

Australian Capital Territory (Self-Government) Amendment Bill 2013

Introduced into the House of Representatives on 13 February 2013

Portfolio: Regional Australia, Local Government, Arts and Sport

1.10 This bill seeks to amend the *Australian Capital Territory (Self-Government) Act 1988* to grant the Australian Capital Territory Legislative Assembly the power to determine the size of the Assembly. At present, changes to the size of the Assembly require a resolution of the Assembly followed by the adoption by the Commonwealth of regulations. The bill provides that any enactment made by the Assembly for the purpose of determining the size of the Assembly will require the approval of a two-thirds majority of the total number of members of the Assembly to come into effect.

1.11 The bill is intended to give the ACT Assembly the power to independently determine and amend its own numbers and remove the Commonwealth's role in the process.

Compatibility with human rights

1.12 The bill is accompanied by a self-contained statement of compatibility which states that the bill 'does not engage any of the applicable rights or freedoms and is compatible with human rights as it does not raise any human rights issues.'

1.13 However, the bill may be seen as promoting the enjoyment of rights relating to democratic governance contained in article 25 of the International Covenant on Civil and Political Rights (ICCPR). Article 25 guarantees the right of citizens to participate in the political and public life process, including thorough elections.⁴

1.14 As the explanatory memorandum states, the bill itself does not change the size of the ACT Legislative Assembly. Rather, it 'removes the Commonwealth's role in the process of amending the size of the Assembly, and provides the Assembly with the power to independently fulfil this function'. In doing so, the bill acknowledges the capacity of the Assembly to run its own affairs by granting it increased legislative autonomy, consistent with the success of its self-governance.

4 See General Comment No 25 of the UN Human Rights Committee in relation to article 25 guarantees: 'Citizens may participate directly by taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community and in bodies established to represent citizens in consultation with government.' (para 6).

1.15 Devolving power to a Territory legislature to determine its own size can be viewed as an enhancement of the power of the Territory community to regulate its own affairs.

Rights of Indigenous peoples/right to self-determination

1.16 The bill follows a number of inquiries into or reviews of the *Australian Capital Territory (Self-Government) Act 1988*. These included the review conducted by the Standing Committee on Administration and Procedure of the ACT Legislative Assembly, which reported in 2012.⁵ That committee recommended that ‘a preamble be included in the Self-Government Act which outlines the Act’s purpose and includes ... a formal recognition of the traditional custodians of the land, after consultation with the local Indigenous community.’ This recommendation has not been taken up in the bill. This may be contrasted with the recent recognition of the position of Australia’s Indigenous peoples in the Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012.

1.17 The committee notes that this bill could have taken the opportunity to promote the rights of Indigenous self-determination by including a preamble to the *Australian Capital Territory (Self-Government) Act 1988* to recognise the traditional custodians of the land as recommended by the ACT Standing Committee.

1.18 The committee considers that this bill does not appear to give rise to human rights concerns.

5 Standing Committee on Administration and Procedure, *Review of the Australian Capital Territory (Self-Government Act 1988 (Cwlth)*, August 2012, Report 5.