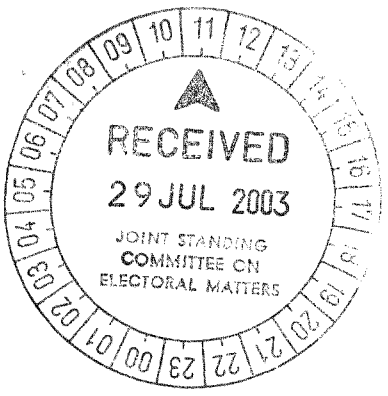
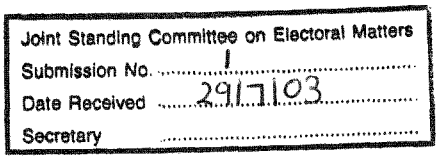


22 July 2003

The Committee Secretary
Joint Standing Committee on Electoral Matters
Department of the House of Representatives
Parliament House
Canberra ACT 2600



Dear Sir

I wish to express an opinion on the question of representation of the territories in the House of Representatives. In particular I wish to expresss my strong opposition to the following piece of legislation presently before the House of Representatives:

> Commonwealth Electoral Amendment (Representation of Territories) Bill 2003

As is well known this is a private member's bill, introduced by David Tollner (Solomon) and given a first reading on 16 June 2003. Its introduction followed the publication of the (special) Commonwealth Gazette dated 20 February 2003 (S 45) which showed that the Australian Capital Territory had 322,871 people and the Northern Territory had 199,760. Also in that same document was a determination that the ACT be entitled to two members and the Northern Territory to one member.

The current formula is the basis of a document issued every three years which is entitled:

> Certificate of the Electoral Commissioner as to the numbers of the people of the Commonwealth and of the several States and Territories and the number of Members of the House of Representatives to be chosen in the several States and Territories

That document begins with these words by the Commissioner:

> I hereby certify that, pusuant to section 46 of the *Commonwealth Electoral Act 1918,* I have this day ascertained the numbers of the people of the Commonwealth and of the several States and Territories in accordance with the latest statistics of the Commonwealth, and that those numbers are as follows:

There follow statements of the various populations. As mentioned above, in the most recent special gazette the population figure for the ACT is 322,871 while for the Northern Territory it is 199,760. Thus the determination that the ACT should have two members and the Northern Territory one member makes sense to the naked eye.

However, that is not really the point. The truly important point is that the parliament decided during the seventies that the respective numbers should be two and one. More significantly it decided during the eighties that the territories should be subjected to a principled population formula consistent with that which applied to the states.

The states are, of course, subject to section 24 of the Constitution which reads:

> 24. 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, as shown by the latest statistics 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.

The current formula (section 48 of the Commonwealth Electoral Act) merely fits the territories into the principled intentions of the Founding Fathers in relation to the states, as set out above. The current formula was accepted on a non-partisan basis as being principled and as being not contentious. The Founding Fathers would turn in their graves if they knew that, a hundred years down the track, the latest set of party politicians were to decide to tamper with constitutional and democratic principles purely to preserve the seat of one politician seeking to escape defeat.

For reasons which must by now be clear I reject the title of the bill which I cited above in my first indentation. So far as I am concerned one of two titles is appropriate. The bill could be called:

David Tollner Protection Bill 2003

Or it could be called:

Northern Territory Gerrymander Bill 2003

Either of those titles would be appropriate descriptions of what this bill is all about.

When I indicate that I reject both the bill and its title I should make clear that my hostility is rather greater than that. I would be thoroughly ashamed of the Commonwealth Parliament were a measure of this nature to be enacted. Just imagine the idea of a Parliament which would junk a sensible, democratic, principled and constitutional formula purely to preserve the seat of one of its 150 lower house members! I recoil at the thought. I spew it out.

Members of the Committee may be interested to know that the main part of my teaching in academic life has been (and still is) to teach the politics of the United States of America. For that reason I am aware that section 24 of the Australian Constitution is, in effect, a copy of America's Article One (1787) which reads in part:

> The House of Representatives shall be composed of members chosen every second year by the people of the several states. . . Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers . . .

To that is added the Fourteenth Amendment (1868) which reads in part:

> Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. . .

Consistent with these commandments Congress has enacted a detailed formula whereby each census distributes the 435 members proportionately by state population. The particular state most relevant to the Australian territories (both of them, let it be noted) is South Dakota.

South Dakota was admitted to the Union in 1889, along with North Dakota, Montana and Washington. South Dakota began with two representatives as determined by the 1890 census and the two were confirmed by the census of 1900. As a consequence of the 1910 census the number was increased to three - which number remained until the 1930 census which saw the state drop back to two again. As a consequence of the 1980 census South Dakota dropped back to electing one representative "at large", as the Americans say it.

The dropping from three to two in 1930 no more suggested special action to "save" a seat than was the case with the ACT which dropped from three to two as a consequence of the Australian determination of 1997. Let that point be noted. Neither South Dakota in 1930 nor the ACT in 1997 thought to squeal at the prospect of the loss of a seat, down from three to two.

That which is sauce for the goose must surely also be sauce for the gander. When the 1980 census reduced South Dakota from two seats to one the two representatives were a Republican and a Democrat – in a normally Republican state. The November 1982 mid-term congressional election saw the Democrat first district incumbent Tom Daschle face off with the Republican second district incumbent Clint Roberts. The vote was 142,122 for Daschle and 133,530 for Roberts, and South Dakota had two Republican senators and one Democratic representative.

Tom Daschle went on to bigger and better things, being elected a senator in 1986 and re-elected in 1992 and 1998 from which he became Senate Majority Leader in 2001 and Minority Leader in 2003. (He had also been Minority Leader 1995-2001). And President in 2008? Clint Roberts, on the other hand, went on to be a footnote in history, a "oncer" in the US House of Representatives.

If America's South Dakota can tolerate such an incumbent contest in November 1982 why cannot Australia's Northern Territory tolerate an incumbent contest in November 2004 between David Tollner and Warren Snowdon?

If the ACT can "cop it sweet" over the reduction from three seats to two in 1997-98 why cannot the Northern Territory take the same position regarding its reduction from two to one in 2003-04?

I wish to indicate the extent to which I am unimpressed by the arguments put forward for special action to save the seat. In *About the House* (Issue 16, May/June 2003) there is the article "Out for the Count" by Peter Cotton which on page 17 records one of the affected members as follows:

> Mr Snowdon says that on the basis of the data used by the Electoral Commission, the Territory fell short of a quota for two seats by just 291 people.
>
> However, he says the Australian Bureau of Statistics' 1996 post enumeration survey indicated that the calculation for the Northern Territory population had a standard error of plus or minus 1,000 persons.

Is Mr Snowdon, therefore, saying that every time there is a close call the formula should be amended to cater for a disappointed MP? In principle that is like saying that the non-elected candidate in a general election who misses out by the narrowest margin should be awarded a bonus seat to compensate for disappointment.

Then Mr Tollner (page 18) opines as follows:

> The numbers used by the Electoral Commission to calculate our level of representation are an anomaly . . And the decision to cut representation for the Territory doesn't serve the current push for boosting resource allocation to rural and remote Australia.

My comment on the first sentence is that I do not agree. Furthermore I assert that anyone reading the whole Cotton article would agree with me, not with Mr Tollner. On the second sentence I would argue that a constitutional formula should not seek to serve politically-driven resource allocation. Rather it should seek to be based on proper constitutional and democratic principles.

Finally Mr Tollner is quoted (also on page 18) as saying:

> It seems ridiculous that an area covering one fifth of the Australian land mass with 200,000 people should have only one federal representative.

My comment on that is to point out that such was, essentially, the case during the 1998-2001 parliamentary term. Yet the then Northern Territory seat was not even the largest in area. According to the *Parliamentary Handbook of the Commonwealth of Australia* (28th edition, 1999) on page 473 the then area of Kalgoorlie (returning one member) was 2,300,284 square kilometres while the area of the Northern Territory (also returning one member) was 1,346,200 square kilometres.

It is true that both jurisdictions have been subsequently redistributed. The 29th edition (2002) of the same work on page 494 records that the area of Kalgoorlie is currently 2,295,354 square kilometres while that of Lingiari is 1,347,849 square kilometres.

However, the reality is that this question is not a matter of details of that kind. Rather it is one of principle. It is on the basis of my principles that I oppose the Commonwealth Electoral Amendment (Representation of Territories) Bill 2003. I hope that a majority of members and senators will agree with me. I hope the bill is rejected on principle and without partisan wrangling. I realise it is a forlorn hope (unfortunately not an expectation) but politicians should not seek to gain electoral advantage from one another by populist propaganda.

Yours sincerely

Malcolm Mackerras

Malcolm Mackerras

25 July 2003.

Mr Russell Chafer
Committee Secretary
Joint Standing Committee on Electoral Matters
Parliament House
Canberra ACT 2600

Dear Russell

In my letter to you dated 22 July there was included this paragraph on page 2:

> However, that is not really the point. The truly important point is that the parliament decided during the seventies that the respective numbers should be two and one. More significantly it decided during the eighties that the territories should be subjected to a principled formula consistent with that which applied to the states.

That was sloppy. I should have written:

> The truly important point is that the parliament decided in 1974 that the respective numbers should be two and one. More significantly it decided in 1991 that the territories should be subjected to a principled formula consistent with that which applied to the states.

I can assure you that there is nothing sloppy about my thinking on the principles involved. I stand by (and am willing to elaborate on) everything else I wrote.

Kind regards

Yours sincerely

Malcolm Mackerras

Malcolm Mackerras

Ms Frances Gant
Inquiry Secretary
Joint Standing Committee on Electoral Matters
Parliament of Australia
Parliament House
Canberra ACT

Dear Frances

This letter acknowledges receipt of your letter earlier today and raises some further points regarding the Joint Standing Committee's Inquiry into the Representation of the Territories in the House of Representatives

First, I accept your invitation to appear before the Committee at 12.15pm next Monday (18 August) at the place you nominate. In point of fact I hope to arrive much earlier so that I can hear other witnesses.

Second, I note that you write "the usual procedure is for the Chairman to invite witnesses to make an opening statement before the Chairman and Members ask questions". I intend to take advantage of that offer by taking it as read that my first submission has been properly understood and by then tabling the attached document "Possible Formula for Small Jurisdictions" in which "small" means "least populous".

My point will be to demonstrate that if Tasmania is protected by the Constitution (giving it at least five members) and the Northern Territory is protected by passage of the Commonwealth Electoral Amendment (Representation of Territories) Bill 2003 (giving it at least two) that would create a grotesque, and indefensible, inequity against the electors of the ACT, of whom I am one. It is very easy to demonstrate that on a population basis the ACT is more entitled to three seats than Tasmania is to five or the Northern Territory is to two. If any member of the Committee were to suggest otherwise I should be only too happy to explain why that is so. Hence I am hopeful that

the Committee will study the attached table before I actually speak.

Third, I have signed the Hansard witness details form and return it to you.

If you have any further questions please do not hesitate to ask.

Yours sincerely

Malcolm Mackerras

Malcolm Mackerras

Possible Formula for Small Jurisdictions

Tasmania	473,371	people
ACT	322,871	"
NT	199,760	
	996,002	

Divide by nine and quota is 110,667.
Therefore entitlements are:

Tasmania	4.2774
ACT	2.9175
NT	1.8051
	9.0000

Malcolm Mackerras

MALCOLM MACKERRAS

14 AUGUST 2003