Mr Corr—That is an interesting estimate.

Ms PANOPOULOS—Gentlemen, can I just take you back to the national underestimate figures of four per cent and 6.1 per cent.

Mr Williams—Four per cent was for the Northern Territory and 6.1 per cent was the measure of underenumeration of Indigenous people.

Mr Corr—In Australia.

Ms PANOPOULOS—Right.

Mr Williams—Four per cent was for the Northern Territory.

Ms PANOPOULOS—What proportion of the Territory's population is Indigenous?

Mr Corr—It is about 28 per cent to 30 per cent.

Ms PANOPOULOS—Is that higher than any other state?

Mr Corr—Absolutely. Across Australia it is about two per cent at the national level. A much higher proportion of the Northern Territory are Indigenous, compared to other states.

Ms PANOPOULOS—That could partly explain—

Mr Corr—Why it is four per cent? The national net undercount is 1.8 per cent for the total population. The Indigenous net undercount is 6.1 per cent, so you can see there is a relationship—

Ms PANOPOULOS—That 6.1 per cent is national.

Mr Corr—It is national, so you can see even at the national level the net undercount is more than three times—

Ms PANOPOULOS—What would be the undercount for the Indigenous population in the Territory?

Mr Corr—We do not directly estimate that but we do compile a figure we use in our estimates. It is certainly larger than four per cent.

Ms PANOPOULOS—Why don't you estimate that for the Northern Territory?

Mr Williams—Going back to an earlier answer, the reason we cannot do it is because we cannot secure independence between a Post Enumeration Survey and the census. One of the philosophies underlying conducting a coverage check—which is what a Post Enumeration Survey is—is that it needs to be run completely independently, otherwise you will have interviewer bias. For instance, if you were to use the same collector that collected the original census information to do the coverage check, basically they would think they already know the answers and that would bias the results.

In other countries where they have not been able to secure separate operations between the census and the coverage check or the Post Enumeration Survey, the figures have come out strange. In fact they have demonstrated an overcount.

Ms PANOPOULOS—I appreciate that but I have some problems accepting that the same methodology is applied in each state whereas the Territory appears, from what you have said, to have this unique situation.

Mr Williams—It does. It is not only the Territory; it occurs in all remote areas for all states. It is not only something that applies in the Territory; it applies in Queensland—

Ms PANOPOULOS—No, but as a proportion of the Territory's population.

Mr Williams—It has a greater impact in the Northern Territory but, on the other hand, most of the Indigenous people in the Northern Territory are enumerated using a special methodology which is far more intense.

The 6.1 per cent is the measure we get out of the rest of Australia, where basically there is one collector who drops off a form for 300 or 400, or even more, households and goes back three weeks later to pick up the form. We know that in that situation we are missing 6.1 per cent of Indigenous people. What happens in the remote communities in the Northern Territory, Queensland and Western Australia is that we go through special procedures where we have one collector for every 10 households.

If anything, that is very intense. We use people from the community who know the community—all those sorts of thing which I could spend a lot of time talking about. That means, although we do not directly measure that—it is a bit hard to know, I do not believe there is a significant undercount and adjustments we do make to the Northern Territory population are sufficient to account for that. As I mentioned earlier, we do have some indirect measures of what the undercount might be. They certainly indicate that the adjustments we are making are taking into account the people we might miss from this very intensive enumeration method.

Mr Corr—There is a risk, with the methods we use in the Northern Territory and other parts of Australia for Indigenous communities, that some Indigenous people get counted more than once because they are regarded as being part of that community by more than one household or family member or kin member that may live in that community. The Indigenous population, particularly in the Northern Territory, is very mobile. They may have more than one place they usually live.

Ms PANOPOULOS—Conversely, what about the Indigenous people in Darwin who may no longer be regarded as part of a particular community or tribe? How are they counted, or are they?

Mr Williams—For people in Darwin we use conventional methods supplemented by special campaigns to reach out to Indigenous people, using community groups and those sort of things. But Darwin is part of the Post Enumeration Survey, so the measure we are getting out of Darwin of four per cent underenumeration would take into account the Indigenous people we are missing in Darwin.

Just to follow up on the point of possible double counting, for the 2001 census we had anthropologists observe our operations in communities. Quite independently, two of them came up with the observation that in fact our methodology could potentially lead to overcounting rather than undercounting. There is some evidence from international experience that that might be the case. For instance, in the United States in the Indian communities, where they do in fact conduct direct Post Enumeration Surveys, there is evidence that those communities are overcounted rather than undercounted.

Ms PANOPOULOS—Do you have any direct evidence of overcounting of the Indigenous population in the Territory?

Mr Williams—No, we do not. I will go back to my earlier answer. We do have demographic evidence that we probably are undercounting, but the undercount is probably below the level of adjustment we make for the Indigenous population.

Ms PANOPOULOS—Thank you.

Senator MASON—My question is along the same lines as Ms Panopoulos and the veracity of methodology. I represent Queensland and in the northern part of the state, particularly in the tropical areas, a lot of the work is seasonal, wet and dry—it will come and go. Is that taken into account in your assessment of the Northern Territory's population? Do you average that out over a year? How do you come to a particular figure?

Mr Edwards—Perhaps I might answer that. In situations where there are seasonal movements of the population, our concept of estimated resident population would have those people being counted in the place they regard as their place of usual residence. If there is a seasonal worker in the north of Australia at the time the census is taken, on the census form, if they are filling it in correctly, they should indicate where their place of usual residence is.

Mr Corr—The guideline we give people is where they live for six months or more, or where they intend to live for six months or more at the time they fill out the census form.

Senator MASON—As simple as that. Yes, I see. The date at which they fill out the census form is not the critical date; it is the fact of where people regard their home as being.

Mr Corr—Yes.

Senator MASON—I understand, thank you.

Mr Corr—So all our estimates are constructed around that concept of where people usually reside. There is a completely separate concept of service populations, where people may move around. There is the winter drift from Victoria up to Queensland for the sun.

Senator MASON—I know all about that, Mr Corr.

Mr DANBY—The two Northern Territory members of the house have asserted that the population growth will see the Territory again become entitled to two members when the next determination of entitlements is made. Do you have any direct comments on those assertions?

Mr Edwards—Yes, we do. Could I refer you to the graph on page 14 of our submission? In that graph we have shown the three projections of the population of the Northern Territory as a proportion of Australia's population. Those population projections were made a couple of years ago. The ABS is in the process now of compiling new population projections for the Northern Territory and for each of the states and the ACT.

Senator ROBERT RAY—Are they the ones that will be available in September?

Mr Edwards—That is correct. Also on that graph we have plotted the estimated resident population for the Northern Territory. That is the bold line.

Mr DANBY—ERP stands for what?

Mr Edwards—Estimated resident population. From those population projections made some years ago you can see the actual experience of the estimated resident population is below even the most pessimistic of the population projections made at the time. When we produce our new population projections in a few weeks, they will be benchmarked to the estimated resident population numbers. You can see that the starting point for those projections will be lower than the least optimistic projection done a few years ago.

Mr DANBY—Very interesting. Can I give you the opportunity—all of you—to make comments on any of the other public comments made by Mr Tollner and Mr Snowdon about the estimates provided for the Northern Territory in terms of them falling within the margin of error.

Mr Edwards—Yes, part B of our submission specifically addresses that matter at about paragraphs 50, 51 and 52. Mr Snowdon said that the estimate could be out by anything up to 4,000 people. We have discussed the standard error on the estimates earlier and at the 95 per cent confidence interval we have agreed that the estimates could be out plus or minus 2,600. To be out by as much as 4,000 is possible but highly unlikely. On the other hand, the shortfall in the quota for the Northern Territory of 291 people is clearly well within reasonably likely standard errors.

Senator ROBERT RAY—The problem with Mr Tollner's projection, I think you pointed out on page 18, is that he is relying on a parliamentary library paper that uses 1999 projection figures.

Mr Edwards—That is correct. That projection is in fact shown at the graph on page 14. It is the middle projection; projection No. 2.

Senator ROBERT RAY—When you publish your figures on 2 September, would you be able to send them to this committee post haste?

Mr Edwards—Yes.

Senator ROBERT RAY—We have hearings in Darwin on the 29th. Can we not have a three-day preview?

Mr Edwards—We will make sure that those figures are available to you on 2 September.

Senator ROBERT RAY—We would appreciate that.

CHAIR—Can I pursue the point that a number of us have an interest in, especially Senator Murray. We have a situation here where a territory has had its representation halved on the basis of it missing the cut-off by 291 people. We have an arbitrary formula. Formulas always have to be arbitrary; I have no problem with that. That could happen to any other state. They could lose a seat because they were one person short of the formula. Can you tell me why we do not take that error factor into account in determining the population of a state or territory?

Mr Edwards—No, I cannot tell you why. That is really something for the parliament ultimately. The law as it currently stands says that the electoral commissioner should base his determination on the latest statistics available from the ABS.

Senator MURRAY—If the parliament were to consider the option of a tolerance-level formula being added to the existing law—and hopefully avoiding what Senator Ray anticipates as a 100-page amendment—is the ABS able to provide the committee with what such a tolerance level should be for both states and territories?

Senator ROBERT RAY—Hold on, you cannot do that for states because of the McKinlay case and the McKellar case. It runs the risk of the High Court totally turning it over. Territories are separate but you said states and territories, Senator Murray.

Senator MURRAY—Yes.

Senator ROBERT RAY—The formula there for states is something that will pass the test of the High Court—rather than have an injunction taken, the entire series of electorates turn over and the constitution then say the electorate will be elected as a whole; and we do not even specify whether that will be winner take all or PR. I do not think we can do that.

Senator MURRAY—All right. Technically you could, couldn't you?

Mr Edwards—We could provide information on the standard errors on the Post Enumeration Survey component of our ERP numbers.

Senator MURRAY—Bearing in mind Senator Ray's remarks, which I am sure are accurate, would you be able to provide the committee with what I have asked you, just so that we know what it means for the ACT and the Northern Territory?

Mr Edwards—In our submission we have provided what those standard errors are.

Senator MURRAY—But which figure do we pick? We were talking earlier about 1,300 and it went up to 2,600 for reasons which I understood. I want to know what particular figure it is that we will pick.

Mr Edwards—In general terms, users of statistics tend to form judgments based around two standard errors; that is, the 95 per cent confidence level. That is typically how informed users would use statistics.

CHAIR—At 95 per cent confidence we have got 2,600 plus or minus.

Mr Edwards—Plus or minus.

Senator ROBERT RAY—When you said they missed out by 291 last time, I think that is an accurate figure. Do you know how much they got the extra seat by the previous time?

Mr Edwards—I cannot tell you offhand.

Senator MURRAY—Just staying on the subject I was on, how would the ACT be done?

Mr Edwards—The standard error on the ACT estimates—and I am referring here to table 1 on page 6—was 1,200.

Senator MURRAY—Do we double that to 2,400 as we did for the—

Mr Edwards—Yes. When you are talking about tolerances here, one thing you need to be conscious of is that the standard error can be plus or minus.

Senator MURRAY—Yes, the point Senator Ray is making.

Mr Edwards—If you were going to develop this concept of tolerances for electoral purposes, you would need to consider the minus aspect of it as well as the plus aspect of it.

Senator ROBERT RAY—You could, even within the margin of error, at one determination add a seat and take it away the next time and there may have been no changes, just the error factor has added and subtracted a seat.

Mr Edwards—That is right.

Senator MASON—It cuts both ways.

Mr Edwards—Yes.

Senator ROBERT RAY—You do make the point, of course, that the Northern Territory would not even be this close but for the addition of Cocos and Christmas Island. How much population does that add into their figures? I think it is about 2,000.

Mr Edwards—It is a bit over 2,000 up to about 2,500—it is somewhere around that.

Mr DANBY—Did the NT have Cocos and Christmas Island in last time as well?

CHAIR—Is it taken into consideration every time?

Mr Edwards—Yes.

Senator ROBERT RAY—Just wondering what will happen if we switch Norfolk Island and send it across to the Northern Territory.

CHAIR—In terms of the plus or minus, that is just a fact. There is no way you can probe behind that.

Mr Edwards—No.

Mr Corr—And it could fall anywhere between that range, too.

Mr Edwards—That is right.

CHAIR—Were you to seek to apply it to the states and the territories, every one of them would have a unique error factor, so you could be fairly specific about it.

Mr Edwards—That is correct.

Mr Corr—For 30 September 2002, Christmas Island had a population of 1,436 and Cocos (Keeling) had 600, so it is just over 2,000. Christmas Island has declined in population in the last five or 10 years.

CHAIR—Part of the issue that confronts the committee, and which is thrown up by the bill and by considerations, is that there is a certain distinctiveness about the ACT and the Northern Territory in that a slight shortfall, well within the standard error, has very substantial impacts in terms of representation of those territories. Even if you take into account that under the formula, as it is applied at the moment, one person short can lose you a seat, the impacts of those are differentially distributed around Australia. In the case of the ACT, you lose one seat and you have electorates of 110,000. In the case of the Northern Territory, if you lose one seat you go back to 110,000. I think that is why some of us want to understand this standard error, because it does impact very differentially in different states and territories. The one that has the highest error standard is the Northern Territory. That's why we are trying to probe behind this.

Mr DANBY—Was Mr Georgiou right when he said that if the Northern Territory resumed to one seat it would have 110,000 constituents in it, or was it slightly higher?

CHAIR—109,000 I think.

Senator ROBERT RAY—We might ask the Electoral Commission that; they would know a bit better.

Senator MURRAY—It is in their submission.

Mr Edwards—Could I draw the committee's attention to table 6 on page 13 of our submission. That table sets out what happened in respect of the population estimates for 30 June 1999, which were the basis for the electoral determination which was made on 9 December 1999—in other words, the electoral determination immediately prior to the most recent one.

You can see in that table that our estimate of the population for the Northern Territory at that stage was 193,882. With regard to the final number for the Northern Territory—final in the sense that we were able to take account of the 2001 population census—you will see that we overstated the population at that stage by 147 people.

CHAIR—Can you confirm that figure, please.

Mr Edwards—If you look at the preliminary number of the Northern Territory—that is, the first column in table 6—that is the population estimate on which the December 1999 electoral—

CHAIR—Is the 147 right?

Senator ROBERT RAY—Isn't that 1,047, or 1,147?

CHAIR—Sorry, but now that you have drawn our attention to it!

Mr Edwards—It is. Is there an error there?

CHAIR—Yes, that is what we call an unusual error.

Senator ROBERT RAY—It is 1,147.

Mr Edwards—It is 1,147.

Senator ROBERT RAY—That is why I asked the question before, about how much they fell over the line. It could well have been they got their second seat chair through an error.

Senator MURRAY—Especially if you add Christmas Island.

Mr Edwards—We will need to check that error. I apologise to the committee. We will give you the correct number.

CHAIR—Yes, certainly.

Mr DANBY—We will accept it as an unusual error, not a standard error.

Senator MASON—When you say 'by virtue of error,' was it within the formula?

Senator ROBERT RAY—Absolutely. You set a formula and you either agree to it or you rot it every time. My point is we agreed to it; it may have given the Northern Territory an extra seat but even with the error—once discovered—we are not going to take it away.

Senator MASON—Yes.

Senator ROBERT RAY—But there is an obvious corollary to that argument.

Senator MASON—I can follow that, yes.

Senator MURRAY—The point to make for the record is that if you put those three—Northern Territory, Christmas Island and Cocos—together, they were all an accumulated overcount. The interesting thing is that if you look at the Australian Capital Territory, it was an undercount.

Mr Williams—We have detected the source of the error. The difference is correct. It is actually the first figure. It is 192,882. Our apologies for that.

CHAIR—Slip of the pen!

Mr Edwards—Our apologies. But the point Senator Murray made is correct. We overestimated the population of the Northern Territory at that stage and underestimated the population of the ACT at that time.

Senator MURRAY—I am glad there is no error for the Antarctic Territory and Coral Seas, otherwise we would really get worried. Not too much counting needed there!

Mr MELHAM—The point is you have a formula and there are swings and roundabouts.

Mr Edwards—That is correct.

Mr MELHAM—The ACT some time ago lost a seat. It just fell under the line.

Mr Edwards—Yes.

CHAIR—Is this about swings and roundabouts, or is this about the determination of how many people are actually there and whether or not you take the upside of the estimate, which is differential across states and territories? I am not sure I would agree with swings and roundabouts. That is not a formula. The determination of what you take, of how you estimate, is a different issue.

Mr Edwards—In accordance with our established methodologies and the data sources that are available to us, we make the best estimate that we can and that is the number published. That number is subject to error. In the case of the net census undercount component of that error we can put a standard error to it, but there is also potential for measurement error in our overseas migration numbers; there is potential for measurement error in our interstate migration numbers. Even our estimates of births and deaths are subject to some revision over time. In a sense, all components of our population estimates are subject to error of one sort or another.

Senator ROBERT RAY—Since the parliament 15-odd years ago put this provision in the act for you to report on these statistics in relation to territories, has the Bureau of Statistics adopted any methodology that makes it more likely today than then that you would undercount the population in the Northern Territory?

Mr Edwards—I would think that with the improvements made over time, our population estimates are probably better now than they were in the past.

CHAIR—Can I follow that up by saying that, nonetheless, the error factor for the Northern Territory is the largest in Australia and runs roughly three times the state average.

Mr Edwards—Yes.

Senator ROBERT RAY—Over or above.

CHAIR—I am not arguing that at all.

Senator ROBERT RAY—No.

Mr DANBY—At the Senate estimates hearings on 5 June 2003 you were asked about the possibility of the Electoral Act being amended to require a rolling average of several quarters population data. Can you tell us about this proposal and explain a bit more of what a rolling average would be.

Mr Edwards—The proposal was put in the nature of a question to us at the estimates hearing. Essentially a rolling average is that you decide how many periods you want to average over—say, five quarters—and what you do is simply, for the most recent five quarters of the population estimates, take the simple average of those numbers. That is a five-quarter moving average. You could have a seven-quarter or 13-quarter average, or whatever you wanted. Essentially the principle of a moving average is an estimate of the population at the midpoint of the five quarters. It is what the average population was over that period. In doing that, of course, what you have done is come up with a population estimate, if it is five quarters—which is two and a half quarters earlier than the most recent number. For states or territories whose population might be increasing or decreasing substantially over that period it will moderate, of course, what the change is.

Senator MASON—Would that be more accurate than the current system?

Mr Edwards—It is a different concept altogether. The current concept is: what is the most recent estimate of the population? If you were taking a moving average you would be changing the concept quite considerably. It would then be: what was the average of the population over 1¼ years?

Senator MASON—Sure. I think Mr Danby's question was relating to some evidence from Mr Tollner in the past that this would cater for the moving population in the Northern Territory and therefore it would be a more accurate representation of the Northern Territory's population. But I take your point; you say, rather than having the most recent statistic, you have an average over a period.

Mr Edwards—Yes. The Northern Territory's population, from memory, has been declining over the last five quarters anyway. The estimate you have would still show, in a sense, a smaller population for the Northern Territory.

Mr MELHAM—If that is the case, if you jiggle with the formula, they could find themselves in trouble down the track, in any event.

Mr Edwards—That is correct.

Mr MELHAM—So that the only way to guarantee the Territory a minimum of two seats from a policy point of view is to legislate accordingly—

Mr Edwards—Yes.

Mr MELHAM—rather than fiddle with it.

Mr Edwards—Yes.

Mr MELHAM—This reminds me of what the Menzies government did in the 1960s, when they decided to have a referendum to include Aboriginal people in the statistics so that they could keep a seat in Western Australia, but at least the people gave it a stamp of approval.

CHAIR—That is quite cynical, even for you, Daryl.

Mr MELHAM—That is a matter of history. That is why there were two referendums in 1967.

Mr Edwards—Again if I could refer the committee to the graph at page 17 of our submission, that graph shows the population growth rates for the Northern Territory and the ACT and the average population growth for the six states combined. On that graph the bold line is the Northern Territory and you can see that the population growth rate for the Northern Territory has been trending down for quite some period of time.

CHAIR—Two other questions, from me, at least: I think Mr Williams made reference to a standard error for different components of the estimate. You said that there were errors associated with the enumeration of internal migration; you said that there were estimates.

Mr Williams—That is right, yes.

CHAIR—It is not summed up in your standard error?

Mr Edwards—No.

CHAIR—How is it different? Is there a compound, is there an error that can be constructed across the different components of the estimate?

Mr Edwards—No. We cannot do that. Technically it cannot be done. The standard error requires a probability sample and, in the case of the overseas migration, the interstate migration, that is not a survey estimate but we do know that there are measurement errors with it.

CHAIR—If we are going to think about anything, it has to be that standard error on the Post Enumeration.

Mr Edwards—Yes, that is correct.

CHAIR—Secondly, somebody adverted earlier on to the impact of this standard error on estimates of the Australian population as a whole. Could you just tell me what the standard error is there?

Mr Edwards—The standard error for the population as a whole is 42,700.

CHAIR—Plus or minus?

Mr Edwards—Yes, so at the 95 per cent confidence level it is 85.4.

CHAIR—We would like to thank you very much. It has been interesting. I am sorry we were so slow to grasp some of the points but these things happen. I am sure that as the committee considers things, it will be back to you, not least for some explanations that will be understandable by ourselves and by the public at large. Thank you very much. We are grateful.

Mr Edwards—Thank you.

Proceedings suspended from 10.40 a.m. to 10.55 a.m.

BECKER, Mr Andrew Kingsley, Australian Electoral Commissioner and Chief Executive Officer, Australian Electoral Commission

MOYES, Mr Andrew David, Assistant Commissioner, Enrolment and Parliamentary Services, Australian Electoral Commission

CHAIR—I welcome the witnesses from the Australian Electoral Commission to today's hearing. The committee has received your submission and it has been authorised for publication. Are there any corrections or amendments that you would like to make to the submission?

Mr Becker—Not that I am aware of, Mr Chairman.

CHAIR—Mr Moyes?

Mr Moyes—No.

CHAIR—Do you wish to make a brief opening statement before questions?

Mr Becker—We are only making a couple of recommendations, should this bill go ahead. One is that it may be advisable not to have transitional provisions retained within the Commonwealth Electoral Act if this bill is successful and the Northern Territory goes back to two seats. The other is that, given the time that it takes for us to conduct a redistribution—and that may well be an outcome—we are suggesting that perhaps the bill itself could deal with the boundaries by reverting to those boundaries that existed prior to the ascertainment of the new position. They were out, I think, at that stage by about five per cent. Whatever tolerances are shown to exist after the next election will then, of course, call into play the next move on how we might redistribute the seats up there.

CHAIR—Could I start by asking you to define how the 'latest statistics of the Commonwealth' are actually gained by the Electoral Commission and what statutory guidelines there are for how they are to be derived?

Mr Becker—The statutory guidelines are in the Commonwealth Electoral Act, running in conjunction with the basic formula set out in the Constitution: that is, we ask for a determination at a particular date, which is the 13-month rule—in this case, for determining whether redistributions are necessary—and then we get the statistics from the Australian Bureau of Statistics and work the calculations out on that.

CHAIR—Your paper says:

The expression ... is not defined by the Constitution.

The act refers to the latest statistics of the Commonwealth, without defining the expression, and we have legal advice that:

... the Representation Act of 1948 and the Statistics Act are intended to ensure that the statistics compiled by the ABS of the number of people of each State ... constitute the 'latest statistics of the Commonwealth' ...

Could we have the legal advice, please, at some stage?

Mr Becker—You can certainly have the guts of that legal advice, Mr Chairman.

Senator ROBERT RAY—You understand that this inquiry and the terms of reference are not into Mr Tollner's bill, don't you?

Mr Becker—We do.

Senator ROBERT RAY—It is not competent for this committee to look at legislative outcomes unless we break into two subcommittees. Is anyone at the table aware of the circumstances of the McKinlay and the McKellar cases and what drove the formula excluding the territories? Do you understand the issues at heart there?

Mr Becker—I do not, Senator.

Mr Moyes—No.

Mr Becker—Mr Moyes does not know the background behind that either.

Senator ROBERT RAY—I suppose the one thing we can take into evidence is that the parliament is not bound constitutionally, as it is in terms of representation, by the states and formulas, is it?

Mr Becker—That is right.

Senator ROBERT RAY—We can legislate as we see appropriate, given that section of the Constitution.

Mr Becker—I think that was section 122 of the Constitution.

Senator ROBERT RAY—Would anyone left in the Electoral Commission with a corporate memory have any knowledge of all the issues that arose out of McKellar and McKinlay?

Mr Becker—I somehow doubt it. I dare say that Colin Hughes will be on top of that but I am not sure that we would have many people left that would remember that. Some of our more research oriented people like Michael Maley might have some idea of what the background to that is. We could certainly try and research it for you, if you would like, Senator.

Senator ROBERT RAY—It only becomes relevant consequential upon any consideration to change the formula for the territories. It has only been hinted at this morning that maybe it would be appropriate to extend it to the states. I have been trying to point out that that, in itself, may have great constitutional difficulties, given the High Court rulings. If you cannot help us this morning, we will move on.

Senator MURRAY—On page 10 of your submission there is a table at paragraph 5.8. If you took the territories as a whole and grouped them together, the quota is 3.91. That means that, grouped as a whole, four seats should be allocated to the territories. I have been considering a number of options today: firstly, to leave things as they are; secondly, to introduce a tolerance level, either for the territories alone or across the board, which is what Senator Ray was just referring to; thirdly, to consider the Tollner bill's proposition; and, fourthly, to determine a territory's allocation as a whole and then allocate within the territories according to the split between them.

On this basis, if the territories were entitled to four seats and the split between them was 2.42 and 1.50, narrowly the Northern Territory would pick up the extra seat. If it was slightly adjusted the other way, narrowly the ACT would pick up a third seat and the Northern Territory would pick up a seat. It is not a proposition I put as a position. It is a question to you as to its fairness or whether there are any merits in the committee considering it more than for the nanosecond in which I have expressed it.

Mr Becker—The fairness is probably the debatable point, bearing in mind that the whole arrangement of the numbers of people in each division is based on population, not on electorate. The construction of the Commonwealth Electoral Act and the way in which it links in with the Constitution cannot give you one vote, one value or anything like that. You could end up with a situation where you have proportionate representation based on population, but not according to the number of electors.

Senator MURRAY—The reason I put it forward in that way is that it extends the same principle already applied to the states. The states are determined not by a formula which relates to population size or average electorate size but by allocation of a numerical number—for House of Representatives people—and then it is divided according to a quota method. You could do the very same thing with the territories: allocate a number and then divide them according to a quota method.

Mr Becker—Yes, you could. That is where the question of rightness or wrongness comes in. That depends on what the committee feels is the appropriate thing to do but that is not something we would necessarily want to comment on. We would be looking at how we would construct things, given that happening. At the moment we have the division of Fraser in the ACT with 112,000 electors in it, whereas in the whole of the Northern Territory they may have 110,000 electors.

Senator MURRAY—Looking again at the states comparison, what they have done is set a floor of five—below which you cannot fall—and then set everything else as determined by distributing those available through the quota method. You could determine a floor for the territories—say, one each, or two each—and then determine everything else by a quota method.

Mr Becker—Yes, you could. If you set it for one each you get the situation we have with the Northern Territory at the moment: you can suddenly halve your representation because there is a small change in the size of the population.

Senator ROBERT RAY—Or double it.

Mr Becker—Or double it. Exactly.

Senator MASON—Mr Becker, in a sense the committee is confronted with two issues and one of the issues is the veracity of the statistics used and whether, when the ABS was looking at the population of the Northern Territory, there were any problems with that: whether Indigenous people were counted correctly; whether seasonal fluctuations were accounted for, et cetera. The second question is an issue of principle: whether perhaps the Northern Territory or other territories should be given a minimum amount greater than one because, in the case of the Northern Territory, it is so large—or some other reason.

You have just said, I think, that you cannot comment on the second point about the matter of principle, or you would prefer not to. On the first issue, about the methodology used by the ABS, do you have any comment on that at all?

Mr Becker—No. Of course, we have no right to comment on it either. The Australian statistician gives us the figures and that is it; we work it out on the figures.

Senator BRANDIS—There is a further point, is there not, that perhaps arises from Senator Mason's first point? Let it be assumed that the statistics are right, but let it also be assumed that they nevertheless disclose an upward trend so that, at the time at which the determination is made, the fact that a territory has fallen just below the quota for the second seat can be seen to be almost an anomaly. If that be the case, does the AEC have a view on whether or not the elimination of the second seat—in circumstances in which extrapolating into the future seems to be sanctioned or mandated only by a statistical anomaly—is a special circumstance?

Mr Becker—No, we do not. Of course, there is no right for us to make those sorts of determinations. This is just a case of the chips lying where they fall.

Senator BRANDIS—That is the whole point of my question. Do they always necessarily lie where they fall where, on a particular throw of the chips, the outcome would produce a result which is so far against the trend as to be anomalous? Do you merely not speak to that question?

Mr Becker—We would not speak to that question. The 13-month rule is there; the stats are there.

Mr DANBY—Do you share Senator Brandis's premise that there is a trend—vis-a-vis the population in the Northern Territory—that this is anomalous? The ABS were here before and showed us projections for population in the Northern Territory versus ERP—the estimated residential population—were much lower than the projections had been in 1996 and 1998.

I am concerned that the trend is consistently under what the projections are for the Northern Territory. As Senator Ray pointed out, in the previous election there may have been two seats given to the Northern Territory on the basis of population that did not achieve those projections. I question the premise on which Senator Brandis based that question to you. Do you have any comments?

Mr Becker—No, because at that stage we are not looking at the projection. We are just saying that at that time those figures—the 13-month—say that this is going to be the number of seats

that a territory or state is entitled to. That is the basis which triggers the redistribution. Projections—whether it is trending up or trending down or anything like that—are really not the issue for us. It is a big issue for the Northern Territory but it is not a big issue for us.

Senator BRANDIS—I suppose, Mr Becker, it comes down to this: is the exercise exclusively a matter of arithmetic? If the difference between the first seat and the second seat was one person, a purist would say, ‘It makes no difference because this is purely a matter of arithmetic.’ The question we have to address is: given that it is first and foremost a matter of deriving quotas—and, therefore, a matter of arithmetic—can the purity of that exercise, legitimately or in a principal way, be influenced by other considerations as well?

Mr Becker—I think it can be influenced by other considerations but not by the way in which the act is constructed at the moment. I think it would be up to the parliament to make that determination.

Senator BRANDIS—I understand that.

Mr Becker—Even if it is one person, or a fraction of a person, if that is the way it falls, that is the way it would fall.

Senator MASON—The formula works.

Mr Becker—We would obviously, I imagine, once we have completed the redistribution, make some comment about that.

Senator BRANDIS—I understand that, of course. But the observation I am putting to you and inviting you to comment on is this: it seems to me the question of principle for this committee in these circumstances is to say, ‘Is this purely an exercise? Is a policy judgment about the way the act should be worded purely the statutory expression of the way arithmetic works on population statistics or can the parliament, in adopting a principal position, have regard to other data than purely arithmetical data?’

Mr Becker—I am sure the parliament can; we have not put our minds to how you would go about that.

Senator ROBERT RAY—Mr Becker, you can with the territories, I agree; you cannot with the states, though, can you? Constitutionally you are bound to accept the formula put in the Constitution. What Senator Brandis is really putting to you—and I do not mean to interrupt him while he is here on a visitor’s visa—is that you can have flexibility with the territories. I put it to you, Senator Brandis, that you cannot with the states.

Senator BRANDIS—No.

Senator ROBERT RAY—You then have to resolve why you can have flexibility for the territories and not with the states. I think the answer is: ‘Our forefathers gave us inflexibility with the states, why should we have flexibility with the territories?’ Then we can discuss that.

Senator BRANDIS—I think that is right, Senator Ray, but if I can rejoin—with your indulgence, Mr Chair.

CHAIR—Please.

Senator BRANDIS—If the ultimate conclusion of this committee were to be that notwithstanding the derived quota there should be the second seat for the Northern Territory mandated by the act, those who criticise that view would say, ‘You are being unprincipled. You are making an ad hominem exception for the Northern Territory.’

The question I am struggling with is: is it as simple as that—in particular having regard to the consideration Senator Ray just raised, which means the states and the territories are going to be treated differently anyway—or, is there a principal basis for us to say, ‘At least in regard to the territories the requirement of a statutory minimum number of seats is good policy’? I am not asking you to comment on that. You have made it clear that you do not feel able to on behalf of the AEC, but that is the way I would formulate the questions before us.

Mr Becker—I think it goes back to what I was saying earlier, about the fact that we calculate the entitlement on the basis of population and not on the number of electors. One could argue, of course, that if 50,000 people are voting for one member of the Northern Territory, then 50,000 in Canberra ought to be voting for one person in the ACT. Of course that is patently not the case. Bob McMullan, for example, has 112,000 in his electorate. There are 110,000 Northern Territory electors. We have one electorate which is bigger than the sum of, in effect, two prospective seats, and therein lies our basic problem. We cannot get that one vote, one value system with our current constitutional set-up.

Senator ROBERT RAY—Mr Becker, one of the other propositions put forward, which I think is more principled than the Tollner bill, as backed by Warren Snowdon, is rounding it out over two periods—in other words, jumping from two seats to one would, for continuity reasons, be regarded as exceptionally awkward and unfair. The proposition put forward is, ‘On this occasion you fall below. You should only lose the seat if you fall below in two successive reporting periods,’ and a rolling six-year cycle one way or the other. I do not know what happens when you fall under one time and go over the next. Do you have any comment on that? How easy do you think that would be to draft?

Mr Becker—That would take care of some of the trending that we may have difficulty with now. It depends on the attitudes of the parliament of the day. If you look at when the states have their redistributions, you will see that some have them after every second election, some after every election, and they just redistribute the state. I know in South Australia they do it after every election, which I think is probably a little too frequently. Every second time would probably be the ideal.

In terms of letting things roll for a while, you do have a precedent within the state context and of course you would have the opportunity to say, ‘It isn’t a fluke that we’ve got this particular arrangement,’ because if it is repeated the next time, it ceases to be a fluke. That is really about all I can say about that. It might be a more acceptable scheme of things than perhaps going up and down, on what might appear to be a whim.

CHAIR—From the perspective of the commission, does the small number of seats held by the ACT and the Northern Territory, and the possibility of quite significant disruptions and movements, pose any sort of policy problem in your view?

Mr Becker—It only gives us a workload problem.

CHAIR—In the larger perspective for a government, for a parliament, does that pose problems?

Mr Becker—No, it does not; not that we are aware of. Certainly, if there were to be problems that came out of the ACT, they might be reflected in some reports we would get out of New South Wales, because that is where they are managed. But outside of that, I cannot think of any.

Mr Moyes—I do not think that there would be any impact on the AEC, other than the normal administration.

Senator ROBERT RAY—I suppose you are not going to have any co-location problems up there after this determination.

Mr Becker—They were always together and they will remain together, the same as they are here.

Senator ROBERT RAY—Yes, but you will not have to split them.

Mr Becker—We did not split them last time.

CHAIR—Can you outline for us why the territories should not have a similar guarantee, higher than one, as is guaranteed to the states, in principle?

Senator ROBERT RAY—Just go back a hundred years and put yourself with the convention forefathers and give us the answer.

Mr Becker—I can see that, when you have a representation of two and you suddenly cut it in half, you have created a real difficulty for the people on the receiving end of that but, frankly, I do not have any view about how you would go about that. You could average them, as Senator Murray is suggesting, or you could run it over a couple of periods, as Senator Ray is suggesting, which would give you the trend, which might justify the existence of that particular arrangement. It might have a nice piece of philosophy behind it, in terms of the warmth and fuzziness of saying, 'We don't want to cut the representation of the Northern Territory in half,' but it is not an exactly an absolutist type arrangement which we like to believe the electoral systems are based upon, because we do not want too much room for subjectivity.

Mr MELHAM—They cut the ACT from three to two and there was not a word said. There were a few words but it was accepted, and in a subsequent determination it was not picked up.

Senator ROBERT RAY—Technically, you will increase the power of the Northern Territory representation by cutting it in half, because at the moment they balance each other out, one vote each. Now you will actually give them a vote.

Senator MASON—That is an interesting theory.

Mr Becker—But again you are on the situation of the demographic profile of the respective states and territories. We have this situation in Canberra where most of our people happen to be of voting age.

Senator ROBERT RAY—Could I ask you about qualification for Western Australia this time? I am sure the raw figures are here but they were 14.5049 above quota. How many populations would that put them above?

Mr Becker—It is only a few hundred, I think. Sorry, Senator, we do not have the actual figure but it was less than a thousand.

Senator ROBERT RAY—Less than a thousand. They retained a seat.

Mr Becker—Yes.

CHAIR—Can I just pursue the issue of the formula. You have no input into the formula for the estimates? That is given to you by the ABS? The determination of the quota and how it is estimated is totally in the hands of the ABS?

Mr Becker—We do the determination but of course we use their stats and they check our figures and we check theirs, and so on.

CHAIR—The method of estimating the population has changed over the years?

Mr Becker—I could not answer that. You would have to ask the ABS about that.

CHAIR—It has changed. You have not sought to put into or codify those methods?

Mr Becker—No.

CHAIR—So as far as you are concerned, it is a black box. They give it to you and you run on it. You do not make any judgments. You just say, 'They're the numbers. That's it.'

Mr Becker—That is right. Mind you, the statistician is on the commission so we are not about to vary his figures.

CHAIR—No, I am not talking about commission qua commission. So you don't see it as your role to comment, involve yourself in or seek to statutorily define how they estimate for the purpose of the determination of—

Senator ROBERT RAY—Has any minister or anyone else approached the commission in the last three years prior to this most recent determination, asking you to look at the formula or change—

Mr Becker—No, they have not, Senator.

CHAIR—Has the commission ever looked at the formula or has this always been the practice?

Mr Becker—Not in my time—we have not looked at the formula. The formula is pretty straightforward.

Mr MELHAM—It has been pretty well accepted, hasn't it?

Mr Becker—For a long while, yes. We have had no cause to look at that. Of course we have had those relatively narrow margins before but I do not know that that has necessarily caused any angst, other than among the affected members.

CHAIR—Has there ever been as narrow a margin before, as the one that hit the Northern Territory?

Mr Becker—I am not aware of one being that close, no.

Mr Moyes—I am not sure of the quantum of it but the ACT, when it went from three to two, I think was also very close. I cannot compare the quanta. I do not recall what it actually was.

CHAIR—Yes, but it seemed to me to be significantly larger than this. Could you just have a look at your table and tell me, please, because there are no numbers there.

Mr Moyes—It was quite close.

Mr Becker—It is a matter of what the percentage represents in whatever the quota was at the time.

CHAIR—It is 5.005.

Senator ROBERT RAY—Yes, but 0.003 is the difference. The Northern Territory is closer.

Mr Becker—It is closer.

CHAIR—There seems to be a systematic variation between the states and the territories. The territories are closer to losing seats than the states.

Mr Becker—When you look at those gaps, yes. I think that is more accident than by design.

CHAIR—I am sure it is not design!

Mr Becker—I do not think anything can be read into it.

CHAIR—We would like those opinions about the acceptability of the way of calculating the formula.

Mr Becker—Certainly.

Mr Moyes—In relation to the earlier comments about the McKinlay case, if the committee would like it, we could put together a submission on that on the basis of the questions you asked.

CHAIR—Please.

Senator ROBERT RAY—It is essentially why we are bound to do it in the way we have, which is what came out of those two cases. The act was amended, I think, on two occasions. You might add why it does not apply to the territories.

Mr Becker—Sure.

Senator MASON—Mr Becker, in relation to the process outlined in your submission to arrive at how many House of Representatives members there are in each state—the population and then dividing that by the quota—is that approach adopted internationally; for example, in Britain or the United States, where there are lower house members based upon population? Is the Australian process adopted universally or are there different approaches internationally?

Mr Becker—In the United States it varies from state to state dramatically. Bear in mind that that is a state based system, so the 2000-odd electoral administrations run the federal elections and everything else that goes with it.

Senator MASON—Is that even for determining the size of House of Representatives seats?

Mr Becker—Not for the House of Representatives seats; that is the federal Electoral Commission. To my knowledge, that is just based on population estimates too.

Senator ROBERT RAY—That follows a census every 10 years, doesn't it?

Mr Becker—The census works it out, does it?

Senator ROBERT RAY—Yes, I think so.

Mr Becker—That is what we extrapolate in our case too.

Senator MASON—Is the process of arriving at the quota and a division of the population by the quota, et cetera, the same here as it is in the United States or Great Britain?

Mr Becker—It is similar to the United States, based on a quota across the whole of the country. I do not know what the UK situation is now that the new commission has been established. Bearing in mind that they still have stuff that goes back to the Magna Carta applying in the UK, I would not be too confident in making a prediction about exactly what it is that they have going at the moment.

Senator MASON—I was wondering whether both the process that we adopt here and the process adopted by the ABS—the formula to take account of the vicissitudes that we discussed this morning—are the same as the United States or Great Britain. I thought that perhaps the committee might look at different approaches.

Mr Becker—We can go and have a look for you, if you like, to see just what the score is there.

Senator ROBERT RAY—The biggest difference here is that, in doing the calculation, the territories are excluded from the formula. It is the total population of Australian states.

Senator MASON—Yes.

Senator ROBERT RAY—It is then divided, as you know, by double the size of the House of Representatives to establish the quota, but the actual territory numbers are not put in the total population.

Senator MASON—Yes.

Senator ROBERT RAY—I do not know what distortions that brings; not much, I would think.

CHAIR—If the parliament decided to guarantee two seats to the Northern Territory and the ACT, your proposal addresses the issue of redivision or redistribution. We would not have to go through that process if it were legislated appropriately.

Mr Becker—If the election were to be held late next year, to be sure that we could get two seats back into the Northern Territory, those boundaries would really have to be determined by the parliament and not by the redistribution commission. That is really what we are saying. It would take us probably nine months to go through the whole process again.

Senator ROBERT RAY—What if the parliament were to carry some sort of interim provisions in it to foreshorten the normal redistribution process and then sunset those out? It is not actually a hard job to do the Northern Territory, compared with doing a big state, is it?

Mr Moyes—There are transitional things that could be put in place. I do not know how it would be written but the effect would be to bypass the determination that was made and revert to the boundaries that existed before that determination.

Senator ROBERT RAY—It is achievable?

Mr Moyes—There are ways and means of doing that.

Mr Becker—In the redistribution context, with calling for submissions and so on, you could probably truncate that in sunset legislation.

Mr Moyes—There are many redistribution provisions that can cater for that sort of situation.

CHAIR—Thank you very much.

[11.33 a.m.]

MACKERRAS, Associate Professor Malcolm Hugh, (Private capacity)

CHAIR—I welcome Professor Malcolm Mackerras to today's hearing. The committee has received your submission and authorised its publication. Are there any corrections or amendments you would like to make to the submission? There has already been an amendment put in, I think, relating to the issue of when—

Prof. Mackerras—Not really. I intend to add some further information for the benefit of the committee.

CHAIR—Would you like to make a brief opening statement before questions?

Prof. Mackerras—In the year 1990—and I have a very clear memory of this—Mr Ian Wilson, the then member for Sturt, rang me and said something like, 'Look, I'm a member of the Electoral Matters Committee and we are currently considering whether to bring the territories into line with the states in relation to the certification and determination of the numbers of members of the House of Representatives.' I said, 'Well, that's interesting,' and he then described what was proposed.

He then said, 'The reason why we're doing this is that we would like to take the party politics out of the determination of numbers of members of the House of Representatives from the territories'—the Constitution permits party politics, as we know, because section 24 does not actually apply to the territories—'and, because of that, we would like to take the party politics out of this entirely and have a permanent formula which will be as permanent as section 24 of the Constitution, but will adopt the principles of section 24 of the Constitution. I've described this to you. What do you think?' I then said, 'That's interesting. I think that's an excellent idea.' That is my first personal story.

My second personal story is that in November last year I was handed a ballot paper and invited to number from 1 to 7 in order of my preference. I thought to myself, at the time, 'The number of electors enrolled is 112,225 who were handed that ballot paper. If I lived in the division of Solomon, I would be handed a ballot paper that would look the same but the number of electors would be 53,945 entitled to vote today. Therefore, I am green with envy of the electors of Solomon; they have a vote value 2.1 times my vote value'.

Ms PANOPOULOS—You could always move there.

Prof. Mackerras—I thought that. Yet the division of Solomon is smaller in area than the division of Fraser in which I am an elector and was handed that particular ballot paper. But then I thought to myself, 'I really shouldn't be green with envy'—I do not approve of the politics of envy, as we all know—'because, after all, I gave assent to this very formula that produced this result when Ian Wilson rang me all those years ago. They have a sensible formula; the chips fall where they are: the division of Solomon is that and the division of Fraser is the other. They are at the extremities of the table.'

But then I thought, ‘It is possible that what will happen to the Northern Territory is what has already happened to the Australian Capital Territory—that is, the Australian Capital Territory had two divisions in 1993, three in 1996 and dropped back to two in 1998. It’s possible what happened to the ACT will happen in the Northern Territory. What attitude should I take if that happens?’ I thought, ‘If the ACT can cop it sweet, so should the Northern Territory, were that to occur. But, if this happens, it should be explained to people how incredibly generous the parliament has been to the Northern Territory in this matter.’ That is not to say that I envy the electorate of Solomon in this way—that is unreasonable—but they should know how incredibly generous the parliament has been to the Northern Territory in this whole matter.

Let me describe to you how incredibly generous the parliament has been. I begin with the constitutional provisions, which I have set out in my first letter. I want to compare and contrast the constitutional provisions of the United States Constitution and the Australian Constitution. If you want all the details on the US position, that is the Bible; it tells you all about it, but let me explain the principle of it.

The American founding fathers decided that the number of members of the House of Representatives should be proportional to population. They stated that as a principle, but they did not go on to detail the formula that should be involved; they simply stated the principle that proportional representation by population is the basis upon which you distribute the numbers. In 1923, under the Permanent Apportionment Act, Congress enacted the detailed formula which is now there and which has continued to operate ever since then, producing 435 congressional districts determined on a population basis according to the formula as set out in the Permanent Apportionment Act 1923 and commonly known as the Hamilton method. I do not understand all the details of it. It has been explained to me and I do not quite understand why the Hamilton method was chosen but it was.

Contrast that with our founding fathers. Our founding fathers, back in 1898, had a problem persuading the peoples of the colonies to vote yes. Certain provisions of the Constitution are explained by the need to get New South Wales to vote yes—I will not go into those at the moment—and other provisions are explained by the need to get Western Australia and Tasmania to vote yes. What they did was put in a detailed formula, which the American founding fathers had not done. The detailed formula is in section 24 of the Constitution. It is commonly called the ‘largest remainder’ formula.

Anyone who knows anything about statistics knows that if you are distributing numbers proportionately—whether it be party list systems of proportional representation where you are distributing party numbers, or whether it be seats in the House of Representatives—essentially if you want to favour the biggest number you choose the d’Hondt formula. If you want to favour the smallest number you choose the largest remainder formula.

Our section 24 is the largest remainder formula and that was put in in order to favour the smallest states at the time. But, of course, the founding fathers went one better and also guaranteed the minimum of five. When the parliament in 1991 enacted the present divisions, they did so for the purpose of having a permanent formula which would be, in principle, exactly the same as the constitutional formula of section 24.

My point about the Northern Territory being so heavily favoured is that the largest remainder formula does favour the smallest number; everybody knows that. It is a simple fact. That is why the Northern Territory was so extraordinarily generously treated on the last occasion. Why have I, therefore, put in that other handwritten table which I submitted last Friday? The reason is to explain to people that if you are really going to go in for this idea of having a minimum of five for Tasmania—because the Constitution says so—and you decide arbitrarily to have a minimum of two for the Northern Territory, for no particular reason except that you want to save the situation of two members having to fight for one seat, it seems to me what you should do is establish a small jurisdictions quota and formula—which is what I have done in that table.

I have taken the statistics of the three smallest jurisdictions by population and shown how the application of the largest remainder formula produces a situation where you can argue quite strongly that the ACT has a better claim to a third seat than the Northern Territory has to a second seat. That does not appear to be the case in the certificate but that is my reason for putting that in. I argue, therefore, that, given the extraordinary generosity of this parliament to the Northern Territory, I really cannot see any basis at all for putting in some arbitrary provision purely to prevent a situation where a member of one party and another party have to face off for the single seat that is left.

I have deliberately, therefore, in my submission pointed out that, in the United States in 1980, the state of South Dakota lost a seat. It went from two to one. A Democrat, Tom Daschle, faced off a Republican, Clint Roberts. I should have mentioned to you that in 1992 the same thing happened in Montana: a Democrat and a Republican congressman faced off and it created a 'oncer' Republican in each case. Clint Roberts in South Dakota in the first case and the other in Montana.

I cannot see any reason why, if the Americans can do it that way, we cannot do that also. I cannot see any reason why we cannot and must not create a oncer member of parliament purely because he does not want to be a oncer. Therefore, I argue that as a matter of principle this proposal should be resisted. I think that is enough from me at the moment.

CHAIR—Thank you very much, Professor Mackerras. You mentioned the Hamilton formula.

Prof. Mackerras—Yes.

CHAIR—How complex is it?

Prof. Mackerras—It is rather complex. It has to do with the fact that the Constitution guarantees one seat for every state.

Senator MASON—At least.

Prof. Mackerras—In order to produce the maximum proportionality by population distributions within 435 congressional districts—and bearing in mind that one seat is guaranteed for what amounts to about a dozen states—they adopted this Hamilton formula, named after Alexander Hamilton. I do not really understand it. All I know is it is in the Permanent Apportionment Act of 1923.

CHAIR—It is a lot more complex than ours.

Prof. Mackerras—Yes, it is. It is a complex formula. It is not a largest remainder formula either but I do not understand it.

CHAIR—Why do you say that the Commonwealth has been extraordinarily generous to the Northern Territory?

Prof. Mackerras—The largest remainder formula is the most generous possible way to treat the smallest number.

CHAIR—Does that apply also to the ACT?

Prof. Mackerras—The ACT is the second smallest.

CHAIR—We have been very generous to them, too.

Prof. Mackerras—You are right. When I say it is very generous to the smallest number, you can actually go up the rank. The d'Hondt formula goes in the opposite direction. With the d'Hondt formula normally the biggest party gets the benefit but sometimes it works out that the second biggest does. In 1996 the ACT was very lucky to have three seats. The three electoral enrolments in 1996 in the ACT were each lower than the five for Tasmania at that election, just as the two in the Northern Territory—

CHAIR—But in 2001 it did not benefit them; rather, it disbenefited them.

Prof. Mackerras—The reason for that being that the formula lost a seat but I am not advocating a formula to give the ACT seats—

CHAIR—I am just probing how generous we were to the smaller—

Prof. Mackerras—for the simple reason that if you look at each of the determinations, you will see the ACT just got the third seat in for the 1996 election, just lost it, and each further thing shows a very further slight decline. The reason for that is that although Canberra is growing, the growth of Canberra is taking place mainly in New South Wales. I am not, therefore, advocating that the ACT be given a third seat; I am simply arguing that really, strictly speaking, if you are going to start saying the Northern Territory must have two, it seems to me you should logically say that the ACT should have three.

Senator MURRAY—Mr Mackerras, the AEC has given us two quoted calculations for the ACT and the Northern Territory: for the ACT they say 2.4209 and the Northern Territory 1.4978. Combine them and they give you 3.9187.

Prof. Mackerras—Yes.

Senator MURRAY—If you were to view the territories as just one block, how many seats do you think that should throw up?

Prof. Mackerras—I have not done the calculations but I suppose it would give two for each. I do not actually know. I cannot think of any reason in logic why you would do that.

Senator ROBERT RAY—Everyone has got to be a winner; that is the rule.

Prof. Mackerras—Sorry?

Senator ROBERT RAY—Everyone has got to be a winner. That is the logic.

Prof. Mackerras—When I go back to my office I will do the calculation and I suppose it will produce two for each.

Senator MURRAY—It seems to me that you determine that the number of seats will be either determined for the territories as for the states as a group and then you allocate them accordingly, whether four or five, or you decide that the cut-off point has to be above the actual quota. In other words, if you had more than 4.001 for the territory as a whole, there would be four candidates. If you had less, there would be three. If you are going to take the view that how the chips fall is the issue, do you hold to the belief that because the territories as a whole, taking the two together, fall below four points as a quota, there should only be three seats?

Prof. Mackerras—The Northern Territory and the ACT are completely different jurisdictions. They each have a completely separate government, the same as New South Wales does from Victoria. I really cannot see why you should say these two territories have something in common that others do not.

Senator MURRAY—Because it is at the discretion of the parliament. On what principle should you base that discretion? The states at present have a certain number determined by the Constitution, whether four or five, and you then distribute that number through the states. Taking the states as a whole, you then determine the individual allocation to the states through the constitutional mechanism. If you are going to adopt that same principle for the territories, you might consider the route I have just asked you.

Prof. Mackerras—It is not a certain number, anyway. It is, as nearly as practicable, 144—which is twice the number of senators for the states.

Senator MURRAY—Twice the size of the Senate, so you have 144—

Prof. Mackerras—As nearly as practicable, 144. It does not state that it shall be 144.

Senator MURRAY—It can be any figure you like, you know that, according to the calculation but, in the end, you have to arrive at a gross figure for the states and then allocate them accordingly. You do not start by saying, ‘New South Wales will have 50, now we will work out the rest.’ You start by saying, ‘There will be a figure of 144 and this will be the allocation through the states, according to the quota determination.’

Prof. Mackerras—The number is not necessarily 144.

Senator MURRAY—Exactly. It can be a figure higher or lower, as long as a nexus is maintained. You do not understand the question, do you?

Prof. Mackerras—I do not really understand your proposition at all. I understood Ian Wilson's proposition when he rang me that day and sprang this idea on me. It seemed to me a perfectly sensible proposition to take party politics out of it and have a formula that makes the states and the territories exactly the same, according to the principles of the Constitution. This involves the largest remainders formula. That seems to be a principled way of doing things that could and should be permanent.

Senator MURRAY—If you do not understand it, I will not pursue it further.

Prof. Mackerras—I am sorry but I really do not understand it.

Senator MURRAY—That is all right.

Prof. Mackerras—I am sorry to be so stupid but I am afraid I just do not understand the logic of it.

Mr MELHAM—What you are saying, Mr Mackerras, is that there should not be a linkage with the Northern Territory and the ACT for the purposes of creating seats for the federal parliament; they are separate and distinct.

Prof. Mackerras—There should be no linkage at all.

CHAIR—There is a linkage. There is one seat guaranteed to both.

Prof. Mackerras—The formula in the United States is based upon one seat guaranteed under the Constitution for every state and that linkage is there.

Mr MELHAM—That is different.

Senator MASON—Professor, just to make this clear, you are not advocating a change to what you call the largest remainder formula being used in the context of territories, are you?

Prof. Mackerras—No, I am not. I am advocating the retention of the present division of the Electoral Act.

Senator MASON—You mentioned before that as a matter of principle you were against the Tollner bill.

Prof. Mackerras—Yes.

Senator MASON—I understand that but you were good enough to be with the committee this morning as the Australian Bureau of Statistics was examined. Do you see, however, on the question of the formula used to determine the population within various jurisdictions, that there could be an improvement to that process or that formula, or can't you comment on that?

Prof. Mackerras—I am not a good enough statistician to comment. I am an ‘any schoolboy’ kind of statistician, if you like. I listened to them but it seemed to me that the letters to the editor of the *Northern Territory Times*, which I have here somewhere, were persuasive. What they said this morning persuaded me that the way they do it at the moment is pretty excellent. For what it is worth, I had a conversation with them after they finished. I said that one of the things I found interesting about this was that in the United States, following the year 2000 census, there was a great long argument about this very kind of thing, this very question of undercounting. It went all the way through the Supreme Court and so forth. One state was generously treated by the way it now is—and I cannot remember which state it was; I think it was North Carolina—and another one was meanly treated and I think it was Montana. There was a great argument. I think I am correct to say that Montana disputed the formula that was used but the Supreme Court eventually decided that the formula was correct. The result was that North Carolina got the extra seat in a situation where 435 is the absolute limit.

Senator MASON—But, professor, you would say that the process adopted by the ABS is sufficiently sophisticated to justify confidence in the process.

Prof. Mackerras—Yes, I would say that. I would certainly say that and I see no reason why the present formula should not be given the kind of permanence that a semi-constitutional provision justifies.

Senator BRANDIS—Professor Mackerras, I think you were in the room when I was asking some questions of Mr Becker and I just wanted to invite your observations on what I put to him. Can I summarise it this way: it seems to me the case against the Tollner bill is as simple as could possibly be. You say this is purely an exercise in arithmetic—let the chips fall where they may, that is really the end of the inquiry and that is the most perfectly understandable case that you could make.

Prof. Mackerras—Yes.

Senator BRANDIS—What interests me is whether, as a matter of good policy, it is appropriate for the parliament to have regard to considerations other than the purely mathematical.

In particular, having regard to the fact that elsewhere in the Commonwealth Electoral Act the Election Commission is enjoined to have regard to population trends, whether it is appropriate in this case that there be a formula—and I cannot remember whether it was Senator Ray or Senator Murray who suggested this—which takes a rolling average of two consecutive cycles so that one does not merely have a snapshot at one point in time for the purposes of section 24 of the Constitution, but has regard also to the trend. That, it seems to me, is a less pure way of making the determination that is required by section 24. I wonder whether it might not nevertheless be good policy. I do have an open mind on this but can I invite your comments?

Prof. Mackerras—I would say that that would be unconstitutional. So far as you tried to make it apply to the states, it would be unconstitutional.

Senator BRANDIS—Let’s come now to a territory.

Prof. Mackerras—What would happen would be that—just as when the Commonwealth in 1963 amended the act to say that any remainder gives you an extra seat and that was eventually found to be unconstitutional by the High Court in the McKinlay case—you could not do this for the states. I suppose you are right, you could do it for the territories. If you did that, you would then be treating the states and the territories inconsistently, when the purpose of the present provision was to make the territories and the states exactly consistent with each other and consistent with the requirements of section 24 as they relate to the states.

Senator BRANDIS—There is a difference of treatment, even if it is only a theoretical one, because the states have a minimum of five seats.

CHAIR—It is a real one, actually.

Prof. Mackerras—The states are not saved from losing a seat. South Australia is suffering the loss of a seat right at this very moment.

CHAIR—Tasmania.

Prof. Mackerras—Tasmania is, yes.

Senator BRANDIS—Tasmania is saved from going from five to four, as I understand the position at the moment. With respect, sir, what you just said is not right.

Prof. Mackerras—Tasmania is saved from going from five to four because the founding fathers put in a provision that said, ‘Notwithstanding anything in this section, five members at least should be chosen in each individual state.’

Senator BRANDIS—I understand that but for that reason only—and there may be others as well—it is not, with respect, right to say that the treatment of the states and the territories is identical.

Prof. Mackerras—Apart from the minimum of five, the treatment is identical.

Senator BRANDIS—That is a material difference, I submit to you.

Prof. Mackerras—Which is caused by the fact that the Constitution reads that way. There is no justification for inserting some equivalent constitutional provision, in effect, that the territories shall have not less than two purely because the founding fathers had the need to put in that provision in relation to the states because of the need to get yes votes at the referendum to create the Commonwealth of Australia.

Senator BRANDIS—I do not think there is any point in going behind the corporate veil of the founding fathers and speculating on their motives, for this exercise anyway. What strikes me, Professor Mackerras, is that when it is such a close outcome—a matter of a couple of hundred electors—surely we should have regard to the sheer randomness of that and surely it is appropriate for us to have a legislative policy underlining the act that has regard to, and corrects for, randomness. In other areas of statistics, like economic statistics, one corrects for the randomness of the sample.

Senator MASON—For example, for a recession you need two successive quarters or whatever.

Senator BRANDIS—I will be honest with you, Professor Mackerras, that is what I am really struck by. If the figures show that the Northern Territory was nowhere near getting a second seat, this would not be of concern. However, when it is so close I do not think that the randomness of the date on which the sample was taken and the peculiarities of the selection of that date are something which we should disregard. As Senator Mason says in relation to economic statistics, if we can build into the act a formula which corrects for random or seasonal anomaly, surely that is good policy.

Prof. Mackerras—I am afraid we are going to have to agree to disagree.

Senator BRANDIS—I am pressing you, Professor Mackerras. I put a proposition to you. What is wrong with it?

Senator ROBERT RAY—Yes, load it up next time!

Prof. Mackerras—What's wrong with the idea?

Senator BRANDIS—Yes, what is wrong with the idea of having a legislative formula which allows for flattening out of what might be seen to be random or anomalous statistical—

Prof. Mackerras—The Constitution does not allow you to do that to the states and, therefore, you should not do it for the territories.

Senator BRANDIS—Is that your ground of objection to the proposition I put to you?

Prof. Mackerras—Yes.

Senator ROBERT RAY—Wouldn't Senator Brandis's suggestion have a lot more credibility—not that I am saying he lacks credibility—if just one minister or one politician had raised this in the last 12 years when there wasn't a problem?

Prof. Mackerras—In relation to the quota, section 24 says:

And shall, until the parliament otherwise provides, be determined whenever necessary in the following manner—

Note the words 'until the parliament otherwise provides'. Relying on those words, the parliament in 1964 said that a remainder greater than one half of the quota be replaced by any remainder. They did that. That is why the number of members of the House of Representatives increased in the 1969 election compared with the 1966 election, but the court found that that was unconstitutional.

I followed that very closely, by the way, because that suggestion was mine. If you are surprised at that, I was a professional officer of the Liberal Party secretariat from 1960 to 1965, and was handed this redistribution problem that arose under the Menzies government in 1962; a redistribution which the parliament rejected, because the Country Party would not buy it. I was

handed this problem and my solution was this very solution. This was actually my amendment, this 'any remainder'. If you do not believe me, I suggest you consult Ian Hancock's *The Federal Organisation of the Liberal Party in Australia*, look up the name Mackerras in the index and you will see that description.

When you start doing that sort of thing—which they did, at my suggestion, because of the politics of the day—and find several years later that the court strikes you down, it seems to me that you are sent a warning signal that you do not make amendments of this kind, which totally lack principle, merely because a problem might arise from a redistribution that you do not want. That is essentially my reason for taking this position.

Senator BRANDIS—Professor Mackerras, that is the whole point of what I am putting to you. Is it conceptually right to say that the Tollner bill, let us say, lacks principle when the effect of it may be merely to correct for a seasonal anomaly? Correcting for a seasonal anomaly in statistics is not an unprincipled thing to do. It is proper statistical practice.

Prof. Mackerras—Within the context of a formula that is already extremely generous to the Northern Territory.

CHAIR—You keep on saying that but it does not actually work.

Senator ROBERT RAY—But don't you legislate—according to Senator Brandis—on a statistical anomaly before it happens and not after? This is the whole point and that was the problem in the United States. Montana took this after it was adversely affected whereas, if the principle stands, you deal with it in advance.

Senator BRANDIS—That may be so, Senator Ray, but then again often in the real world it is when a particular case is thrown up that puts the problem into sharp relief, as this does.

Senator ROBERT RAY—Then you do not get the colleagues to adjudicate on it when they have a personal interest, as I do in this. I am not the right one to adjudicate when one of my colleagues is badly affected. You try to do it in advance.

Senator BRANDIS—I agree with that in principle. I am merely saying that this has been put into sharp relief by the particular circumstances of this case. We have the reference and we have to deal with it.

Prof. Mackerras—Yes. The two members do not like the idea of facing up against each other, just as the two members for South Dakota did not want to face up against each other in 1982 and the two members for Montana did not want to face up against each other in 1992.

Senator ROBERT RAY—Mr Chair, can I correct the record: a couple of members have referred to 'my' suggestion for a rolling average. I did at the time say, 'Some people have suggested a rolling average'. I may indeed adopt that as a proposal but I have not yet.

Senator MURRAY—I thought it was quite a clever suggestion.

Prof. Mackerras—Well, that obviously did not come from me! The member for Individual wants to talk to me.

Ms PANOPOULOS—Professor, of course I would like to speak with you. I particularly wanted to speak to you after a very interesting article you wrote in the *Canberra Times* a couple of years ago but perhaps we will speak about that another time. What I particularly want to talk about today was that I find fascinating this inflexible attitude—as it appears to me, being a very flexible and broadminded individual—from your oral and written submissions; that there could not possibly be any reason at all to change the current system, other than in your opinion—and I would say rather cynically—for political reasons in that two politicians do not want to face off each other.

Prof. Mackerras—Yes.

Ms PANOPOULOS—Do you not accept that there could be any other reason or partial policy reason for changes?

Prof. Mackerras—Not really. I am accustomed to politicians developing a wish list of one kind or another and then being in favour of broad reform in order to satisfy the wish list.

Ms PANOPOULOS—I am a cynic, myself, but some of us do like competitive elections. Perhaps there are other policy reasons that exist, or that could emerge regarding the background to the Tollner bill. You also talked about your very direct role in the current formula.

Prof. Mackerras—Not very direct. A phone call was put to me. If you check with Ian Wilson you will no doubt get his memory of it. But, yes, it is true that Ian Wilson did think it was desirable to get experts—a little like me; I do not know who else he consulted—just to know about it and get approval for it.

Ms PANOPOULOS—You have labelled this as sensible.

Prof. Mackerras—Yes.

Ms PANOPOULOS—It was a sensible formula at the time.

Prof. Mackerras—Yes.

Ms PANOPOULOS—Others who may be as cynical as you, looking at you from the outside, may say that because of your direct involvement—your advice as a professional being sought and having played your part in history with this perfectly sensible formula—you would not want it changed in any way. That is what some who are equally cynical might say.

Prof. Mackerras—I actually forgot about it until this recent thing arose.

Ms PANOPOULOS—The other issue was that you have made all these statements trying to link the territories, or trying to put the territories on the same position as the states.

Prof. Mackerras—Yes.

Ms PANOPOULOS—Acknowledging that there is not a guarantee of a certain number of lower house seats.

Prof. Mackerras—Yes.

Ms PANOPOULOS—Which I put to you is a pretty huge and significant point of difference.

Prof. Mackerras—Do you mean the lack of a guarantee of a minimum number for territories?

Ms PANOPOULOS—Yes.

Prof. Mackerras—You think so but I do not.

Ms PANOPOULOS—It appears that you want to develop some sort of consistency in the treatment of the territories and the states.

Prof. Mackerras—Yes.

Ms PANOPOULOS—Would the next logical step in that consistency be to perhaps support statehood for the Northern Territory?

Prof. Mackerras—It is up to the people of the Northern Territory to make the decision and the process for the Northern Territory to decide whether or not to become a state.

Ms PANOPOULOS—I am not talking about the process. I am talking about principles. You talked about the principle of having consistency with regard to the quota calculation between the territories and the states, and developing a more streamlined and consistent application.

Prof. Mackerras—Yes.

Ms PANOPOULOS—Would not the next step then be, according to the principles as you have enunciated them, to grant the territories statehood?

Prof. Mackerras—If I were an elector of the Northern Territory I would be in favour of statehood. I would vote in favour of statehood at any referendum.

Ms PANOPOULOS—I am not asking you as a hypothetical elector.

Senator BRANDIS—Breaking the habits of a lifetime, Professor Mackerras.

Prof. Mackerras—No, I have only ever voted no at Commonwealth referendums, by the way.

Ms PANOPOULOS—I am not asking you as a hypothetical voter of the Northern Territory because you are here as a voter of the ACT commenting on a Northern Territory bill.

Prof. Mackerras—Yes.

Ms PANOPOULOS—I am asking you: in the capacity that you have come here today, you have made all these professional comments with your extensive background. I am asking you, in that capacity—not as a hypothetical voter in another state or territory—wouldn't you say that the next logical step would be granting the territories statehood?

Prof. Mackerras—Yes, I would.

Ms PANOPOULOS—So you would not oppose any moves to grant the Northern Territory statehood?

Prof. Mackerras—No, of course not.

Senator BRANDIS—Professor Mackerras, I have one question arising from Ms Panopoulos's questions. If your point is that there should be equality of treatment between the territories and the states, isn't the best way to achieve that to give the territories what the original states have—that is, guaranteed minimum?

Prof. Mackerras—No. You are saying that the Northern Territory must be guaranteed five members, are you?

Senator BRANDIS—No. I did not say that. But if your point is that the territories and the states should be treated the same, the states have guaranteed minimums. If you are going to treat the territories the same as the states, you give the territories a guaranteed minimum.

Prof. Mackerras—The expression in the Constitution—

Senator BRANDIS—The guaranteed minimum would have to be more than one, because one just arises from the fact of there being representation.

Prof. Mackerras—The Constitution uses the term 'Original State'—capital O, capital S—

But notwithstanding anything in this section, five members at least shall be chosen in each Original State.

Senator BRANDIS—You did not make that qualification, Professor Mackerras.

Prof. Mackerras—That is there and that is the fact. There is no reason why a future state must be treated in any way equivalently to an Original State. The Constitution is clear that this is a provision for the protection of Original States—capital O, capital S.

Senator BRANDIS—But given that we only have Original States at the moment and for the foreseeable future, if you want to treat the territories consistently with the existing states you have to give them guaranteed minima.

Prof. Mackerras—One member.

Senator BRANDIS—But it has to be more than one because—

Prof. Mackerras—Why?

Senator BRANDIS—one is the necessary entailment of the fact of representation. If you are going to have guaranteed minima, it has got to be a number greater than one or you are treating them differently, which is inconsistent with the proposition you just expounded.

Prof. Mackerras—If the Northern Territory becomes a state the question can then be considered. All I can say is that at the moment the Constitution does not say so, because the Constitution only makes this minimum five members for each ‘Original State’. That is there to protect Western Australia and Tasmania from the possible effect that—even though this formula prevailed in the Constitution is extremely generous to the smallest states in population—they just might somehow drop below that. Therefore, they put this minimum of five members in.

Senator ROBERT RAY—I was pleased to hear Professor Mackerras admit he has gone from being a poacher to a gamekeeper in terms of the formula back in the sixties. Would it make you any less cynical—because I share your cynicism—that if we were to amend the formula we would do so without reference to the current circumstances. In other words, let the chips fall where they fall and then re-examine whether the formula is correct or not?

Prof. Mackerras—In other words, if you were to say that it does not apply to the next parliament but might apply to subsequent parliaments?

Senator ROBERT RAY—Yes, like a rolling average or something like that.

Prof. Mackerras—I would then, of course, be less cynical, yes.

CHAIR—Professor Mackerras, do you think there is a difference between motives and outcomes? That outcomes can be severable from the motives of some of the people who are proposing them?

Prof. Mackerras—I am the first to admit the accusation, if that is the right word, from the member for Indi that I have become rather cynical. That is precisely why I acquired this ‘Vote No’ button 20 years ago.

CHAIR—I do not mind cynicism because there is a larger issue here. The issue is, in part—in my mind at least—that we have a tangible problem which may have always existed, or we are focusing on it because it has arisen. It is impossible to scan the world and draft laws to cover every possible contingency. Sometimes you are dealing with problems as you may have wished to have dealt with them at the beginning, if you had thought of them.

Prof. Mackerras—Yes, but to me this kind of argument is very similar to the argument that arose in September 1987, relating to the distribution of long-term and short-term senators. I am sure the senators among you will remember that argument very clearly. People like me asserted that there was a principle involved and that section 282 should be implemented by the Senate. I railed against a certain senator over there, for example—and his colleagues—when they flouted that principle and their argument was—

Senator ROBERT RAY—Let us correct the record: the offer was made to the Liberal Party in 1986 to put a formula in front of the Senate to bind future Senates, at least morally. They could not concentrate on it. They rejected it so we did what we liked after 1987 because the formula was not there. It is the same argument this time. The formula is there; abide by the formula. If you do not like it, change the formula but do not have retrospective effect; exactly the same. You might have railed against me but you did not know the full circumstances.

Prof. Mackerras—I discovered the full circumstances at a later stage and that is partly what is influencing what I am thinking now. I agree with what Senator Ray says. With a lot of these democratic principles you really should not just concoct them when things go against you. You should foresee the problem. Part of the reason the Australian electorate is so cynical—as it is—is its realisation that when proposals are put before it, almost always it is the case that some politician has a wish list and wants to get the benefit of some alleged democratic principle in order that the wish list be fulfilled.

Senator BRANDIS—Truly, Professor Mackerras, I find this a little bit insulting. Your cynicism about politicians' motives is no doubt shared by virtually everybody in the country, including politicians, but it is not really a material fact before this committee. You appear as an expert and we seek your opinions about policy issues.

Prof. Mackerras—Yes.

Senator BRANDIS—And your cynicism, while no doubt something that you wish to indulge, is not really relevant to us.

Senator ROBERT RAY—Yes, but the witness comes as a volunteer. He has been helpful to us and he is entitled to express his opinions. It would be different if we had forced a witness before us. Senator Brandis, your point is only half made.

Prof. Mackerras—I did volunteer because this is the kind of area where I do know something about it.

Senator BRANDIS—We are interested in your expert opinion, Professor Mackerras. We are interested in your expertise, not your prejudices.

Prof. Mackerras—Okay, but what is wrong with stating your prejudices? Surely one should state one's prejudices. What one should not do is pretend to be a great expert without any prejudice—

Ms PANOPOULOS—Perhaps once or twice but it does get rather tedious after that.

Prof. Mackerras—Fair enough. I do not care if you think I am a crashing bore.

Mr MELHAM—I suppose your cynicism is on the basis that you see no rational basis for the proposal. Is that fair to say?

Prof. Mackerras—I see no rational basis for the proposal whatsoever. I am sorry to have to say that is very often the case with people who make claims about democratic principles; it simply is so often the case.

CHAIR—Professor Mackerras, thank you for sharing your views with us.

Prof. Mackerras—That is all right, it was my pleasure.

Resolved (on motion by Chair):

That this committee authorises publication including publication on the parliamentary database of the proof transcript of the evidence given before it at public hearing this day.

CHAIR—On behalf of the committee I would like to thank all the witnesses who have given evidence at the public hearing. I declare the public meeting closed.

Committee adjourned 12.20 p.m.