



Civil Liberties Australia Inc. A04043
Box 7438 Fisher ACT 2611
Email: [secretary\[at\]cla.asn.au](mailto:secretary[at]cla.asn.au)

Secretary
Standing Committee on Administration and Procedure
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

BY EMAIL: janice.rafferty@parliament.act.gov.au

Re: **Review of the *ACT (Self-Government) Act 1988 (Cwlth)***

Civil Liberties Australia is grateful for the invitation to make a submission to the Standing Committee on Administration and Procedure of the ACT Legislative Assembly on this important issue. We agree with the Committee's concept that one or more round table meeting(s) on the matter would be useful, and CLA would be happy to take part.

The fundamental problem in relation to the Act – which establishes the Territory of the ACT as a self-governing entity – is that it is an act of the Parliament of the Commonwealth of Australia.

To put this in context, the ACT stands in relation to the Commonwealth in almost exactly the same position as the State of NSW (etc) stood in relation to the British Parliament in 1900. It took the writing of a Constitution, and then several Acts of the British Parliament over a period of about 80 years to regularise the status of Australia to what the nation – and the overwhelming majority of Australians – think of as the inherent rights, liberties and freedoms of Australians today.

However, the rights of ACT (and NT) citizens are different from the rights of the citizens living in the States of Australia. This is so because the broad sweep of rights was granted to the Australian colonies/States, not to territories. Until this situation is rectified, no patchwork legislation which attempts to paper over the difference will ever deliver true equality.

At this time of considering the *ACT (Self-Government) Act 1988 (Cwlth)* in detail, it is proper to consider ways that ACT citizens can gain the rights and liberties that other Australians take for granted. Of necessity – because the Act in question is a Commonwealth act – the very basis on which that Act was enacted, and operates today, must be questioned.

Similar provisions, lessening territory citizen rights, apply to the Northern Territory. But there is a difference between the two territories. It is foreseeable that the NT will become a State of Australia in the next 20-50 years, and that its citizens will then be entitled to the full rights enjoyed today by other Australians. No such prospect entices the citizens of the ACT: the opposite is the case, because the Australian Constitution, at face value, prevents the Capital Territory as it now exists ever becoming a State.

There is a fundamental misunderstanding in relation to “rights and freedoms” within Australia, and seemingly by the Australian Parliament. CLA believes that the rights of the people of the ACT are inherent, and do not derive from a “grant” of legislation, or a “gift”, of the Australian Parliament.

In other words, CLA believes that the Universal Declaration of Human Rights (UDHR) applies equally to citizens of the ACT as it applies to citizens of the rest of Australia. In particular:

Article 1 of the UDHR:

All Australians are born free and equal in dignity and rights (*emphasis added*)

But ACT citizens are not equal.

Article 2:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. (*emphasis added*)

But ACT citizens suffer distinction on the basis of the status of the territory where they belong.

Article 17.(1) Everyone has the right to own property alone as well as in association with others.

But ACT citizens may not own property in the ACT.

Article 21.(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.(2) Everyone has the right of equal access to public service in his country.(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures. (*emphasis added*)

But the will of people of the ACT is not the basis of government of the ACT.

Article 28.

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

But citizens of the ACT do not enjoy a social order of the same type – and imbued with the same rights and freedoms – as other Australian citizens.

Article 30.

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein. (emphasis added)

The rights and freedoms of the ACT are impinged upon by both long-standing and recent Acts of the Commonwealth Parliament.

The rights and freedoms of the UDHR were adopted in the 1940s, after the establishment of the Commonwealth of Australia. There may be legal argument as to whether, when, how and why the UDHR rights do or do not apply to citizens of the ACT. But there can be no moral demur. Australians in general believe that all Australian citizens have equal rights, whereas they do not...as far as ACT Australian citizens are concerned.

At some time in the next 20-50 years, the Commonwealth of Australia can be expected to change the status of the people of the ACT (and the NT, if it is not by that time a State) so that citizens of the Territory have full rights as Australians. There is a moral imperative now, even if no formal imperative exists in international law.

The required change could be achieved by amending the Australian Constitution to vary the clauses that impinge on the rights and freedoms of ACT citizens relative to the rights and freedoms of citizens of the States.

Changing the Australian Constitution to create equal rights in the ACT only is unlikely to raise much enthusiasm in the States. Therefore, CLA believes, the changes that are required in relation to the ACT would be best approached as part of a once-in-a-century cleanse and clarification of the Australian Constitution.

In other words, the wider amendments/corrections needed due to the anachronistic nature of many Constitution clauses should be tackled as a package, rather than constitutional change being sought solely for “ACT” reasons.

No Constitutional referendum provisions, of any nature, are likely to succeed unless there is cross-party support. In relation to proposed referendum change provisions concerning the ACT, CLA suggests success is unlikely unless there is cross-State support from each and every State.

Therefore, CLA believes that the first recommendation from the current review to the Commonwealth Government should be that a major reformatory referendum be held in Australia in, say, 2020 or 2025.

An alternative to a wholesale, cross-party and cross-State supported comprehensive referendum, is a ‘Canberra spring’, with public revolt against the Government of Australia. CLA does not support a revolution...at this stage.

However, should equal rights not be enjoyed by ACT citizens in a reasonable number of years, it is likely the placid people of the ACT may be roused to action. In such circumstances, is not hard to envisage a situation in which 50% of Commonwealth of Australia employees – all of whom are ACT citizens – withdraw their labour as an early move in a social revolution against inequity.

The situation points to the irony of the Commonwealth of Australia being run in a practical, day-by-day sense, by the people of Australia who least enjoy the rights and freedoms Australia offers.

Yours sincerely

(sgd)

Bill Rowlings
CEO

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CLA Civil Liberties Australia
Box 7438 Fisher ACT Australia
Email: [secretary \[at\] cla.asn.au](mailto:secretary[at]cla.asn.au)
Web: www.cla.asn.au