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Bills Digest
No. 121 2003–04

Commonwealth Electoral Amendment
(Representation in the House of Representatives)
Bill 2004

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Commonwealth Electoral Amendment (Representation in
the House of Representatives) Bill 2004

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7 May 2004

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Commonwealth Electoral Amendment (Representation in the House of Representatives) Bill 2004

Date Introduced: 25 March 2004

House: House of Representatives

Portfolio: Special Minister of State

Commencement: Sections 1 to 3 will commence on Royal Assent. Schedule 1 will commence seven days after the Bill receives Royal Assent.

Purpose

To amend the *Commonwealth Electoral Act 1918* so as to:

- set aside the Electoral Commissioner's determination of 19 February 2003 in so far as it applies to the Northern Territory
- require that the margin of error in respect of population estimates be taken into account when determining the entitlements of the Northern Territory and the Australian Capital Territory, and
- specify the population statistics that are to be used by the Electoral Commissioner in making his determination.

Background

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.¹ Section 48 of the *Commonwealth Electoral Act 1918* (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 section 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,

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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. In making these calculations the Electoral Commissioner must take into account a number of special considerations. These are that:

- all original states are entitled to a minimum of five members²
- the populations of Cocos (Keeling) and Christmas Islands are added to the population of the Northern Territory and the population of Jervis Bay is added to the Australian Capital Territory,³ and
- eligible residents of Norfolk Island are added to the populations of the states and the Australian Capital Territory.⁴

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 in the *Gazette*.⁵

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.⁶ The loss of the Northern Territory's second seat by such a small margin generated much public discussion. On 16 June 2003 the Member for Solomon, David Tollner MP, introduced a private member's bill, the Commonwealth Electoral Amendment (Representation of Territories) Bill 2003. The purpose of this private member's bill was to guarantee a minimum of two seats each for the Australian Capital Territory and the Northern Territory in the House of Representatives at the next and subsequent federal elections. When introducing his Bill, Mr Tollner told the House that:

[t]he rigid application of mathematical formula, properly required of the Commonwealth Electoral Office, confirmed the Territory's loss of a representative seat by a factor of less than 0.0025 per cent.

Population projections show that this is a temporary condition – by 2005 the Territory will again have the numbers to qualify for two seats.

This amendment to the Act is no more than a bridging device that will carry the Territory across the momentary statistical glitch that threatens to again disadvantage the occupants of 1 346 000 square kilometres of the mainland.⁷

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In July 2003, the Special Minister of State, Senator the Hon. Eric Abetz 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
- 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 (ABS) in calculating the Northern Territory’s population.⁸

In its report dated 1 December 2003, the committee rejected the proposal that the Northern Territory should be guaranteed a second seat. Committee members considered that the existing formula for determining the territories’ entitlement should be maintained, that is, subject to the guaranteed minimum of one seat, the Australian Capital Territory and the Northern Territory should be entitled to representation in the House of Representatives in proportion to their shares of the national population. However, the committee did recommend unanimously that the 2003 determination of the Electoral Commissioner be set aside by government legislation to the extent that it applies to the Northern Territory.⁹ The committee heard that the margin of error in counting the population of the Northern Territory is up to three times greater than that of other states and territories.¹⁰ Some committee members believed that the margin of error was such that it created significant doubt as to the outcome of the 2003 determination.¹¹ Other committee members believed that it was parliament’s intention that the population statistics used in the determination should be the latest published statistics at the time of the determination, and for the 2003 determination, the published statistics that should have been used were the June 2002 figures, not the figures for September 2002 that the ABS supplied to the Electoral Commissioner.¹²

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Government's response

On 19 February 2004 the government introduced the House of Representatives (Northern Territory Representation) Bill 2004 to set aside the Electoral Commissioner's determination of February 2003 and to provide the Northern Territory with two seats in the House of Representatives at the next federal election.¹³ The committee's report had made other recommendations to clarify the process used by the Electoral Commissioner to determine the number of representatives for the Australian Capital Territory and the Northern Territory, and about the statistics of territory population provided by the ABS to the Electoral Commissioner. In presenting the House of Representatives (Northern Territory Representation) Bill 2004, the Parliamentary Secretary to the Minister for Finance and Administration, Hon Peter Slipper, said in his second reading speech that the government would be responding separately to the other recommendations of the committee.¹⁴ The Bill, though introduced on 19 February 2004, has not been debated.

The government introduced the Commonwealth Electoral Amendment (Representation in the House of Representatives) Bill 2004 (this Bill) on 25 March 2004. This Bill seeks to implement all three recommendations of the committee, including those that deal with the process used by the Electoral Commissioner in determining territory representation in the House of Representatives. It supersedes the earlier bill that only dealt with Northern Territory representation at the next federal election.

This Bill proposes three solutions to the current situation: firstly it disallows the 2003 determination in respect of the Northern Territory, secondly it proposes that in future determinations the margin of error in respect of population estimates be taken into account when determining the entitlements of the two territories, and thirdly it defines what statistics are to be used by the Electoral Commissioner in making a determination under section 48 of the Electoral Act.

While this Bill has bi-partisan support, it should be noted that one political commentator, Malcolm Mackerras, has called it a 'political contrivance' to ensure a second Northern Territory seat.¹⁵

Estimates of population

Population estimates are based on census data that is updated for intercensal population changes (overseas migration, natural increase, etc.). Although census population figures are a complete enumeration of the population, there is a degree of 'undercount' in the census figures. At the 2001 Census, the ABS estimates that there was an undercount of 7800 in respect of the Northern Territory.¹⁶ Census figures are adjusted for the undercount estimates. Undercount estimates are derived from a post-Census survey and as such are subject to sampling error (standard error). The 'standard error' is the measure of the likely difference between the survey estimate and the true value. There are two chances in three (67 per cent confidence) that the true value will be within plus or minus one standard error

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of the estimate, and 19 chances in 20 (95 per cent confidence) that the true value will be within plus or minus two standard errors of the estimate.

The standard error for the Northern Territory undercount estimate is 1300. So we can be 95 per cent certain that the true value of the net undercount for the Northern Territory is within 5200 and 10 400 (7800 plus or minus two standard errors (1300 x 2 = 2600)). The standard error on the undercount estimate carries through to ABS population estimates. The Northern Territory would have met the quota for two seats if this undercount standard error had been taken into account by the Electoral Commissioner in the February 2003 determination.

This Bill provides for a two stage process for taking the undercount standard error into account. The first stage (**proposed subsection 48(2E)**) is to ascertain if it is worthwhile proceeding (i.e. if the territories are within the required margins), and the second (**proposed subsection 48(2F)**) is to rework the determination calculation with the undercount error added to the population estimates.

Main Provisions

Item 2 of Schedule 1 repeals and replaces **subsection 46(1)** of the Electoral Act. The item specifies the population of the Commonwealth, states and territories that the Electoral Commissioner must ascertain (**proposed subsection 46(1)**), the statistics that are to be used for that purpose (**proposed subsection 46(1B)**), and the day on which the population figures are to be ascertained (**proposed subsection 46(1A)**). The amendment requires the Electoral Commissioner to ascertain the relevant populations on the first day after the House of Representatives has sat for a period of 12 months in a new Parliament, rather than within one month of that 12 month period (as in the current Act). The statistics used by the Electoral Commissioner on that day must be the most recent population statistics compiled and published by the Australian Statistician in a regular series issued under the *Census and Statistics Act 1905*. These statistics may be published electronically (**proposed subsection 46(1C)**).

Item 3 repeals **section 47** of the Electoral Act and substitutes new provisions to specify the statistical information for each of the states and territories that the Australian Statistician must provide to the Electoral Commissioner on request. However, in the case of the Australian Capital Territory and the Northern Territory, additional information must be provided concerning:

- the estimate of the net undercount for each of these territories at the last Census (**proposed subparagraph 47(1)(b)(i)**)
- the standard error of the measure of that estimate of the net undercount (**proposed subparagraph 47(1)(b)(ii)**), and

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- the upper and lower limits of the 95 per cent confidence interval for the measure of that estimate of the net undercount (**proposed subparagraph 47(1)(b)(iii)**).

The terms ‘standard error’ and ‘upper and lower limits of the 95 per cent confidence interval’ are defined in **proposed subsection 47(2)**.

The amendments to **section 48** that are made by **items 4 to 10** provide for a two stage process for taking the standard error of the net undercount into account.

Proposed subsection 48(2E) involves a test to see if the margin of error in undercount estimates should be taken into account. The subsection applies if the margin by which either the Northern Territory or the Australian Capital Territory falls short of a seat is less than or equal to two standard errors of the measure of the net census undercount. Using the 2003 determination calculation for the Northern Territory as an example: the Northern Territory fell short of a seat by 295 which is less than two standard errors of the measure of the undercount (2600), thus this subsection would apply for the Northern Territory. On the other hand, the Australian Capital Territory fell 10 554 short of a third seat which is greater than two standard errors of the measure of undercount for the Australian Capital Territory (2400), thus this subsection would not apply for the Australian Capital Territory.

If **proposed subsection 48(2E)** applies, then **proposed subsection 48(2F)** allows for the population of the Northern Territory or Australian Capital Territory to be increased by two standard errors of the measure of the undercount and then for the determination calculation to be redone using the increased population figures. The above explanation is summarised in the following table using the 2003 determination as an example.

	Northern Territory	Australian Capital Territory
Population used for determination	199 760	322 871
Quota	133 369.375	133 369.375
Entitlement	1.4978	2.4209
Population short of extra seat	295	10 552
Standard error of measure of undercount	1300	1200
Is population shortfall less than two standard errors?	Yes	No
Population plus two standard errors	202 360	
Quota	133 369.375	
New entitlement	1.517	

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So if the provisions in this Bill were to be applied to the 2003 determination, then the Northern Territory would be entitled to two seats.

Item 11 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, is to be set aside. Instead, the determination of 9 December 1999 is to apply. This was the determination that specified that two members would be chosen in the Northern Territory. This determination is now to apply at the next federal election and will remain in force until the Electoral Commissioner is required to make a new determination after the next federal election in accordance with amended section 48.

Item 11 also 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 **proposed section 48A** commences. This will enable the Australian Electoral Commission to create two new rolls for the Northern Territory Divisions on the day on which the section 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.

Items 12 to 15 amend section 49 and deal with the notification and publication of the determination made by the Electoral Commissioner. **Proposed subparagraph 49(1)(a)(i)** specifies the populations of the Commonwealth, states and territories that are to be included in the certificate given to the Minister by the Electoral Commissioner. **Item 13** provides that details of any adjustments made to the statistics and details of all calculations involved in making the determination, including adjustments, are to be included in the certificate given to the Minister and published in the *Gazette*. **Item 15** provides a time period within which the certificate with details of the adjustments and calculations made must be published in the *Gazette*.

Concluding Comments

The House of Representatives (Northern Territory Representation) Bill 2004 which was introduced by the Government on 19 February 2004 with the purpose of implementing just one of the Committee's recommendations, namely, that two members of the House of Representatives be elected at the next federal election to represent the Northern Territory, remains on the Notice Paper but has not been proceeded with¹⁷. According to the *House of Representatives Practice*¹⁸ from time to time the government may wish to alter a bill substantially from its introduced form. Alteration may not always be possible because the proposed amendments may not be within the title of the bill or relevant subject matter of the bill and may therefore be inadmissible under the standing order 227. In this case, and sometimes in the case where extensive amendments would be involved, a new version of the bill may be introduced. If this is done, the government either allows the order of the

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day in respect of the superseded bill to remain on the Notice Paper until it lapses on dissolution or prorogation, or a Minister or Parliamentary Secretary moves for the discharge of the order of the day, in accordance with standing order 191. The new version of the bill is proceeded with notwithstanding the existence or fate of a previous similar bill. Discharge of a bill may occur before the presentation of the second version or after the second version has passed the House.¹⁹

Endnotes

- 1 In the case of the territories, the source of power is section 122 which provides that parliament may allow territory representation in either house ‘to the extent and on the terms which it thinks fit’.
- 2 Constitution section 24.
- 3 *Commonwealth Electoral Act 1918*, section 48.
- 4 *Commonwealth Electoral Act 1918*, section 95AA.
- 5 *Commonwealth Electoral Act 1918*, section 49.
- 6 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.
- 7 David Tollner, MP, ‘Second reading speech: Commonwealth Electoral Amendment (Representation of Territories) Bill 2003’, House of Representatives, *Debates*, 16 June 2003, pp. 16361–2.
- 8 Joint Standing Committee on Electoral Matters, *op. cit.*, p. 2.
- 9 *ibid.*, p. 68. It is thought that this may be the first time Parliament has ever set aside an Electoral Commissioner’s determination, made under the Electoral Act, as to the proportional representation between the states and territories (Senator Brandis speaking when the *Territory representation: report* was tabled, Senate, *Hansard*, 1 December 2003, p. 18494).
- 10 *ibid.*, p. 41.
- 11 *ibid.*, p. viii.
- 12 *ibid.*, p. 35.
- 13 See *Bills Digest* No. 103, 2003-04 for a discussion of this Bill.
- 14 Peter Slipper, ‘Second reading speech: House of Representatives (Northern Territory Representation) Bill 2004’, House of Representatives, *Debates*, 19 February 2004, p. 24855.
- 15 Mackerras, Malcolm, ‘Democracy? Who needs democracy?’, *Canberra Times*, 7 April 2004, p. 17.
- 16 Joint Standing Committee on Electoral Matters, *op. cit.*, pp. 41–2.

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- 17 As at 31 March 2004.
- 18 *House of Representatives Practice*, 4th edition, Canberra, Department of the House of Representatives, 2001, p. 356, 'Bill not proceeded with'.
- 19 See for example the discharge of the Aboriginal Land Rights (Northern Territory) Bill 1976, House of Representatives, *Debates*, 1 December 1976, p. 3083.

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