



# Jon Stanhope MLA

CHIEF MINISTER

ATTORNEY GENERAL MINISTER FOR THE ENVIRONMENT  
MINISTER FOR COMMUNITY AFFAIRS

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MEMBER FOR GINNINDERRA

Senator the Hon Nick Bolkus  
Chair  
Legal and Constitutional References Committee  
Parliament House  
CANBERRA ACT 2600

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Dear Senator Bolkus

Thank you for your letter of 7 October 2003 regarding the State Elections (One Vote, One Value) Bill 2001 referred to the Senate Legal and Constitutional References Committee for report.

I support the underlying policy rationale of the bill. That each elector is entitled to a vote of equal weight to each other elector has been a principle of Australian Labor Party policy for over a century.

ACT electoral laws adopt the one vote, one value principle. Section 67D of the *ACT (Self Government) Act 1988* (Cth) provides that in distributing or redistributing the ACT into electorates, the following quota formula must be used.

$$\frac{\text{Number of Territory electors} \times \text{Number of electorate members}}{\text{Number of Territory members}}$$

In redistributing the ACT into electorates, immediately after the redistribution an electorate must not have a number of electors greater than 110% or less than 90% of its quota. Section 36 of the *Electoral Act 1992* (ACT) further entrenches the one vote, one value principle by requiring that as far as practicable the number of electors in an electorate will not be greater than 105%, or less than 95% of its quota. The calculation under section 36 is required to be made with respect to the projected number of electors at the next general election. This system ensures that the distribution or redistribution of the ACT into electorates is in accordance with the principle of one vote, one value.

ACT electoral laws also allow for the ACT to be redistributed into an appropriate number of electorates. The quota formula allows for electorates with different numbers of electors,

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provided that the number of members for each electorate is in proportion to the number of electors in each electorate. Section 8 (2) of the *ACT (Self Government) Act 1988* (Cth) provides that the Assembly shall consist of 17 members. If the ACT is redistributed into more than one electorate, or fewer than 17 electorates, a different number of members will be elected by each electorate. The existence of more than one but fewer than 17 electorates allows flexibility to ensure a balanced system of representation in the ACT, involving the participation and representation of minority parties, while providing for a workable system of government. This balance is appropriate for the ACT's unicameral legislature. The flexibility in electorate size also allows economic, social, regional and geographic idiosyncrasies of the ACT to be accommodated in a manner consistent with the one vote, one value principle.

The formulation adopted by the bill to implement the one vote, one value principle is inconsistent with ACT electoral laws. At present, the ACT has three electorates, two of which elect five members and one of which elects seven members. The formulation included in the bill conceives of an electoral system where there are an equal number of electors in each electorate, and each electorate elects an equal number of members. This is a simplistic formulation that would remove the flexibility of being able to redistribute the ACT into more than one and fewer than 17 electorates. The bill would restrict the ability of an independent decision maker to effectively consider economic, social, regional and geographic idiosyncrasies when redistributing the ACT. The bill allows a variation of 15 per cent from the quota for each electorate. Currently the ACT system is subject to a more stringent restriction of 10 per cent under the *ACT (Self Government) Act 1988* (Cth) and a legislated objective of five percent under the *Electoral Act 1992* (ACT), calculated with respect to projected electors at the next general election.

I understand that several submissions received by the committee have identified technical and legal deficiencies with the bill. The disruption to a legislature caused by recourse to legal proceedings in order to clarify ambiguous electoral laws should not be discounted. This is particularly so in a small jurisdiction where a small number of members are elected. Similarly, the retention of court resources and legal expertise comes at considerable cost to the community and is unnecessary where laws are drafted clearly and in reliance on established legal principle. I hope that the committee will give the deficiencies identified serious consideration. Any measure changing a clear and tried electoral system should not introduce unnecessary ambiguity or uncertainty.

Finally, it is fundamental to the independence of a legislature that, subject to compliance with constitutional requirements, it is able to determine how it will be constituted. The electoral laws of Australia's legislatures are prescribed by the relevant constitution and laws of each jurisdiction. An attempt by the Commonwealth legislature to unnecessarily intrude into the domestic affairs of the ACT represents a violation of the legislative sovereignty of the ACT.

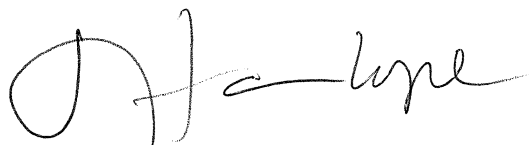
The principle of one vote, one value should be reflected in electoral systems. The principle is entrenched in the ACT electoral system. The ACT electoral system allows for the ACT to be distributed into an appropriate number of electorates allowing for effective government, with minor party representation. It allows an independent decision maker to consider effectively economic, social, regional and geographic idiosyncrasies when redistributing the ACT into

electorates. The bill would unnecessarily limit this flexibility. The bill would also introduce uncertainties where certainty is required. Given these considerations, the ACT government's view is that the bill represents an unjustified intrusion in to the legislative sovereignty of the ACT.

I commend the Commonwealth Parliament for examining measures to embed the principle of one vote, one value in the Australian political system. I would also encourage the Commonwealth Parliament, when considering the implementation of this principle through international human rights law, to examine the universal application of this right. This may address the anomalous position of the people of the ACT, who are not represented in the Commonwealth Parliament in accordance with this fundamental principle.

I look forward to reviewing the committee's report.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jon Stanhope', written in a cursive style.

Jon Stanhope MLA

Attorney General

**29 OCT 2003**