
The Parliament of the Commonwealth of Australia

Territory Representation

Report of the Inquiry into increasing the minimum representation of the Australian Capital Territory and the Northern Territory in the House of Representatives

Joint Standing Committee on Electoral Matters

November 2003
Canberra

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ISBN [Click **here** and type ISBN Number]



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Foreword

Australia's Constitution guarantees each original State at least five seats in the House of Representatives. The Australian Capital Territory (ACT) and Northern Territory (NT) are currently guaranteed one seat each by the *Commonwealth Electoral Act 1918*. Subject to these minimum entitlements, a combination of the Constitution and the Electoral Act sets out a precise manner for determining the number of House of Representatives members each State and Territory will return at a federal election. Based on official population statistics, this determination takes place in the thirteenth month after the first sitting of the House of Representatives following an election.

In the February 2003 determination, the NT was deemed to be just 295 persons short of the population needed to retain the second seat it gained – for the first time – at the 2001 election.

The loss of the NT's second seat by such a small margin generated much public discussion. In July 2003 the Special Minister of State requested that the Committee inquire into and report on guaranteeing a minimum of two seats each in the House of Representatives for the ACT and the NT.

The majority of submissions to the inquiry supported a guaranteed minimum of two seats for the NT.

The Committee was not persuaded by all of the arguments contained in these submissions. However, the inquiry did reveal a lack of clarity in the process for determining the population estimates of the Territories and States. The inquiry also found that the level of uncertainty in the population estimates for the Territories significantly exceeded those for the States.

Concerns regarding the transparency of the process were raised as a consequence of evidence provided to the Committee about the method by which the “latest statistics of the Commonwealth” are obtained, and the absence of a legislative definition for these statistics. As a result the Australian Statistician and to a lesser extent the Australian Electoral Commissioner are given a degree of unintended

discretion when deciding which statistics will be used to determine State and Territory representative entitlements in the House of Representatives.

During the course of the inquiry it emerged that the quarterly publication *Australian Demographic Statistics* does not, as initially claimed, contain all of the Estimated Resident Population (ERP) figures used for the determination of entitlements.

It also became apparent during the inquiry that the Australian Electoral Commission has at times pressed for later quarterly figures to be provided to it as opposed to the latest published quarterly statistics.

For the 2003 determination, the Electoral Commissioner sought (and obtained) September 2002 population figures from the Australian Bureau of Statistics despite the fact that the preceding set of population statistics (for June 2002) had yet to be published. It should be noted that the NT would have retained its second seat had the population figures for the June quarter, rather than the September quarter, been used for the February 2003 determination.

The other area of concern to the Committee is the greater unreliability of the published population estimates for the Territories than those for the States, as acknowledged by the Australian Bureau of Statistics. In the case of the NT, the margin of error in the 2001 net undercount for the census, which carries through to the quarterly figures, is 1.2% (which is up to 3 times the error margin in the States) and for the ACT, it is 0.8% (which is up to twice the equivalent in some of the States). The error margin for Australia as a whole is 0.2% (which is one-sixth of the error margin for the NT).¹

It is clear that the population estimates for the NT and the ACT are less reliable than the estimates for the States, principally because of the difficulty associated with deriving an accurate estimate from a smaller population. This is an important issue when considering cases such as the NT, as it lost a seat on a shortfall of 295 people, which is well within the margin of error surrounding its population estimate.

The Committee does not support a legislative guarantee of two seats for each of the Territories without regard to the size of their populations relative to those of the States. The existing basic principle for determining the number of Members to be elected by the Territories should not be disturbed. It is, however, also important that any systemic disadvantages imposed on the Territories in comparison with the original States be addressed whenever they are identified.

¹ At the 95% confidence level; see further discussion of these concepts in Chapter 5 of the report.

In response to the concerns which emerged during the inquiry the Committee makes the following three recommendations:

1. That in order to make the process of determining the representation of the Territories in the House of Representatives more transparent and certain, the *Commonwealth Electoral Act 1918* be amended:
 - to require the Australian Statistician:

to include in the quarterly Estimates of Resident Population published in *Australian Demographic Statistics*, in addition to the estimated populations of the States, the Australian Capital Territory and the Northern Territory, estimates of the populations of the Territories of Jervis Bay, Cocos (Keeling) Islands and Christmas Island.
 - to require the Australian Electoral Commissioner:

on a date twelve months after the first sitting of a new House of Representatives, to take note of the latest statistics of the population of the Commonwealth, including separate statistics of the populations of each of the States and Territories of the Commonwealth, that have been published as Estimates of Resident Population in *Australian Demographic Statistics*; and
 - to require the Australian Electoral Commissioner:

to make to those statistics whatever adjustments are required by other sections of the Commonwealth Electoral Act 1918 for the purposes of making the determination, for example the Norfolk Island statistics, and to make and publish the determination including details of the adjustments and calculations involved within one month after the end of the twelfth month after the first sitting of a new House of Representatives.
2. That in future, the margin of error for the Australian Capital Territory and the Northern Territory is incorporated into the determination of seats for the Territories when a Territory falls short of quota. If the shortfall is within the margin of error acknowledged by the Australian Bureau of Statistics, the Australian Electoral Commissioner is to use the Estimated Resident Population figure at the top of the margin of error to determine the Territory's entitlement.
3. That the 2003 determination for the Northern Territory be set aside by government legislation to the extent that it applies to the Northern Territory.

With respect to recommendation three, some Committee members believe that the margin of error for the NT creates significant doubt as to the outcome of the 2003 determination and believe that the estimate of the NT's 2003 population should be the ERP figure at the top of the margin of error. This would result in the NT retaining its second seat.

Other Committee Members believe that it was the intention of the Parliament that the "latest statistics of the Commonwealth" be the latest *published* statistics at the time of the determination – not a special version or early release of the ERP figures – and for the 2003 determination the published statistics that should have been used were the June 2002 ERP figures. If the June 2002 ERP figures were used, the NT would have been entitled to two House of Representatives seats.

All Committee Members agree with the recommendations.

The Committee would like to thank those organisations and individuals who made submissions to the inquiry and appeared before the Committee at public hearings. In particular, the Committee would like to acknowledge the staff of the Australian Bureau of Statistics and the Australian Electoral Commission who provided the Committee with further information following the public hearings.

I would also like to thank the Members of the Committee for their work on this inquiry and place on record my appreciation of the support provided to the Committee by the secretariat. I commend the report to Parliament.

Petro Georgiou MP

Chair



Membership of the Committee

Chair Mr Petro Georgiou MP

Deputy Chair Mr Michael Danby MP

Members Mr John Forrest MP
 Mr Daryl Melham MP
 Ms Sophie Panopoulos MP

Senator Andrew Bartlett
Senator George Brandis
Senator Brett Mason
Senator Andrew Murray
Senator Robert Ray

Committee Secretariat

Secretary	Russell Chafer
Inquiry Secretary	Bronwen Jagers (to July 2003)
	Frances Gant (from August 2003)
Administrative Officers	Katie Hobson



Terms of reference

In July 2003, the Special Minister of State, Senator the Hon Eric Abetz, referred to the Committee an inquiry with the following terms of reference:

That the Joint Standing Committee on Electoral Matters 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.



List of abbreviations

ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
AEC	Australian Electoral Commission
ALP	Australian Labor Party
ANU	Australian National University
CAEPR	Centre for Aboriginal Economic Policy Research
ERP	Estimated Resident Population
JSCER	Joint Select Committee on Electoral Reform
NSW	New South Wales
NT	Northern Territory
PES	Post Enumeration Survey
SA	South Australia
WA	Western Australia

List of recommendations

5 The Population Estimates

Recommendation 1

The Committee recommends that in order to make the process of determining the representation of the Territories in the House of Representatives more transparent and certain, the *Commonwealth Electoral Act 1918* be amended:

- to require the Australian Statistician to include in the quarterly Estimates of Resident Population published in *Australian Demographic Statistics*, in addition to the estimated populations of the States, the Australian Capital Territory and the Northern Territory, estimates of the populations of the Territories of Jervis Bay, Cocos (Keeling) Islands and Christmas Island.
- to require the Australian Electoral Commissioner:
 - ⇒ on a date twelve months after the first sitting of a new House of Representatives, to take note of the latest statistics of the population of the Commonwealth, including separate statistics of the populations of each of the States and Territories of the Commonwealth, that have been published as Estimates of Resident Population in *Australian Demographic Statistics* and;
- to require the Australian Electoral Commissioner:
 - ⇒ to make to those statistics whatever adjustments are required by other sections of the Commonwealth Electoral Act 1918 for the purposes of making the determination, for example the Norfolk Island statistics; and
 - ⇒ to make and publish the determination including details of the adjustments and the calculations involved,

within one month after the end of the twelfth month after the first sitting of a new House of Representatives. (paragraph 5.38)

7 Increasing the Representation of the Territories in the House of Representatives

Recommendation 2

The Committee recommends that in future, the Australian Statistician advise the Electoral Commissioner of the margin of error for the Territories at the time of supplying the latest statistics of the Commonwealth, and that the margin of error for the ACT and the NT be incorporated into the determination of seats for the Territories when a Territory falls short of quota. (paragraph 7.52)

If the shortfall is within the margin of error acknowledged by the ABS, the Australian Electoral Commissioner is to use the ERP figure at the top of the margin of error to determine the Territory's entitlement. (paragraph 7.53)

Recommendation 3

The Committee recommends that the 2003 determination be set aside by government legislation to the extent that it applies to the Northern Territory. (paragraph 7.67)



Executive summary

Chapter one - Introduction

In February 2003, the Australian Electoral Commissioner determined that at the next federal election, which is due to be held by mid-April 2005, Queensland will gain an additional House of Representatives seat, and South Australia (SA) and the Northern Territory (NT) will each lose one seat. For the NT, this means that its entitlement in the House of Representatives will be reduced from two seats to one.

Scope and conduct of inquiry

On 9 July 2003, the Special Minister of State, Senator the Hon Eric Abetz, wrote to the Committee asking it to inquire into and report on increasing the guaranteed minimum representation for the Australian Capital Territory (ACT) and the NT to two seats each in the House of Representatives.

The Committee wrote to all Members, Senators, State and Territory governments, political parties, the Australian Electoral Commission (AEC) and the Australian Bureau of Statistics (ABS) inviting them to make submissions to the inquiry.

The Committee received 28 submissions, and three public hearings were held in Canberra and Darwin during August and September 2003.

The Tollner Bill

On 16 June 2003, Mr David Tollner MP, Member for Solomon, introduced a private Member's Bill to the House of Representatives which seeks to amend the *Commonwealth Electoral Act 1918* to provide the NT and the ACT with a minimum of two seats each.

The Committee's reference is not an examination of the Tollner Bill, although that Bill is relevant to the issues raised by the Committee's reference.

Structure of the report

The report comprises seven chapters which discuss the history of Territory representation in the Commonwealth Parliament, the process used by the ABS for determining State and Territory entitlements to House of Representatives seats, population estimates and the “latest statistics of the Commonwealth”, and policy proposals for increasing the minimum representation of the Territories.

Chapter two - Territory representation in the Commonwealth Parliament

The provisions governing the representation of the original States in the Commonwealth Parliament are set out in parts II and III of the Constitution. Representation of the Territories is governed by section 122 of the Constitution.

The House of Representatives

Section 24 of the Constitution provides that the House of Representatives shall be composed of Members directly chosen by the people of the Commonwealth, and that the number of Members shall be, as nearly as practicable, twice the number of Senators. This is referred to as the “nexus”.

Section 24 also provides that at least five Members shall be chosen in each original State.

Paragraphs (i) and (ii) of section 24 of the Constitution prescribe the formula for determining State representation entitlements in the House of Representatives.

In the 40th Parliament, there are 150 Members of the House of Representatives.

The Senate

The original States are each guaranteed a minimum of six Senators under section 7 of the Constitution. Currently, each State elects 12 Senators.

Legislative provisions governing the representation of the NT and the ACT in the Commonwealth Parliament

Section 122 of the Constitution provides that the Parliament may allow for representation of the Territories in either House of Parliament “to the extent and on the terms which it thinks fit”. A number of cases brought before the High Court of Australia have considered the validity of legislation governing representation of the Territories in the Commonwealth Parliament.

The High Court has confirmed the right of the Commonwealth to determine the number of Senators and Members for the Territories, the method for electing or appointing Parliamentary representatives for the Territories, and the rights afforded to each Territory Senator and Member. It also confirmed that different

sections of the Constitution apply to the representation of the States and Territories in the Commonwealth Parliament.

House of Representatives

The NT was granted one Member of the House of Representatives in 1922 by the *Northern Territory Representation Act 1922*. The ACT was granted representation by one Member in the House of Representatives by the *Australian Capital Territory Representation Act 1948*. The voting and participatory rights of these Members were restricted.

In 1968, the Member for the NT was afforded the same rights, privileges and immunities as Members for the States, and in 1966, full voting rights were conferred on the Member for the ACT by the *Australian Capital Territory Representation Act 1966*.

In 1990, all legislative provisions pertaining to the representation of the Territories in the Commonwealth Parliament were incorporated in the *Commonwealth Electoral Act 1918*.

The Senate

The NT and the ACT were first granted Senate representation by the enactment of the *Senate (Representation of the Territories) Act 1973*. The Act provided that the NT and the ACT should each be represented by two Senators directly chosen by the people of the respective Territory voting as one electorate. This is the current entitlement of the Territories.

Territory Senators have the same Parliamentary rights, privileges, and immunities as State Senators, however, Territory Senators are elected for a term concurrent with that of Members of the House of Representatives.

The Joint Select Committee on Electoral Reform

In 1985, a predecessor of this Committee, the Joint Select Committee on Electoral Reform (JSCER) recommended that the ACT and the NT be entitled to representation in the House of Representatives of at least one Member each, and that representation after that be determined by dividing the population of each Territory by the quota used to determine the representation entitlements of the States. The Committee's recommendations were adopted, and the Electoral Act was amended accordingly in January 1990.

Chapter three - Determining representation in the House of Representatives

The formula

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

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

Section 48 of the *Commonwealth Electoral Act 1918* sets out the process for determining the representation of the Territories in the House of Representatives. As is the case with the States, the Territories' entitlements to seats in the House of Representatives are determined by the result after dividing the population of the Territories by the quota. When the division returns a remainder greater than one half of the quota, a Territory is entitled to an additional House of Representatives seat.

Section 46 of the Electoral Act requires the Australian Electoral Commissioner to ascertain the population of the Commonwealth and of the States and Territories within the 13th month following the first sitting of a new House of Representatives. These population figures are then used to determine the entitlements of each State and Territory to seats in the House of Representatives.

For the purpose of determining these entitlements, the population of the Commonwealth does not include the population of the Australian Territories. Similarly, to determine the quota, the population of the Commonwealth is divided by twice the number of Senators from the States (ie, Territory Senators are excluded).

Determination for the 41st Parliament

In February 2003, the Australian Electoral Commissioner determined the number of Members of the House of Representatives for each State and Territory for the next Parliament - the 41st Parliament.

The quota for the 2003 determination was 133,369.375:

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

The number of House of Representatives Members for each State and Territory to be returned in the next Parliament is shown in Table 3.1.

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

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

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

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

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

Chapter four - State and Territory representation in the House of Representatives

Table 4.2 details - for each of the States and Territories that have lost seats in the House of Representatives since federation - the margin by which the jurisdiction was short of retaining that House of Representatives seat.

Table 4.2. States and Territories that have lost seats: 1901 – next federal election

State/Territory	Election Year	Change in number of Seats	Quotas ¹	Quota Gap	Population Gap
Northern Territory	2004-5	2 to 1	1.498	0.002	295 ²
Australian Capital Territory	1998	3 to 2	2.495	0.005	658
South Australia	1993	13 to 12	12.451	0.049	5,627
Victoria	1913	22 to 21	21.375	0.125	7,717
New South Wales	1993	51 to 50	50.417	0.083	9,554
Victoria	1922	21 to 20	20.358	0.142	10,698
South Australia	2004-5	12 to 11	11.415	0.085	11,282
South Australia	1934	7 to 6	6.327	0.173	15,870
Victoria	1906	23 to 22	22.051	0.449	24,643
Victoria	1996	38 to 37	37.279	0.221	26,404
Victoria	1990	39 to 38	38.176	0.324	35,982
New South Wales	1955	47 to 46	45.986	0.514	38,239
New South Wales	1967	46 to 45	44.440 ³	0.560	53,402

Source: Australian Electoral Commission, 28 October 2003.

¹The quotas and the quota gap listed in table 2 have been rounded to 3 decimal places. To calculate the population gap down to an individual person, the AEC uses a quota calculated to 8 decimal places.

² Some submissions to the inquiry have referred to a population shortfall of 291 and 295 people for the NT. An additional 294 people would increase the population of the NT to 200,054 which is 1.49999953 quotas. An additional 295 people would increase the population to 200,055 people and return a quota of 1.50000703 (two seats).

³An extra seat was granted on any remainder of the quota between 1964-1972 determinations of entitlements to seats.

The Territories have experienced the smallest margins (in terms of the number of people) by which a jurisdiction has been short of retaining a House of Representatives seat.

Chapter five - The population estimates

Issues relating to the population estimates of the Commonwealth and the States and Territories, especially the NT, recurred throughout the inquiry.

The latest statistics of the Commonwealth

The Constitution and the Electoral Act do not define what is meant by the “latest statistics of the Commonwealth”. The Explanatory Memorandum of the Electoral

Act also does not define what is meant by the “latest statistics of the Commonwealth”.

Estimated resident population figures

The Committee was told by the AEC and the ABS that the “latest statistics of the Commonwealth” are the Estimated Resident Population (ERP) figures produced by the ABS for each State and Territory as at the end of March, June, September and December of each year. The ERP figures are published by the ABS in *Australian Demographic Statistics* about five to six months after the reference period.

In addition, the Australian Statistician told the Committee - in reference to the population estimates provided for the 2003 determination - that the ERP figures published in *Australian Demographic Statistics* are the same as those provided to the Electoral Commissioner for the purposes of the determination.

The Committee was therefore led to believe that the ERP figures contained in *Australian Demographic Statistics* - whether this is a current, early or embargoed version of the published *Australian Demographic Statistics* - are the “latest statistics of the Commonwealth” provided to the Electoral Commissioner for the determination of entitlements.

During the course of the inquiry, it became apparent that this was not the case. Rather, much confusion surrounded the concept of the latest statistics of the Commonwealth and, more specifically, what is provided to the Australian Electoral Commissioner to make the determination.

The Committee pursued these issues extensively in the public hearings and in subsequent discussions with the two agencies. The Committee now understands that the publication *Australian Demographic Statistics* does not contain all of the ERP figures that are provided to the Electoral Commissioner by the ABS for the purposes of the determination.

The Committee also understands that the process for obtaining the latest statistics of the Commonwealth involves a letter of request from the Australian Electoral Commissioner to the Australian Statistician. The Australian Statistician then responds in a letter of reply that contains population estimates, some of which - namely separate figures for the Territories of Jervis Bay, Christmas Island and Cocos (Keeling) Islands - are not published in *Australian Demographic Statistics*.

The population figures supplied by the Australian Statistician to the Electoral Commissioner are further supplemented by separate population figures for enrolled electors resident in Australia’s external Territories, and eligible electors from Norfolk Island obtained by the AEC. The Electoral Commissioner uses these additional figures to modify the population estimates of the States and Territories and determine House of Representatives entitlements.

The “latest” statistics of the Commonwealth

The absence of a legislative definition of the latest statistics of the Commonwealth provides the Australian Statistician, and to a lesser extent, the Electoral Commissioner, with a degree of discretion when deciding which statistics will be used to determine State and Territory representative entitlements in the House of Representatives.

Contrary to the impression conveyed in the evidence that the process for obtaining the latest statistics of the Commonwealth involved the ABS providing whatever population statistics they had available, it is clear that the AEC has closely monitored the evolution of the quarterly figures, and has at times pressed for later quarterly figures to be provided to it on the basis that getting more recent figures than the last published quarters was particularly sensitive.

The “latest statistics of the Commonwealth” used in the 2003 determination

Uncertainty about the date of the latest statistics was an issue in relation to the 2003 determination.

At the time of the Electoral Commissioner’s letter of request to the Australian Statistician for the “latest statistics of the Commonwealth” for the February 2003 determination, neither the June 2002 nor the September 2002 quarterly figures had been published by the ABS. Nonetheless, the Electoral Commissioner pursued the September 2002 figures for the purposes of the determination. A representative of the AEC explained that the September 2002 quarterly figures were sought because the AEC had a “good suspicion” that these figures would be ready for the February 2003 determination.

The ABS conceded that if the September figures could not have been produced in time for the Electoral Commissioner to make his determination then the June figures would have been provided.

If the June 2002 figures were used as the latest statistics in the 2003 determination, rather than the September 2002 quarterly figures, the NT would have retained its second seat.

The Committee has to admit its surprise that the meaning of the “latest statistics of the Commonwealth” is so fluid, and that there appears to be an unintended degree of discretion afforded to the Australian Statistician and the Australian Electoral Commissioner to determine which quarterly estimates are the “latest statistics of the Commonwealth”.

There is a recollection that the 1986 Committee, which framed the recommendations leading to the current formula in the Commonwealth Electoral Act for determining the number of Members of the House of Representatives for

the ACT and NT, had an expectation that it would be based on the latest *published* quarterly statistics.

Issues in estimating the population of the NT

Concerns about the population estimates used for the 2003 determination of entitlements were expressed in a number of submissions to the inquiry. Members of Parliament from the NT, and the NT Government, expressed the view that the Census methodology used by the ABS to enumerate the population, particularly of the NT's indigenous communities, lends itself to under-estimating the population of the Territory.

The Committee notes the controversy surrounding the population estimates for the NT and understands that the ABS has acknowledged there are shortcomings in some areas, and a project to validate its methodology is underway. For the most part, the matters in contention are for statisticians and demographers to work through. It is important, however, that the ABS and the AEC resolve these issues promptly.

Margins of error

The most recent Census of Population and Housing provides the basis for subsequent quarterly population estimates. The ABS acknowledges that a small percentage of the population is missed in the Census count, and that an even smaller percentage is counted more than once. Accordingly, a Post Enumeration Survey is conducted, through which the ABS estimates the net undercount of a population which it uses to adjust the Census.

Table 5.3 shows the net undercount estimates of the 2001 Census and the error margins at a 95% confidence level. The first set of columns shows that the NT had the highest estimated net undercount of all the jurisdictions, at 4.0% or 7,800 people.

The second set of columns refers to the margin of error surrounding the estimated net undercount figures - that is, the number of people by which the net undercount could actually be over or under estimated. The table shows that for the NT, we can be 95% confident that the estimated net undercount is within 1.2 percentage points or 2,600 people above or below the estimated undercount of 7,800 people. In other words, with an estimated net undercount of 7,800 people, there is a 95% chance that the net undercount is actually between 5,200 and 10,400 people.

Table 5.3. Net undercount 2001 Census

	Net Undercount		Net Undercount - 95% confidence interval		
	Number	Rate %	Error margin*	Lower limit	Higher limit
<i>New South Wales</i>	130,100	2.0	0.4	103,700	156,500
<i>Victoria</i>	67,300	1.4	0.4	49,800	84,700
<i>Queensland</i>	68,500	1.9	0.4	51,700	85,300
<i>South Australia</i>	24,300	1.6	0.4	17,800	30,800
<i>Western Australia</i>	37,400	2.0	0.6	26,800	48,100
<i>Tasmania</i>	7,400	1.6	0.6	4,700	10,100
<i>Northern Territory</i>	7,800	4.0	1.2	5,200	10,400
<i>A.C Territory</i>	3,300	1.0	0.8	800	5,700
<i>Australia</i>	346,100	1.8	0.2	307,600	384,600

Source: adapted from Information paper: *Census of Population and Housing, Data Quality – Undercount, Australia 2001*, ABS Catalogue No 2940.0 in submission #6 from the ABS.

* Percentage points.

The significance of the margins of error in the net undercount is this: when the net undercount is applied to the Census figures, the margins of error in the net undercount carry through to the adjusted Census figures, and hence to the quarterly population estimates that are used to determine State and Territory entitlements to seats in the House of Representatives.

For the NT, this means that its estimated population of 199,760 people is actually an estimated population range of between 197,160 and 202,360 people (that is, 199,760 plus or minus 2,600 people, at a 95% confidence level). Similarly, for the ACT, its estimated population of 322,871 people is actually an estimated population range of between 320,471 and 325,271 people (that is, 322,871 plus or minus 2,400 people, at a 95% confidence level).

Compared with the estimates made for the States, there is greater variability in the estimates for the Territories. It is clear that the population estimates for the NT and the ACT are less reliable than they are for other jurisdictions.

This is an important issue when considering cases such as the NT, as it lost a seat on a shortfall of 295 people, which is well within the margin of error surrounding its population estimate.

Chapter six - Characteristics of electorates in the Territories

Numerical size of Territory divisions

One of the primary concerns expressed in submissions to the Committee was the number of electors in electorates within the ACT and the NT compared to electorates in the States. It was argued that the numerical size of Territory

electorates fluctuates more readily than those in the States and by comparison, the Territories are likely to have relatively small or relatively large numbers of electors per electorate than the States. The loss of one House of Representatives seat will, in the case of the NT, result in its representation entitlement being halved. In the Territories, losing one seat can result in electorates with the largest number of people enrolled to vote in any division within Australia.

At the next election, the ACT and the NT will each have divisions comprised of approximately 110,000 voters as a result of the February 2003 determination. The national average divisional enrolment in the next Parliament based on August 2003 enrolment figures is 85,967 voters.

Population projections

A number of submissions to the inquiry, particularly those by people or bodies from the NT, suggested that the population of the NT will increase and again entitle it to two House of Representatives seats at the election after next.

The relevant issue in determining State and Territory entitlements in the House of Representatives is not whether the population of a State or Territory increases or decreases. The significant issue in determining these entitlements is the State or Territory's population growth relative to the population growth of Australia.

In September 2003, the ABS released its latest population projections. On the basis of these projections, the ABS claims that it is unlikely that the NT's population will grow at a faster rate than the population of the rest of Australia.

The ABS also released its population estimates for the March 2003 quarter in September 2003. According to the Australian Statistician, these figures show that the NT's population in March 2003 would not have entitled it to two House of Representatives seats.

Geographic size of the Territory divisions

As a single electorate, the NT would cover approximately 1,348,175 square kilometres, including the Cocos (Keeling) and Christmas Islands, and would replace the electorate of Lingiari (which is to be abolished pursuant to the 2003 determination) as the second largest in Australia behind Kalgoorlie. Many submissions to the inquiry, including those from the current NT Members of the federal Parliament, raised the geographic size of the NT as an issue in support of increasing the minimum representation of the NT to two House of Representatives Members.

The geographic size of the ACT was not raised as an issue in submissions to the inquiry.

Distinctiveness of the Territories

A number of submissions to the inquiry sought to highlight unique characteristics of the NT and ACT as grounds for granting each jurisdiction a minimum of two House of Representatives seats. Most of these issues, again, were only raised in reference to the NT.

The Committee notes that each electorate in Australia has unique characteristics and challenges, and that representation in the House of Representatives is not based on social and economic factors.

Chapter seven – Increasing the representation of the Territories in the House of Representatives

The majority of submissions received by the Committee supported increasing the representation of the Territories in the House of Representatives. Throughout the course of the inquiry, a number of proposals for achieving this were raised. These included to:

- amend the Electoral Act to provide for an increase in the guaranteed minimum number of House of Representatives seats for the Territories;
- incorporate the margins of error surrounding the population estimates for the Territories when determining entitlements to seats in the House of Representatives;
- introduce a requirement that determinations of entitlements to seats for the Territories be confirmed by a subsequent determination during the next Parliament before becoming effective; or
- change the process for determining State and Territory entitlements to seats in the House of Representatives.

One submission to the inquiry strongly opposed increasing the minimum number of House of Representatives seats for the Territories.

Committee conclusions

The Committee is of the opinion that the existing basic principle for determining the number of Members to be elected by the Territories should not be disturbed. It is, however, also important that any systemic disadvantages imposed on the Territories in comparison with the original States be addressed whenever they are identified.

As discussed in chapter five, there is a margin of error in the estimates provided by the ABS, based on the margin of error associated with the net undercount of the population in the 2001 census.

In the case of the NT, the margin of error in the 2001 net undercount is 1.2% at the 95% confidence level (which is up to 3 times the error margin in the States) and for the ACT, it is 0.8% (which is up to twice the equivalent in some of the States). There is greater variability in the estimates for the Territories compared with the estimates made for the States.

The population estimates for the NT and the ACT are less reliable than they are for other jurisdictions. This leads to the conclusion that, in proportionate terms, the Territories are likely to have a relatively wider range of possible population figures than the States, and could suffer a greater relative disadvantage.

The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to require the Australian Statistician to advise the Electoral Commissioner at the time of supplying the latest statistics of the Commonwealth, of the margins of error in numerical terms associated with the population estimates of the Territories for the Census on which the ERP figures are based.

If a Territory falls short of a quota, and the shortfall of people required is within the margin of error acknowledged by the ABS, the Australian Electoral Commissioner is to use the ERP figure at the top of the margin of error to determine the Territory's entitlement.

Some Committee Members believe that the margin of error for the NT creates significant doubt as to the outcome of the 2003 determination. These Committee Members believe that the estimate of the NT's 2003 population should be the ERP figure at the top of the margin of error. This would result in the NT retaining its second seat. For this reason, these Committee Members believe that the Electoral Commissioner's determination should be set aside to the extent that it applies to the NT.

Other Committee Members believe that it was the intention of the Parliament that the "latest statistics of the Commonwealth" be the latest *published* statistics at the time of the determination – not a special version or early release of the ERP figures – and for the 2003 determination the published statistics that should have been used were the June 2002 ERP figures. If the June 2002 ERP figures were used, the NT would have been entitled to two House of Representatives seats. For this reason, these Committee Members also believe that the Electoral Commissioner's determination should be set aside to the extent that it applies to the NT.

The AEC advises that setting aside the February 2003 determination to the extent that it applies to the NT would have the effect of restoring the NT to two divisions as if the determination had not taken place.

The Committee unanimously agrees that the 2003 determination should be set aside by government legislation to the extent that it applies to the NT.

Introduction

- 1.1 The number of Members of the House of Representatives to be elected in each State and Territory at a federal election is determined by the Australian Electoral Commission (AEC), based on each State and Territory's proportion of the population of the Commonwealth. This process is discussed more fully in chapter three.
- 1.2 In February 2003, the Australian Electoral Commissioner determined that at the next federal election, which is due to be held by mid-April 2005, Queensland will gain an additional House of Representatives seat, and South Australia (SA) and the Northern Territory (NT) will each lose one seat. For the NT, this means that its entitlement in the House of Representatives will be reduced from two seats to one.
- 1.3 The NT became entitled to representation in the House of Representatives at the 1922 election. For eight decades it was represented in the House of Representatives by a single Member. In the 2000 determination of State and Territory entitlements, the NT was determined to be entitled to two Members, and the AEC created the two divisions of Solomon (currently held by Mr David Tollner MP) and Lingiari (currently held by the Hon Warren Snowdon MP).
- 1.4 Following the 2003 determination, the NT is set to revert to a single electorate. The NT was determined to be short of the quota needed to retain its second seat by 295 people. The change in the NT's entitlement is not due to a decrease in the NT's population, but to the fact that the NT's population growth has slowed compared to the growth of the rest of Australia.

- 1.5 Since 1990, the *Commonwealth Electoral Act 1918* has guaranteed the NT and the Australian Capital Territory (ACT) at least one House of Representatives seat each. The February 2003 determination has resulted in Members of Parliament from the NT and others calling for the Territories to have a guaranteed minimum of two Members each, for reasons including:
- the geographic size of the NT, and the distinction between the urban population of Darwin and the regional population of the rest of the NT, which includes a high indigenous component;
 - claims that population growth will mean that the NT will again be entitled to two seats at the next determination of State and Territory representation entitlements;
 - uncertainty about the precise definition of the “latest statistics of the Commonwealth” in the formula used to determine entitlements;
 - reservations about the methodology used by the Australian Bureau of Statistics (ABS) to calculate the NT’s population, and the accuracy of the NT’s population estimate; and
 - the shortfall of 295 people in the case of the NT being within the statistical margin of error acknowledged by the ABS in calculating the NT’s population.

Scope and conduct of the inquiry

- 1.6 On 9 July 2003, the Special Minister of State, Senator the Hon Eric Abetz, wrote to the Committee asking it to inquire into and report on increasing the guaranteed minimum representation for the ACT and the NT to two seats each in the House of Representatives.
- 1.7 A media release announcing the inquiry was issued on 21 July 2003. The inquiry was advertised in the *Northern Territory News* and the *Canberra Times* on 26 July 2003 and members of the public were invited to make submissions.
- 1.8 The Committee wrote to all Members, Senators, State and Territory governments, political parties, the AEC and the ABS inviting them to make submissions to the inquiry.
- 1.9 The Committee received 28 submissions to the inquiry. These are listed at Appendix A. Three public hearings were held in Canberra

and Darwin during August and September 2003. A list of the hearings and witnesses is at Appendix B.

- 1.10 Submissions to the inquiry and transcripts of the evidence from the public hearings are available on the internet from:

<http://www.aph.gov.au/house/committee/em/territories/index.htm>

The Tollner Bill

- 1.11 On 16 June 2003, Mr David Tollner MP, Member for Solomon, introduced a private Member's Bill to the House of Representatives: the *Commonwealth Electoral Amendment (Representation of Territories) Bill 2003* (the "Tollner Bill").

- 1.12 The Bill seeks to amend the *Commonwealth Electoral Act 1918* to provide that at least two Members of the House of Representatives are chosen for the NT and the ACT at each general election.

- 1.13 In tabling his Bill, Mr Tollner told the House:

The rigid application of mathematical formula, properly required of the Commonwealth Electoral Office, confirmed the Territory's loss of a representative seat by a factor of less than 0.0025 per cent. Population projections show that this is a temporary condition – by 2005 the Territory will again have the numbers to qualify for two seats.

This amendment to the Act is no more than a bridging device that will carry the Territory across the momentary statistical glitch that threatens to again disadvantage the occupants of 1,346,000 square kilometres of the mainland.¹

- 1.14 In his submission to the inquiry, Mr Tollner outlined a further amendment to address the possibility that after a new determination, the Electoral Commissioner may not have sufficient time to undertake a redistribution of the NT's electoral boundaries before the writs for an election are issued. Mr Tollner proposed that the next federal election be conducted on the same basis, for the NT, as the immediately preceding election – retaining the divisions of Solomon and Lingiari.

¹ Mr David Tollner MP, *House of Representatives Official Hansard*, No. 9, 2003, Monday, 16 June 2003, p 16361.

- 1.15 The Member for Lingiari, the Hon Warren Snowdon MP, has also called for legislative change following the AEC's February 2003 determination of the NT's entitlement to representation in the next Parliament. Mr Snowdon supports increasing the minimum representation of the Territories, and provisions which would set aside the February 2003 determination.
- 1.16 The Committee has been asked to inquire into and report on increasing the minimum representation for the ACT and the NT to two seats each in the House of Representatives. The Committee's reference is not an examination of the Tollner Bill, although that Bill is relevant to the issues raised by the Committee's reference.

Structure of the report

- 1.17 This report comprises seven chapters:
- chapter one, which is this introduction;
 - chapter two discusses the history of Territory representation in the House of Representatives and the Senate;
 - chapter three sets out the formula used by the AEC to determine State and Territory entitlements to seats;
 - chapter four details the representation entitlements of the States and Territories in the House of Representatives since 1901;
 - chapter five discusses the concept of the "latest statistics of the Commonwealth" and the process used by the AEC to determine State and Territory entitlements to seats in the House of Representatives;
 - chapter six discusses the average divisional enrolment of electorates within the States and Territories, population projections for the NT, the geographic size of Territory divisions, and the distinctiveness of the Territories; and
 - chapter seven addresses policy proposals for increasing the minimum representation of the Territories in the House of Representatives.

Territory Representation in the Commonwealth Parliament

- 2.1 When the colonies of Australia were federated in 1901, six Australian States were created. The provisions governing the representation of these original States in the Commonwealth Parliament are set out in parts II and III of the Constitution. Representation of the Territories is governed by section 122 of the Constitution.

The House of Representatives

- 2.2 Section 24 of the Constitution provides for the composition of the lower house of Parliament. It states that:

The House of Representatives shall be composed of Members directly chosen by the people of the Commonwealth, and the number of such Members shall be, as nearly as practicable, twice the number of the Senators.

The number of Members chosen in the several States shall be in proportion to the respective numbers of their people, and shall, until the Parliament otherwise provides, be determined, whenever necessary, in the following manner:-

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

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

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

2.3 Paragraphs (i) and (ii) of section 24 prescribe the formula for determining State representation entitlements in the House of Representatives. This is discussed more fully in chapter three.

2.4 In 1975 the High Court, in the case of *McKinlay v Commonwealth (1975)*, considered the question of whether:

the relevant electoral provisions of the Constitution (Cth), more especially s.24 thereof, required that ... electoral districts should comprise equal or practically equal numbers of people or of electors.¹

2.5 The High Court held that section 24 of the Constitution does not guarantee that each House of Representatives division comprise an equal or practically equal number of electors or people:

The relevant provisions of the Constitution, in particular the provisions of s. 24 thereof, do not, upon their true construction, compel the conclusion that the electoral divisions... should comprise an equal number of people or an equal number of electors, or that there should be at least practical equality in the numbers of people or of electors comprised in electoral divisions so constituted, nor (per Barwick C.J.) do these provisions contain, as it were, a guarantee of equality in the voting value or weight of each vote cast in an election for the House of Representatives.²

2.6 The Constitutional guarantee of five Members for each original State qualifies the provision that State entitlements in the House of

1 Attorney-General for Australia (at the Relation of Brian John McKinlay) v. the Commonwealth of Australia and Another, the State of South Australia and Others v. the Commonwealth of Australia and Others, *Lawlor v. the Commonwealth of Australia and Another*, *Australian Law Journal Reports*, 1976, vol 50, p 279.

2 *Australian Law Journal Reports*, 1976, vol 50, p 280.

Representatives be proportional to the populations of the States. According to Quick and Garran³:

With fifty thousand as the quota, Tasmania and Western Australia would be entitled to only two or three members each in the National Chamber. This was considered such an insignificant representation that provision was made that there should be a minimum of five members in each State.

2.7 Western Australia (WA) was entitled to five Members of the House of Representatives as a result of the Constitutional guarantee until 1933. Since then its population has entitled it to at least five Members (currently its population entitles it to 15 Members). On the other hand, Tasmania has depended on the Constitutional guarantee for its five Members continuously since federation. Currently Tasmania's population would entitle it to four Members.

2.8 The number of seats in the House of Representatives is tied to that of the Senate through the provision that the number of lower house Members be, as nearly as practicable, twice the number of Senators. This provision was included in the Constitution to prevent disproportionate increases in the membership of the House of Representatives and to preserve the functions and powers of both Houses of Parliament. According to Quick and Garran⁴ the words "as nearly as practicable" are intended to:

provide for the slight variation that may be caused by the provision for the minimum representation of a State, and also by the provision for representing fractions of a quota.

2.9 In the 40th Parliament, there are 150 Members of the House of Representatives.

The Senate

2.10 The original States are each guaranteed a minimum of six Senators under section 7 of the Constitution. This section states that:

3 Quick, J and Garran, R (1976), *The Annotated Constitution of the Australian Commonwealth*, p 455.

4 Quick, J and Garran, R (1976), *The Annotated Constitution of the Australian Commonwealth*, p 450.

The Senate shall be composed of Senators for each State, directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate...

Until the Parliament otherwise provides there shall be six Senators for each Original State. The Parliament may make laws increasing or diminishing the number of Senators for each State, but so that equal representation of the several Original States shall be maintained and that no Original State shall have less than six Senators.

The Senators shall be chosen for a term of six years...

- 2.11 The Constitutional provisions governing the composition of the Senate are based largely on the Constitution of the United States which established a Senate composed of an equal number of representatives from each State. Guaranteeing the original States a minimum number of Senators each sought to alleviate the fears of the smaller colonies at the time – Tasmania, Queensland, SA and WA – that the Parliament would be dominated, to their detriment, by the more populous and wealthy colonies of New South Wales (NSW) and Victoria.⁵
- 2.12 Currently, each State elects 12 Senators.⁶

The Territories

- 2.13 Section 122 of the Constitution allows for the creation of Territories and for their representation in Parliament. Section 122 states that:
- The Parliament may make laws for the government of any Territory surrendered by any State to and accepted by the Commonwealth, or of any Territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such Territory in either House of the Parliament to the extent and on the terms which it thinks fit.
- 2.14 At the time of federation, the NT was a Territory annexed to SA. In April 1901, SA offered the NT to the new Commonwealth. The Territory was formally transferred to the Commonwealth on 1 January 1911 through the *Northern Territory Acceptance Act 1910*.

5 *The Origins of the Senate*, Senate Brief No. 9, March 1998. Parliament of Australia.

6 *Representation Act 1983*

- 2.15 The ACT was created to house the nation's capital city. Section 125 of the Constitution sets out the conditions governing the location of a Territory created for this purpose. The ACT was transferred from NSW to the Commonwealth on 1 January 1911 by the *Seat of Government Acceptance Act 1909*.

Legislative provisions governing the representation of the NT and the ACT in the Commonwealth Parliament

The House of Representatives

- 2.16 The NT was granted one Member of the House of Representatives in 1922 by the *Northern Territory Representation Act 1922*. The voting and participatory rights of this Member were restricted. The NT Member could not:
- vote on any question;
 - be counted in any situation where numbers mattered (eg, a quorum or absolute majority); or
 - hold office as Speaker of the House of Representatives or as a Chair of a House of Representatives committee.⁷
- 2.17 In 1936, the NT Member was granted the right to vote on any motion to disallow any NT ordinance, and on any amendment to such a motion. In 1959 the right to vote was extended to the right to vote on any question concerning a proposed law relating solely to the NT. Only in 1968 was the Member for the NT afforded the same rights, privileges and immunities as Members for the States.⁸
- 2.18 The ACT was granted representation by one Member in the House of Representatives by the *Australian Capital Territory Representation Act 1948*. This provided for the Member to exercise similar rights to those exercised by the Member for the NT at that time. In 1966, full voting rights were conferred on the Member for the ACT by the *Australian Capital Territory Representation Act 1966*.
- 2.19 In 1973, all legislation relating to the representation of the ACT in the House of Representatives was replaced by the *Australian Capital Territory (House of Representatives) Act 1973*, which provided for two Members with full voting rights. This Act was repealed in 1990 when

⁷ See section 5 of the *Northern Territory Representation Act 1922*.

⁸ See the *Northern Territory Representation Act 1936*; the *Northern Territory Representation Act 1959*; and the *Northern Territory Representation Act 1968*.

all provisions pertaining to the representation of the Territories in the Commonwealth Parliament were incorporated in the *Commonwealth Electoral Act 1918*.

- 2.20 Residents of the NT and the ACT could not participate in Constitutional referenda until the right to do so was achieved by a successful referendum to amend section 128 of the Constitution in 1977.

The Senate

- 2.21 The NT and the ACT were first granted Senate representation by the enactment of the *Senate (Representation of the Territories) Act 1973*. The Act provided that the NT and the ACT should each be represented by two Senators directly chosen by the people of the respective Territory voting as one electorate. This is the current entitlement of the Territories.⁹
- 2.22 Territory Senators have the same Parliamentary rights, privileges, and immunities as State Senators.¹⁰ Unlike State Senators, however, who are elected for six-year terms, Territory Senators are elected for a term concurrent with that of Members of the House of Representatives. Elections for all Territory Senators are held at the same time as each general election.¹¹
- 2.23 Under section 40 of the Electoral Act, the ACT and the NT are entitled to elect one Senator for every two House of Representatives Members when the number of House of Representatives Members to be chosen for that Territory reaches six or more.

High Court decisions concerning Territory representation

- 2.24 A number of cases brought before the High Court of Australia have considered the validity of legislation governing representation of the Territories in the Commonwealth Parliament.
- 2.25 The first “Territories case” - *Western Australia v Commonwealth (1975) 134 CLR 201* - challenged the validity of the *Senate (Representation of the Territories) Act 1973*. It was argued that the Act, which provided for the election of two Senators from the ACT and from the NT, was invalid on the grounds that section 7 of the Constitution states that

9 Sub-section 40(1), *Commonwealth Electoral Act 1918*.

10 Sub-section 41(1), *Commonwealth Electoral Act 1918*.

11 Section 43, *Commonwealth Electoral Act 1918*.

the Senate shall be composed of Senators from each State, thereby precluding the election of any Senators from the Territories.

- 2.26 The majority of the High Court held that section 7 of the Constitution does not restrict the wider power afforded to Parliament by section 122 to provide for the representation of the Territories “to the extent and on the terms which it thinks fit”, and that the Parliament is within its authority to grant the Territories Senate representation.
- 2.27 This decision was upheld in the second Territories case - *Queensland v Commonwealth (1977) 139 CLR 585* - which also challenged the validity of the *Senate (Representation of the Territories) Act 1973*, on the grounds that it was beyond the power of the Commonwealth Parliament to allow the ACT and the NT to be represented in the Senate by two Senators each.¹²
- 2.28 In *McKellar v Commonwealth (1977) 139 CLR 527*, sections of the *Representation Act 1905* that gave effect to the formula set out in section 24 of the Constitution for determining representation entitlements in the House of Representatives were challenged. It was argued that section 24 of the Constitution did not require:
- that the people of the Commonwealth should include only the people of the States, or
 - that the number of Senators should include only Senators chosen for the States.

Instead it was submitted that the people of the Commonwealth should include the people of the States and of the Territories, and that the number of Senators should include the Senators chosen for the States and for the Territories.¹³

- 2.29 The High Court confirmed the validity of excluding the people of the Territories and the Territory Senators from the formula set out in section 24 of the Constitution.
- 2.30 The High Court in these cases has confirmed the right of the Commonwealth to determine: the number of Senators and Members

12 *State of Queensland and Attorney-General of Queensland v. Commonwealth of Australia, State of Western Australia and Attorney-General of Western Australia v. Commonwealth of Australia, Australian Law Journal Reports, 1978, vol 52, p 100.* Also see Joint Select Committee on Electoral Reform, *Report No 1: Determining the Entitlements of Federal Territories and New States to Representation in the Commonwealth Parliament, November 1985, p 7.*

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

for the Territories; the method for electing or appointing Parliamentary representatives for the Territories; and the rights afforded to each Territory Senator and Member. It also confirmed that different sections of the Constitution apply to the representation of the States and Territories in the Commonwealth Parliament.

The Joint Select Committee on Electoral Reform

2.31 In 1985, a predecessor of this Committee, the Joint Select Committee on Electoral Reform (JSCER), examined whether a fixed formula should be established for determining the number of Senators and House of Representatives Members for the ACT and NT. In 1983, the *First Report* of the JSCER had noted that future governments might seek to abuse the discretion given to the Parliament to make laws governing the representation of the Territories.¹⁴

2.32 In its report, *Determining the Entitlement of Federal Territories and New States to Representation in the Commonwealth Parliament*, the JSCER noted that the High Court had held, in a series of cases, that section 122 of the Constitution confers on the Commonwealth a virtually unqualified power to make laws for the representation of the Territories in the federal Parliament.¹⁵ The Committee concluded:

It is not satisfactory for the entitlement to representation of the original States to be rigidly controlled by the nexus provision in Section 24 [of the Constitution], while the entitlement of Federal Territories is completely open-ended and subject to arbitrary determination by the Parliament. It is also disquieting that the Parliament can apply different standards for representatives of Territories to those which the Constitution prescribes for representatives of the original States.¹⁶

2.33 The Committee recommended that the ACT and the NT be entitled to representation in the House of Representatives of at least one Member each, and that representation after that be determined by dividing the

14 JSCER, *First Report*, September 1983, p 73.

15 JSCER, *Report No 1: Determining the Entitlements of Federal Territories and New States to Representation in the Commonwealth Parliament*, November 1985, p 4.

16 JSCER, *Determining the Entitlement of Federal Territories and New States to Representation in the Commonwealth Parliament*, 1985, p 49.

population of each Territory by the quota used to determine the representation entitlements of the States.¹⁷

- 2.34 The Committee's recommendations were adopted, and the Electoral Act was amended accordingly in January 1990. The Committee stated that its proposed formula for the Territories should initially be implemented via the Electoral Act, with possible Constitutional amendments to follow. To date Constitutional amendments have not been pursued.

The *Commonwealth Electoral Act 1918*

- 2.35 The Constitutional provisions governing the representation of the Territories in the Commonwealth Parliament are contained in section 122 of the Constitution. All legislative provisions are contained in the *Commonwealth Electoral Act 1918*.
- 2.36 Section 48 (2A) of the Act prescribes the process for determining Territory entitlements in the House of Representatives, and section 53 provides that Territory Members have the same rights as all other Members of the House of Representatives. Representation of the Territories in the Senate is governed by division 2, sections 40 – 44, of the Act.
- 2.37 The formula for determining the number of House of Representatives Members to be chosen in each of the States and Territories is discussed in the following chapter.

17 JSCER, *Determining the Entitlement of Federal Territories and New States to Representation in the Commonwealth Parliament*, 1985, p vii.

Determining Representation in the House of Representatives

The Formula

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

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

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

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

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

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

Population of the Commonwealth

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

- 3.6 Section 46 of the Electoral Act states:

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

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

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

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

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

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

41st Parliament

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

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

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

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

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

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

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

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

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

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

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

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

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

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

State and Territory Representation in the House of Representatives

- 4.1 As discussed in chapter three, the composition of the House of Representatives is governed by section 24 of the Constitution. The Constitution provides that the number of Members of the House of Representatives be, as nearly as practicable, twice the number of Senators. This is referred to as the “nexus”.
- 4.2 Australia elected its first Commonwealth Parliament in 1901. At that time, it comprised 36 Senators and 75 House of Representatives Members. Table 4.1 on the following page details the number of State and Territory House of Representatives Members returned at each federal election since 1901.
- 4.3 From the table, it can be seen that there were two significant increases in the size of the House of Representatives - in 1949 and 1984. At the 1949 election, the number of Members increased from 75 to 123 following a legislated increase in the number of Senators for each of the original States, from six to ten. Similarly, in 1984, the number of House of Representatives Members increased from 125 to 148 following a legislated increase in the number of Senators for each of the original States, from ten to 12. In 1977, the number of Members was reduced from 127 to 124, following the High Court ruling in *McKellar v Commonwealth (1977)*. The Court held that the four Territory Senate places created in 1974 could not be included in the number of Senators for the purpose of calculating the

Table 4.1. Number of House of Representatives Members returned at each federal election since 1901

Election Year	NSW	Vic.	Qld.	SA	WA	Tas	NT	ACT	Total
1901	26	23	9	7	5	5	-	-	75
1903	26	23	9	7	5	5	-	-	75
1906	27	22	9	7	5	5	-	-	75
1910	27	22	9	7	5	5	-	-	75
1913	27	21	10	7	5	5	-	-	75
1914	27	21	10	7	5	5	-	-	75
1917	27	21	10	7	5	5	-	-	75
1919	27	21	10	7	5	5	-	-	75
1922	28	20	10	7	5	5	1	-	76
1925	28	20	10	7	5	5	1	-	76
1928	28	20	10	7	5	5	1	-	76
1929	28	20	10	7	5	5	1	-	76
1931	28	20	10	7	5	5	1	-	76
1934	28	20	10	6	5	5	1	-	75
1937	28	20	10	6	5	5	1	-	75
1940	28	20	10	6	5	5	1	-	75
1943	28	20	10	6	5	5	1	-	75
1946	28	20	10	6	5	5	1	-	75
1949	47	33	18	10	8	5	1	1	123
1951	47	33	18	10	8	5	1	1	123
1954	47	33	18	10	8	5	1	1	123
1955	46	33	18	11	9	5	1	1	124
1958	46	33	18	11	9	5	1	1	124
1961	46	33	18	11	9	5	1	1	124
1963	46	33	18	11	9	5	1	1	124
1966	46	33	18	11	9	5	1	1	124
1969	45	34	18	12	9	5	1	1	125
1972	45	34	18	12	9	5	1	1	125
1974	45	34	18	12	10	5	1	2	127
1975	45	34	18	12	10	5	1	2	127
1977	43	33	19	11	10	5	1	2	124
1980	43	33	19	11	11	5	1	2	125
1983	43	33	19	11	11	5	1	2	125
1984	51	39	24	13	13	5	1	2	148
1987	51	39	24	13	13	5	1	2	148
1990	51	38	24	13	14	5	1	2	148
1993	50	38	25	12	14	5	1	2	147
1996	50	37	26	12	14	5	1	3	148
1998	50	37	27	12	14	5	1	2	148
2001	50	37	27	12	15	5	2	2	150
next*	50	37	28	11	15	5	1	2	149

Source: adapted from Appendix 11, *House of Representatives Practice, Fourth Edition, 2001, p754.*

*At the time of publication, the next federal election had yet to be called but is due by mid- April 2005.

number of Members of the House of Representatives under the nexus provision, and the House of Representatives was reduced accordingly.¹

- 4.4 Table 4.1 includes the State and Territory representation entitlements for the next election, which is based on the Australian Electoral Commissioner's February 2003 determination. The date of the election for the 41st Parliament has yet to be determined, but must be held no later than mid-April 2005.
- 4.5 At the next federal election, based on the 2003 determination, Queensland will elect an additional Member to the House of Representatives while the NT and SA will each elect one less Member than it has in the current Parliament.
- 4.6 Listed below are the States and Territories that have lost a seat in the House of Representatives at elections from 1901 to date, and the year of the elections at which those seats were lost.²
- NSW: 1955, 1969, 1977 (two seats) and 1993.
 - Victoria: 1906, 1913, 1922, 1977, 1990 and 1996.
 - SA: 1934, 1977, 1993 and election due by April 2005.
 - NT: election due by April 2005.
 - ACT: 1998.
- 4.7 Table 4.2 details – for each of the jurisdictions listed in the preceding paragraph, and for each relevant election - the margin by which the jurisdiction was short of retaining its House of Representatives seat. Results are listed by “population gap” order, which appears in the last column of the table; that is, in ascending order of the number of additional people that the State or Territory needed to retain its seat. The “quota gap” is the difference between the quota and the next half quota.

1 House of Representatives Practice, 2001, fourth edition, Department of the House of Representatives, p 84.

2 NSW, Qld and WA each lost a House of Representatives seat at the 1961 determination for the 1963 federal election, however, this determination was set aside by the *Representation Act 1964*. NSW, Qld and SA each lost seats in 1977 after the *Representation Amendment Act 1977* provided that the remainder for an additional seat be (returned to) greater than 0.5 of the quota.

Table 4.2. States and Territories that have lost seats: 1901 – next federal election

State/Territory	Election Year	Change in number of Seats	Quotas ¹	Quota Gap	Population Gap
Northern Territory	2004-5	2 to 1	1.498	0.002	295 ²
Australian Capital Territory	1998	3 to 2	2.495	0.005	658
South Australia	1993	13 to 12	12.451	0.049	5,627
Victoria	1913	22 to 21	21.375	0.125	7,717
New South Wales	1993	51 to 50	50.417	0.083	9,554
Victoria	1922	21 to 20	20.358	0.142	10,698
South Australia	2004-5	12 to 11	11.415	0.085	11,282
South Australia	1934	7 to 6	6.327	0.173	15,870
Victoria	1906	23 to 22	22.051	0.449	24,643
Victoria	1996	38 to 37	37.279	0.221	26,404
Victoria	1990	39 to 38	38.176	0.324	35,982
New South Wales	1955	47 to 46	45.986	0.514	38,239
New South Wales	1967	46 to 45	44.440 ³	0.560	53,402

Source: Australian Electoral Commission, 28 October 2003.

¹The quotas and the quota gap listed in table 4.2 have been rounded to 3 decimal places. To calculate the population gap down to an individual person, the AEC uses a quota calculated to 8 decimal places.

² Some submissions to the inquiry have referred to a population shortfall of 291 and 295 people for the NT. An additional 294 people would increase the population of the NT to 200,054 which is 1.49999953 quotas. An additional 295 people would increase the population to 200,055 people and return a quota of 1.50000703 (two seats).

³An extra seat was granted on any remainder of the quota between 1964-1972 determinations of entitlements to seats.

4.8 From table 4.2, it can be seen that the Territories have experienced the smallest margins (in terms of the number of people) by which a jurisdiction has been short of retaining a House of Representatives seat. At the 2003 determination of entitlements for the 41st Parliament, the NT was 295 people short of retaining its second seat. In 1998, the population gap for the ACT was slightly greater; it was short of retaining its third House of Representatives seat by 658 people.

The Population Estimates

- 5.1 Issues relating to the population estimates of the Commonwealth and the States and Territories, especially the NT, recurred throughout the inquiry. Three matters were particularly focussed on:
- what constitutes the “latest statistics of the Commonwealth”;
 - the methodology used to estimate the NT’s population; and
 - margins of error in the population estimates.

Latest statistics of the Commonwealth

- 5.2 Section 24 of the Constitution and sections 46 and 48 of the Electoral Act stipulate that the “latest statistics of the Commonwealth” are to be used to determine State and Territory entitlements to House of Representatives seats.
- 5.3 The Constitution and the Electoral Act do not define what is meant by the “latest statistics of the Commonwealth”. The Explanatory Memorandum of the Electoral Act also does not define what is meant by the “latest statistics of the Commonwealth”.

Estimated Resident Population figures

- 5.4 The Committee was told by the AEC and the ABS that the “latest statistics of the Commonwealth” are the Estimated Resident

Population (ERP) figures produced by the ABS for each State and Territory as at the end of March, June, September and December of each year.¹

- 5.5 The Committee was initially given the impression that both the concept of the “latest statistics of the Commonwealth”, and the process by which these statistics are provided by the ABS to the AEC, was straightforward. The Committee was told that the AEC requests the latest population statistics and the ABS provides the most recent quarterly ERP figures:

The Electoral Commissioner writes to the Australian Statistician pursuant to section 47 of the Act requesting that the Australian Statistician provide the latest statistics of the Commonwealth during the month of ascertainment. The Australian Statistician then responds during the month of ascertainment with the latest available ERP.²

- 5.6 The ERP figures are published by the ABS in *Australian Demographic Statistics*³ about five to six months after the reference period. The AEC explained that occasionally the latest ERP figures during the month of ascertainment may not have been published by the ABS:

Occasionally, the latest available ERP during the month of ascertainment may not yet have been published. This has occurred in 1994, 1999 and 2003. In these circumstances, the Australian Statistician will either arrange to ensure the latest ERP is released slightly earlier than anticipated to meet the timeline determined by section 46 of the Act, or provide the Electoral Commissioner with an embargoed version of the latest ERP for use in the ascertainment.⁴

- 5.7 Similarly, the ABS explained in its submission:

On those occasions where the AEC request for the latest statistics falls ahead of the publication of the quarterly estimates, but after a new set of estimates is internally available, it has been ABS practice to provide these to the AEC and make them publicly available. For example, in 1994, the Statistician released a press release on 4 March 1994...

1 See submission #24 from the Australian Electoral Commission, p 5, and #6 from the Australian Bureau of Statistics, p 2.

2 Submission #24 from the Australian Electoral Commissioner, p 6.

3 Australian Bureau of Statistics, Cat. No. 3101.0.

4 Submission #24 from the Australian Electoral Commission, p 6.

several weeks in advance of the regular publication of the statistics in *Australian Demographic Statistics*...In 1999, the Australian Statistician brought forward the release of the regular quarterly publication by several days so it would coincide with the provisions of the Statistics to the Electoral Commissioner on 8 December 1999.⁵

- 5.8 In addition, the Australian Statistician told the Committee – in reference to the population estimates provided for the 2003 determination - that the ERP figures published in *Australian Demographic Statistics* are the same as those provided to the Electoral Commissioner for the purposes of the determination:

At the same time we gave the Commissioner the population estimates we had an electronic release to the general public. Four weeks later, we released this publication, *Australian Demographic Statistics*, which also contained those estimates. These were identical, but this publication contains a lot of other information ...⁶

- 5.9 The Committee was therefore led to believe that the ERP figures contained in *Australian Demographic Statistics* – whether this is a current, early or embargoed version of the published *Australian Demographic Statistics* - are the “latest statistics of the Commonwealth” provided to the Electoral Commissioner for the determination of entitlements.
- 5.10 During the course of the inquiry, it became apparent that this was not the case. Rather, much confusion surrounded the concept of the “latest statistics of the Commonwealth” and, more specifically, what is provided to the Australian Electoral Commissioner to make the determination.
- 5.11 This confusion was identified by Senator Crossin in her evidence to the Committee:

There is inconsistency in the advice the Australian Bureau of Statistics has given me and probably this Committee. There is

5 Submission # 25 from the Australian Bureau of Statistics, paragraph 30. Legal advice provided to the AEC in 1980 states that “it is not necessary that the “latest statistical information” used by the Commissioner to ascertain the number of people of the Commonwealth etc must be information which has been made available to the public generally by the Australian Statistician. It is sufficient that the information has been provided by the Australian Statistician to the Commissioner.”

6 Hansard transcript of public hearing 18 September 2003, p 4.

a lack of clarity about exactly what statistics they used or what version of the statistics they used.⁷

- 5.12 The Committee pursued these issues extensively in the public hearings and in subsequent discussions with the two agencies. The Committee now understands that the publication *Australian Demographic Statistics* does not contain all of the ERP figures that are provided to the Electoral Commissioner by the ABS for the purposes of the determination.
- 5.13 The Committee understands that the process for obtaining the latest statistics of the Commonwealth involves a letter of request from the Australian Electoral Commissioner to the Australian Statistician. The Australian Statistician then responds in a letter of reply that contains population estimates, some of which – namely separate figures for the Territories of Jervis Bay, Christmas Island and Cocos (Keeling) Islands – are not published in *Australian Demographic Statistics*.
- 5.14 In this regard, section 46 of the Commonwealth Electoral Act requires the Electoral Commissioner to: ‘ascertain the numbers of the people of the Commonwealth and of the several States and Territories in accordance with the latest statistics of the Commonwealth’.
- 5.15 In its supplementary submission to the Committee, the Australian Electoral Commission noted that: ‘following legal advice, the AEC is of the opinion that the statistics compiled of the number of people of each State and Territory as at the end of each quarter by the Australian Statistician constitute the latest statistics of the Commonwealth’.⁸
- 5.16 Despite this, the population figures supplied by the Australian Statistician to the Electoral Commissioner are further supplemented by separate population figures for enrolled electors resident in Australia’s external Territories, and eligible electors from Norfolk Island obtained by the AEC. The Electoral Commissioner uses these additional figures to modify the population estimates of the States and Territories and determine House of Representatives entitlements.

The “latest” statistics of the Commonwealth

- 5.17 Table 5.1 details information about the provision of the quarterly estimates to the Australian Electoral Commissioner. It lists the dates

7 Hansard transcript of public hearing, Friday 29 August 2003, Darwin, p 49.

8 Submission #24 from the Australian Electoral Commission, p 5.

of the requests for statistics, and the dates of the replies from the Australian Statistician. Also listed are the quarterly estimates that were requested by the Commissioner, and the quarterly estimates that were provided by the ABS.

Table 5.1. Provision of the “latest statistics of the Commonwealth” to the Australian Electoral Commissioner by the Australian Statistician

Year	Requested date for provision of population estimates	ABS letter of request	ABS letter of reply	ERP Quarter Requested	ERP Quarter Provided
1984	As soon as possible after 22 February 1984	21 Feb 1984	27 Feb 1984	Not specified	Sept 1983
1986	As soon as possible after 22 January 1986	8 Jan 1986	10 Feb 1986	Not specified	Jun 1985
1988	As soon as possible after 15 June 1988	10 Jun 1988	27 June 1988	Not specified	Dec 1987
1991	Within a month of 9 February	8 Feb 1991	25 Feb 1991	Not specified	Jun 1990
1994	In the month commencing 5 February	4 Feb 1994	4 Mar 1994	September	Sep 1993
1997	Prior to 28 February	14 Feb 1997	27 Feb 1997	September	Jun 1996
1999	Before 9 December	18 Nov 1999	8 Dec 1999	June	Jun 1999
2003	Between 13 February and 12 March	22 Oct 2002	18 Feb 2003	September	Sep 2003

Source: Australian Bureau of Statistics, 5 November 2003.

5.18 From table 5.1, it can be seen that the month for which the population figures are requested is not determinative of the quarter for which figures are provided by the Statistician. For example, in both 1984 and 1997, population figures were requested in February. In 1984, the preceding September quarter figures were provided, but in 1997, the preceding June quarter figures were provided. And as already noted, in 2003, September quarter figures were provided for population estimates that were required “between 13 February and 12 March 2003”.

5.19 The absence of a legislative definition of the “latest statistics of the Commonwealth” provides the Australian Statistician, and to a lesser extent, the Electoral Commissioner, with a degree of unintended discretion when deciding which statistics will be used to determine State and Territory representative entitlements in the House of Representatives.

5.20 This was a matter of concern to the Committee. As Senators Ray and Brandis pointed out:

Senator ROBERT RAY - The danger is that it is open to manipulation. There is the fact of whether or not you pursue

a particular set of times or specially produced figures, where you already have the knowledge of where the trends may go or not go. You can just track it through the last five quarters, and you think, 'Gee, they haven't lost a seat yet.' You might be able to know in your own mind whether a fresh quarter is going to influence matters or not. I am not alleging that there is any conspiracy here; I am saying that we are open to dangerous ground here that I never understood before...

Senator GEORGE BRANDIS - Therefore, there is a lack of automaticity – or, to put the converse point, there is a dangerous element of discretion left as to when the statistics are called for, which exposes the AEC to the possibility that it could be alleged that the timing of its call under section 47 was being manipulated. Do you agree that that is the way the statutory scheme seems to work?

But, in fairness to you, Mr Becker – and in fairness to your agency – the statute under which you operate ought to protect you from the possibility of that being alleged. I do not think that it would be fair to Senator Ray to say that he has alleged anything, but he has raised the possibility that there could be manipulation.⁹

5.21 Moreover, contrary to the impression conveyed in the evidence that the process involved the ABS providing whatever population statistics they had available, it is clear that the AEC has closely monitored the evolution of the quarterly figures, and has at times pressed for later quarterly figures to be provided to it on the basis that getting more recent figures than the last published quarters was particularly sensitive.

5.22 For example, for the 1994 determination of entitlements the Electoral Commissioner wrote to the Australian Statistician requesting the early release of population estimates:

The entitlements to be determined in the month referred to...may on this occasion be very sensitive to which quarter's population figures are supplied by your office. On current (March Quarter 1993) figures, Queensland and the Australian Capital Territory would both gain a seat, while Victoria would lose one. However, the speed with which Queensland's population is growing indicates that it may in

9 Hansard transcript of public hearing, Thursday 18 September 2003, p 26 and 29.

fact be eligible for a second extra seat by the December Quarter 1993. The Australian Capital Territory is also in an uncertain position regarding its extra seat, having been both above and below the figure that would have given it an additional seat were determinations made on the basis of figures for recent quarters...

I am concerned that a determination made in the February/March period using figures up to 9 months "old" could, on the basis of later figures released even before the redistribution is completed, be out of date.

I thought I should bring this matter to your notice in the event that it might be possible to have later than June 1993 quarter figures available before 4 March 1994.¹⁰

5.23 Similarly, in 1997 the Electoral Commissioner wrote to the Australian Statistician:

Following discussions between officers of our two Agencies, I understand that the latest available figures may only be those of the June 1996 quarter. Further, I understand that the September 1996 figures may not be available until early March 1997.

You will be aware that the population figures for the Australian Capital Territory (ACT) over the past few available quarters translate to a representation entitlement on the margin between 2 and 3 seats. You will appreciate that it is important that the population statistics used for the determination of the entitlements are, therefore, the very latest possible. On June 1996 figures, the ACT entitlement is 2 seats. I do not need to emphasise the concerns which would be expressed should I need to use these figures for the official determination, only for the unofficial entitlements to change (should that occur) within a few days, once the September figures are released.

Accordingly, I would appreciate whatever efforts you may be able to make to enable the September figures to be used for

¹⁰ Letter from Mr B Cox (Electoral Commissioner) to Mr I Castles (Australian Statistician), 22 November 1993.

the purpose of determining the entitlement of seats for the next federal election.¹¹

- 5.24 It is interesting to note that while the Electoral Commissioner requested September quarter figures in 1997, the Australian Statistician provided the June statistics.
- 5.25 A file note from the ABS's records strengthens concerns about the process for obtaining the latest statistics of the Commonwealth:

The figures quoted are for June Q 1996 – the latest published figures. The Sept Q 1996 figures will not be published until late March 1997. Although they are virtually finalised now, they should not be released under embargo for this period – also AEC will want to use them and announce the outcome before end March. Incidentally, the Sept Q figures do not change the distribution of seats – AEC have been advised of this informally.¹²

- 5.26 It is apparent that the AEC not only monitors State and Territory entitlements as quarterly estimates are released¹³, but, as is revealed by the letters quoted above, is able to request that a particular set of quarterly statistics be released in advance of the usual date of publication for the purpose of the determination because of a situation of emergent population trends.

The “latest statistics of the Commonwealth” used in the 2003 determination

- 5.27 Uncertainty about the date of the latest statistics was an issue in relation to the 2003 determination.
- 5.28 On 22 October 2002, the Australian Electoral Commissioner wrote to the Australian Statistician to advise that, in accordance with section 46 of the Electoral Act, he was required to ascertain the population of the Commonwealth and its States and Territories to determine representation entitlements in the House of Representatives. The Electoral Commissioner noted that he was required, between

11 Letter from Mr B Gray (Electoral Commissioner) to Mr W McLennan (Australian Statistician), 14 February 1997.

12 Copies of correspondence between the Australian Electoral Commission and the Australian Bureau of Statistics were provided to the Committee by the Australian Bureau of Statistics on 6 November 2003.

13 Hansard transcript of public hearing, Thursday 18 September 2003, Canberra, p 25.

13 February 2003 and 12 March 2003 to ascertain the numbers of people of the Commonwealth.¹⁴

- 5.29 In the same letter, the Electoral Commissioner also sought to confirm the availability of a “special version” of the September quarter ERP figures to be used for the determination. This “special version”, which was, as usual, a letter from the Australian Statistician to the Australian Electoral Commissioner, containing population estimates for each State and Territory as well as Jervis Bay and Christmas and (Cocos) Keeling Islands, was provided to the Australian Electoral Commission (and released to the public) on 18 February 2003 as the latest statistics of the Commonwealth.
- 5.30 The AEC itself provides the population statistics for Norfolk Island and distributes them to the various States and the ACT.
- 5.31 At the time of the Commissioner’s letter in October 2002, neither the June 2002 nor the September 2002 quarterly figures had been published by the ABS¹⁵. Nonetheless, the Electoral Commissioner pursued the September 2002 figures for the purposes of the determination. A representative of the AEC explained that the September 2002 quarterly figures were sought because the AEC had a “good suspicion” that these figures would be ready for the February 2003 determination:

We know that each quarter’s statistics come out after a six month lag, so in October – while we may not have had June – come February-March we have a good suspicion that the September figures may well be available. That is the context in which we have sought advice from the Statistician as to whether, in that period of time, the September figures would be available. He has answered affirmatively and said that they would be published for us.¹⁶

- 5.32 In regard to the “special version” of the September 2002 quarterly figures, the ABS told the Committee:

It was established that within the time we had to produce a formal response to the Electoral Commissioner the September

14 Exhibit #1 from the Australian Electoral Commission. Letter dated 22 October 2002 from the Australian Electoral Commissioner to the Australian Statistician.

15 The June 2002 quarterly figures were released on 12 December 2002. Australian Bureau of Statistics, Cat. No 3101.0 *Australian Demographic Statistics: June Quarter 2002*.

16 Hansard transcript of public hearing, Thursday 18 September 2003, Canberra, p 28.

quarter 2002 estimates actually would be available internally, so they would be, in our view, the latest available statistics.¹⁷

- 5.33 The ABS conceded that if the September figures could not have been produced in time for the Electoral Commissioner to make his determination then the June figures would have been provided.¹⁸
- 5.34 It is not clear whether the September 2002 or the June 2002 figures were in fact the latest statistics of the Commonwealth given that there was an early release of September 2002 figures.¹⁹
- 5.35 If the June 2002 figures were used as the latest statistics in the 2003 determination, the NT would have retained its second seat. Table 5.2 shows the State and Territory representation entitlements to seats in the House of Representatives based on June 2002 figures.²⁰

Table 5.2. State and Territory representation entitlements - June 2002 ERP figures.²¹

State/Territory	Population	Quotas	No. of HoR Members	Change from 40th Parliament
New South Wales	6,663,735	50.0278	50	none
Victoria	4,883,295	36.6612	37	none
Queensland	3,708,720	27.8431	28	+1
Western Australian	1,929,260	14.4838	14	-1
South Australia	1,522,240	11.4282	11	-1
Tasmania	473,639	3.5558	5 ¹	none
Northern Territory ²	202,148	2.4338	2	none
Australian Capital Territory ³	324,195	1.5176	2	none

Source: Australian Electoral Commission, 20 November 2003.

¹Tasmania, as an original State, is guaranteed a minimum of five House of Representatives seats.

²Comprises NT population of 200,107 people plus the populations of Christmas (1,400 people) and Cocos (Keeling) (601 people) Islands.

³Comprises ACT population of 323,594 plus the population of Jervis Bay (551 people).

- 17 Hansard transcript of public hearing, Thursday 18 September 2003, Canberra, p 10.
- 18 Hansard transcript of public hearing, Thursday 18 September 2003, Canberra, p 11.
- 19 See Hansard transcript of public hearing, Friday 29 August 2003, Darwin, p 49 – 57.
- 20 The Australian Electoral Commission advises that the figures included in this table are not official figures but rather indicative calculations that have been prepared for information only. The Australian Electoral Commission further advises that these calculations are not the same as those required under sections 46 and 48 of the Electoral Act – for example, the population figures for Norfolk Island – which are negligible – are not included in the table.
- 21 Figures are based on Australian Bureau of Statistics' *Australian Demographic Statistics: June Quarter 2002*, Table 4: Estimated Resident Population, States and Territories. Figures for the external Territories were separately provided to the Australian Electoral Commission by the Australian Bureau of Statistics.

- 5.36 The Committee has to admit its surprise that the meaning of the “latest statistics of the Commonwealth” is so fluid, and that there appears to be an unintended degree of discretion afforded to the Australian Statistician and the Australian Electoral Commissioner to determine which quarterly estimates are the “latest statistics of the Commonwealth”.
- 5.37 There is a recollection that the 1986 Committee, which framed the recommendations leading to the current formula in the Commonwealth Electoral Act for determining the number of Members of the House of Representatives for the ACT and NT, had an expectation that it would be based on the latest *published* quarterly statistics.²²

Recommendation 1

- 5.38 **The Committee recommends that in order to make the process of determining the representation of the Territories in the House of Representatives more transparent and certain, the *Commonwealth Electoral Act 1918* be amended:**
- **to require the Australian Statistician to include in the quarterly Estimates of Resident Population published in *Australian Demographic Statistics*, in addition to the estimated populations of the States, the Australian Capital Territory and the Northern Territory, estimates of the populations of the Territories of Jervis Bay, Cocos (Keeling) Islands and Christmas Island;**
 - **to require the Australian Electoral Commissioner:**
 - ⇒ **on a date twelve months after the first sitting of a new House of Representatives, to take note of the latest statistics of the population of the Commonwealth, including separate statistics of the populations of each of the States and Territories of the Commonwealth, that have been published as Estimates of Resident Population in *Australian Demographic Statistics*; and**
 - **to require the Australian Electoral Commissioner:**
 - ⇒ **to make to those statistics whatever adjustments are required by other sections of the Commonwealth Electoral Act 1918 for the purposes of making the determination, for example the Norfolk**

22 Senator Robert Ray, Chair of the Joint Select Committee on Electoral Reform in the 34th Parliament, reported his recollection to the Committee.

Island statistics; and

⇒ **to make and publish the determination including details of the adjustments and the calculations involved,**

within one month after the end of the twelfth month after the first sitting of a new House of Representatives.

Issues in estimating the population of the NT

5.39 The 2003 determination of State and Territory entitlements to seats in the House of Representatives was based on the September 2002 quarterly ERP figures. According to the ABS, the statistics provided to the Australian Electoral Commissioner to make this determination were:

the best estimates that [could] be made, given our current methodologies and available data sources.²³

5.40 Concerns about these estimates were expressed in a number of submissions to the inquiry. Members of Parliament from the NT, and the NT Government, expressed the view that the Census methodology used by the ABS to enumerate the population, particularly of the NT's indigenous communities, lends itself to under-estimating the population of the Territory.²⁴

5.41 In support of this argument, evidence was presented to the Committee concerning:

- NT administrative records, such as health care service and housing records;
- independent research undertaken by the Australian National University's Centre for Aboriginal Economic Policy Research; and
- the conduct of the ABS's Post Enumeration Survey (PES).

Administrative records

5.42 The ABS's estimates were contested by some on the basis that population figures derived from the Census differ greatly from

23 Hansard transcript of public hearing, Monday 18 August 2003, Canberra, p 2.

24 See submissions: #14 from Mr David Tollner MP, #19 from the NT Government, #20 from Senator Trish Crossin, and #22 from the Hon Warren Snowdon MP.

population figures derived from administrative records (eg, health care service and housing records). On the basis of administrative data, some submissions have argued that the population of some of the NT's indigenous communities is greater than that estimated by the ABS.²⁵

- 5.43 The ABS has responded that its population estimates rarely match those derived from administrative records. This is predominantly because of the different purposes and principles governing the data sets:

The business rules which determine whether a person is entitled to access a service and therefore is on an administrative list in a particular location can differ markedly from Census or Estimated Resident Population concepts.²⁶

- 5.44 The ABS explained that it is possible that people are included on a community's administrative list when they may not be currently present in a particular community or meet the ABS's criteria for "usual residence". For example, a resident of a community may be undergoing long term medical treatment and temporarily residing in Darwin. In this case, the person may be counted in the population of Darwin rather than in the population of the community which includes the person on its administrative records. It is also possible that individuals are on a number of administrative lists in different localities which may lead to double-counting.²⁷

Centre for Aboriginal Economic Policy Research

- 5.45 A number of submissions cited research by the Australian National University's (ANU) Centre for Aboriginal Economic Policy Research (CAEPR) to support arguments that the NT's indigenous population was underestimated. The Hon Warren Snowdon MP noted in his submission:

In 2001, the ABS was forced to correct the undercount in the community of Arukun from the statewide indigenous undercount of 8 per cent to 17 per cent following the results

25 See submissions: #19 from the NT Government, #20 from Senator Trish Crossin, #22 from The Hon Warren Snowdon, MP.

26 See submission #25 from the Australian Bureau of Statistics, paragraph 11.

27 Submission #24 from the Australian Bureau of Statistics, paragraph 11-12.

of a study by Dr John Taylor of the Centre for Aboriginal
Economic Policy Research at the ANU.²⁸

28 Submission #22 from the Hon Warren Snowdon MP, p 23.

- 5.46 Senator Trish Crossin and the NT Government also refer to the apparent undercount in Arukun, and cite comments by Dr John Taylor from CAEPR:

The manner of ABS enumeration in remote Aboriginal communities can serve to undercount the population and... the adjustment factor applied to compensate for this may be inadequate.²⁹

- 5.47 In contrast, the Centre's research was also used to support a claim by the ABS that there is evidence to suggest that its methods may lead to an overcount of the indigenous population.³⁰ The ABS referred to the CAEPR report, *Making Sense of the Census: Observations of the 2001 Enumeration in Remote Aboriginal Australia*³¹, and quoted comments made by CAEPR - such as "exemplary" and "as good as it could be" - to describe the ABS's count in two NT indigenous communities. The ABS also cited comments made by CAEPR in the same report regarding the overall conclusion drawn from studies undertaken in three NT indigenous communities:

As we have suggested, this methodology will, if anything, err towards double counting.³²

- 5.48 As a general response to submissions to the inquiry that cited CAEPR research to support assertions of either undercounting or of overcounting in NT's indigenous communities, witnesses from CAEPR told the Committee that:

For the record... misrepresentations, misunderstandings and misinterpretations of our research findings... have no doubt crept inadvertently into aspects of the evidence to date by other parties.³³

- 5.49 As a specific response to the CAEPR quotes used by the ABS in its submission, CAEPR told the Committee:

In our view, paragraph 6 essentially comprises a collection of select quotes that, out of their textual context, take on greater force of meaning than was intended in the original

29 See submissions # 19 from the NT Government, p 12 and # 20 from Senator Trish Crossin, p 1.

30 Submission # 25 from the Australian Bureau of Statistics, paragraph 6.

31 D.F Martin, F. Morphy, W.G.Sanders and J. Taylor, *CAEPR Research Monograph No. 22*, 2002. Australian National University.

32 Submission # 25 from the Australian Bureau of Statistics, paragraph 6.

33 Hansard transcript of public hearing, Thursday 18 September 2003, Canberra, p 33.

manuscript. I think it would be fair to say that, if you read the text as tabled, you would discover that the intent is to be far more circumspect than is suggested here.³⁴

- 5.50 The witnesses from CAEPR were reluctant to provide a definitive opinion about the methodology used by the ABS to enumerate the indigenous population of the NT. Instead, the witnesses discussed studies undertaken in Aurukun, Wadeye and an Alice Springs town camp, which showed undercounts of the population in these communities. The witnesses declined to quantify the undercount in these areas, or to say whether the undercounts were atypical. However, representatives of CAEPR did agree that the methodology used by the ABS tends to undercount indigenous populations in remote areas:

The methodology applied by the ABS to count Indigenous peoples in remote areas has an inherent tendency to undercount young children and young men, in particular.³⁵

Post Enumeration Survey and indigenous communities

- 5.51 The most recent Census of Population and Housing provides the basis for subsequent quarterly population estimates.³⁶
- 5.52 Although the ABS states that every effort is made to count all Australians on Census night, it acknowledges that a small percentage of the population is missed, and that an even smaller percentage is counted more than once.
- 5.53 Accordingly, a PES is conducted by the ABS approximately three weeks after the Census. The purpose of this survey is to assess “the level and characteristics of people undercounted or overcounted”³⁷ by the Census.

34 Hansard transcript of public hearing, Thursday 18 September 2003, Canberra, p 36.

35 Hansard transcript of public hearing, Thursday 18 September 2003, Canberra, p 39.

36 To determine the quarterly estimates of the population of Australia as well as of each of the States and Territories, the results of the Census are adjusted using a range of data – in addition to the PES which is discussed in detail here - including birth and death statistics; overseas arrivals and departures data; interstate migration estimates modelled from Medicare data on changes of address and Census based expansion factors; and changes in defence force personnel levels within States and Territories, that are not accounted for in Medicare changes of address. See Australian Bureau of Statistics, Cat No. 2940.0, *Information Paper: Census of Population and Housing, Data Quality, Undercount - Australia 2001*, Appendix 2.

37 See submission #6 from the Australian Bureau of Statistics, p 5.

- 5.54 Through the PES, the ABS estimates the net undercount³⁸ of a population, which is used to adjust the Census.
- 5.55 The ABS explained that the PES does not include dwellings in very sparsely populated areas due to cost considerations. The PES also does not include remote indigenous communities because close involvement of the indigenous community organisations in the original Census count makes it impractical to conduct an independent PES for these communities. In addition, the PES does not include persons in non-private dwellings such as hotels, motels, hospitals and other institutions.³⁹
- 5.56 To adjust the Census results in the NT's remote indigenous areas where the PES is not conducted, the ABS applies the net undercount rate calculated for the urban areas of the NT where the PES is conducted. The PES net undercount for the surveyed area is 4%. The figure applied to adjust the whole of the NT population count is 4%.
- 5.57 Witnesses from the NT expressed concern about this process and argued that the Census figures for the NT may not have been appropriately adjusted.⁴⁰ This is because the PES is not conducted in the NT's remote indigenous communities, and the characteristics of the NT's urban and remote populations are not the same.
- 5.58 The Committee appreciates the concerns about the method of adjusting the NT's population for undercount. It has difficulty understanding why a 4% net undercount should be applied to the whole of the NT. This is particularly so as remote indigenous communities have been adjusted by a factor greater than 4% in secondary analyses carried out by the ABS.

38 Net undercount refers to the difference between the gross undercount (the number of people who should have been counted in the Census but were not) and the gross overcount (the number of people in the Census who were counted but should not have been either because they had already been counted or were overseas or should not have been counted at all). See submission # 6 from the Australian Bureau of Statistics, p 21.

39 The ABS stated that while it does not conduct a PES in remote indigenous communities, it does invest more resources and adopt more intensive methods when undertaking the Census in these areas. See Hansard transcript of public hearing, Monday 18 August 2003, Canberra, p 3. The ABS intimates that this is likely to result in a better count of these populations compared to the count that would be obtained using the mainstream Census methodology and PES. The ABS further argued that because of this, the adjustment derived from the PES and other calculations, which is applied to the whole of the NT, actually overcompensates for the net undercount in remote and indigenous areas.

40 See Hansard transcript of public hearing, Friday 29 August 2003, Darwin – evidence from the Hon Warren Snowdon MP and Senator Trish Crossin. Also see submission #19 from the NT Government.

- 5.59 The Committee notes the controversy surrounding the population estimates for the NT, including:
- the methodology used to estimate the population, including conflicting opinions as to the efficacy of the population count in remote and indigenous communities; and
 - questions about determining the percentage net undercount to be applied to the whole of the NT.
- 5.60 The ABS has acknowledged there are shortcomings in some areas, and a project to validate the methodology of the undercount is underway.
- 5.61 For the most part, the matters in contention are for statisticians and demographers to work through. It is important, however, that the ABS and the AEC resolve these issues promptly.

Margins of error

- 5.62 Table 5.3 shows the net undercount estimates of the 2001 Census and the error margins at a 95% confidence level.

Table 5.3. Net undercount 2001 Census

	Net Undercount		Net Undercount - 95% confidence interval		
	Number	Rate %	Error margin*	Lower limit	Higher limit
<i>New South Wales</i>	130,100	2.0	0.4	103,700	156,500
<i>Victoria</i>	67,300	1.4	0.4	49,800	84,700
<i>Queensland</i>	68,500	1.9	0.4	51,700	85,300
<i>South Australia</i>	24,300	1.6	0.4	17,800	30,800
<i>Western Australia</i>	37,400	2.0	0.6	26,800	48,100
<i>Tasmania</i>	7,400	1.6	0.6	4,700	10,100
<i>Northern Territory</i>	7,800	4.0	1.2	5,200	10,400
<i>A.C.Territory</i>	3,300	1.0	0.8	800	5,700
<i>Australia</i>	346,100	1.8	0.2	307,600	384,600

Source: adapted from Information paper: *Census of Population and Housing, Data Quality – Undercount, Australia 2001*, ABS Catalogue No 2940.0 in submission #6 from the ABS.

*Percentage points.

- 5.63 The first set of columns lists the estimated net undercount figures derived from the PES survey.⁴¹ It shows that the NT had the highest estimated net undercount of all the jurisdictions, at 4.0% or 7,800 people.
- 5.64 The second set of columns under the heading “Net undercount – 95% confidence interval”, refers to the margin of error surrounding the estimated net undercount figures - that is, the number of people by which the net undercount could actually be over or under estimated. The figures listed here are reported at the 95% confidence level; the number of people by which a net undercount may be under or over estimated is generally reported at this level.
- 5.65 The table shows that for the NT, we can be 95% confident that the estimated net undercount is within 1.2 percentage points or 2,600 people above or below the estimated undercount of 7,800 people. In other words, with an estimated net undercount of 7,800 people, there is a 95% chance that the net undercount is actually between 5,200 and 10,400 people.
- 5.66 The significance of the margins of error in the net undercount is this: when the net undercount is applied to the Census figures, the margins of error in the net undercount carry through to the adjusted Census figures, and hence to the quarterly population estimates that are used to determine State and Territory entitlements to seats in the House of Representatives.⁴²
- 5.67 For the NT, this means that its estimated population of 199,760 people is actually an estimated population range of between 197,160 and 202,360 people (that is, 199,760 plus or minus 2,600 people, at a 95% confidence level). Similarly, for the ACT, its estimated population of 322,871 people is actually an estimated population range of between 320,471 and 325,271 people (that is, 322,871 plus or minus 2,400 people, at a 95% confidence level).
- 5.68 From Table 5.3, it can be seen that:
- the NT has the largest estimated undercount of the jurisdictions, at 4.0% of its population;

41 These figures also include demographic consistency adjustments, and a separately estimated adjustment for the over estimation of the number of persons in occupied dwellings from which a completed Census form was not obtained.

42 The ABS concedes that after all the adjustments to the Census figures have been made there is still a margin of error surrounding the population estimates. See Hansard transcript of public hearing, Monday 18 August 2003, Canberra, p 5-6.

- the NT has the widest margin of error at 1.2 percentage points;
- the ACT has a margin of error of 0.8% - up to twice the equivalent rate for the States; and
- the error margin for Australia is 0.2% - one-sixth of the error margin for the NT.

5.69 This means that, compared with the estimates made for the States, there is greater variability in the estimates for the Territories. It is clear that the population estimates for the NT and the ACT are less reliable than they are for other jurisdictions.

5.70 The Committee has been advised that margins of error in the estimated populations of the Territories are significantly higher in relative terms than the margins for the States because of the difficulty associated with deriving an accurate estimate from a smaller population.

5.71 This is an important issue when considering cases such as the NT, as it lost a seat on a shortfall of 295 people, which is well within the margin of error surrounding its population estimate. The ABS acknowledges:

There is a margin of error around our population estimates. In fact, the margin of possible error is greater than the difference between our population estimates and the number of people that were required for the Northern Territory to have two seats in the House of Representatives... Committee Members should be aware that our population estimates are as likely to have overstated the true population as they are to have understated the true population.⁴³

43 Hansard transcript of public hearing, Thursday 18 September 2003, Canberra, p 2.

Characteristics of Electorates in the Territories

- 6.1 Following the determination of State and Territory entitlements to seats in the House of Representatives, an electoral redistribution takes place in those States and Territories that have gained or lost seats. The provisions governing the redistribution of electoral divisions are contained in part IV of the Electoral Act.
- 6.2 An electoral redistribution seeks to ensure that each division in a State or Territory provides equal representation in the House of Representatives. This is achieved by redrawing electoral boundaries to ensure that, as far as practicable, each division within a State or Territory has approximately the same number of electors.
- 6.3 Section 29 of the Constitution states that a division shall not be formed out of parts of different States. Accordingly, while this section ensures approximate equality in the number of electors per electorate *within* each State and Territory, it does not ensure such equality of voter numbers per electorate *between* States and Territories. As discussed in chapter two (see paragraph 2.5), the High Court, in the case of *McKinlay v Commonwealth (1975)*, confirmed that electorates across Australia are not required to have equal numbers of electors or people.

Numerical size of Territory divisions

- 6.4 One of the primary concerns expressed in submissions to the Committee was the number of electors in electorates within the ACT and the NT compared to electorates in the States.¹ It was argued that the numerical size of Territory electorates fluctuates more readily than those in the States and by comparison, the Territories are likely to have relatively small or relatively large numbers of electors per electorate than the States. The loss of one House of Representatives seat will, in the case of the NT, result in its representation entitlement being halved. In the Territories, losing one seat can result in electorates with the largest number of people enrolled to vote in any division within Australia.
- 6.5 To determine the electoral size of divisions within a State or Territory, an average divisional enrolment – or enrolment quota - is calculated. This quota is the average number of people enrolled to vote in each division, and is calculated by dividing the number of enrolled voters in that State or Territory by the number of House of Representatives seats to which the State or Territory is entitled.²
- 6.6 Section 58 of the Electoral Act requires the Electoral Commissioner to determine each month the number of enrolled electors in each division, each State and Territory's average divisional enrolment, and the extent to which the number of electors enrolled in a division deviates from the relevant State or Territory's average divisional enrolment. The results of these calculations are published monthly in the *Commonwealth Gazette*.
- 6.7 The average divisional enrolment for each State and Territory as at 29 August 2003 is detailed below in table 6.1. These averages were calculated on the basis of the February 2003 determination of representation entitlements for each State and Territory in the 41st Parliament.

1 See submissions: # 7 from Dr Miko Kirschbaum, #9 from the Australian Democrats (NT Branch), #14 from Mr David Tollner MP, #15 from the Australian Labor Party (NT Branch), #17 from the Australian Democrats (ACT Division), #18 from Mr Alan Hatfield, #19 from the NT Government, #22 from the Hon Warren Snowdon MP, and #26 from the Australian Labor Party (ACT Branch).

2 For more information about the redistribution process see Australian Electoral Commission Factsheet: *Redistributions*; 9 July 2002.

Table 6.1. Average Divisional Enrolment for States and Territories as at 29 August 2003.

State/Territory	No. Divisions	No. Enrolled	Average Divisional Enrolment
New South Wales	50	4,278,069	85,561
Victoria	37	3,249,789	87,832
Queensland	27	2,372,345	87,864
<i>Qld (current Parliament)</i>	26	2,372,345	91,244
Western Australia	15	1,198,653	79,910
South Australia	12	1,047,976	87,331
<i>SA (current Parliament)</i>	13	1,047,976	80,614
Tasmania	5	332,798	66,559
Australian Capital Territory	2	219,346	109,673
Northern Territory	1	110,066	110,066
<i>NT (current Parliament)</i>	2	110,066	55,033
Australia (next Parliament)	149	12,809,042	85,967

Source: Australian Electoral Commission, *Enrolment Statistics as at 29 August 2003*, (www.aec.gov.au/_content/what/enrolment/stats.htm, accessed 29 September 2003).

- 6.8 The national average divisional enrolment in the next Parliament based on August 2003 enrolment figures would be 85,967 voters.
- 6.9 Table 6.1 shows that the average divisional enrolment within each State and Territory ranges from 66,559 people in Tasmania to 110,066 people in the NT. The division with the least number of voters is Lyons in Tasmania with 63,985 people,³ while the division with the most people enrolled to vote is Fraser in the ACT with 112,299 people.
- 6.10 From the table, it can also be seen that at the next election, the ACT and the NT will each have divisions comprised of approximately 110,000 voters as a result of the February 2003 determination.
- 6.11 Table 6.2 shows the average divisional enrolment as at each determination of State and Territory entitlements from 1984 onwards.⁴ The figures listed for each State and Territory are the average

3 Tasmania is guaranteed a minimum of five House of Representatives seats as an original State. On a population basis it would be entitled to four seats. Accordingly, it is not surprising that its average divisional enrolment would be relatively low, and that it would have the division with the least number of voters.

4 For average divisional enrolment figures prior to 1984 see submission #27 from the Australian Electoral Commission, Attachment A.

divisional enrolments at the time of the determination; that is prior to the effect of the results of the determination.

Table 6.2. Average divisional enrolment at determinations of State and Territory entitlements since 1984 and at 29 August 2003

Date	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
29/08/03*	85,561	87,832	87,864	79,910	87,331	66,559	109,673	110,066
19/03/03	85,399	88,042	87,099	80,304	86,933	66,066	109,439	54,551
09/12/99	83,314	85,844	83,042	84,323	86,202	65,847	106,600	108,512
28/02/97	79,588	81,366	80,413	79,871	83,598	64,902	68,353	101,600
04/03/94	76,460	75,759	79,282	74,100	84,121	64,707	95,419	92,642
01/03/91	72,982	74,524	77,634	69,818	76,066	63,033	90,238	84,880
30/06/88	69,802	68,667	69,863	70,349	71,835	59,972	81,556	74,808
27/02/84	76,990	76,655	78,667	73,385	80,133	57,062	73,647	64,939

Source: Submission #12 from the Australian Electoral Commission, Attachment A

*Shows the average divisional enrolment for the 41st Parliament based on August 2003 enrolment figures (see table 6.1).

6.12 For the NT and the ACT, the table shows the change from relatively large to relatively small divisional populations as a result of the gain or loss of one seat over successive Parliaments. As a result of the 1997 determination, the ACT went from three to two House of Representatives seats. This resulted in a change to the average divisional enrolment from 68,353 voters to 106,600 voters. Similarly, as a result of the 1999 determination the NT, went from one seat to two, and as a result of the 2003 determination, is set to go from two seats to one at the next election. The average divisional enrolment went from one division of 108,512 voters prior to 1999, to two divisions of 54,551 voters after the 1999 determination, and (notionally) back to one division of 110,066 following the February 2003 determination.

6.13 This is significantly different to the changes in average divisional enrolment experienced by the States. As appears from table 6.2, changes in the entitlements of States usually result in a change of less than 5,000 voters to the average divisional enrolment. For the Territories, however, the average size of divisions may be doubled or halved because of the relatively small populations of these areas and the correspondingly small number of electorates those populations are divided into.

Population projections

- 6.14 In tabling his Private Member's Bill, Mr David Tollner MP told the House of Representatives that his Bill is intended to account for a "statistical glitch" in the population estimates for the NT. The Member for Solomon said:

population projections show that this is a temporary condition – by 2005 the Territory will again have the numbers to qualify for two seats.

This amendment to the act is no more than a bridging device that will carry the Territory across the momentary statistical glitch that threatens to disadvantage the occupants of 1,346,000 square kilometres of the mainland.⁵

- 6.15 In addition to Mr Tollner's assertion in the House of Representatives, a number of submissions to the inquiry, particularly those by people or bodies from the NT, also suggested that the population of the NT will increase and again entitle it to two House of Representatives seats at the election after next. The most common reason cited for this is that population growth is expected to follow a number of economic developments such as the Timor Sea gas project, the Alice Springs-Darwin railway, and the expansion of mining projects on the Gove Peninsula.⁶ In addition, it was also submitted that the NT will experience a substantial increase in the numbers of young people who will enrol to vote over the next few years.⁷
- 6.16 These arguments about the expected increase in the NT's population raise the issue of population projections. The ABS produces population projections every two to three years and notes they are not forecasts but rather projections of what the population might be in the future if a number of assumptions about fertility, mortality and overseas and interstate migration, etc, were to prevail over the projected period. Generally, high, medium and low population

5 Mr David Tollner MP, *House of Representatives Official Hansard*, No. 9, 2003, Monday, 16 June 2003, p 16361.

6 See submissions: #10 from from the Hon Grant Tambling, #15 from the NT Branch of the Australian Labor Party, #19 from the NT Government, and #22 from the Hon Warren Snowdon MP. Also see Hansard transcript of public hearing, Friday 29 August 2003, Darwin.

7 See submission #3 from the Country Liberal Party (Parliamentary Wing) and #10 from the Hon Grant Tambling.

projections are formulated to show the different population growth outcomes if a range of different assumptions were to hold.⁸

- 6.17 However, the relevant issue in determining State and Territory entitlements in the House of Representatives is not whether the population of a State or Territory increases or decreases. The significant issue in determining these entitlements is the State or Territory's population growth relative to the population growth of Australia.
- 6.18 Some submissions to the inquiry cited population projections included in a Parliamentary library research paper⁹ to support claims that the NT's population is expected to entitle it to two House of Representatives seats in the near future.¹⁰ This paper shows that based on ABS population projections, in 2005, the NT is expected to have 1.5509 quotas.
- 6.19 The projections included in the Parliamentary research paper are based on 1999 population figures that were released in August 2000. In regard to these projections, the ABS told the Committee:
- Those population projections were made a couple of years ago. The ABS is in the process now of compiling new population projections for the NT and for each of the States and the ACT.¹¹
- 6.20 Since then, the ABS has produced more recent ERP figures. These figures suggest that the 1999 population projections cited in the Parliamentary library research paper were optimistic, and that the NT's proportion of the Australian population has actually been declining over recent years.¹² The ABS notes:
- the NT population has declined slightly in 4 of the last 5 quarters leading to a 0.1% decline in the population for the

8 See submission #6 from the Australian Bureau of Statistics and the Hansard transcript of public hearing, Thursday 18 September 2003, p 6.

9 *A Fair Deal for Territory Voters?* Research Note, No 27, 18 March 2003, Department of the Parliamentary Library.

10 See submissions: #3 from the Country Liberal Party (Parliamentary Wing), #5 from Mrs De-Anne Kelly MP, and #22 from the Hon Warren Snowdon MP.

11 Hansard transcript of public hearing, Monday 18 August 2003, Canberra p 11.

12 See submission #6 from the Australian Bureau of Statistics, p 13-15. Also see Hansard transcript of public hearing, 18 August 2003, Canberra, p 11-12 for further discussions about projections.

year ending 30 December 2002. By comparison, the national population growth rate was 1.3% for the same period.¹³

- 6.21 In September 2003, the ABS released its latest population projections.¹⁴ On the basis of these projections, the ABS claims that it is unlikely that the NT's population will grow at a faster rate than the population of the rest of Australia. Ms Susan Linacre, Deputy Australian Statistician, said:

Looking at the medium projection is probably the conservative way of looking at it. On that basis you would not be predicting that the population growth rate in the Northern Territory was going to be greater than that for the rest of Australia, on those projections.¹⁵

- 6.22 Recently, the ABS also released its population estimates for the March 2003 quarter. According to the Australian Statistician, Mr Dennis Trewin, these figures show that the NT's population in March 2003 would not have entitled it to two House of Representatives seats. Mr Trewin explains that the March 2003 quarter figures:

show that the Northern Territory is a bit further away from two seats than they were at September quarter 2002...

According to our estimates, their population has declined slightly over the six months since the end of September quarter 2002, whereas Australia as a whole has been growing, so their proportion of the Australian population has shrunk... Over about a four- or five- year period their internal migration has been gradually declining.¹⁶

- 6.23 The NT's population for the September 2002 quarter was estimated to be 197,700 people.¹⁷ By the March 2003 quarter, however, the population of the NT was estimated to have declined to 197,100 people.¹⁸ As noted above, what is significant is not whether the NT's

13 Submission #6 from the Australian Bureau of Statistics, p 14 (sourced from ABS, Catalogue No. 3239.0.55.001, Population, Australian States and Territories - Electronic delivery).

14 Population Projections, Australia, 2002-2101, ABS Catalogue no. 3222.0. These projections are also included in the ABS's supplementary submission to the inquiry: submission #25 from the Australian Bureau of Statistics, paragraphs 30 - 32.

15 Hansard transcript of public hearing, 18 September 2003, Canberra, p 6.

16 Hansard transcript of public hearing, 18 September 2003, Canberra, p 14.

17 Australian Bureau of Statistics, Catalogue No. 3101.0, Australian Demographic Statistics, 20 March, 2003.

18 Australian Bureau of Statistics, Catalogue No. 3101.0, Australian Demographic Statistics, 18 September 2003.

population has increased or decreased, but its population growth relative to the population growth of the rest of Australia. The NT's population recorded negative population growth (-0.2%), while the populations of all the States and the ACT experienced growth during the year ending March 2003.

Geographic size of the Territory divisions

- 6.24 The geographic size of Australia's electorates ranges from 26 square kilometres to over 2,000,000 square kilometres. Currently, the largest electorate by area in Australia is Kalgoorlie in WA (2,295,354 sq km), followed by Lingiari in the NT (1,347,849 sq km) and Grey in SA (897,822 sq km). The smallest electorates in Australia by area are all in NSW - Wentworth (26 sq km), Grayndler (29 sq km) and Watson (33 sq km).¹⁹
- 6.25 As a single electorate, the NT would cover approximately 1,348,175 square kilometres, including the Cocos (Keeling) and Christmas Islands, and would replace the electorate of Lingiari (which is to be abolished pursuant to the 2003 determination) as the second largest in Australia behind Kalgoorlie. Many submissions to the inquiry, including those from the current NT Members of the federal Parliament, raised the geographic size of the NT as an issue in support of increasing the minimum representation of the NT to two House of Representatives Members.²⁰ In particular, Mr Warren Snowdon MP, Member for Lingiari, who spent 12 years as the only Member for the NT, made the following comment:

Servicing an electorate of this size is extremely difficult. A single NT electorate would include both a capital city and some of the most remote parts of Australia. The NT includes a vast range of socioeconomic groups and the highest proportion of indigenous Australian voters (at least 29 per cent) in the country.²¹

19 Australian Electoral Commission, Electoral Divisions by Area, www.aec.gov.au/content/who/profiles/divisions_by_area.htm. Accessed 30/09/03.

20 See submissions: #4 from the Hon John Anderson MP, #5 from Mrs De-Anne Kelly MP, #9 from the NT Branch of the Australian Democrats, #11 from the National Party of Australia, #14 from Mr David Tollner MP, #15 from the NT Branch of the Australian Labor Party, #19 from the NT Government, and #22 from the Hon Warren Snowdon MP.

21 Submission #22 from the Hon Warren Snowdon MP, p 9.

- 6.26 Similarly, Mr David Tollner MP, Member for Solomon was reported as having commented that it seems “ridiculous” that an area covering one-fifth of the Australian land mass, with a population of 200,000 people, should only have one House of Representatives Member.²² Other points raised in submissions to the inquiry in regard to the geographic size of the NT included that:
- the NT spans four different time zones;
 - the NT is made up of remote, regional and urban communities – it is challenging for one Member to service such a vast and diverse electorate; and
 - it is difficult for constituents to access their local Member.²³
- 6.27 The geographic size of the ACT was not raised as an issue in submissions to the inquiry.

Distinctiveness of the Territories

- 6.28 In addition to issues associated with the NT’s population estimates and projections as well as its geographic size, a number of submissions to the inquiry also sought to highlight other unique characteristics of the NT and ACT as grounds for granting each jurisdiction a minimum of two House of Representatives seats. Most of these issues, again, were only raised in reference to the NT.
- 6.29 All submissions from people in the NT supported an increase in the minimum representation for the jurisdiction from one to two seats in the House of Representatives. In these submissions, a range of social, economic, administrative and health-related arguments were advanced for retaining the second NT seat. Some of these included that:
- the allocation of two seats to the NT will not affect the number of seats allocated to the States, nor will it increase the current size of the House of Representatives;

22 Out for the Count, *About the House Magazine*, May-June 2003, p 18.

23 See submissions: #4 from the Hon John Anderson MP, #5 from Mrs De-Anne Kelly MP, #9 from the NT Branch of the Australian Democrats, #11 from the National Party of Australia, #14 from Mr David Tollner MP, #15 from the NT Branch of the Australian Labor Party, #19 from the NT Government, and #22 from the Hon Warren Snowdon MP.

- it is undemocratic to halve the representation of the NT based on a deficit of a few hundred voters;
- the Territories are currently guaranteed a minimum of two representatives each in the Senate;
- it is difficult for one Member to adequately represent all the different peoples and communities within the NT;
- servicing a geographically large electorate adversely affects the health and wellbeing of the elected Member;
- on a per capita basis the NT contributes three times the export earnings of the States;
- oscillating between one and two House of Representatives seats is confusing to the electorate, alienates voters, creates work for the Electoral Commission, is an expense for the taxpayer, and contributes to instability of Territory representation; and
- the NT functions very much like a State and is treated like a State for federal purposes, however, it does not have the guaranteed minimum of five House of Representatives seats granted to the States.²⁴

6.30 The Committee notes that each electorate in Australia has unique characteristics and challenges and representation in the House of Representatives is not based on social and economic factors.

24 See submissions: #3 from the Country Liberal Party (Parliamentary Wing), #4 from the Hon John Anderson MP, #5 from Mrs De-Anne Kelly MP, #9 from the NT Branch of the Australian Democrats, #11 from the National Party of Australia, #14 from Mr David Tollner MP, #15 from the NT Branch of the Australian Labor Party, #19 from the NT Government, #21 from Mr Phillip Grice, and #22 from the Hon Warren Snowdon MP.

Increasing the Representation of the Territories in the House of Representatives

- 7.1 The majority of submissions received by the Committee supported increasing the representation of the Territories in the House of Representatives. Throughout the course of the inquiry, a number of proposals for achieving this were raised. These included to:
- amend the Electoral Act to provide for an increase in the guaranteed minimum number of House of Representatives seats for the Territories, and make a further determination;
 - incorporate the margins of error surrounding the population estimates for the Territories when determining entitlements to seats in the House of Representatives;
 - introduce a requirement that determinations of entitlements to seats for the Territories be confirmed by a subsequent determination during the next Parliament before becoming effective; or
 - change the process for determining State and Territory entitlements to seats in the House of Representatives.
- 7.2 One submission to the inquiry strongly opposed increasing the minimum number of House of Representatives seats for the Territories. Associate Professor Malcolm Mackerras argued that such

a proposal should be rejected as a matter of principle.¹ He argues that the current formula for determining Territory representation entitlements in the House of Representatives is consistent with the process – as set out in the Constitution - for determining State entitlements to seats, and should be retained.²

Proposals to amend the Electoral Act

7.3 Sub-section 48(2B) of the Electoral Act provides that a least one Member of the House of Representatives shall be chosen in the ACT and the NT at each general election. The Private Member's Bill introduced by Mr David Tollner MP seeks to increase the minimum number of seats guaranteed to the Territories from one to two. While many submissions to the inquiry support increasing the current entitlement of the Territories, not all submissions agree with the Bill.

7.4 Three submissions from the ACT suggest amending the Electoral Act to provide that the ACT be guaranteed a minimum of three House of Representatives seats, if the NT is to be guaranteed a minimum of two seats.³ This seeks to account for the different sized populations of the ACT and the NT, and to also prevent the situation of the Territories oscillating between losing and gaining a seat at successive elections. The reasons cited for this included:

- that there would be no practical benefit in guaranteeing the ACT two seats given that the ACT's quota is unlikely to slip back to 1.5;
- the ACT's population is currently just under the 2.5 quotas needed to gain a third seat;
- oscillating between two and three seats creates instability in representation; and
- the ACT currently has two seats of approximately 110,000 voters each (that is, they are relatively large in terms of number of electors).⁴

7.5 Mr David Tollner MP, introduced his Bill into the House of Representatives on 16 June 2003. It proposes that if the minimum

1 Submission # 1 from Associate Professor Malcolm Mackerras.

2 See Hansard transcript of public hearing, 18 August 2003, Canberra p 32-47.

3 See submissions: #23 from the ACT Government, #18 from Mr Alan Hatfield, and #26 from the ACT Division of the Australian Labor Party.

4 See submissions: #23 from the ACT Government, #18 from Mr Alan Hatfield, and #26 from the ACT Division of the Australian Labor Party.

number of Members for the Territories is to be changed, the Electoral Commissioner must make a new determination of the number of Members to be chosen in that Territory.

- 7.6 The AEC has however expressed some concern that, if the Bill is passed, it will be redundant after the NT has reverted to two electorates. Furthermore, the AEC advises that it may not have sufficient time to undertake a redistribution – which can take between nine and 12 months – once the Bill is passed and before the next election is called. The Hon Warren Snowdon MP notes that a redistribution in the NT is unnecessary if the minimum number of seats for the Territories is to be increased to two.⁵
- 7.7 The AEC and Mr Snowdon suggest that it would be more useful to include transitional provisions in the Act which would set aside the February 2003 determination in the case of the NT, and provide that the election of NT Members be conducted in accordance with the determination in force at the time of the immediately preceding election. The transitional provisions proposed by Mr Snowdon are set out in Appendix C.
- 7.8 Mr David Tollner MP also envisages an amendment to his Bill along the same lines.⁶ These amendments are at Appendix D.
- 7.9 The NT Government suggested amendments to the Electoral Act in order to increase the representation of the Territories in the House. One of these proposals is consistent with the aim of the Tollner Bill. The other seeks to ensure that the Territories are granted an additional seat on any remainder of the quota. The NT Government further notes that such a proposal in relation to the States was rejected by the High Court in *McKellar v Commonwealth (1977)*. The amendments suggested by the NT Government are set out in Appendix E.

Proposals relating to margins of error

- 7.10 The issue of incorporating the margins of error around population estimates in the determination of seats for the Territories followed discussions about the accuracy of population estimates, more specifically, the level of confidence that can be placed in the

5 Submission #22 from the Hon Warren Snowdon MP, p 27.

6 Submission # 14 from Mr David Tollner MP, p 3.

population statistics produced by the ABS and used by the AEC to determine State and Territory entitlements to seats in the House of Representatives. This proposal seeks to account for cases such as the current loss by the NT of a seat on a shortfall of 295 people, which is well within the margin of error of plus or minus 2,600 people associated with the population estimate of the NT.

- 7.11 The ABS cautioned however, that if the Parliament was going to develop the concept of tolerance levels (margins of error) for electoral purposes, it would need to consider the minus as well as the plus aspect of it, that is, it is just as likely that a population is overestimated as it is underestimated.⁷

Proposals for successive determinations

- 7.12 The concept of changing a Territory's representation only if the change is confirmed by successive determinations, seeks to remove the risk of the Territories "flip-flopping" between one and two – or in the case of the ACT, two and three - House of Representatives seats at successive elections by providing that a Territory's entitlement to seats in the House of Representatives be based on the outcome of two successive determinations rather than one. Under this proposal, a Territory would only lose or gain a House of Representative seat if the outcome of the determination was the same on both occasions.
- 7.13 Difficulties with this proposal relate primarily to the inherent time lag involved in responding to population changes.

Proposals for changing the basis for determinations

- 7.14 Evidence received by the Committee urged that the populations of the Territories be included in the formula used to determine the quota, and therefore the entitlements to seats in the House of Representatives. Those who support this view believe that such an amendment would not only more adequately reflect the actual situation with reference to the population of Australia and the number of Senators in Parliament, but that it may result in the NT, at least, being entitled to more House of Representatives seats.⁸

7 Hansard Transcript of public hearing, 18 August 2003, Canberra, p 14.

8 See submissions #3 from the Country Liberal Party (Parliamentary Wing), #2 from Mr Col Friel, and the Hansard transcript of public hearing, 29 August 2003, Darwin, p 41-44.

- 7.15 In its submission, the ACT Division of the Australian Democrats noted the large electoral sizes of divisions within the ACT and the NT as being a significant issue, and argued that the Territories are under represented, but did not support the proposal to increase the number of House of Representative seats for the Territories to two, on the basis that the proposal:
- does not address adequate and fair representation for small jurisdictions generally;
 - does not address the long-term issue of determining a “fair” threshold at which a Territory should lose or gain a seat;
 - is ad hoc and appears to address a specific, short-term problem; and
 - appears to discriminate in its differential effect on the ACT and the NT.⁹
- 7.16 The ACT Division of the Australian Democrats recommends that the Electoral Act be amended to prevent electorates in the Territories from being greater than 10% in excess of the quota.¹⁰ Dr Kirschbaum proposed that a new formula be introduced for determining representation in the House of Representatives which shifts the transition points at which States and Territories are entitled to additional seats.¹¹
- 7.17 The ACT Branch of the Australian Labor Party (ALP) also proposed a new formula, using the enrolment data for Tasmania to determine the number of seats to be returned by the ACT and the NT at each election.¹²

Statehood

- 7.18 The issue of statehood for the NT was only briefly raised during the inquiry. The Committee is aware that the issue of statehood has been raised again by the NT Government and that the Government expects

9 Submission #17 from the ACT Division of the Australian Democrats, p 6.

10 See submission #17 from the ACT Division of the Australian Democrats.

11 Submission #7 from Dr Miko Kirschbaum.

12 Submission #26 from the ACT Branch of the Australian Labor Party, p 5.

to put this proposition to the residents of the Territory by 2008.¹³ While the Committee notes that the outcome of this referendum may have implications for the future representation of the Territory in the Parliament if it becomes a State, this issue is not discussed further in this report.

Committee conclusions

- 7.19 The Committee was asked to inquire into whether the minimum representation of the ACT and the NT should be increased from one to two seats each in the House of Representatives.
- 7.20 Most submissions to the inquiry focused on whether the guaranteed minimum representation of the NT should be increased from one to two seats. Only a few submissions addressed the minimum representation of the ACT and whether this should be increased to two or even three House of Representatives seats.
- 7.21 The High Court has held that section 122 of the Constitution confers on the Parliament a virtually unqualified power to make laws for the representation of the Territories in the federal Parliament.
- 7.22 The basic principle for determining State and Territory representation entitlements to seats in the House of Representatives is prescribed under section 24 of the Constitution and section 48 of the *Commonwealth Electoral Act 1918*.
- 7.23 Under this formula, a quota of the number of people that each State and Territory requires to return one House of Representative seat is established. The quota is divided into the population of each of the States and Territories and the result of the division (ie the number of quotas) determines the number of seats that each State and Territory is entitled to in the House of Representatives. If the result of the division shows a remainder which is greater than one half of a quota, the State or Territory is entitled to an additional seat. Calculations for the 2003 determinations in relation to the Territories are shown below:

13 Clare Martin, NT Chief Minister, Media release - *Statehood: this time let's get it right!* 22 May 2003. Accessed from www.nt.gov.au/ocm/media_releases/20030522_statehood.shtml

Table 7.1. 2003 determination of NT and ACT entitlements

	NT	ACT
Population	199,760	322,871
Quota	133,369.375	133,369.375
Number of quotas	1	2
Remainder	66,390.625	56,132.25
Half a quota	66,684.6875	66,684.6875
Shortfall (for extra seat)	295	10,553

- 7.24 The formula used to determine entitlements to seats is strictly a matter of arithmetic based on the population of the States and Territories. To this extent, it is a matter of “letting the chips fall where they might”. The Committee notes that the formula has produced electorates of different population sizes across Australia. In particular, the NT has benefited in the 40th Parliament with two seats that have enrolled populations substantially smaller than the national average divisional enrolment, and smaller than even the five seats Tasmania returns by virtue of the guaranteed minimum representation provided for in section 24 of the Constitution.
- 7.25 A particular issue is whether a Territory that has benefited from the operation of a “let the chips fall where they might” approach should have these benefits protected through an increase in the guaranteed minimum number of seats.
- 7.26 The Committee notes that should the ACT or any State – apart from Tasmania - fall below the quota by the same number of people that the NT fell below the number necessary to retain its second seat, that Territory or State would lose a House of Representatives seat. Regarding Tasmania, an increase in the minimum guarantee would give the NT the same advantage that Tasmania has enjoyed under the Constitution, that is, one seat more than its population would entitle it to.
- 7.27 The Committee endorses the 1985 report of the JSCER which noted the potential for abuse of the discretion given to Parliament to make laws governing representation of the Territories, and saw it as disquieting that the Parliament can apply different standards for representatives of the Territories to those which the Constitution prescribes for representatives of the original States.

- 7.28 The present Committee agrees with the earlier Committee that it is important to ensure that the representation of the Territories be contained within the parameters it set and which are now incorporated in the *Commonwealth Electoral Act 1918*, and that the power of the federal Parliament to make laws governing representation of the Territories be treated in a responsible and restrained fashion.
- 7.29 The Committee does not regard as decisive the various social and economic issues that were raised in support of increasing the minimum guarantee. Representation of the States and Territories in the House of Representatives is based on population, not on social and economic factors.
- 7.30 The Committee is of the opinion that the existing basic principle for determining the number of Members to be elected by the Territories should not be disturbed.
- 7.31 It is, however, also important that any systemic disadvantages imposed on the Territories in comparison with the original States be addressed whenever they are identified.
- 7.32 What is proposed in this report does not in any way derogate from the principle of meeting the quota provisions of the existing legislation and accepting the outcome of the formula used to calculate the Parliamentary representation of the Territories.
- 7.33 The Committee notes that there is some controversy surrounding the population estimates for the NT, including:
- the methodology used to estimate the population, including conflicting opinions as to the efficacy of the population count in remote and indigenous communities; and
 - questions about determining the percentage net undercount to be applied to the whole of the NT.
- 7.34 The ABS has acknowledged there are shortcomings in some areas, and a project to validate the methodology of the undercount is under way.
- 7.35 For the most part, the matters in contention are for statisticians and demographers to work through. It is important, however, that the ABS and the AEC resolve these issues promptly.¹⁴

14 The Committee also has concerns about the process undertaken to obtain the 'latest statistics of the Commonwealth'. As discussed in chapter five, the Committee has noted

- 7.36 What is beyond controversy is the fact that, as discussed in chapter five, there is a margin of error in the estimates provided by the ABS, based on the margin of error associated with the net undercount of the population in the 2001 census.
- 7.37 In the case of the NT, the margin of error in the 2001 net undercount is 1.2% at the 95% confidence level (which is up to 3 times the error margin in the States) and for the ACT, it is 0.8% (which is up to twice the equivalent in some of the States). The error margin for Australia as a whole is 0.2% (or one-sixth of the error margin for the NT).
- 7.38 There is greater variability in the estimates for the Territories compared with the estimates made for the States. The population estimates for the NT and the ACT are less reliable than they are for other jurisdictions.¹⁵ This leads to the conclusion that, in proportionate terms, the Territories are likely to have a relatively wider range of possible population figures than the States, and could suffer a greater relative disadvantage.
- 7.39 In view of the fact that the estimates of populations for the States are more reliable than those for the Territories, and in keeping with its Terms of Reference, the Committee has restricted to the Territories its consideration and analysis of the effects of the error margins associated with the ERP figures supplied by the ABS to the AEC.¹⁶
- 7.40 In addition, the Committee is mindful that Parliament's Constitutional power to legislate as it sees fit for Parliamentary representation is explicit in the case of the Territories.
- 7.41 For the NT, the population figure supplied by the ABS to the AEC for the 2003 determination, based on the "latest statistics of the Commonwealth", was 199,760.¹⁷ The margin of error in the estimated

uncertainty about the date of the latest statistics of the Commonwealth and that there is a significant degree of discretion available to the Statistician and the Electoral Commissioner in deciding which statistics should be used. The Committee has accordingly made recommendations for change.

15 The Committee has been advised that margins for error in the estimated populations of the Territories are significantly higher in relative terms than the margins for the States because of the difficulty associated with deriving an accurate estimate from a smaller population.

16 Legal advice could be sought regarding the consideration of margins of error surrounding the population estimates of the States.

17 In its submission to the Committee, the ABS states that: 'Like all statistical measures, the data sources used to compile the population estimates are subject to measurement error.'

population is plus or minus 2,600 people at the 95% confidence level. For the ACT, the population figure supplied by the ABS to the AEC for the 2003 determination, based on the “latest statistics of the Commonwealth”, was 322,788. The margin of error in the estimated population is plus or minus approximately 2,400 people.

- 7.42 This means that we can be 95% confident that the estimated population of the NT is 199,760 plus or minus 2,600, that is, that it is between 197,160 and 202,360 people.
- 7.43 The estimated population figure of 199,760 provided by the ABS is the mid-point in the estimated population range of 197,160 to 202,360 people. In fact, each number in the range is equally likely to be the actual population of the NT. It is equally valid to say that, at the 95% confidence level, the population of the NT for the purposes of the determination was any number within the range 197,160 to 202,360, ie 2,600 below or 2,600 above the population figure used.
- 7.44 In most circumstances, error margins would have no impact on the result because the population shortfall from the number required to retain or gain another seat is usually much greater than the margin of error. However, where the shortfall is in the margin of error, the choice of the mid-point of the range is of considerable significance. In such cases, the practical implications of using the figure that the ABS provides to the AEC – that is, the mid-point of an estimated population range, are as follows:
- (1) If the population mid-point divided by the quota results in a fraction that is larger than half a quota, the Territory is entitled to an additional seat. It is possible, however, that the actual population would not have entitled the Territory to an additional seat. But using the mid-point results in this possibility being ignored. In effect, the estimated population figure is treated as the lowest possible population figure rather than the mid-point of a range.
 - (2) Conversely, if the population mid-point divided by the quota results in a fraction of half a quota or less, the Territory is deemed to have fallen short of the number necessary to gain an additional seat. It is possible, however, that the actual population would have entitled the Territory to an additional

The ABS does not, however, include any reference to error margins in any of the material supplied to the AEC for the determination of representation in the House of Representatives.

seat. But using the midpoint results in this possibility being ignored.

7.45 In effect:

- In (1), the estimated population figure is treated as the lowest possible population figure and the actual population may be advantaged by getting a seat to which it is not entitled; and
- In (2), the estimated population figure is treated as the highest possible population figure and the actual population may be disadvantaged by not getting a seat to which it is entitled.

7.46 This differential, asymmetrical treatment is unfair in that it discriminates for or against population numbers that may be entitled to an additional seat on the arbitrary basis that they fall on different sides of the mid-point but still within the margin of error.

7.47 To treat populations equally where they fall within the margin of error, the question is whether one chooses to uniformly:

- take the lowest number in the range as being representative of the whole range, or
- take the highest number in the range as being representative of the whole range.

7.48 In both cases, each and every number in the range would be treated equally and fairly – in contrast to taking the mid-point, where the numbers above and below that point are ignored even though they are within the range of potentially correct numbers.

7.49 In the context of determining Parliamentary representation for the Territories, the Committee believes that it would be inappropriate to choose the lowest number of the range of possible population figures for the following reason. Where the highest number in the range of possible population figures would qualify a Territory for an extra seat, and if that highest number was in fact the real population, choosing the lowest number would deprive the people of that Territory of a seat in Parliament.

7.50 The fairest method, one which ensures that no possibly correct number is arbitrarily excluded, is to use the highest number in the range for purposes of the Australian Electoral Commissioner's determination. This is because if the lowest number is used it is almost certain that the actual population will be excluded, whereas if

the highest number is used it is almost certain that the actual population will be included.

- 7.51 The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to require the Australian Statistician to advise the Electoral Commissioner at the time of supplying the latest statistics of the Commonwealth, of the margins of error in numerical terms associated with the population estimates of the Territories for the Census on which the ERP figures are based.

Recommendation 2

- 7.52 **The Committee recommends that in future, the Australian Statistician advise the Electoral Commissioner of the margin of error for the Territories at the time of supplying the latest statistics of the Commonwealth, and that the margin of error for the ACT and the NT be incorporated into the determination of seats for the Territories when a Territory falls short of quota.**
- 7.53 **If the shortfall is within the margin of error acknowledged by the ABS, the Australian Electoral Commissioner is to use the ERP figure at the top of the margin of error to determine the Territory's entitlement.**
- 7.54 As discussed in paragraph 7.43, the NT's estimated population figure of 199,760 is the midpoint in the estimated population range of 197,160 to 202,360.
- 7.55 In the case of the NT, performing the determination calculation using the mid-point figure of 199,760 resulted in a determination that the NT was entitled to only one seat.
- 7.56 As appears from table 7.1, the NT would have qualified for a second seat had its population been just 295 more than 199,760, that is 200,055.
- 7.57 In fact, 200,055 is within the estimated population range of the NT that was used in the 2003 determination, that is, between 197,160 and 202,360. This means that it is as likely that the actual population of the NT was 200,055 as it was 199,760. Another way of looking at this is to say that 295 – the amount of the shortfall – was within the error range of plus or minus 2,600.
- 7.58 This means that it is possible that the actual population of the NT is entitled to two House of Representatives seats, and under the

Committee's recommendation for future determinations, in these circumstances, the NT would be determined to be entitled to a second seat.

- 7.59 In determining the NT's entitlement to representation, it is evident that the arbitrary use of the mid-point of the estimated population range may have resulted in the NT being denied a seat to which its actual population would entitle it. Denying the NT one seat has the severe effect of halving its representation in the House of Representatives.
- 7.60 During the course of the inquiry, the view was expressed that the arguments made in submissions and by witnesses for increasing the representation of the Territories would have been more credible had these arguments been made before the NT lost a House of Representatives seat, rather than as a reaction to the 2003 determination. This would have negated the prospect of retrospectivity and also negated the appearance of self interest on the part of those who argued in support of increasing the minimum representation to two seats.
- 7.61 It was also noted that the response to the NT's loss of a House of Representatives seat has galvanised a reaction that was not apparent when the ACT lost its third seat at the 1997 determination of entitlements.
- 7.62 The Committee considers these to be valid points. It acknowledges that the arguments may have been more credible if Parliament had foreseen these problems, however the Committee recognises that in reality problems are not usually addressed until they become apparent as a result of cases such as the NT.
- 7.63 The Committee notes that the core of longstanding opposition to retrospectivity is the concern that it adversely affects individual rights. Equally, there is the concern that retrospectivity does not result in a windfall gain. While the Committee believes that such a windfall gain would result if the NT was entitled to two House of Representatives seats regardless of the outcome of the quota or its population relative to the population of the States, it does not believe that such a windfall gain would result from granting two seats on account of the margin of error surrounding its population estimate.
- 7.64 Some Committee Members believe that the margin of error for the NT creates significant doubt as to the outcome of the 2003 determination.

These Committee Members believe that the estimate of the NT's 2003 population should be the ERP figure at the top of the margin of error. This would result in the NT retaining its second seat. For this reason, these Committee Members believe that the Electoral Commissioner's determination should be set aside to the extent that it applies to the NT.

7.65 Other Committee Members believe that it was the intention of the Parliament that the "latest statistics of the Commonwealth" be the latest *published* statistics at the time of the determination – not a special version or early release of the ERP figures – and for the 2003 determination the published statistics that should have been used were the June 2002 ERP figures. If the June 2002 ERP figures were used, the NT would have been entitled to two House of Representatives seats. For this reason, these Committee Members also believe that the Electoral Commissioner's determination should be set aside to the extent that it applies to the NT.

7.66 The Committee unanimously agrees on the following recommendation.

Recommendation 3

7.67 **The Committee recommends that the 2003 determination be set aside by government legislation to the extent that it applies to the NT.**

7.68 The AEC advises that setting aside the February 2003 determination to the extent that it applies to the NT would have the effect of restoring the NT to two divisions as if the determination had not taken place.¹⁸



Appendix A

Submissions to the inquiry

No.	Received from
1	Mr Malcolm Mackerras
2	Mr Colin Friel
3	Country Liberal Party, Parliamentary Wing
4	The Hon John Anderson MP
5	Mrs De-Anne Kelly MP
6	Australian Bureau of Statistics
7	Dr Miko Kirshbaum
8	Mr Kevin Fletcher
9	Australian Democrats (NT Branch)
10	The Hon Grant Tambling
11	National Party of Australia
12	Australian Electoral Commission
13	Mr Ray Taylor
14	Mr David Tollner MP
15	Australian Labor Party (NT Branch)

- 16 Liberal Party of Australia
- 17 Australian Democrats (ACT Division)
- 18 Mr Alan Hatfield
- 19 Northern Territory Government
- 20 Senator Trish Crossin
- 21 Mr Phillip Grice
- 22 The Hon Warren Snowdon MP
- 23 Australian Capital Territory Government
- 24 Australian Electoral Commission (supplementary submission)
- 25 Australian Bureau of Statistics (supplementary submission)
- 26 Australian Labor Party (ACT Division)
- 27 Australian Electoral Commission (supplementary submission)
- 28 Australian Electoral Commission (supplementary submission)



Appendix B

List of Hearings and Witnesses

Monday, 18 August 2003 – Canberra

Australian Bureau of Statistics

Mr Rob Edwards, Acting Australian Statistician

Mr Paul Williams, Assistant Statistician, Population, Census and Demography Branch

Mr Patrick Corr, Director, Demography Section

Australian Electoral Commission

Mr Andy Becker, Electoral Commissioner

Mr Andrew Moyes, Assistant Commissioner, Enrolment and Parliamentary Services

Associate Professor Malcolm Mackerras

Friday, 29 August 2003 – Darwin

Mr David Tollner MP, Member for Solomon

The Hon Warren Snowdon MP, Member for Lingiari

Mr Brett Walker, Australian Labor Party, NT Branch

Mr Daniel O'Neill, Electorate Officer, Office of the Hon Warren Snowdon MP

Department of the NT Chief Minister

Mr Graham Chandler, Senior Policy Advisor, Policy and
Coordination

Mr Rolf Gerritsen, Director, Economic Policy

Mr Tony Stubbin, Assistant Under Treasurer (Economics), NT
Treasury

Ms Fay Lawrence, Australian Democrats, NT Branch

Senator Trish Crossin, Senator for the NT

Ms Noel Padgham

Mr Michael Chin

Thursday, 18 September 2003 – Canberra

Australian Bureau of Statistics

Mr Dennis Trewin, Australian Statistician

Ms Susan Linacre, Deputy Australian Statistician

Mr Paul Williams, Assistant Statistician, Population, Census and
Demography Branch

Mr Matthew Berger, Director, Producer Price Indexes

Australian Electoral Commission

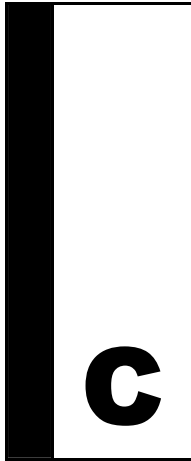
Mr Andy Becker, Electoral Commissioner

Mr Andrew Moyes, Assistant Commissioner, Enrolment and
Parliamentary Services

Australian National University – Centre for Aboriginal Economic Policy Research

Dr John Taylor, Senior Fellow

Dr William Sanders, Fellow



Appendix C

Amendments to the Tollner Bill proposed by Mr Warren Snowdon MP.

The following outlines the proposed transitional provisions to be included in *Commonwealth Electoral Amendment (Representation of Territories) Bill 2003* as suggested by the Hon Warren Snowdon MP, Member for Lingiari.

Schedule 2 – Transitional provisions

- (1) As soon as practicable after this Act commences, the Electoral Commissioner shall make a new determination in respect of the Northern Territory under paragraph 48(1)(b).
- (2) If, after the commencement of this Act, the Commissioner is unable to make a new determination in accordance with subitem (1) before the writs are issued for a general election, the election in relation to the Northern Territory is to be conducted in accordance with any determination in force at the time of the immediately preceding general election, regardless of any determination of the Electoral Commissioner made between the time of that election and the commencement of this Act.¹

¹ Submission #22 from the Hon Warren Snowdon MP, Appendix II.



Appendix D

Transitional provisions proposed by Mr David Tollner MP.

The following transitional provisions are to be included as amendments to the *Commonwealth Electoral Amendment (Representation of Territories) Bill 2003*, and moved in debate by the Member for Solomon, Mr David Tollner MP.

after subsection (1B) insert:

(IC) if the number of members of the House of Representatives to be chosen for the Australian Capital Territory or the Northern Territory under subsection (2B) has been altered since the last determination and the Electoral Commissioner is not able to make a new election determination in accordance with subsection (1B) before writs are issued for a general election, the election in relation to the Australian Capital Territory or the Northern Territory, as the case may be, is to be conducted in accordance with any determination in force at the time of the immediately preceding general election, regardless of any intervening determination of the Electoral Commissioner.¹

¹ Submission #14 from Mr David Tollner MP, p 5.



Appendix E

Amendments to the *Commonwealth Electoral Act 1918* proposed by the NT Government

The NT Government proposes that sub-sections 48(2C)(b) and (c) be amended to change the way in which Territory entitlements to seats in the House of Representatives is calculated:

S.48(2C)(b), if the result of the division of the population of the Territory is greater than 0.5 and less than or equal to 1 – that one member of the House of Representatives be chosen in the Territory at a general election; and

S.48(2C)(c), in any other case – that the members of the House of Representatives to be chosen in the Territory at a general election is the number ascertained by the division or, if there is a remainder, the number be increased by one.

A second option recommended by the NT Government for increasing the representation of the Territories is amend the Electoral Act to provide that a minimum of two House of Representatives seats be guaranteed to each of the Territories at each general election.¹

¹ Submission #19 from the NT Government, p 8.

