

SUPPLEMENTARY SUBMISSION TO SENATE COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

REFERENCE: THE AUSTRALIAN CAPITAL TERRITORY (SELF-GOVERNMENT) AMENDMENT (DISALLOWANCE AND AMENDMENT POWER OF THE COMMONWEALTH) BILL 2010

I refer to my original submission on this matter, dated 11 March 2011

2. The purpose of this *supplementary* submission is to amplify the point I made in para 18 n 23 of the original submission in the light of remarks made by Professor George Williams in an article published in today's press.¹ . That point was that if:

the Self-Government Amendment Bill is to be passed it would be advisable for the terms of cl 4(b) of the Bill to be modified to take account of this point made in n 23 of this submission in order to avoid any unnecessary doubt about the continued operation of the power of the Governor-General in Council to make Ordinances on matters excluded from the authority of the ACT Legislative Assembly.

3. As will be amply apparent from my submission, and what has been said by Professor Williams, even if the Self-Government Amendment Bill is passed, it is incorrect to assert that the ACT Legislative Assembly (and the legislatures of the other two self-governing Territories mentioned) can enjoy "exclusive legislative authority" to legislate for the ACT. In addition to the reason given in para 18 n 23, this is also because of:

- the more significant authority of the *Federal Parliament* to pass laws overriding laws made by the Legislative Assembly;²
- the ability of the same Parliament to recall the arrangements for self-government which cannot be abdicated;³ and
- finally the serious doubt that exists about whether the ACT can aspire to statehood.⁴

4. The most that can be said about the objective of the Bill is that it seeks to enhance the powers of self-government by freeing legislation passed by the ACT (and other Territory) legislation from disallowance by the Federal Government. Or, as was put in my submission, it seeks to ensure that citizens in the ACT (and the other Territories mentioned in the Bill) should, "wherever possible, enjoy the same rights as other citizens in Australia to be free from Ministerial (or Executive) interference in the enactment of legislation passed by their elected representatives."⁵

5. To conclude, the considerations outlined in this supplementary submission provide a further reason for modifying the terms of cl 4(b) of the Self-Government Amendment Bill.

¹ George Williams, "Nothing to fear but timidity in Brown's bill", The Age 15 March 2011
<<http://www.theage.com.au/opinion/politics/nothing-to-fear-but-timidity-in-browns-bill-20110314-1bue5.html>>

² Paras 7-8, 10 and 16-17.

³ Para 8.

⁴ Para 16 (7th point).

⁵ Para 23.

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