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Secretary
Standing Committee on Administration and Procedure
ACT Legislative Assembly

Dear Secretary

Review of the *Australian Capital Territory (Self-Government) Act 1988* (Cth)

The *Australian Capital Territory (Self-Government) Act 1988* (Cth) is in need of significant amendment. When the ACT was granted self-government in 1988, the Commonwealth imposed major conditions. This left the ACT system of government with several features more akin to a nineteenth century colonial possession than a modern Australian Territory. In the main, these long standing restrictions remain.

Changes to the ACT Self-Government Act should be guided by the following constitutional principles of self-government:

- The Act should establish a system of self-government for the ACT.
- The system should be self-governing in the sense that it provides for local representation in the body empowered to make laws generally for the community.
- The system should be also self-governing in that it enables the local community directly or via their representatives to set and change the terms of self government (a community cannot be said to be self-governing in this regard if a rigid system is imposed upon them).
- People living in the ACT should have the same democratic rights, entitlements and responsibilities as other Australians.

The ACT Self-Government Act fares poorly against these principles. In particular, the current system is rigid and unresponsive to local opinion and needs. Other problems stem not from that Act, but from the Australian Constitution. For example, it grants territorians a lesser vote in federal referendums (s 128) and also denies them the same protections as other Australians (such as in s 117). These problems can only be dealt with by amendment of the Constitution.

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The ACT Self-Government Act could be usefully improved in a modest way. For example, ss 8 and 41 could be amended to enable the ACT Legislative Assembly to determine its own size and maximum number of ministers (in a like manner to provisions such as s 67B). Other provisions could simply be deleted where they are obsolete or inappropriate, such restrictions on the power of the Legislative Assembly in s 23 or the power in s 16 that enables the Governor General, acting on the advice of the federal executive, to unilaterally dissolve the ACT Legislative Assembly.

It would also be appropriate to rename important ACT positions and institutions. Having a legislative assembly rather than a parliament speaks of a body with a lesser status and importance. The same applies to having a chief minister rather than a premier. Different names such as these create a set of expectations and assumptions in the broader Australian community and among Australia's leaders. If the ACT is to be truly self-governing and its people to have some rights as other Australians, they need representatives and institutions of equal status.

These changes are desirable, but not in my view sufficient to produce an appropriate long term model of self-government for the ACT. The ACT might think to achieve this by becoming a State. The population of the ACT is certainly significantly larger than some of the colonies that became Australian States 1901.

The Northern Territory is currently pursuing this path. It was scheduled to hold a convention to draft a new state Constitution in April of this year, but that process has now been postponed until after the 2012 Territory election. If that process proceeds as planned, it will be followed by a Northern Territory referendum on statehood and then the possible conversion of that Territory into Australia's seven State.

Unlike the Northern Territory, the ACT may never be able to become a State (absent amendment to the Australian Constitution). In *Capital Duplicators Pty Ltd v Australian Capital Territory* (1992) 177 CLR 248, the High Court left open the possibility that the ACT cannot become a State because it includes the seat of the federal government. This issue has not been finally resolved, but there is good reason to believe that the ACT does not have a viable path to statehood.

With this in mind, the goal ought to be to amend the ACT Self-Government Act to the maximum extent possible to achieve the guiding principles set out above. This should be driven by a local process. Ideally, the ACT ought to hold its own convention or like event, perhaps concurrently with that of the Northern Territory, to consider its long-term governance arrangements. These are matters upon which the people of the ACT should have direct input.

This process should give rise to a model of ACT self-government developed by the people of the ACT. This model should then be legislated for the ACT by the Commonwealth as a replacement for the ACT Self-Government Act. Crucially, this new Act should also provide a means by which every aspect of ACT self-government may be changed by the people of the ACT or their local representatives.

Yours sincerely

Professor George Williams