

Joint Standing Committee on Electoral Matters

**Inquiry into representation of the Territories
in the House of Representatives**

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1. Background

At the 2001 federal election, the people of the Northern Territory voted in two House of Representatives seats for the first time. These electoral divisions were named Lingiari and Solomon.

On 20 February 2003, the Australian Electoral Commission issued a determination that the NT would lose one of the seats it had gained little more than a year earlier. This determination was based on the September 2002 estimated residential population (ERP) figures released by the Australian Bureau of Statistics (ABS) on 19 February 2003, which portrayed a decline in the population of the NT relative to the national population. These estimates indicated that the NT population was just 291 persons short of the number required for two lower house seats.

The cost of this apparent decline in population has been extremely high for the NT. As well as halving the NT's representation in the House of Representatives, it also resulted in the loss of \$25 million in funding through the Commonwealth Grants Commission.

At the time the determination was made, I called on the Government to amend s. 48(2B) of the *Commonwealth Electoral Act 1918* to provide for a minimum of two lower house seats in the NT and three in the Australian Capital Territory. The member for Solomon subsequently introduced the *Commonwealth Electoral Amendment (Representation of Territories) Bill 2003* into the House of Representatives on 16 June 2003, which if passed would provide a minimum of two lower house seats in both territories.

This submission makes the case for redressing the loss for representation in the NT, an anomalous situation that has occurred as a result of a determination made by the Electoral Commissioner based on, in our view, inappropriate statistics.

2. Summary of conclusions

Fair and equitable representation

- One vote, one value while regarded as an essential principle of representative democracy in Australia is not enshrined in the Constitution.
- Guaranteed minimum representation is one mechanism that acts to ensure fair and equitable representation in Australian democracy.
- Guaranteed minimum representation is recognition of the parity of jurisdictions and the functions played by those jurisdictions.

The case for the Northern Territory

- The NT should be entitled to similar guarantees of representation in the House of Representatives as the states, in recognition of the state-like functions and roles it provides.

The legislative framework

- The “latest statistics of the Commonwealth” are not limited to quarterly population estimates for the purposes of the NT. The Electoral Commissioner is able to use a range of statistics to determine the NT’s population.
- The Electoral Commissioner should therefore use the most appropriate statistics to measure the population of the NT for the purposes of s. 48 determinations.
- Appropriate processes should exist to review determinations that rely in inappropriate statistics, such as the February 2003 determination.

Appropriate use of statistics

- Population projections are as accurate as the assumptions on which they are constructed. ABS projections are primarily based on past trends and do not directly take into account projected economic development. Also, the volatility of NT population decreases the utility and accuracy of population projections. It is likely that the population in the NT will continue to grow due to increasing economic activity in the NT.
- There may be statistics other than the ERP figures that better fit the purpose of determining the population of the NT.

- The volatility of the NT population contributes to making the EPR unfit to be used in s. 48 determinations with specific regard to the NT.

Appropriate use of statistics

- The ABS significantly underestimates indigenous populations in the NT.
- The underestimation of the indigenous population is considerably greater than 291, which is the difference between the ABS September 2002 ERP figures for the NT and the population required for two lower house seats (1.5 quotas).
- The lack of post enumeration surveys in remote areas, including indigenous communities, is a serious flaw in the ABS methodology. These surveys are the main checks on the reliability of Census data.
- There is no significant difference between September 2002 ERP figures for the NT and the 1.5 quota level. Because of the error associated with the ERP, it is uncertain that the September 2002 ERP figures for the NT are not greater than the level that would be required to entitle the NT to two electoral divisions.
- The ABS's September 2002 ERP figures for the NT are not fit for the purpose of being used in the Electoral Commissioner's determination because they are seriously flawed. They are flawed because:
 - the ABS underestimates indigenous populations;
 - there is no post enumeration process in remote areas; and
 - the September 2002 ERP figures for the NT were not significantly different from the population that would have been required for two electoral divisions in the NT.

3. Fair and equitable representation

The Constitution guarantees that Australians are represented in the Parliament in a fair and equitable manner. However, this is not achieved through the strict application of the principle of one vote, one value as some commentators assert.

Arguments that the Constitution requires one vote, one value for members in the House of Representative are based on s. 24 of the Constitution. This section:

- a. stipulates that members of the House of Representatives must be “directly chosen”; and
- b. provides for “proportionality”—that is, the number of members from the states “shall be in proportion to the respective numbers of their people”.

In contrast with these assertions, the High Court determined in *McKinlay v. The Commonwealth* (1975) that the principle of one vote, one value neither exists explicitly nor is implied in the Constitution. The court held that while s. 24 requires that the number of House of Representatives members from each State be in proportion to the states’ population, it does not require electorates to have broadly equal numbers of voters. Barwick CJ and Gibbs J stated in their findings that one vote, one value was not an essential principle of representative democracy.

Guaranteed minimum representation is an important part of fair and equitable representation in Australian representative democracy. Each of the original states as well as the NT and the ACT has some form of this guarantee. These guarantees are important to the Australian electoral process in a number of ways.

Firstly, each of the original states is guaranteed a minimum of five members in the House of Representative under s. 24 of the Constitution. Notably, Tasmania has never had a sufficient population to justify this number of seats by the one vote, one value principle.

Second, both the NT and the ACT are guaranteed one member in the House of Representatives by s. 48 of the *Commonwealth Electoral Act*, regardless of population.

Third, s. 29 of the Constitution works to change the value of votes between states, by stating that electorate boundaries may not cross state borders. As a result, average enrolments per electorate in January 2003 ranged from 80,691 in Western Australia to 88,009 in Victoria. Tasmania, which is guaranteed five members, averaged just 66,315 voters per electorate, while the ACT averaged 109,322. Importantly, the Constitution is silent on the comparative size of electorates between states.

Finally, s. 7 of the Constitution guarantees equality of representation for each original state in the Senate, but not the equality of the value of individual votes.

One vote, one value is not an essential part of Australian representative democracy and exists only in a limited form currently. Minimum representation is one factor that works in conjunction with proportional representation to ensure fair and equitable representation.

Minimum representation allows for appropriate representation of small states and territories where otherwise the strength of their representation would be diminished. It provides these states and territories with recognition of their:

- a. status as independent jurisdictions;
- b. right to self-determination; and
- c. role as an equal member of the Council of Australian Governments, and their subsequent need for an appropriate voice in Federal Parliament.

Conclusions

- **One vote, one value is not an essential principle of representative democracy in Australia.**
- **Guaranteed minimum representation is one mechanism that acts to ensure fair and equitable representation in Australian democracy.**
- **Guaranteed minimum representation is recognition of the parity of jurisdictions and the functions played by those jurisdictions.**

4. The case for the Northern Territory

Section 122 of the Constitution provides that the Commonwealth may give representation to the territories to the extent that it sees fit. Parliament has shown over the century since Federation that it is willing to use this power to provide representation appropriate to Australia's needs.

The following is a brief chronology of parliamentary representation of the NT. It is a clear demonstration of Parliament's historical readiness to provide territories with appropriate representation (see *Appendix I* for more detail):

- 1922 — The NT is granted one non-voting member in the House of Representatives, representing the division of Northern Territory.
- 1958 — The member for Northern Territory is granted the right to vote on matters relating solely or principally to the NT.
- 1968 — The member for Northern Territory is granted full voting rights.
- 1975 — The NT and the ACT are each granted the right to elect two Senators.
- 1978 — The NT is granted self-government.

There is a current need for Parliament to use these legislative powers to provide appropriate representation and increase the minimum representation of the NT from one to two. The reasons for increasing guaranteed representation include:

- a. the size and diversity of the NT;
- b. the parity of the functions between states and territories;
- c. the need for stability in representation of good governance; and
- d. recognition that the ABS significantly underestimates the population in the NT and that the NT had sufficient population for two House of Representatives electoral divisions.

Size and remoteness

If the NT were to revert to a single House of Representatives electorate at the next federal election it would arguably be the most diverse electorate in Australia in terms of its residents and its geography.

The seat would be the largest electorate by population, the second largest in area (covering 1.34 million square kilometres) and the largest from one extremity to the other (spanning four time zones).

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 socio-economic groups and the highest proportion of indigenous Australian voters (at least 29 per cent) in the country.

State-like functions

On 21 May 2003, the Clare Martin, the Chief Minister of the NT, announced that the NT would embark upon a new process aimed at achieving statehood by 2008. While the NT is aiming to become the next state of Australia, in most ways it is already equivalent to states in the functions it provides.

The NT was granted self-government in 1978 in recognition of the rights of its people to self-govern and, to an extent, self-determination. The NT is treated as an equal to other states in many federal structures—for example, at the Council of Australian Governments. Since 1988 the NT has been treated as a state for the purposes of funding by the Commonwealth Grants Commission. One of the only occasions where the NT is treated as other than equal to the states is in its representation in Federal Parliament. The single example of the Commonwealth imposing its power against that of the NT is the overturning of the NT's euthanasia legislation.

While the NT functions as a state and to hold the concomitant responsibilities it does not have the same rights to a minimum of five members in the House of Representatives.

Stability of representation

A functional democracy requires stability and certainty in its electoral processes. Frequent changes in both the level of representation and electoral boundaries are confusing and lead to the alienation of voters. Parliament should foster in the public a sense of participation and ownership of the democratic process, rather than endorse processes that are seen as excessively arbitrary.

It is possible under the current arrangements that the NT will oscillate between one and two House of Representatives divisions over the coming parliaments due to projected population movements and the current mechanisms that determine the number of divisions. This instability would be counterproductive to effective government and undermines the capacity to Territory representative(s) to provide a consistent voice to the people of the Territory.

The effect of fluctuations in representation is felt more severely in smaller jurisdictions like the NT because of the relative changes in the level in representation. The Electoral Commissioner's determination of February 2003 would result in the halving of lower house representation for the NT, whereas the previous determination resulted in a 100 per cent increase.

When the most recent determination was released, Territorians expressed both deep frustration and confusion about mechanisms that led to the determination. Many NT residents saw the gain of an electoral division in 2001 as a sign of increasing maturity, and were angry that their 'hard won' increase in representation was taken so soon after it had been gained.

One way of stabilising the representation of the territories may be to guarantee representation over two parliaments

Statistical problems

There are several concerns about the validity, accuracy and precision of statistic supplied by the AEC. These include:

- a lack of measures to validate Census results in remote areas of the NT;
- an inability to differentiate between numbers because of the large errors associated with population estimates; and
- significant underestimations of the NT's indigenous population.

Together, these concerns lead to the conclusion that the Australian Electoral Commission's determination should not have resulted in the loss of a House of Representatives seat. The data used for the determination was flawed and it underestimated the NT population. Parliament should now take corrective action to ensure that the NT is granted an appropriate level of representation.

Statistical issues are dealt with in detail in section 6.

Conclusions

- **The NT should be entitled to similar guarantees of representation in the House of Representatives as the states, in recognition of the state-like functions and roles it provides.**
- **The Committee should investigate mechanisms that would ensure that territories do not oscillate between gaining and losing an electoral division at successive elections.**

5. The legislative framework

Currently, the minimum representation in the NT is determined by s. 48(2B) of the *Commonwealth Electoral Act*, which states:

At least one member of the House of Representatives shall be chosen in the Australian Capital Territory and Northern Territory in a general election.

The number of NT members in the House of Representatives is determined in the same way as that of the states—that is, by dividing the population by a quota and rounding up if there is a remainder greater than one-half of a quota. The quota is defined as the total population of the six original states divided by twice the number of senators for those states.

Section 24(1) of the Constitution provides that the quota shall be determined using the “latest statistics of the Commonwealth”. In *McKinley v. The Commonwealth* (1975), the High Court interpreted this phrase to mean the Census figures gathered every five years by the ABS as well as more recent statistics:

31. At this point it is proper to observe that in contrast to the Constitution of the United States, the Constitution does not require that a census be taken and statistics compiled at any particular time. ... Thus, there is no constitutional requirement that the latest statistics of the Commonwealth be up-to-date. At the present time, the *Census and Statistics Act 1905-1973*, required the taking of a census every tenth year following on 1911: s. 8. But regulations made under that Act now provide for a census each fifth year. However, the statistician is to collect, at least annually, statistics in relation to population: s. 16. He must complete and tabulate such statistics and publish them as ministerially directed: s. 20. Such statistics would qualify, in my opinion, as the latest statistics for the purposes of s. 24. But from the point of view of the construction of the Constitution, the absence of any constitutional requirement of the holding of a census or of the compilation of statistics is significant. So far as concerns the Constitution itself, the latest statistics may be, though the latest, yet stale. [emphasis added]

Importantly, this definition provided by the High Court does not limit “the latest statistics of the Commonwealth” to the quarterly ERP estimates published by the ABS. The definition also includes those figures that the ABS has produced at the direction of the Minister as well as other statistics—that is, the ERP figures are only a subset of the “latest statistics”.

The requirement to collect population statistics on the last day of each quarter, as defined by s. 9 of the *Census and Statistics Act 1905*, applies only to the population of the states, where the states are not defined as including the NT. The ABS is therefore not required to publish quarterly population estimates for the NT population. It is questionable whether the conventional interpretation of the phrase “the latest statistics

of the Commonwealth” to mean the ERP figures should apply for the NT. Legislatively, the ABS is at liberty to generate and provide other measures of the NT’s population.

The Electoral Commissioner is able to use a range of statistics that would qualify as “the latest statistics of the Commonwealth”. The Commissioner also has the responsibility to use the most appropriate statistics for the purposes of a determination under s. 48 of the *Commonwealth Electoral Act*. It is my view that the statistics used in the February 2003 determination were neither appropriate nor fit for purpose, for reasons stated below.

Given the flexibility that the Electoral Commissioner has in ascertaining the population of the NT, it would be appropriate to review the determination process. Currently, electoral determinations are final and conclusive, under s. 48(3) of the *Commonwealth Electoral Act*. This would be perfectly appropriate if the determination simply involved applying a pre-determined formula. However, the Electoral Commission has latitude to select the nature of the statistics used in determinations, which implies that the process involves discretionary powers.

Conclusions

- **The “latest statistics of the Commonwealth” are not limited to quarterly population estimates for the purposes of the NT. The Electoral Commissioner is able to use a range of statistics to determine the NT’s population.**
- **The Electoral Commissioner should therefore use the most appropriate statistics to measure the population of the NT for the purposes of s. 48 determinations.**
- **Appropriate processes should exist to review determinations that rely in inappropriate statistics, such as the February 2003 determination.**

6. Appropriate use of statistics

Population projections

The NT has a relatively small and volatile population. However, ABS population projections published in 1999 indicate that the NT population will increase relative to other states over the coming decades. These projections suggest that the NT will qualify for a second House of Representatives seat in both the near and long term future. The median projection anticipates that the NT will have 1.55 lower house quotas by 2005 and 1.6 quotas by 2014¹.

Since 1999, the ABS's ERP figures have been below the most conservative estimates of population growth. The accuracy of population projections depends on the accuracy of the assumptions on which they are based. In the case of the NT, the ERP figures seem either to have been based on incorrect assumptions or to have failed to account for several key factors that affect population growth. Unless the ABS has substantially changed its methodology, the same inaccuracies will accompany the next set of population estimates.

Population projections are based primarily on rates of mortality and fertility, and on international and interstate migration, and moderated by past trends. In terms of volatility interstate migration is likely to have the greatest impact on population projections for the NT.

The ABS population projections do not directly take into account predictions of future economic growth and the effects this might have, particularly on interstate migration.

The volatility of the NT population limits the ability to make accurate predictions of future population based on past population trends. In a small and relatively isolated population like the NT, large economic projects can have a substantial effect on the population level.

While population projections may be useful for policy and planning purposes, the Electoral Commissioner's s. 48 determinations should be based on the best estimate of *current* population levels. However, the February 2003 determination, like most before it, was based on the most recent figures of the actual number of people in the NT at a time in the past, rather than on the effects of subsequent population changes.

The next set of population projections and quarterly population estimates are due to be released on 2 September 2003. Whatever these projections indicate, it is apparent that the NT is entering a period of economic and accompanying population growth. A number of projects are set to have a major impact on the NT economy, workforce and population levels. These include the gas projects in the Timor Sea and Bonaparte Gulf,

¹ Australian Bureau of Statistics. *Population Projections, Australia, 1999-2101*, ABS catalogue no. 3222.0.

expansion of mining projects at on the Gove Peninsular and the development of a trade hub in Darwin following the completion of the Alice Springs to Darwin railway. It is clear that these and other projects will be a major boost for the NT economy and stimulate population growth. A sign of this is the admission by the NT Government that the NT does not currently have the skill base to meet the demand for skilled employees, and that these employees are being sought from other states.

Statistics that are fit for purpose

The ABS is committed to providing statistics that are appropriate for the uses to which they will be put—that it, statistics that are fit for purpose—under its charter. This commitment is provided in the ABS Mission Statement, which states:

WHAT WE BELIEVE IN—ABS PRINCIPLES

Relevance:

Our efforts are directed to the best interest of the Australian community. To aid this, the ABS should ensure that data needed for policy and research purposes is available when required. Good statistical planning, which requires a keen understanding of the current and future needs of users, is essential.

We also recognise that, in order to be relevant to informed decision-making, debate, and discussions, our statistics must be timely and relatable to other data. To support this, they will be placed in an appropriate statistical framework. We should also provide analyses and explanations to help the interpretation of our statistics. [Emphasis added.]

The ABS released the September 2002 ERP figures on 18 February 2003—two days before the release of the Electoral Commissioner's determination. The ABS was cognisant of the purpose for the data it supplied to the Electoral Commissioner, as it released these figures earlier than usual—specifically to enable them to be used by the Electoral Commissioner in his determination. This was shown in correspondence between the Australian Statistician and the Electoral Commissioner that has been obtained by Senator Trish Crossin.

In contradiction to the ABS Charter, the Australian Statistician told the Senate Economic Estimates on 5 June 2003:

It is the people who use these numbers for their purposes who make the judgement on the best statistics to use.¹

When questioned whether there may be other statistics that would better fit the purpose of February 2003 determination, the Australian Statistician did not answer.¹

¹ Senate Economics Estimates Committee, 5 June 2003, p657.

It is possible there may be other statistics that would qualify as the latest statistics of the Commonwealth and be more accurate measures of population. One such set of statistics could be a rolling average of a number of quarters. Another such set of statistics could take into account the error associated with population estimates.

A number of questions to the ABS were placed on notice following Senate Estimates hearings in June 2003. The answers to these questions have not yet been received despite an agreement that the answers would be supplied by 31 June 2003². Answers to these questions, when made available, will no doubt help the purposes of this inquiry.

Conclusions

- **Population projections are as accurate as the assumptions on which they are constructed. ABS projections are primarily based on past trends and do not directly take into account projected economic development. Also, the volatility of NT population decreases the utility and accuracy of population projections. It is likely that the population in the NT will continue to grow due to increasing economic activity in the NT.**
- **There may be statistics other than the ERP figures that better fit the purpose of determining the population of the NT.**
- **The volatility of the NT population contributes to making the EPR unfit to be used in s. 48 determinations with specific regard to the NT.**

¹ Senate Economics Estimates Committee, 5 June 2003, p659.

² These questions were put on notice by Senator Crossin.

7. Northern Territory population estimates

There are a number of methodological issues that bring into question the accuracy, precision and statistical validity of the ERP statistics produced by the ABS. These issues include the statistical confidence of the figures, the underestimation of indigenous populations and the lack of a post-enumeration process in remote areas. These issues suggest the ABS seriously underestimates the population in the NT.

The September 2002 ERP for the NT was the first quarter since 1997 in which the NT's population failed to justify a second lower house seat.

Post enumeration surveys in remote areas

Approximately a month after each Census, the ABS conducts a post enumeration survey to determine the number of people the Census missed. The post enumeration survey is the main check on the reliability of the Census figures.

However, this process does not extend to remote communities. The process for determining the undercount in remote communities appears arbitrary. According to the 2001 Census results, the ABS applied the general state rates of undercount to remote communities. This is unjustifiable, as these communities are not sampled and are anticipated to be vastly different from the total population.

As a result, an NT wide net undercount of just 4.0 per cent was applied to remote indigenous communities in the 2001 Census. Some commentators believe the real rate of adjustment should be between 15 and 30 per cent in various indigenous communities.

Statistical confidence

The NT lost its second House of Representatives electoral division in 2003 by a margin of 291 people. This was an order of magnitude smaller than the standard error associated with the September 2002 ERP figures for the NT, and makes the ERP totally unsuitable for the Electoral Commissioner's February 2003 determination.

In the 2001 Census, the net undercount found by the post enumeration survey for the NT was found to be 7,814. The rate of undercount was 4.0 per cent—the largest for any state or territory—and had an associated error of 0.6 per cent or $\pm 1,172$ persons. This means that one can be 95 per cent confident that the September 2002 ERP figures for the NT lay within a range of 4,688 people.

This error means that there is no statistically significant difference between the 1.5 quotas and the September 2002 ERP figures for the NT. As a result, there can be no

certainty as to whether the real population at the time was greater, less than or the same as the 1.5 quota level. It is possible—even likely—that the real NT population in September 2002 was greater than the level that would be required to entitle the NT to two electorates.

The error calculated by the post enumeration process is just one component of the total error. Other sources of error are not easily quantifiable. The error associated with interstate migration is likely to be relatively large in the NT. Estimates of interstate migration rely on Medicare records when it is known that the error associated with these figures increases for young people, indigenous people and defence personnel. Defence personnel do not generally access medical services alternate to Medicare¹. Young people are generally reluctant to change their Medicare details because they use Medicare infrequently. Indigenous populations are highly mobile, and while they may use the Medicare system it is unlikely that they change their residential details. The NT population is characterised by its high proportion of each of these population segments.

The indigenous population

As part of its responsibilities, the ABS is required to determine the population of indigenous peoples in Australia.

The method used to enumerate remote indigenous populations is separate from general method of enumeration. The method the ABS uses to enumerate indigenous populations is critically important for the NT, as at least 29 per cent of Territorians are indigenous Australians.

A growing body of evidence suggests that the ABS's method for enumerating remote indigenous populations seriously underestimates that population. The ABS has admitted that enumerating indigenous communities is difficult. However, it has shown little interest in amending its data when there is clear evidence that it is flawed.

Many organisations in the NT no longer use the ABS figures but instead generate their own population estimates for indigenous populations, because they recognise the serious problems with the ABS data.

For example, the Commonwealth funds various indigenous health programs based on figures from the Health Insurance Commission (HIC)—not the ABS—in recognition of the fact that the ABS grossly underestimates indigenous populations.

HIC figures indicate the number of people resident in a region for the purposes of the delivery of healthcare services. These figures provide a dynamic record of population as the record is updated each time a person enters a health clinic.

¹ABS Demography Working Paper 1999/2 — Estimating Interstate Migration, 1996–2001.

Indigenous people have a demonstrated interest in healthcare that they may not have in the Census. Some remote indigenous people may have little interest in the census process and less understanding of the nature and importance of the question asked. It is anticipated that healthcare records are more reliable. For example, HIC records show that there are 3,123 people in the Katherine West district, whereas ABS figures estimate that there are only 2,868 in this region¹. Similarly, ABS figures estimate that there are 2,000 people in the Tiwi Islands, whereas the Tiwi Health Board has found there to be 2,300 people on the islands by using HIC figures². The underestimation for the Tiwi Islands alone is more than the amount required to ensure the NT has two members in the House of Representatives at the next election.

There are also claims of serious discrepancies in population data from the Wadeye (Port Keats) region. The Wadeye Census data shows a 31 per cent discrepancy with data from the health clinic, the community council and the Community Housing and Infrastructure Survey (CHINS). CHINS 2001 data estimates there are 2,247 people in Wadeye and the surrounding outstations, which agrees with the 2,250 people on the books at the health clinic. However, on Census night the ABS counted 1,492 people, and applied an arbitrary increase of 6.5 per cent to account for people not enumerated.

Following are the comments of an indigenous worker in Wadeye, the sixth largest town in the NT, concerning how the Census was carried out in that area. This worker provided the comments in May 2003:

The census was disgusting – people were coming back with their forms weeks later, and the census people would not collect them. We rang the 1300 Canberra number they said "Don't worry it's past the date". I myself saw about 15 forms lying around people's houses when I did home visits, so how many more were there I didn't see? Most houses around here have 20 people a night staying there. Everyone stays in a different house every night. They move round and around. Many are too shamed to admit how many people.

The census reckons there are only about 1300-1400 here. We have just audited our files - all files checked for double names, deaths, all current residents. And we have 1980 current files in clinic. There are also 150 not on files, especially the young men. And there are another 150 in outstations. But we may have about 50 files doubled up with Palumpa and Peppiminarti [the nearest indigenous communities]. Altogether that's around 2250 people in this census area. The Council also says they have 2300 on their files. That corresponds with our figures.

The white fellas were given a stack at their work, there was no interaction, no collection. We were responsible to get them in. The Aboriginal people had them dropped off at home. But they had no interpreters with them, the volunteers who interpreted from the community were not adequate. People here may look literate,

¹ Guttirde, S. et al. 2003. *Population estimates for Indigenous health zones in the Northern Territory*, NT Government.

² Draft paper on Census data, Aboriginal Medical Service Association, Northern Territory.

but they are not., they have no numeracy, totally a-numeric, that includes all those who went to school. And the census people only visited one outstation [Kuy].

The ABS has been forced to admit that they significantly underestimated the population in Aurukun, an indigenous community in Cape York. In 2001, the ABS was forced to correct the undercount in the community of Aurukun from the statewide indigenous undercount of 8 per cent to 17 per cent following the results of a study by Dr John Taylor of the Centre for Aboriginal Economic Policy Research at the ANU.

While the ERPs in that single statistical area were increased to reflect this specific data, there was no adjustment to the overall state figures for Queensland. Population was taken away from other areas of Queensland to make up the shortfall.

A similar underestimation of the indigenous population is likely to have occurred in most communities because the same contributing conditions exist in indigenous communities around Australia. These are low literacy, high fertility rates, a young population structure and a lack of engagement with mainstream Australia including the ABS.

The ABS has been slow to respond to similar claims of underestimations of indigenous populations in the NT. However, it is not possible for independent groups to carry out the type of research required by ABS to conclusively demonstrate systematic flaws in their estimation of indigenous populations.

As mentioned above, some commentators believe the real rate of adjustment should be between 15 per cent and 30 per cent in various indigenous communities.

The evidence of the underestimation of specific indigenous populations in the NT, together with rigorous population studies of indigenous communities elsewhere in Australia, suggests the systematic underestimation of the indigenous population in the NT.

Conclusions

- **The ABS significantly underestimates indigenous populations in the NT.**
- **The underestimation of the indigenous population is considerably greater than 291, which is the difference between the ABS September 2002 ERP figures for the NT and the population required for two lower house seats (1.5 quotas).**
- **The lack of post enumeration surveys in remote areas, including indigenous communities, is a serious flaw in the ABS methodology. These surveys are the main checks on the reliability of Census data.**
- **There is no significant difference between September 2002 ERP figures for the NT and the 1.5 quota level. Because of the error associated with the ERP, it is**

uncertain that the September 2002 ERP figures for the NT are not greater than the level that would be required to entitle the NT to two electoral divisions.

- **The ABS's September 2002 ERP figures for the NT are not fit for the purpose of being used in the Electoral Commissioner's determination because they are seriously flawed. They are flawed because:**
 - **the ABS underestimates indigenous populations;**
 - **there is no post enumeration process in remote areas; and**
 - **the September 2002 ERP figures for the NT were not significantly different from the population that would have been required for two electoral divisions in the NT.**

8 Amending the *Commonwealth Electorate Act*

It is apparent that the Committee has a number of options to solve the problems that have led to the establishment of this enquiry:

- a. do nothing;
- b. introduce a system that allows appropriate tolerance;
- c. increase minimum representation in the Territory; or
- d. set aside the determination.

The first option is not acceptable because it does not deal with the real flaws in data presented by the ABS, nor does it deal with the right of the NT to be represented as a state-like jurisdiction.

Introducing a tolerance system would address the issue of the lack of precision or large errors of the quarterly population estimates. It would also avert this type of event occurring in the future. However, if it was also applied to the states, attention would need to be paid to the constitutionality of the system, as it risks breaking the 2:1 nexus between the House of Representatives and the Senate.

Increasing the minimum representation for the Territories would solve the current problem, however, there is a risk that fluctuations in representation could occur in future—for example, the ACT could experience similar fluctuations in the medium term.

Setting aside the Electoral Commissioner's s.48 determination as it relates the NT would be an explicit recognition that the determination was based on inappropriate statistics. It would allow the ABS time to generate more accurate and reliable statistics.

Increasing minimum representation is the preferred option as it is the most effective solution to current issues. This should be considered in conjunction with a process to review the Electoral Commissioner's s. 48 determinations.

Business Moved by the Member for Solomon

The member for Solomon introduced private business into the House of Representatives on 16 June 2003 that, if passed, would increase minimum representation in the ACT and NT from one to two electoral divisions. The title of the bill is the *Commonwealth Electoral Amendment (Representation of Territories) Bill 2003*.

After the bill moves into effect, the new s. 48(1B) would become redundant. It would be more appropriate to have transitional arrangements that would include this section.

If the bill were passed into law, it would have the effect of requiring a new redistribution of the Northern Territory. This process is unnecessary, and would be costly and a waste of public resources. Further, it is uncertain whether the AEC would have sufficient time after the bill is passed to carry out the redistribution.

It would be more appropriate to provide transitional provisions that would set the February 2003 EAC determination aside. This would have the effect of reverting the electoral situation in the NT to the current arrangement, without the need for a redistribution. The ABS in their submission to this Inquiry has raised similar concerns.

Potential amendments to the bill addressing these concerns are attached in *Appendix II*.

Appendix I:

History of representation in the Northern Territory

- Residents of the NT were first represented by two members in the South Australian Legislative Assembly and by one member in the Legislative Council. This parliamentary representation was lost when the Commonwealth took over administration of the NT in 1911.
- Territorians attained limited representation when the NT was given very limited self-governance through the Council of Advice Ordinance 1919 (no. 8 of 1919), which established an appointed rather than elected advisory board for the Administrator of the Northern Territory.
- In 1920 Senator Russell introduced the Northern Territory Representation Bill 1920, which provided for a non-voting senator to represent Territorians and attached the NT to South Australia for electoral purposes. This bill was defeated on constitutional grounds.
- The government of the day eventually introduced its own bill which became the Northern Territory Representation Act 1922, which provided for one non-voting member for the Northern Territory in the House of Representatives.
- In 1958 the member for the Northern Territory was granted the right to vote on matters relating solely or principally to the NT. In 1968 that member was allowed full voting rights.
- In 1975 the NT, along with the Australian Capital Territory, was granted the right to elect two Senators in the Upper House. In 1978 the NT achieved self-government.
- This history of the NT's representation in Parliament demonstrates that over more than one century of federation, the Commonwealth has not been afraid to use its legislative powers to determine the appropriate level of representation it sees fit for the circumstances and needs of the time.

Appendix II

Possible amendments to Private Members Business

2002-2003

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Commonwealth Electoral Amendment (Representation of Territories) Bill 2003

- (1) Schedule 1, item 1, page 3 (lines 5 to 11), omit the item.
[representation of Northern territory]
- (2) Page 3 (after line 16), at the end of the Bill, add:

Schedule 2—Transitional provisions

1 Electoral Commissioner to make new determination

- (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 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.

[transitional provisions]