



**Australian Labor Party
Australian Capital Territory Branch**

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ACT Secretary**

**Submission to the
Joint Standing Committee on Electoral Matters**

***Inquiry into the representation of the Northern Territory and the
Australian Capital Territory in the House of Representatives***

August 2003

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.

INTRODUCTION

The Australian Capital Territory Branch of the Australian Labor Party (ACT ALP/ ACT Labor) is proud of its record of engagement and involvement in the political affairs of the Australian Capital Territory (ACT) since the establishment of the first ACT Branch of the New South Wales ALP in 1930. This commitment to good governance and effective representative democracy in the Territory was further entrenched with the establishment of an autonomous ACT Branch of the ALP in 1973.

The ACT ALP has fielded candidates in every federal election since the ACT was granted representation in the House of Representatives in 1948. The ACT Branch is proud of the role and contribution the ALP has made over this period.

The ALP has played a critical role in engaging the ACT community on the many and varied issues of public policy and takes pride in being a catalyst for improved public policy and political representation. It is in this tradition that the ACT Branch of the Australian Labor Party provides this submission on this critical issue.

While the terms of reference for this inquiry cover the issue as it relates to the Northern Territory and the Australian Capital Territory, this submission seeks only to address issues as they relate to the ACT.

HISTORY OF ACT REPRESENTATION IN THE HOUSE OF REPRESENTATIVES

After the site of Canberra was chosen as the National Capital, the Australian Capital Territory was transferred from New South Wales to the Commonwealth. This occurred on 1 January 1911 by the *Seat of Government Acceptance Act 1909*.

As a result of the transfer, residents of the ACT lost all political representation. They had none in the Commonwealth Parliament, and neither was there any form of 'state' or local government. ACT residents were deprived of their political rights and of a voice in the Federal Parliament.

The Australian Capital Territory was granted a Federal Member of Parliament by the *Australian Capital Territory Representation Act 1948*. As with the Northern Territory, voting and other rights were circumscribed. In 1959 the ACT Member of Parliament achieved the right to vote on all issues relating solely to the ACT (the *Australian Capital Territory Representation Act 1959*). With the enactment of the *Australian Capital Territory Representation Act 1966*, all disabilities and restrictions were removed and full voting rights in the Federal Parliament were achieved.

The ACT gained a second federal seat in 1974, and a third seat at the 1996 election, which was then abolished before the 1998 election.

PARLIAMENTARY REPRESENTATION AND DEMOCRATIC EQUALITY

The issue of parliamentary representation has been very topical in the ACT over the last twelve months. The Standing Committee on Legal Affairs of the ACT Legislative Assembly conducted an inquiry into the appropriate size of Legislative Assembly last year.

Through that process it was highlighted that the people of the ACT had proportionally significantly fewer parliamentary representatives at the Territory level of Government compared with people in the States. This is primarily due to the fact that all other jurisdictions in Australia have a multi-tiered governmental system, embracing the Senate, the House of representatives, and two layers of representation at the State and Municipal and City Council level. The ACT has only the federal representation and combines the two layers of governance at the state and municipal levels.

The ACT also has a unique political relationship with the Federal Parliament. The direct power that the Federal Parliament and federal governments have on ACT matters is well above and beyond the power they have over the States.

Accordingly these two factors place even greater importance of democratic equality for the ACT in its representation in the House of Representatives. Of all communities that should not be proportionally underrepresented in the Federal Parliament it is the ACT.

ACT Labor believes in the principle of ‘one vote, one value’ and it is essential for some parity between the size of electorates in the Territories and States if this principle is to be achieved.

The number of Members of the House of Representatives that represent the people of ACT as a ratio of MP to enrolled voter and MP to population, as it compares to the ratios in other jurisdictions, is a core issue of democratic equality.

The federal electorates in the ACT now contain far more enrolled voters and total number of people than in the rest of Australia. This means that the vote of an ACT person counts for much less than the vote of a person in any of the States. The average federal electorate size in the ACT at the last election was 109,322. This means the ACT has more than 40,000 more enrolled voters in each federal electorate compared to a federal electorate in Tasmania. This is also well above the average divisional enrolments of the States as highlighted below.

Average divisional enrolments for all States and NT

State	Averages
NSW	85486
VIC	87701
QLD	88059
WA	80477
SA	87278
TAS	66517
ACT	109718
NT	109986

These figures clearly highlight the disparity between the representation in the House of Representatives of people living in the ACT and their fellow Australians who live in the States. It is essential that the current imbalance in this representation is addressed by the Parliament.

The fact that the ACT was not an original State of the Commonwealth of Australia and therefore not provided with the right to at least five seats in the House of Representatives is not a reason or an excuse for this disparity in parliamentary representation to continue.

The current situation is nothing more than a constitutionally entrenched gerrymander which the Constitution itself facilitates the Parliament correcting.

Moreover, it is the loss of the third ACT seat prior to the 1998 election that caused this considerable disparity between the number of voters per seat in the ACT compared with the States. The ACT was only 657 people short of having the required population to entitle it to three seats in the House of Representatives. The then Member for Canberra (now Member for Fraser) Mr Bob McMullan commented that if the Government had treated Norfolk Island like all other small territories, the populations of which are counted in with those of the ACT or the Northern Territory, for the purpose of calculating seat entitlements, the third ACT seat would have been retained.

The net undercount for the 2001 Census also highlights that the ACT may have actually had the required population to entitle it to the third seat.

This significant disparity between the population size of the ACT seats to that of the seats in the States severely undermines the integrity of our democratic system of government and is a matter that should be addressed as soon as possible.

TECHNICAL ISSUES

The existence and political representation of territories was contemplated by section 122 of the Constitution, which empowers the Commonwealth to allow the representation of any territory in either House of the Parliament **'to the extent and on the terms which it thinks fit'**.

This is enacted through Section 48 (2B) of the *Commonwealth Electoral Act 1918* (CEA) which guarantees that the NT and the ACT shall have at least one member of the House. The actual numbers representing each at any particular time are ascertained by use of a formula detailed in the CEA.

Accordingly this addresses a key issue that should be resolved before the Committee considers any recommendations, that is, does the Federal Parliament have the power to make any changes to the representation of the territories on the House of Representatives.

It is clear that it does have that power and in fact section 122 of the Constitution leads the Parliament to ensure that equality be achieved for representation in the Federal Parliament for the territories of Australia, now and in the future.

SOLUTIONS

The terms of reference for this Inquiry as they stand do not offer the ACT any relief from this problem. Guaranteeing the ACT two seats does in no practical way address this critical problem of under representation in the House of Representatives. On its current population the ACT needs to have three seats in the House of Representatives for a level of political representative equality to be restored. Accordingly we would request the Committee to give consideration to options beyond the current terms of reference.

The easiest way to solve the problem for the territories might be to amend the CEA so as to increase the guaranteed minimum number of MPs for each Territory. This has been suggested by a number of people including the Federal Members of Parliament representing the two territories. Mr Warren Snowdon MP said in a speech in the Parliament when speaking on this matter 'it would seem fair to ensure that the ACT has a minimum of three seats and the NT has two'.

Given the constitutional barriers that exist to achieving perfect equality between House of Representatives electorates, perhaps an increase in the guaranteed minimum number of seats for the territories is a very reasonable compromise.

On the latest enrolment figures (January 2003) such an arrangement would have meant that three seats in ACT would have averaged 72 881 voters. This would not be greatly below the average figure for current federal electorates in Western Australia and would still be above that for House of Representative seats in Tasmania.

Furthermore, the Federal Parliament should continue to incrementally increase the guaranteed minimum of ACT House of Representative seats as required, up until the ACT has a population that entitles it to 5 members in the House Of Representatives. At that stage the ACT would be on an equal footing with the States' constitutionally protected minimum.

There are, however, alternatives to achieving a better level of representative equality for the ACT in the House of Representatives than simply increasing the minimum.

It would be possible to use a specific formula for the determination of seats for the Territories that would deliver a fairer outcome and this could be done by amendment to the CEA. The formula could use the number of voters as determined for Tasmanian electorates (the enrolment quota, not the 'population quota') as the divisor to determine the territory quota and then the number of territory seats in the House of Representatives.

The formula would be:

Total Territory enrolments divided by Tasmanian enrolment quota = quota for number of House of Representative seats for the Territory (the fractional remainder to be rounded up or down and the resulting whole number is divided into total enrolments in the Territory to determine size of seat).

Using such a system would ensure that current disparities and inequality would be addressed while providing a process with some greater certainty rather than relying on the government to initiate one of amendments to the CEA increasing the minimum.

CONCLUSION

This is one of the most pressing issues regarding representation in our Parliament. It goes to the core of our democratic system. The Constitution foresaw these issues and has provided for its correction.

'To the extent and on the terms which it thinks fit' must mean ensuring that our system seeks to get as close as possible to achieving one vote, one value. At this point for the people of the ACT we have a system of one vote, half value compared to Australians in some other jurisdictions.

The Parliament should immediately amend the CEA to guarantee a minimum number of three Members of the House of Representatives for the ACT or change the formula used in determining House of Representatives seats for the ACT and Northern Territory as a means of restoring democratic equality in federal parliamentary representation to the people of the territories.