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JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

Reference: Representation for the territories in the House of Representatives

FRIDAY, 29 AUGUST 2003

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JOINT COMMITTEE ON ELECTORAL MATTERS

Friday, 29 August 2003

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

Senators and members in attendance: Senators Brandis and Robert Ray, Mr Danby, Mr Georgiou and Mr Melham

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 8.31 a.m.**TOLLNER, Mr David, Federal Member for Solomon**

CHAIR—I declare open this public hearing of the Joint Standing Committee on Electoral Matters into the Representation of the territories in the House of Representatives. The committee is examining whether the Commonwealth Electoral Act should be amended to provide a minimum of two seats in the House of Representatives for the Australian Capital Territory and the Northern Territory. This follows a determination this year that the entitlement of the Northern Territory will reduce from two House of Representatives seats to one at the next federal election. To date the committee has received 21 submissions to the inquiry. Many of these submissions, particularly from the Northern Territory, support the proposed amendments to the Electoral Act. Is it the wish of the committee that submissions Nos 20 and 21 be accepted as evidence and be authorised for publication? There being no objection, it is so ordered.

Last week the committee held a public hearing in Canberra and took evidence from the Australian Bureau of Statistics and the Australian Electoral Commission. This morning we will hear from a number of witnesses who will share their views about the appropriate representation of the territory in the House of Representatives. I do remind the 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 proceedings of the House of Representatives or the Senate. The giving of false or misleading information is a serious matter and may be regarded as a contempt of parliament. The evidence given today will be recorded by Hansard and will attract parliamentary privilege.

Welcome, Mr Tollner. The committee has received your submission. It has been numbered 14 and authorised for publication. Are there any corrections or amendments that you would like to make to the submission?

Mr Tollner—No. As I say, you have received my submission. You have also received a submission from Dennis Burke and the parliamentary wing. My first reading speech on the bill is also on the public record.

CHAIR—Do you wish to make a brief public statement or summarise your position?

Mr Tollner—I do. Having said that you have my submission and Dennis Burke's submission and that I have made speeches, today I would like to concentrate on other matters related to your inquiry. The committee should note that I intend that the private member's bill in my name will be amended, because depending on when the bill comes into effect relative to the timing of an election being called, it may not be possible for the Australian Electoral Commissioner to carry out the steps required to make a new determination before the writs for the new election must be issued. The amendment will deal with this practical possibility by providing a fall-back arrangement if the commissioner has not had time to make a new determination as required under the bill. In this case, the election will be conducted on the same basis as the immediately preceding election—that is, two electorates, Solomon and Lingiari, with the current boundaries. The amendment makes a requirement for a new determination to be made a transitional provision rather than a permanent amendment to the act.

Today I also want to direct the committee's attention to the major impact the Australian Electoral Commission's determination has on the constituents of the seat of Lingiari. The committee is already aware from other submissions of the disparities between urbanised Solomon representing the residents of Darwin and Palmerston and the mostly rural small town, small community out-station nature of Lingiari. But the differences between these electorates are not only those that apply between urbanised and regional electorate generally. The seat of Lingiari contains the greatest concentration of Aboriginal constituents in the greatest number and in the greatest percentage in the nation. About 50 per cent of the Lingiari constituents are Aboriginal. It is the only seat in the country where Aboriginal people are or come close to being in the majority of constituents. Seats such as Kalgoorlie have around 14 per cent Aboriginal people, Leichhardt, Maranoa, Kennedy and Capricornia do not even come close to Lingiari in terms of Aboriginal representation. The committee should ask itself what effect it might have on such a constituency to be lumped in with the mostly whitefella middle class urban populations of Darwin and Palmerston. I do not believe the issues in these two constituencies have a great deal in common at all. I have never had a complaint from the Yolngu about barking dogs, nor have I had a complaint from a Darwin constituent that royalty moneys have failed to turn up.

Darwin and Palmerston people are currently concerned about the site for a business convention centre. In Lingiari the concerns are about cultural preservation and starting joint business ventures for the first time. As an aside, I note that according to its current representative the concern in Lingiari is that the government's rush to privatise Telstra is causing the residents of Wadeye, Galiwinku, Maningrida and Milingimbi to worry about the New York blackout and that, in his words, a similar market failure in Australia may result in a future government having to buy back Telstra at greater financial cost to taxpayers. I do not agree with the member for Lingiari on this issue and that it's a major concern to those communities. I do not wish to trivialise his submission. However, I believe that the member for Lingiari would agree with me that the concerns of his constituents are not commuter bus services, nor Darwin's new convention centre.

The question of a minimum of two members for the Northern Territory constituency has become clouded by arguments about ABS statistics and the AEC formula. But given that two seats would result in an electorate population that is far less than those of the popular states, I hardly think it is worth arguing about a few hundred people either here or there. Rather, the committee should concern itself with the cultural, racial and social demographics, which clearly differentiate the two seats. I ask this committee what Aboriginal Australians may think of their national parliament if they find that for the first time in the history of Australia a predominantly Aboriginal electorate was created and then 18 months later abolished by statistical hairsplitting.

Finally, and at the risk of repeating myself, I state my conviction that the Territory's special status within the Commonwealth Electoral Act and indeed the Commonwealth of Australia requires the national parliament to pay special attention from time to time to its appropriate representation at the national level. Such a time is now upon us.

CHAIR—Thank you, Mr Tollner. I appreciate the point about statistical hairsplitting. But in your submission you say that 30,000 Indigenous voters in the Northern Territory are not counted in the census. Can you elaborate on that, please?

Mr Tollner—My understanding is that that is anecdotal evidence. It has been suggested to me by numerous people that there could be as many as 30,000 Aboriginal people who have not been counted.

Senator ROBERT RAY—It would have been helpful if you had footnoted that it is anecdotal evidence.

Mr Tollner—I do apologise.

Senator ROBERT RAY—Have you had a look at the evidence—I hope you have; it's a matter of great interest—of the Electoral Commission and the way it dealt with recording Indigenous communities?

Mr Tollner—I tried to sit through as much of their submission as possible. I have not had the opportunity to read it through in fine detail. But my understanding is that a lot of the statistical information that was collected by the ABS was done through Medicare cards. I am aware, again through anecdotal evidence, that a large proportion of Aboriginal people in the Northern Territory do not have a Medicare card or a tax file number and those areas that would seem to be a standard counting practice in mainstream Australia do not apply to remote Aboriginal people.

CHAIR—Does your argument amount to the fact that, regardless of the size of electorates in the Northern Territory, you need two at whatever level of population?

Mr Tollner—My argument is that, having created the seat of Lingiari—and in hindsight it is a predominantly Aboriginal seat which gives the original inhabitants of this country a firm say in the representation of one particular seat in Australia—it would be a massive blow to them to lose that representation. Additionally, my argument stems from the fact that the Northern Territory and the ACT are territories. They are not states. They are not treated like states and never have been treated like states. It is, I suppose, the goodwill of the parliament that decides the level of representation in both of the territories. My view is that the Northern Territory has matured, and there has certainly been a track record of that in the Commonwealth parliament as to the levels of representation Territorians have been given in that forum. I think that this is just the next logical step. It is unfortunate that this progression will be seen by many as a knee-jerk reaction to the AEC decision. In any case, irrespective of that decision, this proposal has merits on its own outside of their decision.

Mr DANBY—Before you became the member for Solomon, there was one seat in the Territory, wasn't there?

Mr Tollner—That is correct, yes.

Mr DANBY—And whoever was the member had to represent Aboriginal people and everyone altogether. You are not suggesting that anyone would not do that if the Territory were to revert to having one electorate?

Mr Tollner—No, I am not suggesting that at all. What I am suggesting is that of course a member in the federal parliament tries to represent his particular constituents to the best of his ability. To dilute the Aboriginal population into the whole of the Territory dilutes the level of

clout that they have with their existing member. I am not suggesting at all that Aboriginal people were not represented. I am merely making the suggestion that maybe they were not being represented as greatly as they possibly are now.

Mr DANBY—Why would the job of having one seat in the Territory be more difficult than representing Kalgoorlie in Western Australia, Grey in South Australia or Kennedy in Queensland? They are all pretty big seats and they have mixed populations and difficult jobs to do and are big geographical areas.

Mr Tollner—They are big seats. Kalgoorlie in particular is a huge seat. But, as I say, the electorate of Kalgoorlie has an Aboriginal population of around 14 per cent. In this particular case, the Aboriginal population is almost half the population in the electorate. The other obvious difference between my proposal and what happens in Western Australia, South Australia, Queensland and Tasmania is that they are states. They are treated differently. The make-up of the parliament is dictated by the level of representation in those particular state electorates. The Territory does not impact at all on the level of representation in the federal parliament. The counting is done, as I am sure the committee is aware, by the population in the states.

Senator ROBERT RAY—Do you know what the per capita grants from the Grants Commission is to the Northern Territory as compared with Victoria? That would make up for some of these disadvantages.

Mr Tollner—I wish I had that information off the top of my head.

Senator ROBERT RAY—You know it is fairly substantive.

Mr Tollner—It is fairly substantive. But my understanding also is that—

Senator ROBERT RAY—You are not complaining about it, by the way.

Mr Tollner—No. My understanding is also that, since the mid- to late-eighties, the Territory had its funding arrangements changed in as much as that, for all intents and purposes, as far as grants and funding are concerned, it is treated as a state despite the fact that we are a territory. The Commonwealth was very generous to the Northern Territory in the years immediately following self-government and I imagine that the Commonwealth is responsible for a lot of the development and infrastructure that we have here today. In recent years, the Commonwealth has treated the Territory as a state.

Senator ROBERT RAY—You assert here—so does Mr Snowdon, so it is a fairly common theme—that there is a statistical aberration and you will revert to two seats next time. I am sympathetic to the flip-flop argument—that is, two one year and one the next, then two the next and one and so on, but are you sure of that? You are basing those figures on statistics that are four years old and in about five days time we are going to get the next four-yearly update. What if that shows just a terminal decline that you do not have any chance under any formula really of getting two seats the following time? Does that affect us in our decision making now as to whether you should continue to have two seats?

Mr Tollner—Senator Ray, I take your point. You are correct when you say that the figures we have relied on are four years old. Both Warren and I used information from a research paper from the Parliamentary Library. Since we have put our submissions in, we have made a better analysis of the figures and realise that they are four years old. I think all economic commentators say that the Territory is on the cusp of a boom. There is gas coming onshore. We are set to be the fourth gas province in Australia. The railway line is intended to create a transport hub and all of the economic modelling that has been done by organisations such as Access Economics and that sort of stuff shows that the Northern Territory is set for periods of increased growth. That economic growth should also, in my view, translate to population growth as well.

I have no idea what the future ABS statistics will say. It is an argument that I do not feel fully comfortable with myself, not because I would not want to go down that path but simply because I am not a statistician and I do not fully understand the way that statistics are collated. For me to argue with the ABS or the AEC over statistics, I feel I would be a little bit out of my depth. My submission and other submissions constantly refer to the Territory's maturity and the fact that in an egalitarian society, which Australia has become, we have always recognised the underdog. By merging the two seats it would create one of the largest electorates not just in size but also in population. In this particular case, I am also arguing for the Aboriginal people of the Northern Territory that they deserve not to be lumped in with the whole of the Territory. I suppose my argument is far more egalitarian rather than statistical based, Senator.

Senator ROBERT RAY—It is not my understanding of egalitarianism that we put the retrospective fix in to fix a problem to the disadvantage of the rest of Australia proportionally. We are not considering your legislation before this committee.

Mr Tollner—No.

Senator ROBERT RAY—Through the technicality, joint committees cannot. So we are looking at the principle. In effect, that allows us basically to look at your legislation but not in specific terms. The difficulty is that there is a formula put in; the philosophy was 'where the chips fall they fall'. So the fix could never be put in by a government for the good reasons that you argue for or for bad reasons.

I would like to know is whether you or any of your colleagues ever once put a submission to this committee or anywhere else saying that the formula was wrong or the statistical collection method was wrong before you lost a seat. Did you ever try to have the act amended or altered before you suddenly lost a seat?

Mr Tollner—In regard to the representation in the House of Representatives, no, we did not. But, in regard to the way the Territory is funded, I had a recent conversation with the federal Treasurer. I asked him about the Territory Treasurer, Syd Stirling, who was coming down to Canberra to make the case that because of a statistical error of the ABS the Northern Territory had been duded out of \$25 million of Commonwealth grants. I asked the federal Treasurer what his view on that was and whether that argument of Mr Stirling's would hold water.

The federal Treasurer's response to me was, 'Look, I have been Treasurer now for seven-odd years and every single year the Territory government—whoever it is—trots down here and says that the statistics are wrong. I have no reason to believe that was not the case prior to my being

Treasurer. So it would have occurred for previous Treasurers.’ It has been an ongoing argument from the Northern Territory that the ABS has not collected the statistics properly. As I say, I do not know enough about the way statistics are collected and allocated, but I do know that this argument has been ongoing ever since, I imagine, the Territory was treated as a state in regard to funding.

Senator ROBERT RAY—This section of the act went through the parliament unanimously some 13-odd years ago. We can see that it is far less binding on the territories than it is on the states because we are not so constitutionally bound when it comes to the territories. I am just looking for some evidence that someone tried to change it somewhere, other than saying, ‘We are happy, especially when we went up by a seat.’ That could have been a statistical error too.

The moment a seat is lost, a whole range of arguments is adduced from egalitarianism to special interests to the Aboriginal community, all of which I understand. I do not understand your reference to export incomes. I did not think we ever determined the number of seats on the basis of export income. I assume you put that in to pad out the submission and make it look more professional—I will just take that with good grace. I cannot find anywhere where anyone has said, ‘Look, we really need to amend this act to take into account error factor or anything else.’ I have been lectured for two decades by your colleagues on the sins of retrospectivity. I was Darth Vader when I suggested that tax dodges should be penalised retrospectively. It was a tenet from John Mill through to Deakin and every other Liberal icon that retrospectivity was horrible. You do not have any problem embracing it, do you?

Senator BRANDIS—Pursuing that point, had the issue ever arisen before the latest AEC determination was made? Had you, for instance, Mr Tollner, ever turned your mind to the issue of whether or not the number of seats in the Northern Territory may potentially fall from two to one before this latest determination?

Mr Tollner—No, Senator Brandis, I had not, and it was something that had not occurred to me as a possibility.

Senator BRANDIS—I am just struggling to understand Senator Ray’s point, which I think is fairly openly a go at your motives when the issue had never even arisen for anybody to think about because there seems to have been—

Senator ROBERT RAY—If he is speaking out of self-interest, then I understand and approve.

Senator BRANDIS—an assumption that there would be two seats. Do you accept as a basic principle of all this that citizens, whether they be Northern Territory or ACT citizens, should be treated the same as Australian citizens who live in states?

Mr Tollner—I am a huge supporter of Northern Territory statehood, and it is for that reason that I can honestly answer yes to your question. I believe territory citizens should have the same rights as people in the states. However, I am also aware that currently we do not. We are a territory. There are some differences, I suppose, in a number of facets of life about living in a territory per se. I think that is the crux of the whole push for statehood in the Northern Territory. We want to be treated equally with the rest of Australia, and I suppose that is what has led to this

submission of mine. Currently we are not treated like the rest of Australia, and the parliament has the ability to influence how we are treated. I am asking the parliament to use its special powers to guarantee us a minimum of two seats.

Senator BRANDIS—One respect in which the territories, or at least the ACT and the Northern Territory, are not treated the same as the six states is that the six states, all being original states, have a guaranteed minimum number of members of the House of Representatives. As you know, they have to have at least five. There is no such guarantee for the territories. It seems to me that one way in which your position and the position of others whose evidence we are receiving today could be understood is to say that the territories ought to be accorded a guaranteed minimum number of representatives just as the original states are, and that would have to be more than one because one representative is a necessary implication of the fact of having any representatives at all. So it would have to be at least two. What is your view on that?

Mr Tollner—I follow your logic completely, Senator Brandis. Part of my personal view about Northern Territory statehood was that, if the Territory were to become a state, we would have a guaranteed minimum number of senators—the same as all the other states, Senator Ray. What is the point of being a half state or a quarter state?

Senator ROBERT RAY—That is the one thing that makes people antagonistic to Northern Territory statehood and the reason they will not grant it.

Mr Tollner—Of course it does and that is part of the debate, but my view is that if you are going to be a state you should be a fully-fledged state, treated exactly the same way that other states are. I understand fully your point of view that that is one big stumbling blocks.

Senator ROBERT RAY—If you were a fully-fledged state, we would have no choice under the Constitution to make sure you had only one seat in the House of Representatives because that would become a constitutional obligation enforced by the High Court. We are under no such obligation that this hearing listen to your views today.

Mr Tollner—Certainly.

Senator BRANDIS—Mr Tollner, I think you were in a hearing room in Canberra a couple of weeks ago when we heard evidence from the AEC and from Professor Malcolm Mackerras.

Mr Tollner—I heard only parts of both.

Senator BRANDIS—I hope I do not do an injustice to Professor Mackerras's evidence. His point was very simple. He said that this is purely a matter of arithmetic. To use Senator Ray's expression, the chips fall where they may irrespective of all these other external considerations of the kind that you have just described. You cannot go beyond the point at which it becomes anything other than a matter of arithmetic. If, as a result of the numbers being crunched on the designated day, you find that the Northern Territory is entitled to only one seat or, conversely, to a third seat, for argument's sake, that is the end of the discussion. His position was perfectly simple. It could not have been more simple. What do you say about that? Why do you say it is more complicated than merely an arithmetical exercise?

Mr Tollner—To me, that argument is using the state argument to say, ‘Here, you are something like a state,’ when in fact we are not a state. Those arithmetical numbers apply to the states. The House of Representatives has to be twice the size of the Senate—all that sort of stuff. The territories are exempt from all of those calculations. They are not included in those numbers. My view is that it is a possibility that this idea of statistics and numbers is clouding the real issue, and that is issues of representation and equity, and the ability for the federal parliament to take a special interest in the levels of representation in the territories.

Mr DANBY—To follow up Senator Brandis’s point, the image that is being created is that this is a one-off glitch—that somewhere out of nowhere the ABS has found that the Northern Territory is just under the quota and has been mean and taken the extra seat from you. In fact, statistics show that over the 12 months there has been a decline in the Northern Territory population in three of the four quarters, and as Senator Ray said, we are just about to come up to the next one. You gave us anecdotal evidence about the reason there will be population growth in the future—because of economic growth. What explains this decline over the last 12 months? I am asking for anecdotal evidence; I am not asking you for—

Mr Tollner—Do you want my political opinion? We have a new Labor government in the Territory.

Mr DANBY—And that explains population decline in the Northern Territory? Are you serious?

Mr Tollner—I think a change of government certainly has caused some concern in the community. We have gone from a regime that has lasted for virtually 27 years in the Northern Territory. A new government comes in and, irrespective of the colour of that government, it cannot be expected to carry things on as they were for 27 years.

Mr DANBY—Apart from political factors, are there any other factors? I am seeking to throw you a bit of a lifebuoy. Is there something that will be reversed that just happened in this 12 months?

Mr Tollner—What has happened is that the major construction booms of defence industries and those sorts of things have ceased. It has left this pocket of time, I suppose, before the next major project hits. It should be remembered that the Territory is a growing economy. It is not a mature economy. My view is that in relation to this economy we cannot afford to sit around and navel gaze and concern ourselves completely with matters of propriety, accountability and so on. The role is for government and the community to get out there, create projects and look at expansion rather than accountability. I am not arguing against accountability, of course. What I am saying is that the focus in the Northern Territory has to be on expansion.

We are in a small period where there is nothing happening. My view is that, as a result, the people who are leaving are the tradespeople—the people who depend on construction. A lot of the smaller corner stores and so on are closing. However, in the future—by 2005-06—the major development will have taken place at Wickham Point for the LNG facility. The railway should well be at full steam. Economic activity will have increased and it will drive a population increase. That is my view.

Senator ROBERT RAY—The point you have to make—it is a very hard point to make—is not that the Northern Territory will grow. I think it will. It has to go faster than the rest of Australia before it can then statistically catch up. You might say, ‘The Northern Territory population is going to grow,’ but so is the rest of Australia. So you actually have to outpace them.

You have properly pointed out that we have more flexibility with the territories than we do with states. So we will put that aside. One of the propositions that has been floated is that we say, ‘Well, the statistical aberration of flip-flops has a much bigger effect in the Northern Territory and the ACT than anywhere else because you can go from two representatives to one. It is an enormous change. We should average it out over two terms.’ In other words, what we could have done this time is say, ‘Yes, you are due to go down a seat but because of maybe statistical error or bumpiness of economic growth you will automatically go back to it next time. So you maintain your representation until next time, but if it again shows you’re below, you will then lose it.’ The penalty on that, of course, is that, if you are due to go up a seat, you do not get it until you go through two cycles and then you get the seat. In other words, we have this capacity to average you out, which we cannot do with states. What is your view on that?

Mr Tollner—This is the first time that view has been put to me, Senator Ray. On first hearing I do not seem to have too many problems with that. My first question is: why would it be two and not three, or two and not five? I suppose five is getting a bit far down the track, but I understand your point.

Senator ROBERT RAY—It is an awfully long time to wait for a third seat when we put five in the formula. You would all be getting pretty impatient up here, with all this economic growth coming out of the gas and the Labor government and everything else.

Mr MELHAM—The Northern Territory was granted a seat of the House of Representatives in 1922 by the Northern Territory Representation Act 1922, but the voting and participatory rights of the member were restricted. Full voting rights for the Northern Territory member were conferred in 1968. In all that time, apart from the last two years, there has been only one member representing the Northern Territory. Why should we just not cop the result of the Statistician and go with their figures? It is not as though the Territory has had two members for any length of time.

Mr Tollner—You are right, but in that time you can hardly say that our one member was representative or had the same abilities as other members of the House of Representatives. You are right: from 1922 until 1936 we had a representative there who did not have the right to vote, who could not participate in divisions.

Mr MELHAM—Until 1968.

Mr Tollner—Until 1936. In 1936 the parliament then allowed that member to vote, but only on matters relating to ordinances of the Territory. That only occurred in 1936. Then in 1958 the member was allowed to vote on any proposed law or matter relating solely or principally to the Northern Territory. So it has always been this growing level of representation that we have received in the federal parliament. It would have been very difficult to be a constituent in the

Territory in 1922—talking to your local member and saying, ‘I want you to do this for me in the federal parliament,’ when in fact he sat in there but did not have a say on anything.

Mr MELHAM—They have a say. What I am saying to you is that it is only in the last two years that there have been two members of parliament and now the statistics fall on the other side of the equation.

Mr Tollner—But prior to the last two years, it has been since only 1968 that we have had a fully-fledged voice in the federal parliament. It has been since only 1975 that we have actually had any representation at all in the Senate.

Mr MELHAM—Your argument today is a little different from what is in your submission. You say in your submission that your amendments to the act were intended as a bridging device to carry the Northern Territory across a momentary statistical glitch. You now seem to be arguing that it is not about statistics; it is about minimum representation.

Mr Tollner—I am arguing on a number of fronts. I am saying that it is a bridging measure. I am saying that it is also a recognition by the Commonwealth parliament that the Territory is maturing. That is laid out in the way the Territory has been represented over the years. I am also saying that special attention needs to be paid to the constituents of Lingiari. I do not want to get lost in the statistical arguments. I think there are a whole range of other arguments that apply that the committee should concern itself with.

Mr MELHAM—So if the figures that come out in five days time—the statistics that have reduced the Northern Territory from two to one—confirm the situation, the argument folds, does it not, in terms of the statistical glitch?

Mr Tollner—I disagree. It depends on what the projections are. What we are saying in my submission is that the Territory is expected to grow.

Senator BRANDIS—What if the projections are downward?

Mr Tollner—That would very much surprise me, Senator Brandis. I can imagine that there may be a further reduction in population, but I do not believe that the projections—any projections—would show that the Territory was heading backwards.

Senator BRANDIS—An international trend—do you know what I mean?

Mr Tollner—I do not believe that that would be the case. But that is one argument, I suppose. If that were to eventuate, that would be one argument to say that the Territory should not have the second seat. What I am suggesting, Senator Brandis, is that you should look at other arguments as well—one that recognises or falls into step with the recognition that the Territory has been given since 1922. The committee should also concern itself with Lingiari in particular.

Senator BRANDIS—It seems to me—if I can just put my cards on the table—that you and those who share your opinion have two good arguments. There is the statistical glitch argument but, as Mr Melham says, you have got to roll with the punches on that one. If the statistics do not support the proposition that the last assessment was a glitch, then that argument is out the

window. Then there is the other argument that I was trying to explore with you and that is that, from the constitutional status of a territory, there is a reason in principle why the territories should have, as the original states do, a minimum representation. Those seem to me to be the two persuasive arguments. The first one, as I say, is a contingent argument depending on what happens with the next statistical sample.

Mr Tollner—I agree with you wholeheartedly on the points that you make there, Senator Brandis. I have no problem with any of it. I am not a soothsayer, so I cannot predict what the next statistics will say.

CHAIR—I want to summarise from my perspective that, essentially, you are making an argument that the distinctiveness of the Northern Territory, leaving aside any other arguments, would require two seats to be properly represented.

Mr Tollner—Yes.

CHAIR—The question that that raises is that nothing has dramatically changed about the Northern Territory. Has anybody actually mounted that argument prior to losing a seat? Has that been a theme within Northern Territory discussions, because I am from the east, so I would not know.

Mr Tollner—I am not aware that it has been raised before. I have no doubt that my colleague Mr Snowdon would agree with me that the seat of Lingiari is unique in Australia. There is no seat like it and, for that reason alone, the parliament should very much—

CHAIR—You are writing his press releases! You appreciate that, do you not?

Mr Tollner—I am saying that the parliament should pay special attention to that and also to a bit of the history of the Territory and the way that its representation has developed over the last 100 years.

Senator ROBERT RAY—I have a question, but I think that Mr Tollner can take it on notice and we can get an answer at a later time. I would like to know whether you can nominate one person in the Northern Territory, or one member of the coalition Australia wide, who objected to the ACT going from three seats to two? You can take that on notice, because that would need a lot of research.

Mr Tollner—You want me to nominate one?

Senator ROBERT RAY—Yes, one person from the coalition or the Northern Territory who objected to the ACT losing a seat when they went from three to two.

CHAIR—Who was the member who lost his seat at the next election?

Senator ROBERT RAY—He was a member of the Labor Party. I said the coalition.

CHAIR—No, no—

Mr MELHAM—He accepted his fate.

Mr Tollner—Senator Ray, I think you are being a little bit mischievous here.

Senator ROBERT RAY—I would have said ‘very’, not a ‘little’.

Mr Tollner—I believe that there are a great many differences between the Northern Territory and the ACT. The two obvious ones are the size—the ACT is a relatively small jurisdiction—and, of course, the make-up of the population.

Senator ROBERT RAY—They are not allowed extra representation by being the seat of government because they do not earn export dollars!

Mr Tollner—I do not want to tie that into this. What I am saying is that the make-up of the ACT population is greatly different from the make-up of the Northern Territory population. The Northern Territory population has almost two distinct constituencies. Darwin and Palmerston—there are communities like that all around Australia; probably not as beautiful and unique as this place. But certainly there are people of similar means and backgrounds in the electorate of Solomon.

Senator ROBERT RAY—Mr Danby has an electorate that goes from the working class to upper bourgeoisie. Is he entitled to—

Mr Tollner—And my argument is that Mr Danby would not have anywhere near the uniqueness of electorate that Mr Snowdon does.

Senator ROBERT RAY—We could dispute that.

Senator BRANDIS—In the Leichhardt electorate, for instance, Cape York is very different from Cairns.

Mr Tollner—Leichhardt and Kalgoorlie have nowhere near the percentage of Aboriginal people as does Lingiari—nowhere near. It is not even close and in that regard Lingiari is unique.

CHAIR—This is probably in the eye of the beholder, but if you can find someone who actually objected to the ACT losing a third seat, would that dramatically sway your views?

Mr DANBY—He would need 10—

Senator ROBERT RAY—I would think you were an outstanding researcher—something I have not previously noticed.

CHAIR—Mr Tollner, do you have anything final to say?

Mr Tollner—I would like to thank the committee for your time and for your foresight and vision in coming to the Territory. I hope you enjoy your stay.

CHAIR—Thank you very much.

[9.18 a.m.]

O'NEILL, Mr Daniel, Electorate Officer, Office of Warren Snowdon

SNOWDON , Mr Warren, Federal Member for Lingiari

WALKER, Mr Brett John, Secretary, Northern Territory Branch, Australian Labor Party

CHAIR—Welcome. Is it the wish of the committee that submission No. 22 be received as evidence and authorised for publication? There being no objection, it is so ordered. Do you want to make a brief opening statement or summarise the submission before we—

Mr Snowdon—No, I will not attempt to summarise the submission. I will say a couple of things out of the submission. I will not repeat the contents of other submissions, either. It might be better if we have a discussion about the issues in a similar way to the discussion that you have just had. I would say, though, that we have based our submission on the issues of fair and equitable representation, a recognition that the Constitution does not provide for one vote, one value and a very strong view that the statistical basis on which the estimates are made is flawed.

I think that there are a number of ways in which that can be addressed. I am strongly of the view that we should have minimum representation of at least two seats. I, unlike any other person in this room, am more qualified than anyone to talk about what it is like to represent the Northern Territory on its own, having done so over three elections. I might just say, foreshadowing any discussion that might happen later, that I did foreshadow this possibility on a previous occasion when the redistribution was done initially to two seats. I made a strong submission to the Electoral Commission about the nature of that redistribution and did say that there was no guarantee that it would not go back to one seat following a subsequent redistribution.

On the question of the census data, which I think is the underlying problem with this whole exercise, questions have been raised about the validity of census data in the Northern Territory over a number of years. What we have seen here, though, is it underscored and it has had an impact in a couple of areas. It certainly had an impact, obviously, in the context of this redistribution result but, secondly, it has had a direct impact upon the Northern Territory's own budget, because it has lost \$25 million in Commonwealth government sourced revenue as a result of the change in the estimate of population.

I think you have heard the arguments about fair and equitable representation. They have been discussed here and I will leave you to read my submission about that. You have had a discussion about the case for the Northern Territory in terms of the derivative of where we are and how we got here. But I think, contrary to my colleague the member for Solomon, I would argue that we do carry out state-like functions and, indeed, the Northern Territory is treated as a state for every other purpose apart from this. I recognise the constitutional issues engaged in that. For example, the Northern Territory has been treated as a state for financial purposes since the early 1990s. The only opportunity that there has been for the Commonwealth to intervene in the affairs of the Northern Territory, which it has been able to do by the Northern Territory (Self-Government) Act

1978, was the euthanasia debate. But apart from that—which the Northern Territory rightly regarded as a gross impost on the rights of Territorians—there has been no occasion when there has been an attempt by the Commonwealth government to override any decisions of the Northern Territory in relation to its own functions and powers and for every other purpose the Northern Territory is treated as a state.

The question of representation, I think, speaks for itself. There is a section here in this submission on the legislative framework. I noted in the submissions that were received last week that there was some discussion in the last hearings by the Commonwealth Electoral Commission on that issue. I also noted Mr Mackerras's remarks, which I think displayed more ignorance than capacity.

I want to, however, go straight to the issue of population projections, because I think that is the nub of the problem. In their own submission, the Commonwealth Statistician acknowledges that there are problems with their estimates process. Both in the submission that we have put forward and the submission from the Northern Territory government—and I understand that you will be hearing from a Northern Territory government representative later this morning—we have demonstrated clear anomalies between the census data and other data, significantly data gathered by the Northern Territory's own resources and by the medical services in the Northern Territory. That gives us, I believe, a significant undercount in the census of the Indigenous population. The result of that, of course, is that that is the base data on which all the other estimates are derived and therein is the problem.

This question has been raised previously. Let me make that very clear. Successive censuses have attracted the question of whether or not there is an accurate count of the population in the Northern Territory and in remote communities in particular. We have never had a satisfactory response. But I will just give you perhaps two clear examples of the data—and if you can turn to pages 21 and 22 of the submission, you can read it for yourselves. These are data which show the disparity between the Health Insurance Commission records for the Katherine west region—and the Katherine west region comprises all communities west of Katherine in an area about the size of Victoria across to the Western Australia border. Their records count 3,123 people in the Katherine west district whereas the ABS data give us 2,868. More compelling are the estimates for Port Keats or Wadeye. Wadeye is the fifth or sixth largest town in the Northern Territory. The Wadeye census data shows a 31 per cent discrepancy with data from the health clinic, the community council and a community housing infrastructure survey. That CHINS data estimates that there are 2,247 people in Wadeye. On the census night, the ABS counted 1,492. That is a massive discrepancy. There is an extract here from a comment from a worker in Wadeye who comments about the census night and the way in which census was gathered.

The academic John Taylor—you have heard of his work, I think, previously about work in Aurukun and North Queensland and I will not repeat it—has pointed out that there is a real issue here. So if the base is flawed, as we believe that it is in terms of the original census data, then all that flows from that base is flawed. That means that any estimates up until now will be flawed and even estimates into the future will be flawed. I might make this observation: that the September quarter of the last year was the first occasion since 1997 where the Northern Territory population fell below the requirement for two seats. Had the 13-month period involved a four-quarter rolling average—a three-quarter rolling average or a four-quarter rolling average—then

we would have had two seats. So that would have accounted for the statistical hiccup which has occurred.

Because of the impact of this decision—291 short of two seats—I am strongly of the view that we should find a process to set that decision aside. But I do note that there is no process of reviewing the data which is used by the bureau once its deemed as the latest statistics as required by the Constitution. It seems to me that therein lies a problem. If we cannot be sure that the information is accurate, then how can we compel Australians to believe that we are actually getting fair and equitable treatment out of a democratic process. I will leave my comments at that.

CHAIR—Mr Walker, would you like to make any comments or are you happy to go with the flow—whatever you like?

Mr Walker—Yes, I am happy to go with the flow. I just want to ensure that the committee had received my submission. I have got only one copy here today. I did not bring my copy. Otherwise, as I have stated in my submission, I am supportive of information presented by the NT government, Trish Crossin and by Warren himself. I do not want to waste the committee's time by reiterating all of those things.

CHAIR—Mr Snowdon, could I say that I have a lot of sympathy with the argument about the statistics and the statistical problems. Given that there is an issue here, how would you like to see that resolved?

Mr Snowdon—I think that there are a number of mechanisms to resolve it. It is a question of which option you choose. As a matter of principle, I think that we should be guaranteed two seats. However, I recognise the politics and I think that we can achieve two seats if we are prepared to accept the reality that these statistics are flawed. We can achieve two seats by reviewing the data, by setting aside the determination and allowing, as Senator Ray has said, this to run over two periods.

Let us put it in a nutshell here. We talked about the Northern Territory having its representation halved in the House of Representatives for what, in my view, will be one period of government—one parliament. Whilst I understand the argument about the bureau coming out with more data on 2 September, I have to say that I believe that their data is flawed. They do not take into account projections being made by the Northern Territory government for employment, for example, and the stimulus which will go to the economy as a result of not only the Timor Sea developments, Wickham Point, the Bonaparte Gulf developments and the doubling of the size of Nabalco in its production. All of these economic arguments will bring in population which would more than account for the differences which they have identified. So my view is that, whilst they might give us a set of projections next week, I will treat them with the same scepticism that I have treated the last lot, which we know were wrong.

CHAIR—Part of the difficulties, of course, is that other states lose seats and gain seats on a rolling basis. Queensland wins one, loses one, gets a redistribution—

Mr Snowdon—But, with respect, the other states all have a minimum guarantee under the Constitution, as you rightly pointed out earlier. But, in the case of the larger states, a 291

discrepancy on a quota would make no difference. In the case of the Northern Territory, 291 means losing half its representation. There is no situation that you could possibly envisage where any state would lose half its representation as a result of a count.

Senator BRANDIS—That is akin to the argument that I was exploring with Mr Tollner. From the mere fact of its character as a territory, there is an argument that there should be a minimum representation and then one makes essentially a value judgment as to what that representation ought to be. But it seems to me that that has to be more than one, because one is just necessarily entailed by the fact of giving the Northern Territory representation. So, if you are going to speak meaningful about minimum representation, you start at two. Do you want to comment on that?

Mr Snowdon—I think that is right, although I would not have argued that if our population was 1.3 of a quota or 1.4 of a quota. But I think that we can argue that where our population is on or about the quota. We are talking about 1.497 of a quota here; we are not talking about 1.2 of a quota or one quota. Given the nature of the Constitution, and given the principles that underlie the Constitution, I do not think that we can validly argue that we should have had two seats in 1978, for example.

Senator BRANDIS—The argument that you have just been developing, though, is not really the statistical glitch argument—if I can use that shorthand expression—because the statistical glitch argument has it that the determination on 19 February 2003 was really an anomaly, it was a random event, which was counter-indicated by a trend. Your argument is different. You say that there is something flawed about the way in which the ABS collects statistics for the Northern Territory. While I understand the argument and I have some sympathy for it, does that not mean that you are really asking this committee to sit, in effect, as a court of appeal from the ABS? I guess that I have two further questions. Is that not anomalous itself? Is that not an inappropriate function for this committee? Secondly, is it even possible for us to do that consistently with what the High Court said about section 24 in McKinley's case? In particular, I notice the extract that you set out in pages 12 and 13 of your submission.

Mr Snowdon—My response is that, under normal circumstances, I do not think that this committee should be a review.

Senator BRANDIS—But that is really what you are asking us to do—or to have regard to.

Mr Snowdon—I am saying that you should have regard to it. I think that you have to understand that either you accept or you do not accept that there is a problem. If you accept the problem, you have to find a way to address the problem. I believe that we have identified very clearly that there is a problem. We can bypass it by saying that this committee does not have the power to address the problem, in which case the problem just gets put aside. In my view, that is not the appropriate course of action. In my view, there has to be something done to ensure that now and into the future the ABS changes the way it collects its data. If one recommendation of this committee is that there be a process by which the ABS has an expert panel, for example, reviewing its data and having some process by which we—that is the electorate, the people of Australia—can challenge the legitimacy of the data which they represented as being the population, then that may well be the course of action to follow. But in the meantime, because we have accepted that this data is flawed, we should set aside the determination.

Senator BRANDIS—On another slightly different point, Mr Snowden, I notice that section 24 of the Constitution enjoins the determination on the basis of the latest statistics for the Commonwealth. It does not say the latest population statistics for the Commonwealth, but it seems to have been assumed, at least in argument in McKinley's case, that what the section meant was population statistics only. Do you join with Mr Tollner in saying—as I understood him to be saying—that statistics other than population statistics ought to be had regard to, even if only peripherally.

Mr Snowden—No. I might just make this observation. My grandfather is a member of the Country Party and I am very conscious of the arguments which he would use as an agrarian socialist for overrepresentation of the bush. But I do not think that we should be using imports and exports as a valid way of determining representation in the parliament.

Senator ROBERT RAY—There has never been much difference between the Country Party and the Left of the Labor Party!

Mr Snowden—It was a cyclical argument.

Senator ROBERT RAY—It is rather hard to articulate my point of view on this because people find it very easy to distort it. You are now putting the argument forward that there is a historical problem with the census-taking in the Northern Territory. I cannot make a judgment on that yet. We may well have to get the Bureau of Statistics back before us. But what I cannot understand is that if that has been an historical event—and you have been in the parliament for the last 16 years, less a three-year holiday—

Mr Snowden—Two years or 2½ years.

Senator ROBERT RAY—A 2½-year holiday.

Mr Snowden—Very enjoyable it was.

Senator ROBERT RAY—We missed you, so I am not saying it was enjoyable. I have looked through the *Hansard* record to try to find out where you have tried to pick up this and relate it back to the Electoral Act and there is total silence.

Mr Snowden—I have not. I make the point that I made earlier. One, it was not of sufficient gravitas in terms of the electoral outcome up until this time.

Senator ROBERT RAY—This is a case of you being asleep at the wheel, is it not?

Mr Snowden—Hardly asleep at the wheel. We raised the issue in considerable discussion about the question of methodology of funding for the Northern Territory. I am happy to have this discussion.

Senator ROBERT RAY—Yes, I know, but relate it back to the Electoral Act. You sat in the parliament in 1990 when this provision was put in.

Mr Snowden—Let me just explain. One of these submissions details—it might even be the Electoral Commission’s—the history of the quota. In 1990, the quota was not an issue. My mind was not turned to it, because the quota was not an issue.

Senator ROBERT RAY—Can I tell you what the issue was and see if that refreshes your memory. The issue was that we were concerned at that time that the Northern Territory or the ACT may be entitled to extra seats and that there would be no government activity to grant them that because it would be against the government-of-whatever-persuasion’s self-interest. So we put a formula in the act, even though it was not binding constitutionally—we acknowledge that—to trigger an extra seat when it was deserved. Having put that in the act, we also had to put one in to take it away if it was not deserved, all based on Bureau of Statistics statistics. I think that we are agreed on all that. So why at some stage in the last 13 years, other than when self-interest came to bear, was there not an objection to that formula then? That would make the case far more credible, you see. It would make it easier for us to say, ‘Yes, people were arguing about this in the past,’ other than just when suddenly a seat goes.

Mr Snowden—I am sure that I could seek advice from my more senior colleagues at the time—and perhaps I did, Senator Ray. I might have even spoken to you.

Senator ROBERT RAY—Yes, probably.

Mr Snowden—But I just make the observation that, again, I was very clear about the need to find a guaranteed way of providing us with representation. But at the time the formula itself was not an issue for me and so the data collection process was not an issue. It became an issue subsequently when we saw the way in which censuses were being collected. The question of the census data has been raised on a number of occasions previously—about the accuracy or otherwise of the census collection material. That is the issue here.

In general terms, I accept that there is a need for a formula. I accept the fact that we should have something which is transparent and that there is no chance of it being rigged. But I just dispute the argument that it is a matter of self-interest. If the self-interest is my own interest, I am quite happy to challenge or come to the next election and fight for one seat. It will not worry me in the slightest. But I think that it would worry the people of the Northern Territory in the context of halving their representation. That is the issue for me.

Senator ROBERT RAY—Certainly, we accept—

Senator BRANDIS—That would allay your self-interest, but it does not mean that it is wrong.

Mr Snowden—No, but I want to make sure that my interest is in the interests of trying to ensure maximum representation for the Northern Territory.

Senator ROBERT RAY—My biggest interest is to not interfere with the state’s formula so we become constitutionally challengers. No-one here today has suggested it. So good marks. But my problem is the flip-flopping from two to one to two to one all the way through and how we can address that rather than on every occasion when the pressure comes on being asked for the retrospective fix. I am trying to see if we can establish a principle that we can agree on into the

future, be it this rolling two terms. I do not want you to come back here in three years time and say, 'You helped support legislation'—maybe not Mr Tollner's but maybe government supported legislation—to say that we are going to average this out over two electoral cycles,' and then you miss out by 160 and you come back here, with a Labor member in the chair we hope, arguing for a three-year rollover et cetera. We have to at some stage establish a principle that we can all tick off on and say, 'That is the one we accept.'

Mr Snowden—I have no difficulty with that proposal, provided we could assure ourselves of the data. That is my principal concern. I am just reminded by Brett that in our submissions to the Electoral Commission on the redistribution we did address the issue that you have raised about the flip-flopping. I am happy to make a copy of that available to the committee.

CHAIR—If you would, please.

Senator BRANDIS—The flip-flopping argument also supports the proposition of two seats, does it not? If there is a risk—I am not saying that there is—that for an uncertain time into the future at each statistical determination it might go from two to one and one to two and two to one and one to two, then surely you could make a strong argument to say that there is a public interest in stabilising that at a uniform figure. And because you could not deny the entitlements of Territorians when the statistical outcome suggested two seats by imposing a limit of one it would have to be the other way around. If you were going to stabilise it at a single number to avoid flip-flopping, you would have to stabilise it at two.

Mr Snowden—As I said at the outset, my fundamental position is that you should be going to two seats. But I understand the nature of the dialogue and the discussion the committee has been having, both this week and at its last hearings, about the other issues. You will meet and fundamentally agree or disagree about whether there should be a minimum of two seats, but there is a logic issue. The logic issue, though, to me is how you get to the position. If you do not accept that there is a legitimate need for two seats now and into the future, then we have to get to a position where we accept the legitimacy of the argument that the data which is used is flawed and that, as a result of that, because of its impact on the Territory in the last determination by the Electoral Commission, that determination be set aside and either go back to providing us a guaranteed minimum of two seats and at the same time deal with the issue of the data collection or, alternatively, do as Senator Ray has pointed out and roll it over a couple of periods. The other point, of course, is to ask whether or not the latest statistics could mean rolling averages. I think they are the sorts of issues you have to turn your minds to.

Senator ROBERT RAY—Do you accept the fact that if we use the rollover approach in the future we may get to a situation where you are entitled to an extra seat but you have to wait an extra term before we can grant it? It has to cut both ways, does it not? Do you have a view on that, Mr Walker?

Mr Walker—Something I wanted to highlight in my submission was how hard the Northern Territory had worked to secure representation. Something we are probably all missing a view of here is that some people would believe the federal parliament is robbing them of that right. When you look at all of the social indicators—education, health and the other—

Senator ROBERT RAY—Sorry to interrupt you there. Your two Northern Territory senators and your Northern Territory member of parliament voted for this formula. I do not think you can accuse us of robbing anyone of anything.

Mr Walker—I am not being personal by saying this. I am saying that from the very establishment of the Territory—its relationship with the South Australian parliament and its formative relationship with the federal parliament—it has been a real struggle for Territorians to secure representation and increased representation. It is something we are sort of missing a view of here. While we talk about ABS statistics and numbers, these are people with some of the worst outcomes across the board and people who are deserving of increased representation. So on the basis of finding some formula that will address that issue—so that we are not exposed to the flip-flop and to keep faith with the community—a move to a minimum guarantee of two seats would be really important.

Senator ROBERT RAY—Now could you answer my question? Thanks for that, but I did ask: is it a natural corollary if we roll it over into two terms? In other words, you lose a seat but we say, ‘No, you do not lose it because we really want to see the statistics in three years time because we want to avoid flip-flop,’ and then when those statistics come up okay you keep your seats. But what happens when you are due for a third seat and we roll it around the first time and you are over quota? You are just 2.54 and we say, ‘No, you can’t take it because we have to do it over two terms’? Are you going to jump up and down then and say, ‘We want the early custard tart’?

Mr Walker—I will always fight for increased representation—always.

CHAIR—That is part of the problem we are alluding to.

Senator BRANDIS—But the argument is stronger than that, isn’t it? This is not just a grab for power. The way you phrase it, if I can put it in my words, we ought to recognise that there are unique circumstances affecting the Northern Territory as a body politic within the Commonwealth which suggest, among other things, that the last thing that should happen, irrespective of what the rules of arithmetic might say, is that it should be deprived of half of its seats in the House of Representatives. And that is not just an opportunistic argument; that is a principled argument.

Mr Walker—Yes.

Senator ROBERT RAY—It is the one Bjelke-Petersen used, too.

Mr Snowdon—In this case, though, he and I are ad idem.

CHAIR—You are making the point that the only reason this came up as a substantive argument was that the numbers were so close to two seats that your mind focused on this, because the problems with the ABS determinations in the Northern Territory were quite idiosyncratic and quite different from anything that happens anywhere else in Australia in this one correction. Any state that falls short of a quota or half a quota by 239 votes also does not get a seat.

Mr Snowdon—Yes, but it does not lose half its representation.

CHAIR—But it loses a seat.

Mr Snowdon—That is the point I made earlier. I accept that they might lose a seat but, if you have 50, losing two per cent of your representation is not going to make much of a difference.

Mr DANBY—Is there not something of a contradiction with what I thought was your earlier position, where you said that you did not dispute the fact that the Northern Territory should go down if it was only 1.2 of the quota rather than just under—

Mr Snowdon—I said that it never became an issue. When we were 1.49 of a quota or 1.4 of a quota we were close but not close enough. You had a discussion last week with the Statistician about standard deviations and the rest of it. Under normal circumstances you would say that is okay. When we were 1.2 and 1.3 of a quota there was never an argument, but when we have 1.497 of a quota and you are 291 short there is a real argument. Whilst Senator Brandis has made a very pertinent and relevant point about guaranteeing, because of where we are currently, a minimum of two seats in the parliament, I think that is—

Mr DANBY—So that is what you would ultimately prefer, regardless of whether you—

Mr Snowdon—If I had my druthers, I would like you to go in there and fix it tomorrow—guarantee us a minimum of two seats—but I recognise the politics of this discussion. I am trying to advance a number of different arguments that will bring you to the same conclusion or a conclusion that will give us the same outcome.

Mr DANBY—I think you have produced some of the most valuable evidence for your argument with the specifics on the undercounting in various parts of Lingiari. Is there, by contrast, any way that the ABS could produce evidence to us that there were overcounts in remote areas?

Mr Snowdon—I suspect not. If you go to page 19 of our submission, you will see that as part of their data collection the bureau does post-enumeration surveys a month after each census. You had this discussion with the bureau last week. You will note from their submission on page 5, at paragraph 21, that the post-enumeration survey does not include dwellings in very sparsely populated areas due to the high cost of enumeration. So that does not happen. The PES also does not include Indigenous communities as the close involvement of the Indigenous community organisation in the census enumeration process makes it impractical to effectively conduct an independent PES for each community. That is just a cop-out. What they have effectively done is say, 'We are not going to bother going to make sure our count is correct.' You cannot have it both ways. They can have certainty about using the data they have if the data is correct. The data is flawed. That cannot be disputed. They may dispute the processes by which they collect the data, but they cannot dispute the fact that their data is flawed.

Mr DANBY—What is different between what they do with collecting census data from remote regional communities, such as the Tiwi Islands and Wadeye?

Mr Snowden—What they say is that they provide one collector for every 10 households in the bush. I do not know who they get, but you would have to say that, given the evidence from Wadeye and given the hearsay evidence of people, it is not done very efficiently.

Mr DANBY—Have you asked the local ABS people about that?

Mr Snowden—No, not independently. Generally speaking, we try to help them get information out. Let us be clear about it: in the case of Wadeye, for example, we are talking about a community where the average house occupancy is 17 to 18 people in a three-bedroom house. There is one camp where there are three houses and the average occupancy is 30 people per house. Bear in mind that we are talking about communities where literacy levels are low and that the ability of individuals to comprehend a census survey form, if they were given one, would be difficult. Unless someone sits down with each person and fills out their form with them, then you are not going to get an accurate determination.

Mr DANBY—What about the people collecting them? You make some point in here about—

Mr Snowden—I am saying that in Wadeye that is an example of the sorts of concerns that people have—basically they get a bunch of forms and they leave them there and hope someone will fill them in.

Mr DANBY—Are they Aboriginal people who go around collecting these census forms? Do they know the local community?

Mr Snowden—No, they are not. They could be Aboriginal people; they may not be. This is the difficult issue for the bureau and for other agencies, I might say. I am not trying to slag off the bureau for the sake of it. I might point out that this is a concern that I have about a whole range of government agencies about the way in which they deal with remote communities.

Senator BRANDIS—Mr Snowden, I understand the argument, but the way the act operates is to assume that the statistics are conclusive. It does not provide for any means of collateral attack on the statistical conclusions. Perhaps it should.

Mr Snowden—That is my point.

Senator BRANDIS—But it does not. I do not think the Tollner bill deals with that either. What you are basically saying is that we should take a peak behind the veil of the statistics and satisfy ourselves that the statistics were probably wrong and the influence by that consideration is arriving at a conclusion which treats the statistics as not being conclusive.

Mr Snowden—That is right. My other point, and I think we raised it—

Senator BRANDIS—I wonder how logically we can do that.

Mr Snowden—I think it is difficult to do it. I am not pretending to be—

Senator BRANDIS—No, you are being very frank. I appreciate it.

Mr Snowdon—If we accept at face value—you do not have to accept my argument is correct—that it is a correct position that the statistics are flawed and that some independent person can verify that they are flawed because of the arguments I have raised or because of other arguments that other people might want to raise, then I think there is a question which we have to deal with, and that is that the act is deficient. In terms of the latest statistics—which is what the act says, what the Constitution says—there is no definition of it. I might say that the ERPs, the estimated resident population surveys, which are done on a regular basis throughout Australia are required, but they are not required for the territories.

Senator BRANDIS—I suppose you say, ‘If there’s sufficient doubt about this, the way to cut the Gordian knot is just to be done with it and guarantee two seats.’

Mr Snowdon—That would be the simple solution, but I am mindful of Senator Ray’s arguments. I think there is some compelling logic in a lot of what he says. I think what we have to do is to come to a conclusion which satisfies the position which he has adopted but brings us to the conclusion that if we do not guarantee two seats into the future we get a mechanism that will give us two seats into the future.

Mr MELHAM—But what about the argument that says the determination having now been made the appropriate time to look at anything is the election after next as against the next election?

Mr Snowdon—No, because it would not be—it wouldn’t be after the next census. That is the problem. If you accept the principle of what I am saying, then the problem will exist after the next election until the next census is done and the next count after that is done.

Mr MELHAM—But minimum representation is something that should be addressed for the election after next, isn’t it?

Mr Snowdon—No, I think it should be fixed now. I think we have been dealt a severe blow for a problem which is not of our making.

Mr MELHAM—On that, what are the figures for your seat and the figures for Solomon at the moment in terms of electors? What are the current electoral statistics?

Mr Snowdon—It is 55 and 52, I think. I was attracted by—I am not sure I support the arguments—a table put forward by the Democrats in their submission in which—

CHAIR—We are getting non-partisan. Very good.

Mr Snowdon—I wanted to point out as a general principle that if we were to go to the next election with one seat—and this has occurred over time and clearly it is an anomaly which the Constitution provides us with because of minimal representation of Tasmania—we would end up with one seat for the Northern Territory with 200,000 people in it.

Senator ROBERT RAY—Even then the enrolments would not be as big as the biggest single ACT electorate at the moment.

Mr Snowdon—I would think that that is going to change rapidly, and the reason that that will change rapidly is the demographic profile of the Northern Territory population is very young. I think it would be worth while getting some data on that because it will show you that the cohort of the 18-plus age group is growing far more rapidly than it is elsewhere in Australia.

Senator ROBERT RAY—Is there a case for the ACT to be given a minimum of three seats then? They are awfully close.

Mr Snowdon—I think there is.

Senator ROBERT RAY—So you would be happy with that?

Mr Snowdon—Yes. The same anomalous argument exists for them in terms of the data.

Senator ROBERT RAY—I asked Mr Tollner a final tricky question and it had a bipartisan—

Mr Snowdon—No, in terms of the quota.

Senator ROBERT RAY—In terms of bipartisanship, I was going to ask you a tricky question because I asked your colleague.

Mr Snowdon—Please go right ahead.

Senator ROBERT RAY—We have made enormous special provisions over the years to make up for the fact that the Northern Territory is such a big seat. Now that we have almost accepted your argument it should be two seats, you would be quite happy for the Special Minister of State to reduce a lot of that assistance because you would have the two smallest enrolled electorates in Australia.

Mr Snowdon—No. On the contrary, I would be arguing for him to expand it. You can halve what Mr Tollner gets, but in the context of my own seat—let me just go through this—as you will find in the Northern Territory government's submission, my seat covers four time zones. There would be no other seat in the world that covers more time zones. It is 1.34 million square kilometres in area. The furthest point in the electorate is 3,500 kilometres from Darwin. I would be arguing for additional facilities and suggest that I should have at least one extra staff person. We need to get rid of the ridiculous argument that they are trying to put—

CHAIR—You asked for that.

Senator ROBERT RAY—I am not the Special Minister of State. I am enjoying it.

Mr Snowdon—We need to get rid of the ridiculous proposition which Mr Tollner and the Special Minister of State are trying to advance that I should not have an office in Darwin—how ridiculous is that!—and I refer you to my submissions to the redistribution committee for further elaboration of these arguments.

CHAIR—Mr Walker, one of your arguments is that two seats are required because the extent of the electorate means that it cannot be represented without jeopardising the health and

wellbeing of the elected representative and a number of good quality candidates are discouraged from standing. Do you want to elaborate?

Mr Walker—I need to say that I worked on staff with Warren. Both he and some of the Northern Territory members surprise me with their stamina and commitment to their task. But I cannot help but think of the negative impact that that has on their health and their family life. I think they are being asked to go further distances than their colleagues are elsewhere.

CHAIR—I was interested in what you say about a number of good quality candidates being discouraged. I thought that Warren might be touched by that.

Mr Walker—It is very hard to attract people to these sorts of jobs. In my position as state secretary, people come up and say, ‘This is great, but you won’t have me running myself into the ground like every other body does.’

Senator ROBERT RAY—They would much rather represent 3,000 constituents. We accept that.

CHAIR—Gentlemen, thank you very much.

Mr Snowdon—Thanks for the opportunity. If you require any further assistance or advice, please do not hesitate to give us a ring. We will forward you a copy of our submission on the redistribution.

CHAIR—That would be great.

Proceedings suspended from 10.01 a.m. to 10.12 a.m.

CHANDLER, Mr Graham Charles, Senior Policy Adviser, Policy and Coordination, Department of the Chief Minister

GERRITSEN, Dr Rolf, Director, Economic Policy, Department of the Chief Minister

STUBBIN, Mr Anthony John, Assistant Under Treasurer (Economics), Northern Territory Treasury

CHAIR—I welcome representatives from the Northern Territory's Chief Minister's Department to today's hearing. The committee has received your submission and, could I say, it is a very thorough submission. Would you like to make any additions or amendments or would you like to make a short statement?

Dr Gerritsen—With your indulgence, I would like to make a very short statement. At present the Constitution guarantees states a minimum of five members. The current practice is that the territories, de facto, were guaranteed one member. In essence, what we are arguing is that they should be given two members and, in the case of the Northern Territory, we are arguing that on two grounds. One is on the community of interest grounds, which the member for Lingiari canvassed and which we also canvassed in our submission, covering substantially similar ground. The second ground is that we think there is an anomaly or a degree of undercount that is not covered by the ABS figures. We have dispute with those and we think, therefore, that in itself justifies a second seat for the Northern Territory, or the retention of the current arrangements. That is basically all I want to say.

CHAIR—You have quite an extensive discussion of your differences with the ABS. Have you actually reached any rapprochement with the ABS?

Dr Gerritsen—I can answer that question, because I am in charge of an exercise where we have engaged a mutually agreed consultant. Historically, especially in Treasury, we have had huge arguments with the ABS about enumeration, especially Indigenous enumeration. What I have decided to do, rather than shout at the ABS, is to try to persuade them of our point of view. So under agreed terms of reference we have appointed an agreed consultant to have a look at the issues associated with Indigenous enumeration. Hopefully, the consultant's report will come down on our side and the ABS will be persuaded. But that remains to be seen.

CHAIR—Can you tell us a little bit about that? Does that mean that you and the ABS have agreed that the views of this consultant will determine your differences?

Dr Gerritsen—Speaking on behalf of the Northern Territory government, I can say that we will accept the consultant's determination. Given that the consultant was the one nominated by the ABS, I would hope that they would accept it as well.

CHAIR—And the consultant's name?

Dr Gerritsen—Dr John Taylor of the Centre for Aboriginal Economic Policy Research at the Australian National University.

CHAIR—What sort of time line are you looking at in terms of the completion of that?

Dr Gerritsen—He will carry out the work in the first three months of next year. So we would be looking at a report in about April—so, unfortunately, too late to help your committee.

CHAIR—I have just one more question before I move off this. Mr Stubbin, could you encapsulate for us the key issues of differentiation between yourselves and the ABS?

Mr Stubbin—There are two essential issues. I briefly read the transcript of our discussions with the ABS on Monday. I think they were largely concentrated on the accuracy of the census. That got down to the ABS providing a standard error message, which you had some discussion of, which I think was plus or minus 2,600 of the 95 per cent confidence interval, which in this context suggested that the 290-odd figure with respect to the electorate issue was within that bounds. There is another issue that I do not think was canvassed, and that is the accuracy of intercensal population estimates. They are as equally valid to your deliberations as are the census. Census represents a significant effort by the ABS and the community to measure the population at a point in time. But they are only as good as the adjustments that are made each quarter in between each five-year line-in-the-sand exercise.

Over the last four censuses, the ABS have consistently underestimated the Territory's population. They have not underestimated in a consistent way any other jurisdiction's population. Those underestimates and the difficulties they have with the census are acknowledged by us as being largely because we are a very unusual jurisdiction in the Australian context—extremely large landmass, very small population, extremely mobile population and the complexities of the Indigenous and particularly the remote Indigenous population. But over the last four censuses the ABS margin of error on measuring the intercensal estimates has been quite significant, but it has improved in recent times. In 1986 it was 4.1 and it was 4.1 again in 1991. It came down to 2.9 in 1996 after a considerable application of resources by the ABS. In 2001 it came down to a very low measure. However, we think that is artificial because of some changes to the enumeration of unoccupied dwellings that they introduced at that time. We think that it is still about one per cent. In any case, we have been higher than the national average all that time and we have been consistency underestimated in those four periods.

Resources is an important issue. The ABS in the nineties employed some demographic skills in the Northern Territory. They put a lot of effort in and that did help improve the situation. Resources can help the ability of the ABS to estimate the population. That is when they acknowledged a lot of the problems with age groups of Indigenous people—the undercounting of babies, the undercounting of males in their twenties. For cultural reasons, those did not show up in counts.

CHAIR—So in brief you would say that the problems with the larger error margin is one distinct issue and undercounting is another distinct issue, but they are actually distinct?

Mr Stubbin—There are two similar problems which have similar issues. The point I was trying to think of when you helped me there was that I think through the investigations that ABS did put in in the early nineties they did realise that perhaps some of their treatments of the sparsely settled areas and remote areas in the census was not the best way to go. From memory, in the eighties the ABS attitude to their census counts in sparsely populated areas was to accept

that they put in extra effort, accept that there were technical difficulties in conducting a post-enumeration survey and acknowledge that it would also be very costly to do an exercise like that. They accepted that they got it absolutely right. They made no adjustment at all. In the nineties they introduced some adjustments. I am hopeful that in 2006 we will see not a crude adjustment as currently applied but a more tailored and accurate adjustment to more appropriately uplift the undercounted figures in those remote areas to give a more realistic figure. I think there has been a slow recognition by the ABS, perhaps a slow recognition by everyone, that there is a problem there. ABS have applied additional resources to improving the undercount in remote areas.

Mr DANBY—Apart from the constitutional guarantee that the original states each receive a minimum of five seats in the House of Representatives, what other factors contribute to the Northern Territory not being, as you describe, on equal footing with Australians in terms of representation, apart from this issue of the two seats?

Dr Gerritsen—If we become one electorate not only do we have a lower significance of the Senate vote but we also have a lower House of Representatives vote.

Mr DANBY—Does this affect anything to do with Commonwealth grants or is there anything else that is linked to this that will disadvantage the Territory in any other way?

Dr Gerritsen—You mean by having one less member of parliament?

Mr DANBY—Yes.

Dr Gerritsen—You are prodding me to start being cynical. I would suggest that it would be handy for us to have two members of parliament, because it would double our chances of having one of them at least in government. That is my opinion, but I would not like to hold the Northern Territory government to that position.

Senator BRANDIS—Mr Tollner does a terrific job for you, I might say—Mr Snowdon as well.

Mr Stubbin—On the topic of financial implications, from the Northern Territory Treasury point of view, our concerns with population are primarily focused on the direct and very real financial implications of underestimating our population. The electoral issues are more in Rolf's ball court, but we have been able to demonstrate that we have lost many hundreds of thousands of dollars over the last 20 years due to the under-remuneration of the Territory's population.

Senator ROBERT RAY—What is the per capita grant from the Grants Commission to the Northern Territory compared with, say, Victoria?

Mr Stubbin—It is about five times as much. In round terms, it is about \$7,000 per Territorian.

Senator ROBERT RAY—It is about five times. If the statistics were right, how big would the margin be?

Mr Stubbin—It might be five and a half.

Mr DANBY—The projection of population growth, along with the economic projects, are outlined in the paper. Do you have any specifics on what you expect the population to grow by in each of those projects or as a total?

Dr Gerritsen—We are starting to do some modelling work on that now, but the ABS itself has admitted in its forward projections that the population will pick up, and so in two years time we will justify the second seat.

Senator ROBERT RAY—Where do they do that?

Dr Gerritsen—They do it in projections that I have seen.

Senator ROBERT RAY—We have never seen it. Where are those projections, could you tell us?

Dr Gerritsen—I have no idea.

Mr Stubbin—The ABS publishes every few years an official set of projections—

Senator ROBERT RAY—Hold on. I think we know the ABS publishes every few years. The claim has been made that there is some empirical evidence from the Bureau of Statistics that the population is going to increase when what it has basically told us is that in four of the last five quarters it has gone backwards. I am trying to find out where that information is because it is material to the hearing.

Mr Stubbin—It cannot be empirical evidence for the future. What the ABS has to do—

Senator ROBERT RAY—Well, let's wind it back and look for empirical evidence. Claims have been made that the Bureau of Statistics has indicated there is going to be a level of population growth in the Northern Territory. That is new evidence before this committee. No other witness has given that evidence. I am just wondering whether you have made a mistake or whether you can point to where that prediction is.

Mr Stubbin—I think you would have to look at the ABS official publication—

Senator ROBERT RAY—No, I am sorry. Someone must have it because Dr Gerritsen just said that the Bureau of Statistics has said that the Northern Territory's population will increase. I want to know where the bureau has said that because I do not think it has.

Mr Stubbin—They have said it in their ABS publication—I do not know the catalogue number—on projections of Australia's population.

Senator ROBERT RAY—What, back in 1999?

Mr Stubbin—They would have said it then and they will be re-doing it again.

Senator ROBERT RAY—Is that what you are referring to—projections that are four years old? If that is good evidence and we know they are going to produce their next update in five or

six days time on 2 September, you would regard that as more relevant than something four years old, would you not?

Dr Gerritsen—We work with what we have until we have done the modelling to work out what the impacts of the gas plant and the railway will be. We have some idea on the railway but not on the gas plant yet. We have done some preliminary estimates. They are just raw figures and not multipliers worked through the economy. Therefore, what the—

Senator ROBERT RAY—Just to get it straight, when you made the statement that the Bureau of Statistics were projecting a population increase, you were basing it on their four-year-old predictions, all of which, if you have seen the graphs subsequently produced by the Bureau of Statistics, you would find are just a crock? The growth was nothing like that. We have the forward projections, have we not, Chair? Their predictions are up there and the actuality is down here.

Mr Stubbin—I cannot believe they will produce a set of projections which will decline the population.

Senator ROBERT RAY—No, what is relevant to us is whether the growth will be relative to the rest of the growth in Australia. You might be able to argue that the Darwin to Alice Springs railway and all these other things are going to produce economic growth. I think you are right. Will it produce growth that makes your population growth outstrip the rest of Australia and therefore rebalance back to two seats? That is what is centrally before us, and you do not know.

Dr Gerritsen—Exactly. I do not know, Senator, because it depends upon a whole set of assumptions.

Senator BRANDIS—Does the Northern Territory government itself not produce any population projections?

Dr Gerritsen—Not yet. We are about to start.

Senator BRANDIS—So the only evidence of population trends to which we could look would be the latest ABS statistics?

Dr Gerritsen—That is right.

Senator BRANDIS—Thank you.

Mr DANBY—I was hoping you might have had some detail on approximate population increases attendant to this economic growth and whether this was going to be ahead of the general population growth electorate by electorate around Australia. Again, while we did not have the information from the ABS that there might be some half-developed information which we did not know was out there, it sounds like the modelling is not done and you are expecting population growth but you do not know whether it will be ahead of—

Dr Gerritsen—For instance, there will be about 300 construction jobs when Wickham Point gets going.

Mr DANBY—What is at Wickham Point?

Dr Gerritsen—That is the big gas plant. Now, you can make an assumption based upon certain multipliers that that means the population of Darwin will increase by a factor. The impact over time is a bit more difficult to model because there are 80 full-time employees on that plant once it is constructed. Whether the ABS will allow for that blip of work force growth in its forward estimates or whether it will take the longer term view, I do not know. We have to wait on the ABS figures.

Senator BRANDIS—Dr Gerritsen, the problem with that argument, as I said to Mr Snowdon, is that the way the act operates—and the way section 24 of the Constitution was interpreted by the High Court in the McKinley case sanctions this—is that the ABS statistics are taken as conclusive. There is really no point in going behind the ABS statistics and saying perhaps they are wrong. They are a given and the rules of arithmetic obviously are a given. It seems to me that it might be more fruitful for those seeking to support the argument for two seats not to say that one could second-guess the ABS statistics or the rules of arithmetic but to say that there are other considerations in addition to the simple crunching of the ABS numbers that ought to be had regard to. What do you say about that?

Dr Gerritsen—That is why we have made the community of interest argument, and that is why we are engaging in this exercise, which is principally about the grants but it also has an impact on electoral figures, with the ABS—to try to persuade them of our point of view with regard to what we would claim is an Indigenous undercounting.

CHAIR—Can I just pursue one point briefly? This review that you are conducting by agreement with the ABS, or this consultant that you are getting in, was this in your submission? Because if it was I read it too quickly. When did that happen?

Dr Gerritsen—When did it happen?

CHAIR—Yes. When did you agree?

Dr Gerritsen—About two weeks ago. We have not signed the contract yet.

CHAIR—How long had it been in negotiation?

Dr Gerritsen—About six months.

Mr MELHAM—I suppose if that review is accepted by both parties there will be fewer people willing to criticise future figures from the ABS.

Dr Gerritsen—Yes, that would be true. If we are correct, the impact may be reflected in the intercensal estimates of population. After the 1991 census there were substantial revisions of ABS figures of the Northern Territory population in the intercensal estimates.

Mr MELHAM—Were they revised upwards?

Dr Gerritsen—Yes, by a very substantial number.

Mr MELHAM—And what was the basis of the revision—underestimation in Aboriginal communities?

Dr Gerritsen—Indigenous undercount, and the ABS recognised that it was dramatic.

Mr Stubbin—It was an unanticipated administrative complication with the Medicare system, whereby Indigenous people were encouraged to register with Medicare whereas previously they had not been. The way the system worked, there were unintended reductions in population that had occurred. So they had to factor those people back in. I think it was about 1,045 people, as I recall, in Central Australia who were identified.

Mr MELHAM—So how long is the study expected to take place? It is three months, is it not, with the results expected to flow quickly after that?

Dr Gerritsen—Yes. I would expect that by the end of April we would have at least an initial report.

Mr MELHAM—And what is expected to flow from that if there is an acceptance of a new formula in calculating the Territory's population?

Dr Gerritsen—You are asking me a question about how the ABS will react to this.

Mr MELHAM—What are you seeking, in other words?

Dr Gerritsen—Assuming we are correct, the immediate result, we hope, would be a revision in the intercensal estimate of the population and there would be an agreement by the ABS to conduct a post-enumeration survey in remote Indigenous communities to tighten the number count.

Senator BRANDIS—Pardon my ignorance about this—and perhaps I should have asked this of the ABS—but does the ABS qualify its statistical conclusions in the way, for example, auditors sometimes qualify an auditor's report with commentary that allows for uncertainties in the data, or do they simply present a raw figure without commentary?

Mr Stubbin—In my experience, the ABS have used that sort of cautionary approach with things like Indigenous population forecasts. They have used the word 'experimental' on them. They also use those for a number of state and territory economic estimates of gross state product. In terms of census output and population determinations in the publication of Australian demographic statistics, I cannot recall that there is that up-front cautionary note.

Senator BRANDIS—Or qualification.

Mr Stubbin—Or qualification.

Senator BRANDIS—I am just looking for a way logically around this issue of the conclusivity of the ABS's determinations.

Mr Stubbin—I think it would be appropriate for certain aspects of their demographic work, but it would be better to ask them. They may well do things that I am not aware of and they may have an opinion on doing it, but legislatively there is obviously an issue of then putting up a figure. You want a conclusive figure, you do not want a—

Senator BRANDIS—Absolutely and that the figure is not only conclusive, but unreviewable.

Mr Stubbin—Yes.

CHAIR—But why do you say that we need a conclusive figure? Fundamentally, the variations in the Northern Territory, or the standard error in the Northern Territory, far exceed anything else.

Mr Stubbin—Agreed.

CHAIR—On top of a census and intercensal problem, which is quite distinctive, on my understanding, in terms of any other state or territory.

Mr Stubbin—Absolutely. Perhaps only in terms of the way the legislation is currently structured, there is no mechanism for ‘If it is within a certain range, you will have an allowance.’ If you wanted to amend the legislation to allow for the standard error—

Senator BRANDIS—Did you say ‘amend’ the legislation or ‘torment’ the legislation?

Mr Stubbin—Perhaps both, yes. I think I said ‘amend’ there. That would be appropriate. I am just thinking of your current act. You cannot have the ABS coming up and saying, ‘We think it might be this figure.’ That would not go down too well.

Senator BRANDIS—No, but you could have a situation in which they could state a provisional conclusion and, in a statistically very difficult case, it is like a sensitivity analysis. They could say, ‘But we caution against reliance on this figure for the following reasons’ and, therefore, there could either be a wider margin of error or there could be qualifying words in a qualitative sense.

Mr Stubbin—Sure.

Senator BRANDIS—I do not know anything about statistics, but that does not seem to me to be intrinsically illogical.

Mr Stubbin—You said ‘provisional’. The ABS do publish a number of estimates for a single point in time. I think it is up to five estimates that they will revise over and over again and revisions can occur up to five years out. So you can look back and say, ‘Gee, we made the wrong decision in terms of electorates’ once the ABS have finally determined the population. They already do that. They did make some comments to us earlier this year at a seminar that they presented to us about population estimates being fit for particular purposes and that not one size fits all.

Senator BRANDIS—I have to say that I am intuitively repelled by the notion of slashing the Northern Territory's representation in half on the basis of a statistical conclusion which is within the margin of error.

Mr Stubbin—I would agree with that.

Senator ROBERT RAY—I am just wondering because a lot of these submissions, including yours, says that the ACT should be guaranteed two seats along with the Northern Territory, which at the moment means that each ACT seat would have 110,000 electors and the Northern Territory ones about 55,000. Why would you not contemplate giving them three to make it a bit more equitable in enrolment terms between the two territories?

Dr Gerritsen—I think Mr Snowdon agreed with that. The Northern Territory government, so far as I have been told, do not have an opinion on that, but I am sure they would agree.

Senator ROBERT RAY—I am sorry, it is in your submission. You say: the Northern Territory two and the ACT two. If you had just said the Northern Territory, I would not have even asked the question. But you are also now proselytising on the rights and responsibilities in the ACT. I am wondering why you would not have said three.

Dr Gerritsen—We are making that claim on the same basis that I would presume you would make a claim that Tasmania should have five seats.

Senator ROBERT RAY—I see.

Dr Gerritsen—I am saying that, if we apply the same principles to the territories, there is an inalienable minimum number of seats in territories in the same way that the Constitution provides for a minimum number of seats for states. But we are being modest; we are asking only for two.

Senator ROBERT RAY—While you are being modest, you might be able to explain something on page 6 of your submission. I will just read it out to you. I do not understand it but, no doubt having written it and consulted widely among the Northern Territory government before coming here, you might be able to tell me what it means. It says:

Notwithstanding constitutional arrangements, the people of the Northern Territory have at least a moral claim to a level of representation that gives some measure of efficacy to our effective participation in a democratic Commonwealth and which enables our elected representatives to adequately and appropriately service the needs of their constituents.

What does that mean?

Dr Gerritsen—That comes from Mr Danby's comment to me earlier, which I answered rather badly. In essence, what we will argue is that, for instance, the member for Lingiari represents 70 per cent of the remote Indigenous population of this country. The rest of them are spread over the electorates of Capricornia, Kennedy, Grey and Kalgoorlie. So in that sense I would argue that, on equity grounds alone—which as a Labor member I am sure you would be keen on—we are looking at the group of the Australian population that is absolutely the poorest and the most disadvantaged. So it is important that they be powerfully represented in parliament.

Senator ROBERT RAY—So basically we should cut the seat of Lalor in half and make two members there, because they are also in the lower percentile. We should actually have representation on disadvantage. I can understand the argument for the Northern Territory, but you have to extend it elsewhere. You cannot just be hypocrites and say, ‘We will use this self-serving argument’—like half this submission is—‘for the Northern Territory’. The problem with these submissions is that half the material is terrific and the other half is just self-serving guff to puff it out. I just think that you are putting in all of these unnecessary distracters that lead us up all of these dry gulches. I cannot imagine. It is bureaucracy gone mad.

Senator BRANDIS—I, being a Liberal member of this committee, am also equally concerned with equity arguments. I agree with Senator Ray and I disagree with you. I do not think that you can characterise the people who are being represented as having special considerations because of who they are. That is kind of the old Bjelke-Petersen argument in Queensland.

Dr Gerritsen—Actually, the AWU started it.

Senator BRANDIS—Of course they did and various special pleaders throughout Australian history on both sides of the fence have used the argument and it has never been a respectable argument. But there is a slightly different argument, which I thought was what you were trying to articulate, which I put to Mr Snowdon. It is what I would call the body politic argument, and that is, the Northern Territory, being a body politic within the Commonwealth of Australia, should have certain minimum entitlements not because there are a lot of Aboriginals in Lingiari or for any reason internal to itself, but because, as a body politic within the Commonwealth, just as the original states were guaranteed five members of the House of Representatives, there is a minimum, which is reasonable for a large body politic, to be guaranteed. That is rather what I thought at least part of your argument was and that does not suffer from the vice of playing favourites among the character of people being represented within the body politic.

Dr Gerritsen—I agree with you entirely. That was the basis of my opening remarks.

Senator ROBERT RAY—You had better go back and find out who wrote this silly submission then. You just made a good point, but the submission does not reflect that. That is my point. You have got some great points in this submission and some absolute dross. I cannot understand how it would have got past you.

Dr Gerritsen—We do one or two other things.

Mr Chandler—The other aspect of that sentence, I think, touches fairly and squarely on the point that Mr Snowdon made previously, and that is the fact that one member attempting to service an electorate of the Northern Territory and Christmas Island finds the task extremely difficult. In terms of efficacy of really adequately representing those people in parliament with only one member attempting to do that—

Mr DANBY—That was not very clearly apparent between 1975 and the previous election. I asked Mr Tollner about this. It equally applies to the members for Kalgoorlie, Grey, Kennedy and all of these places. Do you concede that?

Mr Chandler—Absolutely. I think our submission makes the point that Kalgoorlie—

Mr DANBY—We are not going to think about dividing Grey, Kalgoorlie or Kennedy in half. There may be other sound grounds for looking at this issue, but I do not think the hard work the member had to do between 1975 and the previous election, which I understand the current member for Lingiari acquitted quite competently, is an argument, as far as I am concerned. There may be other good grounds, but it was not apparent previously, and other people are in the same position.

Mr Chandler—I agree absolutely. With respect, though, the Northern Territory was addressing the particular issue here, which was representation of the Northern Territory. I guess it is not for the Northern Territory to be dabbling in issues concerning the way the formula is applied in the states and other electoral divisions.

Senator BRANDIS—By the way, Dr Gerritsen, that argument I was exploring with you a moment ago is by no means unique to the Constitution. The Constitution and the Electoral Act say that every state, no matter how small it is, gets 12 senators. It says that every territory, no matter how small it is, gets two senators.

Dr Gerritsen—The Constitution does not say that.

Senator BRANDIS—No, but the legislation does. And section 24 of the Constitution says that every original state gets five members of the House of Representatives—no matter how small they are. So the idea of statutory minima of representation in the Commonwealth parliament for bodies politic within the Commonwealth is commonplace.

Dr Gerritsen—That is why I made the point in my original argument that what we are really saying is that the territories at present are guaranteed one seat in the House of Representatives. We are just saying that that should be upgraded to two. We are trying to present arguments as to why, in our case, it should be—to support the case for the Northern Territory. We are not presuming to make—

Senator BRANDIS—But I think your argument is stronger than that. I think if you are going to have a statutory minimum for the territories you have to start at two, because to have one is merely a recognition that you are entitled to the fact of representation.

Senator ROBERT RAY—The overall solution to the whole thing would be to increase the size of the parliament to make Tasmania's five seats representative right across Australia, which would automatically give the Northern Territory two and the ACT three. Then you would not have the bias in favour of Tasmania that the Constitution currently allows. The secret to doing that is to reduce the power of the Senate so people do not mind expanding the Senate. I think that is slightly outside our terms of reference, even though it is a solution.

Senator BRANDIS—An elegant but impractical solution, Senator Ray.

Senator ROBERT RAY—We expanded the parliament in 1949 and 1984. Parliament House is not big enough. That is the problem.

CHAIR—One of the issues that I think it is important to underscore—it bubbles up every so often—is that you have a perspective. We also have a general situation to confront, where all the

particularistic arguments apply to a lot of other cases as well. We understand where you are coming from, so long as you understand where we are coming from.

Mr Chandler—I understand perfectly.

Dr Gerritsen—I think our position is without detriment to the states.

CHAIR—It is in some degree a zero sum game, too. An increased representation by the Northern Territory diminishes the significance of the states. Even though they do not lose a seat, they actually have less of an impact.

Senator BRANDIS—It is pretty incremental, though.

CHAIR—That is true. It is axiomatic. Gentlemen, thank you very much for appearing before the committee. We may pursue some points through the secretariat. I think we would like to come back to you on some of the statistical information.

Proceedings suspended from 10.47 a.m. to 11.09 a.m.

LAWRENCE, Ms Fay, President, Northern Territory Branch, Australian Democrats

CHAIR—Welcome, Ms Lawrence, to today's hearing. The committee has received your submission. Would you like to make any corrections or amendments or would you like to make a brief opening statement?

Ms Lawrence—I would like to add a couple of extra points to elaborate on the submission and I should tell you that when I put the submission in, I was the secretary; that has since changed. As I said in the submission, the Democrats are supporting keeping the present number of Northern Territory members in the House of Representatives to two—that is, until the issue of statehood is determined. That has been put on the political agenda and it opens up a whole range of different issues, such as where boundaries are drawn. Should the state include the Kimberley? Should Central Australia be part of South Australia or should we have a Central Australian state? There are a whole lot of issues like that, including the number of senators and the number of members in the House of Representatives. The statehood issue is an opportunity to look again at the Constitution and how representation is determined and whether we should have states at all, et cetera. Putting that aside, the Democrats believe that we should do without the states and just have Commonwealth government plus local government and regional governments where necessary. At the same time, by virtue of the fact that we do have a federation, Northern Territory people are disadvantaged because we are not a state in the current political set-up in Australia. We are a territory and I feel that we are disadvantaged in representation compared to the rest of Australia.

At the moment we have 12 senators per state. Back in the eighties, when the Labor government changed the number of senators per state from 10 to 12, I made a call to talkback radio, to then Prime Minister Bob Hawke, suggesting that those 12 extra senators should be allocated to the two territories instead of to the states if they wanted to increase the size of the Senate. He laughed that off, of course, and it did not happen. Again, that is another issue. Those 12 extra seats could go to the two territories, having six each. At a half Senate election that would be three each. You would retain the 72 senators, if you want to look at it in that way, but we would rearrange which states get those 72 senators. Again, if we had the number in the House of Representatives, there would still be 144, having to be twice the number.

Senator ROBERT RAY—No.

Ms Lawrence—Sorry, House of Representatives seats are twice the number of Senate seats.

Senator ROBERT RAY—No. Twice the Senate state seats.

Ms Lawrence—State seats, yes.

Senator ROBERT RAY—So if you put those territory ones in, you could not calculate them in the double.

Ms Lawrence—What I am saying is that, if we rearranged those Senate seats and if the Northern Territory had statehood, there would still be 72. I am making the statement that, if we

had 10 for each state and six for the two territories, it would still be 72. On that, the House of Representatives would remain at 144, that is if statehood was granted on those terms. We are disadvantaged at the moment in that our term for the Territory senators is only the length of the House of Representatives term, whereas with statehood we would get the term for the present state senators, which is six years.

Senator BRANDIS—Why is that a disadvantage? I can see why it is a disadvantage for the senators, but it might be an advantage for the electorate, because you have twice as many opportunities to kick them out?

Ms Lawrence—It would be equal with the rest of Australia. Again, I do not mind if that comes up for constitutional discussion—

Senator BRANDIS—A lot of people would think that is an advantage, to have a more frequent opportunity to exercise their franchise.

Ms Lawrence—Are all of the states going to go out for every House of Representatives term? Are you going to suggest that?

Senator BRANDIS—No, I am merely pointing out that what you say is a disadvantage is not necessarily a disadvantage. It is a difference.

Ms Lawrence—That may be a point of view. Anyway, at the moment we are different from the states by virtue of the fact that we have a term linked with the House of Representatives while the states have a term for six years. I am just pointing out that there is that difference. We are not equal. If you want to open up another discussion, I do not think that is—

CHAIR—It is not identical, but it is equal in terms of representation.

Ms Lawrence—The length of the term is different. One might say the senators are being elected for three years, but obviously that changes, too. It is not necessarily three years. They are elected for only three years whereas the state senators are elected for six years.

Mr MELHAM—But the criteria for your representation is different than for state senators and the lower house.

Ms Lawrence—In what regard?

Mr MELHAM—Because it has basically been a gift of the national parliament in terms of Territory representation. So it has been given on those particular terms.

Ms Lawrence—I understand that. That is what I am saying. We are not equal, then, to the rest of Australia. The population up here is getting it as a gift instead of as a right. That is the point I am making.

Senator BRANDIS—But my point is that you have an additional right. You have an opportunity to elect senators every three years.

Ms Lawrence—But the states might want to elect their senators every three years. That is not the point I am making.

Mr MELHAM—Well, you need a constitutional change to bring that about.

Ms Lawrence—That is what I am saying. The statehood thing raises a whole lot of issues. I am saying that that is a constitutional debate. If you want to have it now, I do not mind having one now.

Mr MELHAM—Surely the key is representation, is it not—not necessarily how often an election has to take place to put them into Canberra?

Ms Lawrence—I am making the point that our senators have a different term from senators from the states. That is the point I am making.

Mr MELHAM—And the point I am trying to make is that the territories and citizens of the territories as of right do not have the same rights as citizens of the original states.

Ms Lawrence—I appreciate that. That is part of the statehood debate, surely, and a constitutional debate.

Mr MELHAM—One of the things you are asking for is some special treatment for the Northern Territory by bringing you back to two members of the lower house. That is not something that we have the flexibility to do in relation to the original states.

Ms Lawrence—I appreciate that. I am just putting this as an introduction to say why I am supporting this. At the moment, as per the private member's bill, I am supporting it in the interim until statehood issues are determined.

CHAIR—You have engaged the committee hugely. I think we should let you finish your statement and then re-engage.

Ms Lawrence—Coming back to the connection between the number of senators and the House of Representatives and the population, I did some figures. You all know what the quota is according to news file No. 110 for I think March of this year. I referred to it in my submission. I do not know whether I attached it, but I provided a link to it. Obviously we have the quota at the moment, which is 1.4978, which is just under the 1.5, which would have taken us to two. At the moment I acknowledge that the NT population does include the Christmas and Cocos (Keeling) islands, which raises a question in my submission—I had not looked at the table. In some states, some populations are included and others are excluded. That is another instance of things not being equal. If we included all of the Australian population, according to the Bureau of Statistics' figures, including the ACT and NT, the population of Australia would be 19,727,821.

The other situation is that we have 72 senators plus the two from each territory, making 76. If the formula were based on 76 senators, twice that number being 152 in the House of Representatives, in the Territory under the existing population figure, excluding the territories from the Australian population—as I said, the quota I am saying is currently as stated in the AEC news file 110—there would be a quota of 1.4978, which is just under the amount to get two. If

we used 148 House of Representatives seats, which there actually are—there are 144 plus four, which equals 148—and if we divided that population excluding the territories by 148 it would make the quota for the Territory 1.5394. If you took the first quota and took it to one decimal place, it would be 1.5 for both.

If you took the third quota and divided it by 152 and there are 76 senators and you multiplied that by two, it would make 152 seats in the House of Representatives. If you had the formula using that figure, it would make the quota for the Territory 1.5810 or, if you took it to one decimal place, 1.6 which, under the present circumstances would give us two seats. Tasmania, as I said in my submission under quota three, which is the actual situation excluding ACT and NT populations, should only have 3.76 to three quotas. If you included the Australian population, including the ACT and the NT—again, this is somewhere where we are being discriminated against; we are not actually being included in the Australian population, which I think is a bit strange—the quota under the 144 seats, which is the deviser under the present formula, would give us a quota of 1.4581 or, taking that to one decimal point, it would be 1.5. If you divide that by 148, which is the number of existing House of Reps seats, the quota would be 1.4986 or 1.5 if you took it to the nearest decimal place. If you divide that by the existing 76 senators, 152 seats being double that, the quota would be 1.5391 or still 1.5 if you took at it the first decimal point.

What I am saying is that if you take those figures in and out and what the actual reality is, we have 76 senators and we have 148 seats. If you look at the figures according to what the existing situation is, you get different results as to what our quota should be. I suppose it all boils down to the fact that our population has only decreased by about 700. I do not have that figure in my head, but whatever it is it is relatively small, which means that we are going to go back to one or maybe at the next election it will be back up to two again. Again, it really makes a big difference as to the impact on the Territory as a large geographic area. As I said in my submission, because of the different communities that we have and the communities of interest, going back to one is really I think reducing the representation. Certainly, there is no equality with, say, compared to Tasmania. If we had one seat, we would have a population of 199,000 in that seat compared to the rest of Australia, which averages at a lot less per seat. The population in each seat in the other states is contained in my submission.

The other point I wanted to make is this: again looking at the Bureau of Statistics population trend going up to 2051, the NT will be greater than Tasmania by roughly 50,000 and the ACT just 2,000. The ACT will decrease and the Territory will increase. So, again, I suppose I am saying that with the expected population growth in the territory that would, under the present formula, allow us to retain our two seats. The other thing is that in 2002 the population in the capital city for the Northern Territory is 52.9 per cent. Again, that highlights the point that I made that we have a community of interest in the urban areas and a community of interest in remote and rural areas, which I think is almost split half and half. That in itself would support having two representatives to cover those interests and to give them attention.

CHAIR—Thank you very much for that. You have been here for a lot of the discussion. What is your attitude towards the problems with the census data and the representation of the Northern Territory? Do you have any views on this?

Ms Lawrence—I am only reacting to some media reports that I have read and, again, I am not too sure how accurate they are. But there was a statement made in the media that some of the

census forms were not returned in the remote areas. If that is the case, it could well be that our actual population could be greater than what the census figures said. The other thing, too, is that I read something from the Bureau of Statistics saying that their next quarterly return is due in September, so maybe that might show up some difference and might take us back, under the present formula, to retain those two seats.

CHAIR—What if it went the other way?

Ms Lawrence—That would then make that a stronger argument I guess using the present formula. Again, if you compare the fact that we have a 199,000 population compared to, say, the next most populous state of South Australia with 138,000, we are still well and truly above that. Compared to Tasmania, which has a population of only 94,000 or 95,000, we would still be well and truly twice the Tasmanian representation population wise. If you are comparing those, I think the argument justifies the second seat.

Senator ROBERT RAY—The last Thursday that the Senate met Senator Murray and your colleagues in the Democrats Party introduced a private member's bill for one vote, one value. How is it one vote, one value that you have got 57,000 electors in the electorate of Solomon and 112,000 in the electorate of Fraser under your proposed scheme? Where is the fairness in that?

Ms Lawrence—That is something that I think needs to be taken into account. At the moment these quotas are determined on the population of the state, not the number of electors on the roles.

Senator ROBERT RAY—I think we understand that. I am just taking it the next point on.

Ms Lawrence—So, in that sense, if we are using the current formula, you could use your argument and say, 'Okay. Do we need to look at the current formula and revise the whole lot for the whole of Australia?' If you want to implement one vote, one value, I am quite happy to look at that.

Senator ROBERT RAY—With respect, I did not ask you that. I said how do you feel about the consequences of that? You have espoused principles of how you think seats should be divided up on the basis of population. I am now asking you to look at the consequences of enrolment where you can get a seat of 112,000 under your scheme and seats of 55,000. Where is the fairness in that?

Ms Lawrence—I have no objection to this committee recommending that the whole of Australia look again at working out a formula based on one vote, one value on the enrolment. I have not done analysis of those figures so I do not know how that would pan out, but I am quite sure that these figures for the other states would then change according to that because there is a discrepancy in the number of enrolments. I have a paper here if you want me to refer to it which says what they are, which I have taken from the AEC web site. At the moment we have a population of 109,986 compared to enrolment as at 12 August of 109,986. Under that enrolment figure, for one seat we would be well and truly over every other state. Using that figure, we would be almost on a par with the ACT. Using that figure, we would still not be equal to the states on a one vote, one value if you took the average vote according to the AEC figures. This all would be equivalent to the other states. That would be equivalent to the ACT.

Senator ROBERT RAY—So you argued at one stage there that it was anomalous—and you are probably right—that territories' populations are not taken into the overall calculations of the population.

Ms Lawrence—Yes, of the Australian population. That is my understanding.

Senator ROBERT RAY—You are correct. If that were to occur though—and the possibility of constitutional change at this stage is remote—the deviser would be 144, nothing else. You have no choice; the Constitution tells us what the deviser is at the moment. If that were the case, then you would fall a lot shorter of quota to two seats now than ever before. So it is probably to the Territory's advantage at the moment, is it not, that the overall population of the territories is not put into the Australian total?

Ms Lawrence—It would change the quotas including the ACT population and using the 144, not using the 148.

Senator ROBERT RAY—The Constitution tells us that we have to at the moment use 144.

Ms Lawrence—Yes, and I understand that you cannot do anything about that.

Senator ROBERT RAY—You cannot change that. So if we were to put the populations of the territories into the overall Australian population and divide it by 144, both the ACT and the Northern Territory would be far worse off in trying to achieve an extra quota, would they not?

Ms Lawrence—Yes, which is why we are dealing with this by legislation. We are not dealing with it via the Constitution, are we?

Senator ROBERT RAY—I am just trying to make the point that you are one of the several witness who have alluded to the fact it may not be fair that the Territory's population is not added to the total population of Australia for this formula. In fact, it is a major advantage to the Territory that it is not and we really should let that sleeping dog lie.

Ms Lawrence—I think all of those things are constitutional issues which need to be resolved, because there are differences. Coming back to the NT, if you look at it constitutionally, maybe you do need something in the Constitution that accounts for smaller entities, like Tasmania when it became a state. It had a minimum of five seats, which is why they have a difference in their population quota. According to the formula, they would be entitled to only three or four seats—four I think it is.

Senator ROBERT RAY—Poor old Tassie is taking a bit of a battering on all this. It was put there at the time mainly to protect Western Australia—that is the great irony—not Tasmania, but it has worked out that way.

Ms Lawrence—I take your point that things are different, but again this is going to be resolved by legislation, not by the Constitution. I am quite happy for it to be resolved by constitutional debate and change the Constitution.

Senator ROBERT RAY—Do you have the \$40 million deposit to put up?

Ms Lawrence—There might be a reason why we are not having it, but we are resolving this by legislation. I am just making the point that under the present formula we are only just under and we can use that same argument that Tasmania needed a minimum number of representation. I am not too sure what their argument was in those days, but our argument is, as I have said, that maybe we do need those two seats because the Territory is a large vast area with lots of different interests and maybe that does need a minimum of two to serve the interests of the Territory and the community of interest.

CHAIR—Do you want to make a concluding statement?

Ms Lawrence—No. I think I have just made it in response to Senator Ray.

CHAIR—Thank you, Ms Lawrence.

[11.32 a.m.]

CROSSIN, Senator Trish Margaret, Senator for the Northern Territory

CHAIR—Welcome, Senator Crossin. The committee has received your submission and authorised it for publication. Do you wish to make any amendments or additions or would you like to make a short statement?

Senator Crossin—I will make a short statement to begin with. Thank you for making the trip to the Top End and investigating this matter. My submission goes to the work that I have been doing through the Senate estimates committee in tracking exactly what the Australian Bureau of Statistics does or is doing when it conducts a census and the information it then provides to the Electoral Commission, the result of which you are inquiring into. I am not going to go into the background of how the one or two seats are determined. You have that in the research notes which the Parliamentary Library has provided and through your understanding of the act. Suffice to say, though, that my submission goes to the inaccuracy or accuracy of the 2001 census that was conducted. Let me just take a few minutes to talk about that.

I have provided the committee with the estimates process in which I put a number of questions to the Australian Bureau of Statistics in June of this year following the budget estimates. If in fact you compare their answers to me with the submission this committee has been given or information that has been provided to another committee I sit on which is the Joint National Capital and external Territories Committee, there is no consistency in the advice that they provide in terms of how population statistics are collected, particularly when it comes to Indigenous communities. I have asked on numerous occasions for the list of Indigenous communities and out-stations that were sent census forms or at least had somebody go into that community or out-station in which to provide a census form during 2001. Three times now that list has not been provided to me from the ABS. If you look through the transcript of estimates, all but one of the questions have been answered. So there are many questions still left unanswered about how they conducted their count in Indigenous communities.

There are a few things I want to highlight to you, and one is the issue of a post-enumeration survey. Some weeks after a census is conducted, 30,000 forms are sent around this country to exactly the same people so that an adjustment can be made on the census figures. Those forms are not sent to any Indigenous communities or out-stations, so here in the Northern Territory they are only sent to the major regional towns—Darwin, Katherine, Tennant Creek, Alice Springs, Jabiru and Nhulunbuy. So where you might have a one per cent adjustment in New South Wales, which is probably relatively minor given their population, a one per cent adjustment here in the Northern Territory—if a post-enumeration survey included Indigenous people as well—would have quite an amazing result. About one per cent for the Territory is far greater and has a greater impact than, say, a one per cent adjustment in New South Wales.

Senator ROBERT RAY—If they have 50 seats, a one per cent error could well cost them a seat, too.

Senator Crossin—We are not talking about seats; we are talking about census data collection material. In other words, you might get a post-enumeration survey following the census which just reconfirms the information you provided in the census, or it will not reconfirm that. People will say, 'I was actually in my house that night but on census night I said I was in New South Wales,' so you have to readjust it. That readjustment is not done in terms of Indigenous people in the Northern Territory because no-one in a remote community or an out-station gets a post-enumeration survey.

Senator ROBERT RAY—That is a different point. I still cannot understand why a one per cent error in New South Wales is not as serious as a one per cent error in the Northern Territory. Your point now is a different one and a valid one, but I cannot understand that.

Senator Crossin—I think you are linking it to the number of seats and I have not made that connection yet. A one per cent error in New South Wales when you are talking about millions of people is a minor number. One per cent in the Northern Territory can be quite significant.

Senator ROBERT RAY—It is exactly the same proportionality and it is just as massive an error.

Senator Crossin—But you are talking about a one per cent adjustment on only 75 per cent of the population, because a third of the population in the Northern Territory are not included in the post-enumeration survey. The ABS have admitted that there are problems in the way in which they collect data in the Northern Territory in relation to Indigenous people. The other thing I want to point out to you is that once a census is conducted, any further adjustment of those figures through the estimated resident population or the intercensal period relies on a number of issues—births and deaths, and that is pretty obvious, use of the Medicare card and movement in and out of the Northern Territory. When we go to the use of a Medicare card, though, a significant number of Indigenous people do not have a Medicare card and do not have a Medicare number. A significant number of Indigenous people, particularly around the borders of the Alice Springs region—east and west of Alice Springs—would move in and out of the Northern Territory to Western Australia and South Australia. Many times I have asked the ABS how they count those people and how they factor them in and on a number of times they have admitted they do not do it well, there is a significant margin or error and it needs to be reviewed.

Mr MELHAM—On Senator Ray's point about the one per cent, isn't your case really not that there is a one per cent error in New South Wales and a one per cent error in the Northern Territory but that there is a one per cent error in New South Wales and a greater percentage error in the Northern Territory because of the lack of follow up?

Senator Crossin—That is right, because—

Mr MELHAM—So it is not one per cent in each. I am just trying to pick up Senator Ray's point. On the submission you are giving us it seems to me—

Senator Crossin—The percentage is irrelevant. It is the way in which they arrive at that adjustment after the census.

Senator ROBERT RAY—Can we strike the one per cent in New South Wales and Northern Territory out of the argument now and just dismiss it?

Senator Crossin—All right. That is just an example I gave.

Senator ROBERT RAY—It is a bad one.

Senator Crossin—The issue is that, if you are going to send 10,000 post-enumeration surveys to New South Wales, you will get everybody there. If you are going to send 2,000 to the Northern Territory, they only go to the major regional centres. They do not go to communities or out-stations. If you actually read the transcript I provided you in June you will see that.

Mr MELHAM—But the effect of that is to underestimate the Northern Territory. Is that what you are saying?

Senator Crossin—Significant underestimation. When John Taylor from the Australian National University conducted a review of the figures at Aurukun, there was found to be a 17 per cent undercount. So what I put to you in my submission is that I believe at the end of the day, although the ABS have admitted they do not do it well—they did it better in 2001 in terms of collecting Indigenous numbers than in the past and are looking at improving the process for the future—I still do not believe that a self-evaluation of that bureau is going to be the best way forward. I would hope that your committee would at least recommend that an independent review of the way in which the Australian Bureau of Statistics conducts and collects census data in relation to Indigenous people should be carried out. That is, a body external to the ABS should have a very good look at what they are doing and make recommendations and improvements to it.

Mr MELHAM—We were told by an earlier submission from the Northern Territory government that there is actually a review taking place in the early part of next year by John Taylor because of arguments between the ABS and the Northern Territory government.

Senator Crossin—John Taylor has written a number of papers on this. I think it would be worth the committee getting hold of those. The issue this leads up to is that it is the census figures that are used as the baseline data for any figures that may be then derived for future use. In this case, of course, it is the calculation of House of Representatives seats. We are talking about a calculation that is used right across the board.

It was after quite a bit of prodding and questioning at estimates that I finally got Mr Trewin from the Australian Bureau of Statistics to agree to give to me the letter that came from the Australian Electoral Commission in relation to what sort of statistics would be required in order to conduct the review of the House of Representatives seats. During the estimates I was informed by the ABS that they were pretty convinced that what the Electoral Commission had actually asked for was the latest available statistics, but of course if you actually read the letter that I provided to you in my submission you will see that that is not entirely the case. This letter says:

Mr Terry Rushton from the AEC recently contacted Mr Matthew Berger from ABS regarding the likely availability of the September Quarter 2002 ERP—

that is, the estimated resident population. It continues—

Mr Berger has advised that the Australian Demographic Statistics would not be available until late March 2003.

It goes on to say, however, that:

... the ABS may prepare a special version of the September Quarter ERP figures.

Unfortunately, thanks to the work of the Economics Legislation Committee, I was able to obtain this letter only a week ago, so I have not had a chance to ask the ABS exactly what a special version of the September figures constitutes. Therefore, I am not in a position to be able to tell you what that means. The Australian Electoral Act specifies the latest available statistics. I put it to you that, if in fact the ABS has admitted they cannot get the September quarter figures calculated and ready in time—they have to put together a special version of those figures—then the date of this letter, being 22 October, means that the latest available statistics would have been from the June 2002 quarter. The June 2002 quarter would have seen us retain the second seat in the Northern Territory.

What I am putting to you is that there is inconsistency in the advice the Australian Bureau of Statistics has given me and probably this committee. There is a lack of clarity about exactly what statistics they used or what version of the statistics they used. As a result of that, I put to you that this committee needs to look at making a recommendation that a definition of the latest available statistics is put into the Electoral Act, because currently that definition is not there.

Senator BRANDIS—Senator Crossin, are you saying that your understanding of what Mr Becker conveyed to you in his letter of 22 October 2002—

Senator ROBERT RAY—Not to Senator Crossin.

Senator BRANDIS—I am sorry. Are you saying that your understanding of the letter to the ABS of 22 October 2002, which was supplied to you in response to your question on notice in estimates, is that the determination that was made for the Northern Territory on 19 February 2003 was not based on the latest available statistics? Is that your point?

Senator Crossin—According to this letter, it is based on ‘a special version’, whatever that means. I have not had a chance to request the ABS about that—

Mr MELHAM—It is a special version of the September quarter ERP figures. You have to read on. My reading of it is that they are bringing it out early.

Senator Crossin—It may not be.

Mr MELHAM—It is not different figures.

Senator Crossin—Well, it may not be. That is your interpretation of ‘a special version’.

Senator BRANDIS—I am not against you, Senator Crossin. I just want to know what exactly is the point you are making. Do you say that we should read this letter as indicating that when

the determination on 19 February 2003 was made the latest available statistics were not being used? Do you say that or do you not?

Senator Crossin—I do. Let me clarify that.

Senator BRANDIS—Where is the evidence of that?

Senator Crossin—What I am saying to you is that on 22 October the response from the Australian Bureau of Statistics, if I read this letter correctly, should have been, ‘By the date you want the latest available statistics’—that is, between February and March—‘our September quarter figures will not be available because they are generally not available until the end of March. Therefore, the Australian Electoral Commission has decided to provide ‘a special version’—

Senator BRANDIS—No: ‘may prepare’, it says.

Senator Crossin—And I have no evidence to the contrary, because the ABS has not—

Senator BRANDIS—He does not say that they did and he does not say they are going to; he says that they may.

Senator ROBERT RAY—But the significance here, Senator Brandis, is, firstly, why in heaven’s name did the Electoral Commission not supply us with this letter when they put a submission in? What a rotten outfit not to do that. That is the first thing. Secondly, the intention—I can at least speak to the intention because I was privy to putting these sections in the act—was to get the latest figures, and we knew there were lags. That is why I keep on saying ‘where the chips fall, they fall’. We knew there would be lags. You cannot have absolutely up-to-date figures. You are quite right, Senator Brandis. We do not know whether they brought forward the figures. If they brought forward the figures we want to know whether they have ever done it before or if this is a one-off case, because it does change your appreciation of what they did.

Senator BRANDIS—I agree. I am not for a moment disputing what you say, Senator Ray. I think that Senator Crossin, who has derived this evidence, is perhaps putting a more certain characterisation on that last paragraph on the first page of the letter than it bears.

CHAIR—I think you have raised the question.

Senator Crossin—If you actually look at the—

Senator ROBERT RAY—But if we go back and look at the evidence of the Electoral Commission it will tell us which quarter they used. If we go back and look to their evidence we should be able to find out now whether they used the June or the September quarter.

Senator BRANDIS—The other outstanding question is whether the special version of the September quarter was in fact prepared. We do not know that.

Senator Crossin—Well, that is the issue. I have read the submission from the ABS to this inquiry and they are saying that they used the September quarter figures. Were they the final

September quarter figures that would normally have been released in March or were they a special version of those figures? If it is the special version, what does making a special version of those figures mean? This very committee, I think back in 1995, conducted an inquiry and specifically ruled that projected figures were not acceptable and that in fact it needed to be the latest available or previous figures. Can I just take you to the transcript, though, of 5 June? At page E660 I specifically ask Mr Trewin what advice the Australian Electoral Commissioner actually asked for. Mr Trewin said to me:

He asked for the estimated resident population. I presume it was as at the end of the September quarter 2002.

Bearing in mind that this letter is dated October 2002 and this is an answer given in June 2003, he knew very well what the Australian Electoral Commission had asked for and he knew very well at that time what the ABS had supplied but did not provide that answer to me accurately, I believe.

Senator BRANDIS—You are being a bit rough on him, are you not? He may not have been aware of that piece of information during the course of the estimates hearing.

Senator Crossin—He did not indicate that, with all due respect, Senator Brandis.

Senator ROBERT RAY—Does it indicate here—this goes back to one of the questions we need to follow up here—that that is something we have done in the past when there has been a similar sort of requirement? If there is a constant pattern that this has been done and no-one has picked it up, it weakens your case. If it is done especially on this one occasion in the Northern Territory, it is a big, big problem for the Electoral Commission, the Statistician and this committee. If it is a regular thing where they have rushed through figures to get out the latest, it is not quite as strong a point. It still does not in any way defend the Electoral Commission not forwarding this letter to us. I am just staggered that they did not.

Senator Crossin—That might be the case, Senator Ray, but at that time I was not aware that a special version of the statistics had been contemplated, and what I was getting at here was whether or not the ABS were going to use estimated resident population or a rolling average. I asked them which one would they use and why. They indicated to me that a rolling average took a number of previous figures, which was not usually the case. If you follow my line of questioning, I then went on to ask who makes the decision, which figures do they use and are they always mindful of the fact that the ABS have to be careful which figures they use and the impact they have. I am sure this morning you would have heard evidence about the impact of this. Aside from the fact that we will lose one federal House of Representatives seat, the census based figures indicate quite a significant drop in Commonwealth Grants Commission money based on—

Senator BRANDIS—Senator Crossin—

Senator ROBERT RAY—Sorry, I just want to go back to the June figure and then I will cede the floor to you. You said that the June figure allows you two seats in the Northern Territory. When I say you, I am talking collectively. Do you have those figures with you or can we get hold of those figures? I have not seen a calculation done on the June figures and I would be interested to see that because it may well be—

Senator Crossin—It is one of the questions I would ask the ABS to provide me with in Senate estimates. I looked at the ABS web site and made a calculation of that myself. It is certainly one of the questions that I am—

Senator ROBERT RAY—So you do not know for sure.

CHAIR—Senator, if I can help: I think the Library briefing stated that the June figures would have brought them in on target. He was making the point that the September figures were idiosyncratic, as I recollect.

Senator ROBERT RAY—I am sorry to play doubting Thomas; I just wanted to—

Senator Crossin—I do have the June figures for 2002. They were 154 which was 1.5 quotas or 2,354 people above a quota.

Senator BRANDIS—The June 2002 figures?

Senator Crossin—Correct. But what I had asked in estimates was for those figures to be confirmed. I am still waiting for that answer to come back.

Senator ROBERT RAY—I meant to ask them when they were before us because I know they have not answered all your questions. When was the closing date for answering of questions?

Senator Crossin—Probably around 20 July.

Senator ROBERT RAY—Yes, I thought so.

Senator Crossin—There have been several letters and several requests from the Economics Committee to the Treasurer. I understand the letters are sitting on his table but they have not been released. I would have thought that if the government were interested in supporting the—

Senator BRANDIS—Come on, Senator Crossin, before you make any political points, just come back to the facts. Go to the last paragraph of the letter of 22 October. You say, do you, that if there had been a special version of the September quarter ERP figures they would have validated or confirmed the June quarter figures and the Northern Territory would have got two seats? Is that your position?

Senator Crossin—No, that is not what I am saying.

Senator BRANDIS—All right. What significance then do you ascribe to a special version of the September quarter ERP figures?

Senator Crossin—I do not understand what a special version of the figures constitutes. I have not had a chance to ask the ABS to clarify it.

Senator BRANDIS—What do you think this means?

Senator Crossin—I think it means they had to rejig figures or quickly anticipate a projection or—

Senator BRANDIS—That is conjecture.

CHAIR—Senator Crossin, I am sorry to interrupt, but I think what it means is that the ABS told them the figures were not coming out in the normal course of events until the end of the month, and they needed them by 13 February and 12 March and they would want them at the front end. So the ABS said, ‘Fine, we will produce them for you quickly.’

Senator Crossin—It does not say that. It says ‘a special version’.

Senator BRANDIS—Maybe.

Senator Crossin—Why not a regular, normal version that is just fast-tracked and an indication that their staff will work very hard to get the figures released earlier? It needs to be clarified.

Senator BRANDIS—You are right; it does need to be clarified. I think it does not necessarily mean what you think it means—

Senator Crossin—Maybe not.

Senator BRANDIS—Nevertheless, you have raised a legitimate issue.

Senator ROBERT RAY—Even if it does not mean what Senator Crossin has alluded to—and I think you might be right there, Senator Brandis—there is still the problem of the original intention, which was where the chips fall they fall, not that you could hurry up the chips falling or change anything to do with it. We would have anticipated when we put this legislation through parliament that the latest figures would come out, there would always be a lag and it would have been the June figures, not rushed figures. That was never the intention. I would like to know whether this has happened in the past.

Senator Crossin—That is the position I am putting to you: on 22 October when this letter was written to the ABS the latest available statistics were the June 2002 ERPs, not a special version or a fast-tracked version of the September quarter figures.

Senator ROBERT RAY—Which could or could not be accurate, you are saying?

Senator Crossin—Correct.

Senator BRANDIS—I understand the argument, but I am not so sure about it either. What the High Court says about section 24 of the Constitution in the McKinley case rather suggests that, once you arrive at the date for making the determination, you use whatever the latest figures are available to you in order to enable you to make the determination on that date, even though as I read the language that is not inconsistent with their being a special set of figures or a more recently prepared set of figures.

Senator ROBERT RAY—Wouldn't we like to get the original explanatory memorandum on that, too? That might help.

Senator Crossin—I put it to you that is your interpretation.

Senator BRANDIS—Yes, it is.

Senator Crossin—My interpretation has been—and I believe this is true as of 22 October—the latest available statistics were the June ERPs.

Senator ROBERT RAY—And mine.

Senator BRANDIS—Except, Senator Crossin, 'latest available statistics' is not a lawyer's term; it is not a term of art.

Senator Crossin—It is a term that is in the act, though.

Senator BRANDIS—If on 22 October there were statistics more recent than the June statistics, they surely would have been the latest available statistics.

Senator ROBERT RAY—Go back to Mr Becker's evidence, Senator Brandis, where he says, 'We just take the figures given to us by the Statistician.' He did not indicate to us that he had written to the Statistician and suggested a different course of action. So we have a problem there, too.

Senator BRANDIS—I understand that. I am not seeking to excuse this. I am merely saying that if, for whatever reason, there are more recent statistics than the most recent set of regular statistics on the relevant date, unless ordinary language has lost its meaning, they are the latest statistics.

Senator Crossin—And those statistics that you are alluding to are usually available at the end of March.

Senator BRANDIS—That is a different question.

Senator Crossin—Therefore, the Australian Electoral Commission are advising that they will have to put a special version of those statistics together in order for them to be used by the AEC on 18 February.

Senator BRANDIS—I think we should pursue this with the Australian Electoral Commission.

Senator ROBERT RAY—The difficulty for the Electoral Commission in asking for a new set of figures is that if you have done your projections right—and I am not saying they did this—they might ask for a new set knowing what the result is going to be different from the old set, and that is why it has always been where the chips fall and whatever is the latest statistics they can provide in the normal course of events. This is where we have a problem if that is hurried and brought forward. That is the potential manipulation. I am not saying it was on this occasion—in fact, I am sure it was not.

Senator BRANDIS—I understand that, Senator Ray, and there is an additional issue too, I suppose, which is lack of uniformity of treatment—because if you have a special set of figures for one state or territory on a postponed or later point in time but not for the other states or territories then that produces a potential inconsistency of treatment.

CHAIR—I think the key issue for the commission is: when the 13 months expires from the first sitting day and you have to produce the latest set of statistics, what do you usually do? I know what I would do if I were the AEC. I would say, ‘Give me your latest statistics that I can actually deal with in this period of time.’ I would not say, ‘Give me the last lot.’ I am not even being argumentative there.

Senator Crossin—I would just ask you to read the transcript of estimates because I think it does paint a picture of the ABS not being entirely forthright in their answers. There are significant problems in their answers and inconsistencies. A lot of questions I have asked are still not answered. I am sure if you got the answers—like the letter I received—some of the pieces of the jigsaw puzzle might fall into place, but if you follow the story in this estimates transcript that I have provided you with you will find you have quite a lot of questions you might need to ask the ABS. I suppose the crux of the issue is that my submission goes to two areas. That is, I think the definition of ‘latest available statistics’ needs to be looked at and considered as being inserted in the act because it is currently not there, and I think it provides—

Senator BRANDIS—It comes from the Constitution.

Senator Crossin—The actual definition of ‘latest available statistics’ is not defined clearly enough.

Senator BRANDIS—My point is that the provenance of the expression is section 24 of the Constitution, not the act

Senator Crossin—But it is not defined clearly enough. I think it should be.

Senator BRANDIS—It was defined by the High Court in McKinley’s case, but I accept that is not a statutory definition.

Senator Crossin—I am saying that in relation to the act it needs to be clarified. The issue of John Taylor actually looking at how the ABS collects statistics in terms of Indigenous people may well be something that is being done in conjunction with the Northern Territory government in relation to the Northern Territory. What I am suggesting is that I think the federal government ought to actually pick up a recommendation that a review of the ABS in relation to the collection of those sorts of statistics needs to be done. You need to have a look at how it was done in Queensland and Western Australia as well. I put it to you that I think, based on the fact that there has been quite a lot of evidence that shows that there are alleged inaccuracies in the 2001 census and because I think the wrong data was provided to the AEC in calculating these seats, the Northern Territory should be able to retain its second seat.

Senator BRANDIS—Your point amounts to this, does it not: just as there has to be a common date for the AEC to make its determination, so there should be a common date for the ABS to supply the latest statistics to the AEC?

Mr DANBY—A consistent date.

Senator BRANDIS—A common date.

Senator Crossin—That is right.

Senator ROBERT RAY—Senator Brandis interrupted Senator Crossin, thinking she was being political about the lack of answers. She was not indicating a conspiracy, but I do not want to put words in her mouth. It is normal practice, though, not to get answers out of ministers. That is not necessarily to protect anyone.

Senator Crossin—That is true, but this is a case where if all of the answers had been coming a little bit earlier than this then some of us who were putting forward a case may well have been armed with better information from the ABS than we currently are.

Senator ROBERT RAY—But there is no political motive for the Treasurer to delay information that is going to help Mr Tollner, is there?

Senator Crossin—That is correct. That is right.

Senator ROBERT RAY—Good.

Senator Crossin—So I do not understand why, if the answers are actually sitting in the minister's office, we could not have got them sooner rather than later. In fact, at this stage we do not have them at all.

Senator BRANDIS—Mr Chairman, can I say to you that having just heard what Senator Crossin has to say I think we should recall the AEC and possibly the ABS.

Mr DANBY—Rushton and Berger from the ABS.

Mr MELHAM—I think we should provide them with the transcript. Shall we bring them back?

Senator ROBERT RAY—Absolutely. I want to know why this letter was not produced to us, because it is totally relevant to our inquiry. If they think, 'Oh, well, the committee doesn't know about it, we'll just treat them like dirt,' then I am sorry.

Senator BRANDIS—You may have saved Mr Tollner's bacon, Senator Crossin.

Senator Crossin—That must be a good thing.

Senator ROBERT RAY—This is new evidence.

Senator Crossin—If you also look at my transcript, you will see I continually ask Mr Trewin exactly what did he provide to the AEC. In June of this year he would have known the answer to that. Whether it was a special version or not a special version, whether his people worked 24

hours a day flat out and actually produced the September quarter figures in time, I still do not know—

Senator ROBERT RAY—Can I stop you there. Are you alleging he has misled the committee? If you are, I have got to exclude myself, just for that part of the evidence.

Senator Crossin—No, what I am suggesting is that he could have been clearer in his answers.

Senator BRANDIS—The answer you have pointed to as a matter of particular criticism, Senator Crossin, with all due respect, which is the answer on page 660, he does express tentatively. He says ‘I presume’. He does not assert a proposition in a dogmatic fashion. I think you are being a little unfair on him to suggest that he has misled the committee or has been in bad faith or has been deliberately unhelpful, as you seem to be implying.

Senator Crossin—I am suggesting that he would probably have answered this letter from Mr Becker; so he should have known rather than presumed what he supplied to the AEC.

Senator BRANDIS—That is a current imperfection, I think. You know what Senate estimates are like.

CHAIR—Thanks for your time.

[12.05 p.m.]

PADGHAM, Ms Cecilia Noel (Private capacity)

CHAIR—I welcome you to the committee. You have not made a submission, so please make a brief statement.

Ms Padgham—That is all it is going to be, because I was told that I was allowed five minutes.

CHAIR—As much as that!

Ms Padgham—My remarks, because of the time and because of my position now, are going to be of a general nature. I am speaking as an ordinary person in the community would consider this position. Mr Tollner has introduced this legislation, and there will be amendments to other relevant legislation, because there is a problem. When you have a problem, you look at the root cause. The root cause, as I see it, of this problem that Mr Tollner is trying to solve for us is that the figures presented to the Commonwealth Electoral Commission by the ABS were faulty.

In my naivety, I thought a census was when forms were delivered to you, you filled them in on a certain night of the year, the figures were counted up by the Australian Bureau of Statistics and, on those figures, the Australian Electoral Commission made certain decisions about the numbers of people in electorates. Great play has been made by previous speakers about the lack of inclusion of lots of Aboriginal people, but I would like to parallel that by saying there is a lot of white fellas that were not included also. Nobody came around to my place. Nobody came around to my daughter's places, and they are on either side of me. I would hazard a guess—I did not see any reason to ask them—by extrapolating that incident of our not being included right up the road, that nobody in our road was included. I am not a Johnny-come-lately; I have been living in my road for 30-odd years. It is a bitumen road. It is 15 miles from town. You really cannot get lost. Even if the dogs were out, they could have left it on the gate. If I was excluded and everybody else was excluded—I know other people in Winnellie and Berrimah were excluded—I think the census was faulty. The people did not come around with the papers. So how can you work on that methodology that the Australian Bureau of Statistics employed?

I have got a paper here. I do not know the origin of it. It is a statement by Mr Corr, who is the director of demography at the Australian Bureau of Statistics. He says: If you do a complete count of the population, you get a finite result.

I thought that was what you did a census for, to get a finite result. He continues:

However, if you run a sample survey because you're only going to a proportion of the population, there is always a sampling error involved.

I cannot understand that, I am sorry. It is not that I cannot count or add up. That leaves me completely in the dark.

CHAIR—A sample is different from a count or enumeration.

Ms Padgham—I know it is different. But what is the point of having the census if they are going to do sampling afterwards?

CHAIR—Presumably because they are trying to validate whether or not their total enumeration was actually the total.

Ms Padgham—To my way of thinking, it still does not add up. I know there are a lot of other people in the community who think the way I do. We think in black and white. You either count people in or they are not counted in. Sampling has got nothing to do with it.

With regard, very generally, to the Northern Territory having one or two members in the House of Representatives, it would be a retrograde step to go back to what we used to have—one. The territory has been treated like a social experiment for so many years that people that have been up here a number of years are getting a bit fed up with it. I think that Mr Tollner is to be congratulated for bringing this legislation forward, because it is going to do the territory nothing but good.

In some papers that I have read there was a lumping together of the Northern Territory and the Australian Capital Territory. I cannot think why we are lumped together. I know we are both territories, but we are as different as chalk and cheese. The ACT, as far as I am concerned, does not produce a single solitary thing except a lot of public servants, who I would not give the time of day to. Whereas the Northern Territory, on the other hand, has got mining, agricultural exports, a huge defence investment, the railway is coming on and it has got on to a gas development. We are important people up here—

Senator ROBERT RAY—Not like people in the ACT.

Ms Padgham—No, I disagree with you there.

Senator ROBERT RAY—That is just a snobbish, trashy point of view.

Ms Padgham—It might be a snobby, trashy point of view, but we put up with Canberra—

Senator ROBERT RAY—The people down there are just as decent as people up here and they treat you better than you treat them.

Ms Padgham—People in Canberra have been trying to control our lives for far too long, even before I came on the scene.

Mr DANBY—You should live in Victoria and see what you think of Canberra then.

Ms Padgham—I read the Victorian newspapers and I know all about them too. I do not have anything more to say. My time is very brief. But I do support having two members in the House of Representatives for the Northern Territory, as it is only fair that we should have these two representatives.

Mr DANBY—What kinds of dogs do you have?

Ms Padgham—Maremmas and cattle dogs.

Mr DANBY—Are they very big?

Ms Padgham—Yes, the maremmas are quite big.

Mr DANBY—Do you think that the ABS collectors were scared from the whole street by your dogs in particular?

Ms Padgham—No, no way. They can leave them on the gate; they do not even have to come in. They can leave them on the road gate and I would get them when I come in.

Mr DANBY—How many people live in this particular street?

Ms Padgham—It is not a street; it is a road. There are about 18 families, but on my side of the road there would be about 10 of us.

Mr DANBY—So you and your daughter did not get the census forms—

Ms Padgham—Daughters.

Mr DANBY—Daughters, I am sorry. Did you speak to the other people in the street?

Ms Padgham—No. No, I said I did not. I am just assuming they did not either.

Senator BRANDIS—Why do you assume that?

Ms Padgham—Because, very generally, we are all treated the same up here. If they did not come to me, they did not come to them.

Senator BRANDIS—It seems to me, with all due respect, that all you are saying is that in respect of one household a mistake was made?

Mr DANBY—No, three households?

Ms Padgham—No, it is more than that, because I have got some tenants. But it is more likely that they would come to my place, because I have got a farm. Farmers are generally home working all day, whereas the people on the other side of the road go out to work and there is often no adults at home during the day.

CHAIR—Thanks very much for appearing before the committee.

Proceedings suspended from 12.11 p.m. to 12.21 p.m.

CHIN, Mr Victor Michael Norman (Private Capacity)

CHAIR—Mr Chin, welcome. Would you like to make a brief statement?

Mr Chin—Yes. I think submissions have probably been made already on the technical issues, the crunching of the numbers and so on. I just wanted to say a few words from a personal perspective in terms of how these issues affect the ordinary person in the Northern Territory who is a student of politics and who has an active interest in these sorts of matters. I am from an old Darwin family. My family came here in 1883. We were some of the early boat people.

CHAIR—Be careful!

Senator ROBERT RAY—That is only in terms of Phillip Ruddock.

Mr Chin—Basically our family has been here ever since. I refer in my submission to how it affects ordinary people here because the Northern Territory, in particular Darwin, is unique in many ways. One reason is its remoteness from everywhere else and, as a consequence, the absence of facilities for many years and the absence of proper political representation. I was one of a generation who had to go away. I went away some 40 years ago, initially to Adelaide, and then I came back. I was always coming back. Then I went to Canberra in 1970.

I am presently working as a lawyer in private practice, as a sole practitioner, but my experience of government started off 40 years ago when I was handing out pencils, buying stores and that sort of stuff in Commonwealth departments in Darwin. Basically, policy was made in Canberra and we were issuing pencils here and doing operational things.

Then I went to Adelaide, where I went to university initially and worked with the South Australian education department. I then came back and worked as a teacher. I went to Canberra to the ANU in 1970. From there I joined the Prime Minister's department. I worked there from 1974 to 1983, during the period of change when it was referred to originally as a post office role and then changed, initially under the Whitlam government and then further under the Fraser government, to a dynamic—some may not agree with that choice of word—powerful agency and instrument of the government of the day.

The perspective I got from the Prime Minister's department was very different from the perspective I got here as a person issuing pencils and filling in purchasing orders. It was very much a case of being in Canberra, being close to the action, shooting things off to the Prime Minister's office from time to time, sitting in the adviser's box in the House of Representatives and the Senate advising government ministers in question time or during debates on legislation and so on, and getting very much involved in policy development.

We in Darwin have a different perspective. I came back here last year but I have been coming back every year, and I was very pleased to learn in the year 2001 that the Northern Territory got its second seat in the House of Representatives. Like many people in Darwin I was very much dismayed earlier this year when, after the assessment by the Bureau of Statistics as a result of

number crunching, it looked like the Northern Territory would lose its second seat because the numbers had fallen by a couple of hundred below the quota.

I very much hope this committee will make recommendations that will support the bill that has been introduced or drafted in relation to the representation of territories. My comments are mainly focused on the position in relation to the Northern Territory, not the ACT, even though I lived in the ACT for 30 years. I would like to make submissions in relation to three brief points: firstly, on factors that make it difficult for members in the Northern Territory to service their constituents; secondly, the fact that the Northern Territory is disadvantaged in terms of political representation by not having full statehood; and, thirdly, the possibility of having an appropriate mix in representing views or having two political representatives with the opportunity of having a representative from each side.

In relation to the first point, it is self-evident there are a number of factors that make it very difficult or more difficult for a member of a Northern Territory seat to service constituents. Firstly, there is the sheer geographical size of the Northern Territory. I know it is not the largest seat. I remember Graeme Campbell coming up here a number of years ago and saying to people that his seat was bigger than the whole of the Northern Territory. I do know there is also a seat in South Australia that covers about 95 per cent of South Australia. Nevertheless, the Northern Territory geographically is larger than almost every other seat in the House of Representatives, and this makes it harder for a single representative to service the whole of the Northern Territory.

I love Canberra but there are a lot of people in Canberra who are not very focused on areas outside what I call the golden triangle—namely, Canberra, Sydney and Melbourne. I am not talking about members and senators; I am talking about public servants who develop policy proposals for the consideration of ministers and for the parliament. I think there could well be an argument from someone who does not support retaining the second seat that the Northern Territory is not the largest geographically, that there are two others at least. But does the Northern Territory have to achieve more in terms of every indicator for it to have discretion exercised in its favour? Does it have to be bigger than the seat of Kalgoorlie? Does it have to be bigger than that second biggest seat? I think the committee could well take into account that although it is not the largest it is one of the largest.

Another big factor in relation to the difficulties of servicing constituents in the Northern Territory is the transience of the population. The Northern Territory has always had a transient population. When I went to school here I lost friends every two years because people were coming up here on two-year terms. In some ways one might have thought that had settled down as the Northern Territory now has better facilities in terms of lifestyle, but it is still a huge transient population. I recently saw statistics that between 1997 and 2002 there was a movement of 102,000 people out of the Northern Territory and 97,000 in, with a net loss of 5,000. In terms of servicing constituents, out of a population of 200,000 people, nearly half the people are moving out every five years. In a space of a three-year term just imagine what that means in terms of tilling the soil, getting to know your constituents and being able to hear and represent their voices. It is a huge problem. It is very hard to expect one person to be able to do that.

Another factor that makes it different is the multiracial mix of the Northern Territory's population. For example, I do not know whether you have had the opportunity to go to the Mindil market last night to see the huge multiracial mix. This has increased a lot since the mid-

seventies, since the turmoil in South-East Asia, Vietnam, Indonesia, Malaysia and so on. One of the positives of this is that we have a dynamic population here with a rich and diverse cultural life. However, it makes it harder for our political representatives because of the differences in language, upbringing and cultural background that political representatives have got to get across here more than they have to in other places. Now, perhaps somebody in Canberra might say, 'The multiracial mix here is not as great as it is in Victoria Street in Melbourne.' But, again, does the Northern Territory have to prove that it has a greater multiracial mix? Does it have to meet every indicator more than anyone else.

The fourth factor is that the distance between the Northern Territory and Canberra means that, in terms of logistics, the member here has to travel a longer distance to get to the House of Representatives. It is not so easy for him to come back on the weekends and so on. So that puts additional stress on any member for the Northern Territory. Again, someone might say, 'Perth is actually further away than Darwin is from Canberra and the seat of Barton is closer,' but does the Northern Territory have to be the furthest away? Again, does it have to meet indicators more than anyone else? I think it is fairly obvious for everybody who does not live in Canberra—all of you do not live in Canberra; one of you lives in Sydney—that there are already stresses and strains because of the amount of time that you have to spend in Canberra away from family life and so on. But that problem is exacerbated in relation to the member for the Northern Territory. So the burden can be shared if there is more than one member.

The next point I want to make is that the Northern Territory is disadvantaged compared to the other states by not having full statehood. So it is subject to the reserve powers of the Commonwealth to disallow legislation. The states are not subject to that. It is subject to greater controls in relation to national parks in Australia, particularly when the Commonwealth enacts legislation that it can implement under the territories power but cannot apply in relation to the states. Again, by having only one member all of those difficulties are compounded. A person in Darwin who wants to have a voice, or someone in Alice Springs who wants to feel that their voice is being heard in government, may not find it so easy to access a single member. Access would be easier if there was a second member.

The last point is that before 2001, when we got our second seat, the representation in the Territory was almost like a ping-pong match. It was one of the indicators of who was going to win government federally. It was one of the litmus test seats. In the Northern Territory there are some major issues that other people in Australia have a big interest in that are being played out here. For instance there are native title and Aboriginal land rights issues, resources development—uranium was a big issue—and other resources issues in relation to sustainable development. There is a relationship there between native title, Aboriginal land rights issues and resources development and, of course, immigration and refugee issues.

All of you would know that the two present members have very divergent views on each of those issues and on many other issues. That is not a new scenario. That has typically been the case. What has happened over the years when there has been one seat is that, when the seat changes, there has been a sense—that I have been away for 40 years, but I have been back every year and I have kept very much in touch—of disfranchisement by the loser. This is less the case now with a member on each side, with Warren Snowdon and David Tollner representing the very divergent views. I think that this is a healthy position to have with the issues being agitated on behalf of people with completely different perspectives. It is a very healthy situation. It is a good

situation and it is very much in keeping with the principle enunciated by Abraham Lincoln in his Gettysburg Address, which is always ringing through my head—that it is very much in keeping with government of the people, for the people and by the people.

The only other comment that I would make is that the Northern Territory was for many years in a situation where it had a representative from one of the political parties. In other words, the other side was unrepresented. Mr Georgiou would know this, as a former political scientist, I understand, but off the top of my head I would say that probably only Tasmania has ever been in a situation where both parties were not represented in the House of Representatives: the Bass effect in 1975 and a couple of elections after that. Probably that is fairly unique in Australia. But in the Northern Territory, we have had only one representative and it happens every time. Somebody is the loser. But with two seats, there can be a win-win.

CHAIR—Thank you very much.

Senator BRANDIS—I just want to make one comment on your statement, Mr Chin. One of the issues that we have been struggling with this morning and in earlier hearings—at least I have been struggling with it—is the question of whether there are considerations other than purely the arithmetical considerations to which we ought to have regard. The simplest argument against the second seat is that the statistics, assuming that they are produced in a regular fashion and computed, say you are not entitled to a second seat—and that is the end of the inquiry. The other view is that one can have regard to considerations beyond the iron laws of arithmetic. The point that I have made to a couple of witnesses this morning is that our Constitution or our electoral laws do provide for minima of representation of different body politics within the Commonwealth. They provide for minimum representation for the original states in the House of Representatives. They provide that every state, irrespective of population, will have at least 12 senators. They provide that the two territories will have at least two senators. So the notion of statutory minima reflecting the different constituent parts of the Commonwealth, whether they be states or territories, is not unknown to our system—indeed, it is integral to it.

If we can have regard to that broader structural consideration, then it seems to me that there is a good case to be made for saying, ‘The territories are entitled to at least two representatives,’ one reason being that, if you are going to have a statutory minimum, it has to be more than one, because one is just the necessary consequence of the fact of representation. So you have to go above one to state the principle of a statutory minimum. The argument, if I may say so—and I am not even particularly inviting you to comment on this; I am essentially thinking aloud—that you have expressed, which we have not heard from anyone else, is that in broadly a two-party system you need to have two, because that will reflect both sides of politics, as indeed is reflected in the representation of the territories in the Senate. That seems to me to be a quite an impressive argument to support the proposition that there should be a minimum and that that minimum should be two. I am merely agreeing with what you say, but that articulates my process of reasoning.

Mr MELHAM—The problem, however, is that there is no guarantee that if you have two it will be one of each.

Senator BRANDIS—No.

Mr MELHAM—It is possible, given the margin in either seat, that one party could take both.

Senator BRANDIS—Quite probably.

CHAIR—That is so compelling that I think we should make a decision that we should have two seats and one should go to the Liberal Party and one should go to the Labor Party. That way, that solves everybody's problems!

Mr MELHAM—That is the way, if you have multimember constituents. But I am just saying that it was the basis of your submission. I am saying to you that, for instance, in Solomon, it was a very close call the last time.

Mr Chin—That is right. It is my submission that, while there are two seats, there is that chance of it, whereas if there is one seat there is no chance of it and every time somebody is going to be the loser.

Mr MELHAM—I accept that argument.

Senator ROBERT RAY—That is politics. There are winners and losers in politics. Not everyone can win a kewpie doll. That is the point.

Mr Chin—But we can give people a chance. We can change the numbers so that they get one chance in two instead of one chance in 30-something.

Senator ROBERT RAY—But you are not giving people across the country an even chance. That is the whole point to the argument. It is just that you are making one special exception and saying, 'Here is the social experiment. You're all going to have a chance here but, the rest of Australia, where the chips fall you've got to cop it.' That is the difference.

Mr Chin—I am not saying that.

Senator BRANDIS—That is not right. For example, we say that Tasmania gets five seats whatever happens, even though at the moment I think that they are entitled to only four. That is my point—that you do not merely look at the—

Mr MELHAM—That was the price of federation.

Senator BRANDIS—Quite, but you do not merely look at the country as one undifferentiated population; you do legitimately have regard to the different constituent bodies politic within the Commonwealth.

Senator ROBERT RAY—But one anomaly does not necessarily mean that you should promote a second one.

Mr Chin—I did not think it necessary for me to deal with the statistical parameters, because I thought that they were dealt with very well in other papers, including the paper prepared by the Parliamentary Library research service and in the explanatory memorandum. So what I wanted to do was to address these initial factors, these matters of discretion, to try to move you to—

Senator ROBERT RAY—Yes, I know. The problem for this committee is that there has been some tremendously valid and strong arguments put, and just when we get to taws on those all this irrelevancy comes in about the speciality of the Northern Territory or equal representation politically. We get all of these red herrings racing through the argument as though this extra dross will somehow help the argument. I suspect at the moment that it is hindering it, and that is the problem. People are coming along and defining their own self-interest or their point of view.

CHAIR—Michael, it was good to see you again. Thank you for coming in. Thanks for your testimony.

Resolved (on motion by **Mr Melham**, seconded by **Senator Brandis**):

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 gave evidence in the public hearing today.

Committee adjourned at 12.43 p.m.