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No. 103 2003–04

House of Representatives (Northern Territory Representation) Bill 2004

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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No. 103 2003–04

House of Representatives (Northern Territory
Representation) Bill 2004

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3 March 2004

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House of Representatives (Northern Territory Representation) Bill 2004

Date Introduced: 19 February 2004

House: House of Representatives

Portfolio: Special Minister of State

Commencement: Sections 1 and 2 will commence on Royal Assent. Section 3 will commence seven days after the Bill receives Royal Assent.

Purpose

To provide for two members of the House of Representatives to be elected at the next federal election to represent the Northern Territory.

Background

Representation of the Northern Territory in the House of Representatives

Section 122 of the Constitution provides that the Parliament may allow for representation of the territories in either House of Parliament 'to the extent and on the terms which it thinks fit'. The High Court has confirmed the right of the Commonwealth to determine the number of senators and members for the territories, the method for electing or appointing parliamentary representatives for the territories, and the rights afforded to each territory senator and member.¹ The legislative provisions for territory representation are contained in the *Commonwealth Electoral Act 1918* (Electoral Act).

The *Northern Territory Representation Act 1922* (Cwlth) first granted the Northern Territory one member in the House of Representatives. Until 1968 the member for the Northern Territory had limited voting and participatory rights. In 1990 the Electoral Act was amended to incorporate all legislative provisions dealing with the representation of the territories in the Commonwealth Parliament. Subsection 48(2A) of the Electoral Act prescribes the process for determining territory entitlements in the House of Representatives, and section 53 provides that territory members have the same rights as all other members of the House of Representatives.² Since 1990 subsection 48(2B) of the Electoral Act has guaranteed the Australian Capital Territory and the Northern Territory at

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least one House of Representatives seat each. At the 2001 federal election, both the Australian Capital Territory and the Northern Territory elected two members each to the House of Representatives.

Process for determining the number of members for the House of Representatives

Section 24 of the Constitution sets out a formula for determining the entitlement of each of the states to seats in the House of Representatives. Section 48 of the Electoral Act gives effect to section 24 of the Constitution and also sets out the process for determining the representation of the territories in the House of Representatives. Under sections 46 and 48 of the Electoral Act, the Electoral Commissioner is required to determine the number of representatives that a state or territory should have in the House of Representatives, using the latest statistics of the Australian population. A quota is first calculated by dividing the total population figure for the Commonwealth, excluding the territories, by twice the number of senators for the six states. The population of each state and territory is then divided by the quota, and the result rounded to the nearest whole number to determine the entitlement. The Electoral Commissioner is required to carry out this calculation during the thirteenth month after the first meeting of a newly elected House of Representatives and to publish a copy of his or her determination.³

Inquiry into territory representation by the Joint Standing Committee on Electoral Matters

The Electoral Commissioner's determination dated 19 February 2003 reduced the Northern Territory's representation in the House of Representatives from two to one. According to the Joint Standing Committee on Electoral Matters, on the figures used by the Electoral Commissioner to make his calculations, the population of the Northern Territory fell short of the second quota by 295 people.⁴ The loss of the Northern Territory's second seat by such a small margin generated much public discussion. The Member for Solomon, David Tollner MP, introduced a private Member's Bill to the House of Representatives on 16 June 2003. The Bill's purpose was to amend the Electoral Act to provide that at least two members of the House of Representatives were chosen for the Northern Territory and the Australian Capital Territory at each general election.⁵ In July 2003, the Special Minister of State asked the Joint Standing Committee on Electoral Matters to inquire into and report on guaranteeing a minimum of two seats each in the House of Representatives for the Australian Capital Territory and the Northern Territory.

The majority of submissions to the inquiry supported a guaranteed minimum of two seats for the Northern Territory. The reasons given included:

- the geographic size of the Northern Territory, and the distinction between the urban population of Darwin and the regional population of the rest of the Northern Territory which includes a high indigenous component

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- claims that population growth will mean that the Northern Territory will again be entitled to two seats at the next determination of state and territory representation entitlements
- uncertainty about the precise definition of the 'latest statistics of the Commonwealth' in the formula used to determine entitlements
- reservations about the methodology used by the Australian Bureau of Statistics to calculate the Northern Territory's population, and the accuracy of the Northern Territory's population estimate, and
- the shortfall of 295 people in the case of the Northern Territory being within the statistical margin of error acknowledged by the Australian Bureau of Statistics in calculating the Northern Territory's population.⁶

The Committee unanimously recommended in its report dated 1 December 2003, that the 2003 determination of the Electoral Commissioner be set aside by government legislation to the extent that it applies to the Northern Territory.⁷ This Bill enacts the Committee's recommendation. It does so in a way that will apply only for the next federal election and will not affect future determinations.

The Committee also made recommendations about the process used by the Electoral Commissioner to determine the number of members for the House of Representatives. The Parliamentary Secretary to the Minister for Finance and Administration, Hon Peter Slipper, said in his second reading speech that the government will respond separately to those recommendations.⁸

Main Provisions

Subclause 3(1) provides that the Electoral Commissioner's determination of 19 February 2003, as it deals with the number of members of the House of Representatives to be chosen by the Northern Territory at the next federal election, should have the effect of specifying that two members should be chosen. The determination, as affected by this provision, will remain in place until a new determination is made by the Electoral Commissioner in accordance with section 48 of the Electoral Act following the next federal election. **Subclause 3(2)** of the Bill provides that, for the purposes of section 86 of the Electoral Act, two new Divisions are taken to have been created from the Division of the Northern Territory on the day on which the clause commences. This will enable the Australian Electoral Commission to create two new rolls for the Northern Territory Divisions on the day on which the clause commences, and ensures the legality of all enrolment transactions that have taken place in the Northern Territory since the determination was made on 19 February 2003.

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Endnotes

- 1 The 'Territories cases' are described in the report of the Joint Standing Committee on Electoral Matters, *Territory representation: report of the inquiry into increasing the minimum representation for the Australian Capital Territory and the Northern Territory in the House of Representatives*, November 2003, pp. 10-12.
- 2 Representation of the territories in the Senate is governed by Division 2, sections 40-44 of the Electoral Act.
- 3 *Commonwealth Electoral Act* sections 46 and 49.
- 4 Joint Standing Committee on Electoral Matters, *Territory representation: report of the inquiry into increasing the minimum representation for the Australian Capital Territory and the Northern Territory in the House of Representatives*, November 2003, p. 24.
- 5 David Tollner, 'Second reading speech: Commonwealth Electoral Amendment (Representation of Territories) Bill 2003', House of Representatives, *Debates*, 16 June 2003, p. 16361. The Bill was not debated and was removed from the Notice Paper in accordance with Standing Order 104B. (Standing Order 104B says in part that 'Any private Members' business not called on ... any of the next eight sitting Mondays, shall be removed from the Notice Paper by the Clerk'. House of Representatives, *Standing and sessional orders as at 1 February 2000*, p. 29.)
- 6 *ibid.*, p. 2.
- 7 *ibid.*, p. 68.
- 8 Peter Slipper, 'Second reading speech: House of Representatives (Northern Territory Representation) Bill 2004', House of Representatives, *Debates*, 19 February 2004, p. 24855.

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