

SUBMISSION TO INQUIRY INTO THE AUSTRALIAN CAPITAL TERRITORY (SELF-GOVERNMENT) AMENDMENT (DISALLOWANCE AND AMENDMENT POWER OF THE COMMONWEALTH) BILL 2010

The Australian Family Association ACT Branch wishes to make the following submission to the Australian Capital Territory (Self Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill 2010 enquiry. We note that this not the first time that Senator Brown has tried to have such legislation pass through the Parliament. He introduced similar legislation in 2006 after the defeat, in the Senate on 15 June, of the Greens-Democrats disallowance motion against the Governnor-General's disallowance of the ACT's Civil Unions Act.

Under the Constitution the territories are not equal to the states; the states are sovereign entities the territories are not. Even the states do not have "exclusive legislative authority and responsibility for making laws for their citizens and land area. Under Section 109, of the constitution, where there is conflict between commonwealth law and state law, the commonwealth law prevails (witness the dispute between the Victorian state government and the commonwealth government over cattle grazing in a national park). Does the Commonwealth really want to relinquish this ability to over ride inconsistent law in the case of the territories? And, given S109, could it even do so? For the Commonwealth to give the territories the exclusive powers that Senator Brown is seeking for the them may see the Territories coming into conflict with Commonwealth Law as in the case of the ACT's Civil Unions legislation 2006. This legislation was in direct conflict with the Commonwealth Marriage ACT 1961 as amended in 2004. Does the Commonwealth really want to give the territories the ability to pass legislation which conflicts with its own laws? It is interesting to note in this regard that none of the states have enacted same-sex marriage legislation, precisely for this reason.

In conclusion Senator Brown, and some of his supporters have framed their support for this bill in terms of it being about democracy. Their actions both past and present would suggest otherwise. Where, for instance was Senator Brown's outrage when the Commonwealth over-rode the Tasmanian government's decision to build the Franklin Dam in 1983, and its homosexual legislation in 1994. Where is Senator Brown's outrage at the Commonwealth's stance in its dispute with the Victorian government over cattle grazing in a Victorian national park. Rather than basing his bill on a principled stand he is, in our view, indulging in "realpolitik".

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