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Committee Secretary  
Senate Legal and Constitutional Committees  
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Dear Committee Secretary

As a person who advocates equality for all citizens in a democracy, I am compelled to make a submission to the Inquiry into the Australian Capital Territory (Self-Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill 2010 (the Bill) by the Senate Legal and Constitutional Committees.

This Bill, if enacted, will remove the power of the Commonwealth executive government to override or amend legislation made by the Australian Capital Territory (ACT), and, as I understand recent amendments, would have a similar effect on the Northern Territory and Norfolk Island. Without loss of generality, I will focus my remarks on the situation in the ACT, where I reside.

### **Equality of citizens**

The Bill is solely a matter of equality of rights for ACT citizens and, if enacted, would go some way to giving ACT citizens the same rights as people living in the Australian States (for those matters that are generally within the purview of the States). However, the Bill falls short of a better outcome, because the Federal Parliament may, by a vote, continue to overturn legislation passed by the ACT. What Senator Brown's commendable Bill does is to eliminate the possibility of action by the executive government against the ACT, whether that action is by ministerial whim, personal preference or ideology.

Clearly, the ACT is an Australian Territory, it has a self-government act, its Senate representation is less than that of the States, and so on. Quite unsatisfactory, but this is an artefact of federation and a consequence of Canberra's unique role as the nation's capital. ACT citizens should not however, suffer the indignity of having their elected representatives pass laws that do not affect the national interest or Canberra's national character overturned by a decision of the federal executive government, just 'because it can'.

## Reports in *The Australian*

I have noticed that recent media reports on Senator Brown's Bill, most notably in *The Australian*, highlighted some religious politicians' stress about the Bill. All Australians should be entitled to their own religious and individual beliefs, but what they must not do in a democracy is impose those religious views on others. Nobody wants another person's views on how they should live their personal lives imposed on them by legislative fiat, regardless of whether they are religious or not. That would be contrary to the oft-quoted maxim of 'do unto others as you would have them do unto you'.

It should be a fundamental principle that the equality of Australian citizens takes precedence over politicians' ideological or religious views. Barack Obama, as a Senator, correctly recognised that governments must not legislate based on politicians' religious beliefs. He said 'Democracy demands that the religiously motivated translate their concerns into universal, rather than religion-specific, values. It requires that their proposals be subject to argument, and amenable to reason. I may be opposed to abortion for religious reasons, but if I seek to pass a law banning the practice, I cannot simply point to the teachings of my church or evoke God's will. I have to explain why abortion violates some principle that is accessible to people of all faiths, including those with no faith at all.'

It would seem that perhaps some Australian politicians lack President Obama's ability to separate their religious beliefs from their political responsibilities. They must understand that their religion is not 'amenable to reason' and to force it on others, such as by overturning ACT legislation, denies equality and individual liberty.

## Paul Kelly in *The Australian*: matters of national consequence

In *The Australian* on 9 March 2011, Editor-at-large Paul Kelly argued against Senator Brown's Bill because 'It is entirely appropriate and prudent the national government retain this executive power, given the ACT is the home of the national institutions.' With respect to national institutions, he has a case. However, if the Bill is passed, the Federal Parliament can still overturn a decision of the ACT government that might adversely impinge on the national landmarks, parliamentary triangle, or perhaps the fundamental design of Canberra.

With regard to those matters that directly affect ACT citizens, such as the cost of parking to matters that are generally within the purview of the States, the Commonwealth executive government and the Federal Parliament should not intervene.

Mr Kelly failed to make a case that matters generally within the purview of the States should be determined by federal politicians (not elected by Canberrans) in preference to ACT politicians (elected by Canberrans). If this occurs, democracy fails ACT citizens.

Mr Kelly also suggested, in his opening statement, that the Bill 'is inexorably tied to same-sex recognition'. That is his opinion. For me, as a heterosexual Canberran (and I shouldn't need to write 'heterosexual'), equality is paramount. Mr Kelly's article would be racist in nature if the term 'racial equality' was generally substituted for his

term 'same-sex recognition'. The media and politicians must realise that all discrimination is equally abhorrent, whether it be on the basis of race or sexual preference.

### **ACT self-government**

The Federal Parliament granted the ACT self-government in 1988. The ACT has matured since then. There have been good decisions and poor decisions by ACT governments. ACT citizens have had to wear the good with the bad. But what message will it send if a vote of the ACT's elected representatives is overturned either by political whim (which would be prohibited by Senator Brown's Bill) or even a vote of the Parliament.

The ACT must live or die by its own decisions. If the Federal Parliament does not pass Senator Brown's Bill, it would be making a rather arrogant statement: that the Federal Parliament considers the Commonwealth executive government, perhaps even a Minister with some ideological grudge against the ACT, knows what is best for ACT citizens better than the ACT's own elected representatives. This concept is contrary to representative ideals in a democracy.

Australians would rightly consider it abominable if the British executive government or British Parliament could overturn a law of the Australian Parliament today. ACT citizens, and all rational Australian citizens, would consider it just as reprehensible that the executive government or Federal Parliament could overturn a law (unrelated to the national interest) of the ACT Legislative Assembly.

The Federal Parliament should consider repealing the ACT's self-government act if it has so little confidence in the ability of ACT citizens to govern themselves. ACT citizens should not need to live with the uncertainty of whether a vote of their elected representatives in their Legislative Assembly will be repealed or not.

Equality demands it is time to cut the umbilical cord.

### **Conclusion**

I recommend that Senator Brown's Bill be supported. Ideally the Federal Parliament should also be prohibited from overturning an act of the ACT Legislative Assembly, except for issues of explicit national interest. Some semblance of equality between State and Territory citizens can only be achieved if the ACT Legislative Assembly has exclusive legislative authority and responsibility for making laws for the Australian Capital Territory.

Yours faithfully

David Swanton