A fairer system for Territory entitlements

A proposal to provide Territories with fair representation
in the House of Representatives
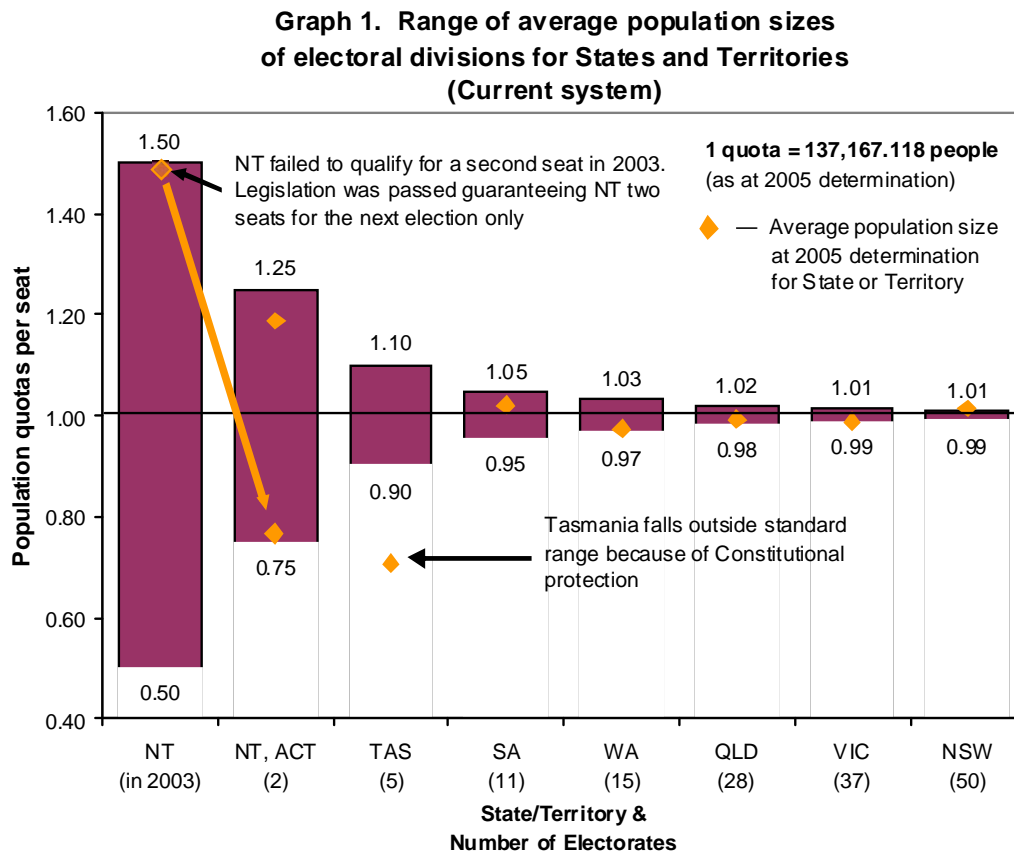
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Executive Summary

When the original Constitution of Australia was drafted, States were guaranteed an equal number of Senators and a minimum of five (5) members in the House of Representatives. This provision guaranteed that the more populous States could not disregard the will of the less populous States.

Australian Territories have no such guarantees in the Constitution. Instead, Commonwealth legislation decides Territory representation in the Federal Parliament. For most of their history, Territories have been under-represented despite the implicit constitutional goal of providing all States and Territories with fair rights to representation.

In February 2003, the Electoral Commissioner determined that the Northern Territory fell below the 1.5 quotas required to qualify for a second member in the Federal Parliament. To avoid the absurd situation of having an electorate with approximately 200,000 people, special legislation was passed in 2004 to guarantee the Territory a second seat at the next election.

This legislation was a "Band-Aid" fix to a deeper structural problem. Territories will always be vulnerable to having oversized electoral divisions unless a fairer system is adopted. Graph 1 illustrates the current situation:

**Graph 1. Range of average population sizes
of electoral divisions for States and Territories
(Current system)**

NT failed to qualify for a second seat in 2003. Legislation was passed guaranteeing NT two seats for the next election only

1 quota = 137,167.118 people
(as at 2005 determination)

◆ — Average population size at 2005 determination for State or Territory

Tasmania falls outside standard range because of Constitutional protection

Population quotas per seat

1.50	1.25	1.10	1.05	1.03	1.02	1.01	1.01
0.50	0.75	0.90	0.95	0.97	0.98	0.99	0.99

| NT (in 2003) | NT, ACT (2) | TAS (5) | SA (11) | WA (15) | QLD (28) | VIC (37) | NSW (50) |

**State/Territory &
Number of Electorates**

In particular, the following features are of interest:

- Territory electoral divisions can be far larger than the constitutionally protected electoral divisions of the States (and particularly Tasmania);
- Without the 2004 legislative intervention, the Northern Territory electoral division would have had a population 50% larger than the average electoral division;
- ACT electoral divisions remain oversized with an average population 20% larger than the seats in the States.

To fix the problem of oversized electoral divisions, a modified entitlement system is proposed. The new entitlement system will not alter allocations for the States, but will cap the population size of Territory electoral divisions at **1.1 quotas**, or **10% larger than the national average** (see Graph 2):

**Graph 2. Range of average population sizes
of electoral divisions for States and Territories
(Proposed)**
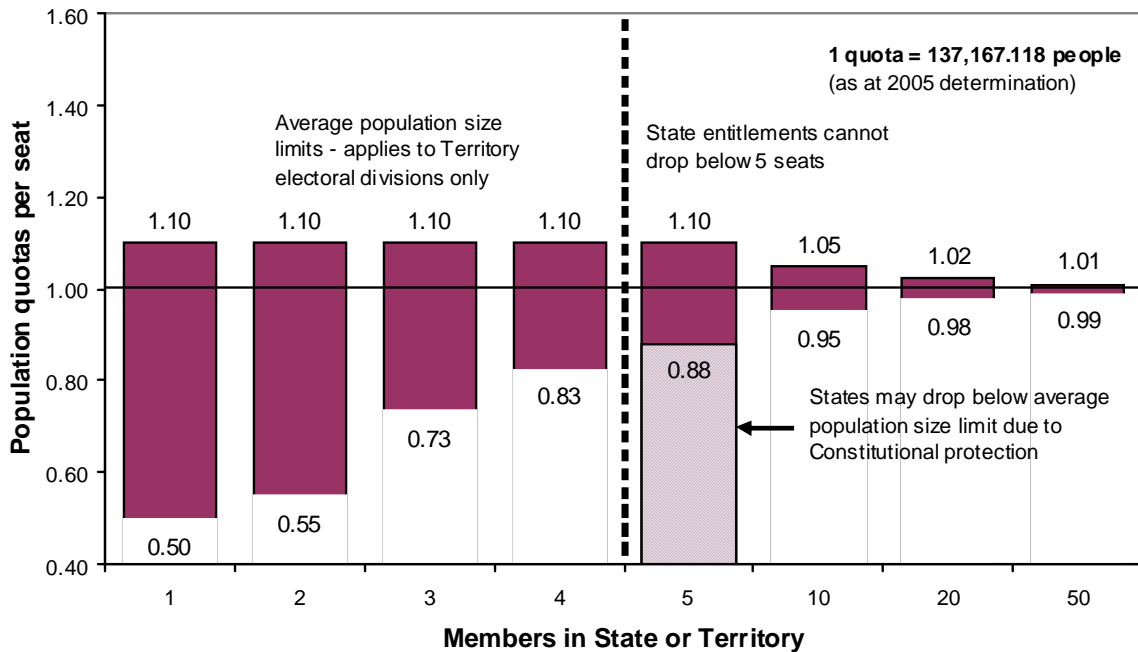
It is worth emphasizing that **quota requirements for the States will not change**. The new system simply makes the quotas needed for Territories more equitable.

Table 1. Comparison of quota requirements for new and old entitlement systems

Number of seats	New quota requirement	Old quota requirement
1	0.5	0.5
2	1.1	1.5
3	2.2	2.5
4	3.3	3.5
5	4.4	4.5
6	5.5	5.5
7+	as per existing quota system	

This proposed system has been **publically endorsed by noted psephologist Malcolm Mackerras**. It has many advantages, such as:

- Ensuring Territory electoral divisions can never become substantially bigger than the national average
- Removing the need for case-specific legislative intervention (such as the legislation for NT in 2004)
- **Complementing the existing State formula** for member entitlements, allowing growing Territories to transition to the formula used by the States without the need for additional legislation
- Being relatively simple to implement via the adoption of an "oversized" formula (see Appendix A).

Introduction

When the original Constitution for the Commonwealth of Australia was drafted, States were guaranteed an equal number of Senators and a minimum of five (5) members in the House of Representatives. This provision ensured that States with higher populations (NSW and Victoria) could not simply override the will of the rest — Tasmania and Western Australia in particular. At present, Tasmania is the only Original State that still benefits from this clause in the Constitution.

Australian Territories have no such guarantees in the Constitution and rely exclusively on Commonwealth legislation to determine Territory representation in the Federal Parliament. For many years, Territories had no representation in Parliament whatsoever. Even when legislation allowed for elected representatives in the Northern Territory (in 1922) and the ACT (in 1948), their rights were severely circumscribed – not gaining full voting rights until 1968 and 1966 respectively. Even today, the NT and ACT are disadvantaged because they can have *oversized electorates* far greater than those possible in any of the Original States.

This submission outlines a modification to the Territory entitlement system that addresses this issue without affecting the States in any way. However, a quick recap on the current entitlements system and its shortcomings is required to explain the proposal properly.

Current entitlement system

The Constitution specifies a two-step process to determine federal entitlements in the House of Representatives for Original States:

1. **Population quota** $= \dfrac{\text{Population of the six states}}{2 \times \text{No. of senators}}$

2. **MP entitlement** $= \dfrac{\text{Population of State or Territory}}{\text{Population Quota}}$ *(rounded to nearest whole no.)*

> **Notes**
> - The 'population of the six states' in (1) excludes the ACT, NT and other Territories.
> - The 'MP entitlement' in (2) is rounded up for fractions of 0.5 or greater; otherwise the figure is rounded down.

Once the number of seats for each State have been determined, electoral boundaries are drawn up according to certain enrolment quota limits[1] and guidelines, including the consideration of economic, social and regional interests.[2]

Originally, Territories had a single elected representative irrespective of population size. While the ACT received a second member in 1973[3], it was only after a Joint Committee inquiry in 1986[4] that the State quota system was extended for the use of the Territories through the *Electoral and Referendum Amendment Act 1989*.

Issues with the current system

While the quota system works well for large States, it is less effective in smaller Territories where electorates can become *oversized*. For example, after the 2003 determination the Northern Territory failed to qualify for a second seat. Without special legislative intervention (discussed further below), the following situation would have arisen for the 2004 election:

Table 1. Average size per seat in States and Territories (as at 2003 determination)

	Population	Members	Ave population per seat	Quotas per seat[5]
NT	199 760	1*	199 760	1.498
ACT	322 871	2	161 436	1.210
SA	1 522 467	11	138 406	1.038
QLD	3 729 123	28	133 183	0.999
NSW	6 657 478	50	133 150	0.998
VIC	4 888 243	37	132 115	0.991
WA	1 934 508	15	128 967	0.967
TAS	473 371	5	94 674	0.710

* NT actually received 2 seats in the 2004 election due to the *Commonwealth Electoral Amendment (Representation In The House Of Representatives) Act 2004*.

There are several noteworthy features about Table 1:

- The average population of ACT and NT electoral divisions is far greater than the national average, while Tasmania's is far below the average.
- All other states have a comparatively small variance in average population sizes for electoral divisions.

Since 2004, the Northern Territory has since grown slightly relative to the rest of the Australian population. This has allowed it to retain its second seat:

Table 2. Average size per seat in States and Territories (as at 2005 determination)

	Population	Members	Ave population per seat	Quotas per seat[6]
ACT	325 790	2	162 895	1.188
SA	1 540 223	11	140 020	1.021
NSW	6 764 690	49	138 055	1.006
QLD	3 945 940	29	136 067	0.992
VIC	5 012 689	37	135 478	0.988
WA	2 003 778	15	133 585	0.974
NT	206 492	2	103 246	0.753
TAS	484 745	5	96 949	0.710

This leaves the ACT in a position where its electorates are, on average, 19% larger than the rest of the country. To illustrate the reasons for this variance more clearly, Graph 3 shows the current limits on average population size for electoral divisions in

each of the States and Territories, and the actual average size of these divisions as at the 2005 determination.

Graph 3. Range of average population sizes of electoral divisions for States and Territories (Current system)
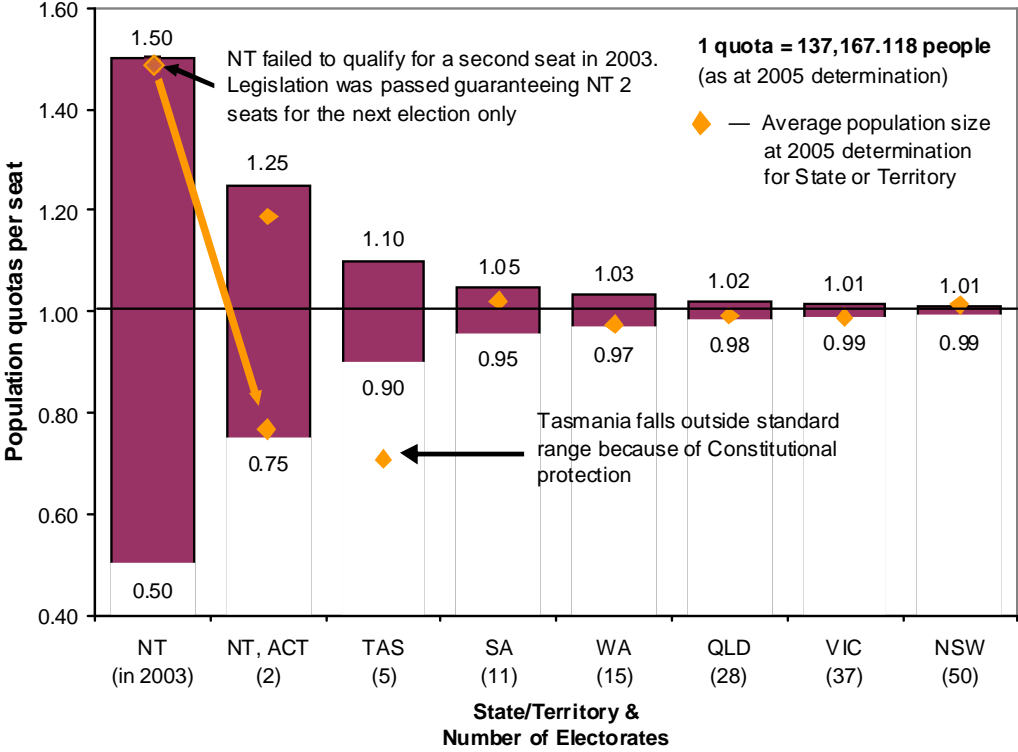
As you can see, electoral divisions in Territories such as the ACT and NT have the potential to be much larger or smaller, on average, than the States. By comparison, no state will *ever* have an average electoral division size greater than 1.1 quotas (a population of approximately 151,000 per division as at the 2005 determination). This limit applies since all states are guaranteed a minimum of five seats (see Graph 4).

Graph 4. Range of average population sizes of electoral divisions
(Current system)
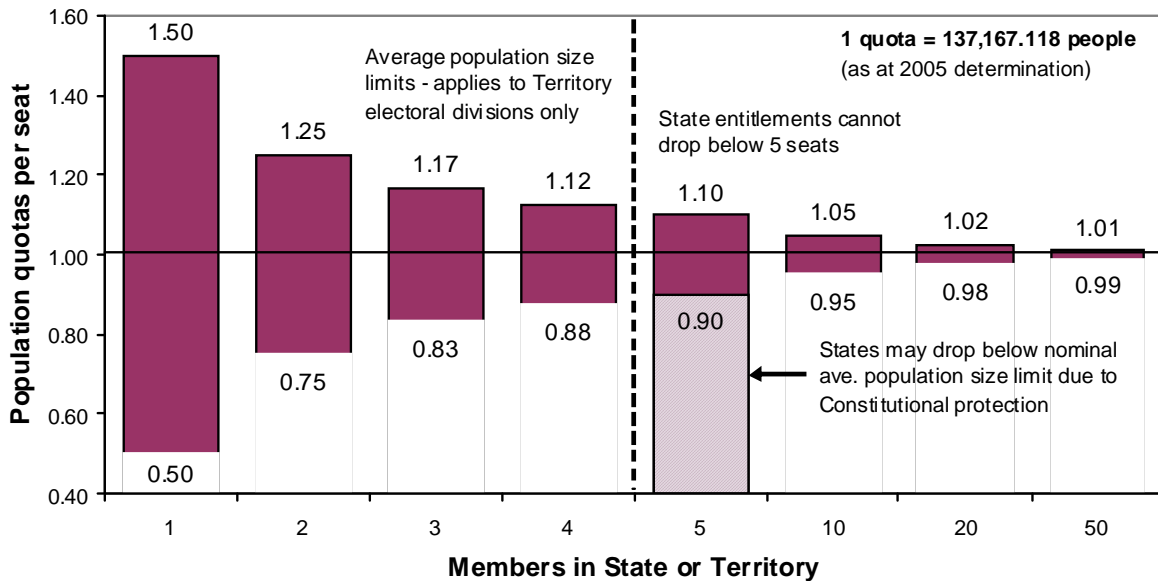
When Territory electorates are oversized, voters are at risk of disenfranchisement. Some have argued that Territories are already underrepresented since all States are entitled to a full set of twelve (12) senators regardless of size, as shown in Table 3:

Table 3. Representation in Parliament for Territories compared to Tasmania
(as at September 2008)

State/ Territory	Enrolled Population	Members	Senators	Total Representation
Tas	351 656	5	12	17
NT	120 862	2	2	4
ACT	244 069	2	2	4

Tasmania's enrolled population is now **less than** that of the NT and ACT combined. Yet it has **more than double** the number of Federal representatives. To meet the Constitution's implicit aims of balancing the interests of voters with those of States and Territories are to be met, a more equitable solution needs to be found.

When the 2003 determination found that the Northern Territory should return to having only one seat, a Parliamentary Committee made recommendations leading to the introduction of legislation that:

- guaranteed the Northern Territory two seats for the 2004 election
- relaxed the quota rules slightly so that if either the ACT or NT population fell marginally short of a quota ("within twice the standard error of the census"[7]), they would be granted the extra seat.

While the changes help, they do not address the structural unfairness of the quota system. **A more permanent solution is required.**

Finding a fairer system for the Territories

Over the years, various attempts have been made to increase the minimum representation of the Territories. Since the Constitution simply provides for representation "to the extent [Parliament] thinks fit",[8] any of these changes can be enacted by a simple act of Parliament.

However, moves to impose guaranteed minimums of representation for the Territories have been generally resisted. Quite reasonably, people are keen to avoid another "Tasmania scenario" – that is, locking in a level of representation for the Territories that may be seen as grossly disproportionate in the future.

A better long-term proposal is to modify entitlement rules for Territories so that average population sizes of electoral divisions can never exceed 1.10 quotas (or 10% larger than the Australian average). This is fair because the maximum average size of populations in States can *also* never exceed 1.10 quotas, as illustrated by Graph 5 below:

**Graph 5. Range of average population sizes
of electoral divisions for States and Territories
(Proposed)**
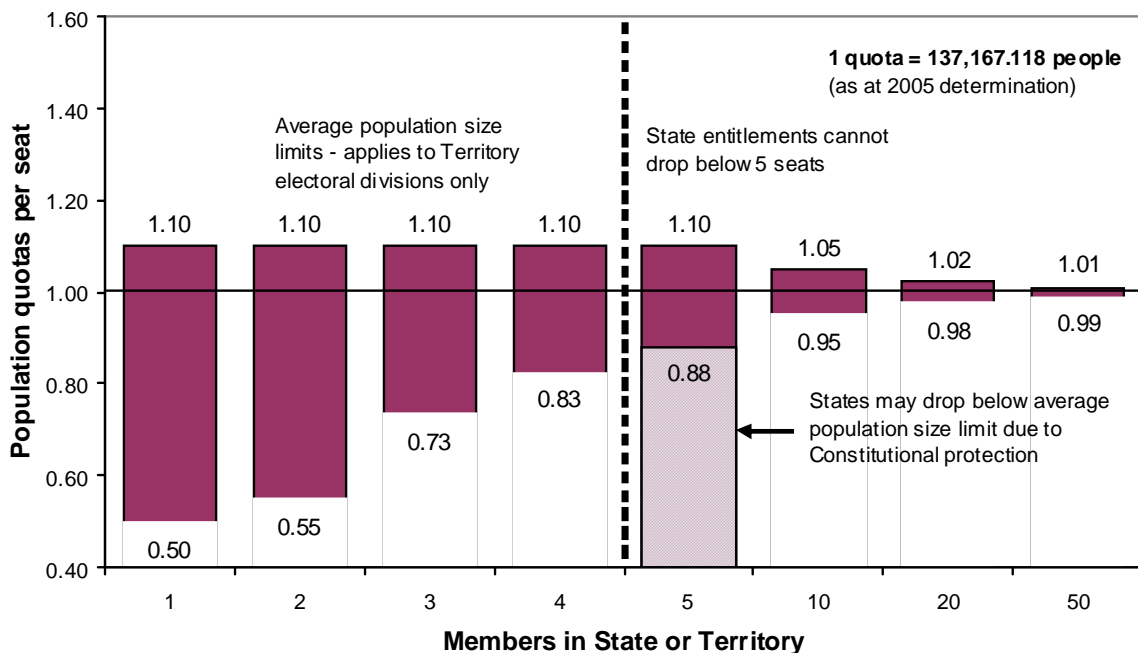
This modification of the quota system reduces the problem of oversized electorates in the Territories, putting them on a more even footing with the States. When determining entitlements for the Territories, the relevant quotas required would be as shown in Table 4:

Table 4. Comparison of quota requirements for new and old entitlement systems

Number of seats	New quota requirement	Old quota requirement
1	0.5	0.5
2	1.1	1.5
3	2.2	2.5
4	3.3	3.5
5	4.4	4.5
6	5.5	5.5
7+	as per normal quota system	

Implementing these changes would not be difficult. For example, a formula to determine if an electorate is oversized is shown in Appendix A.

Conclusion

When originally drafted, the Australian Constitution aimed to uphold *representational equality*. While broadly following the principle of "one vote, one value", the Constitution also ensured that the voices of smaller States could not be drowned out by the larger States.

Without similar Constitutional protection, Territories need a legislative framework that also protects them against unfair disadvantage caused by their small size.

The proposed amendments to cap average sizes of electoral divisions at 1.10 quotas, or 10% larger than the Australian average, will eliminate current problems with the system while complementing the regular entitlement formula used for the States.

This new system, if adopted, would place the electoral system on a more secure footing for the future and remove the need for future stop-gap measures such as the legislation passed in 2004.

Appendix A: Oversize fraction calculations

1. Australian Capital Territory

ACT population	=	325 790
Population quota	=	137 167
ACT quota calculation	=	2.3751 (2 + remainder 51456)

Oversize fraction $\quad=\quad \left(\dfrac{Remainder}{Population\ Quota}\right) \div MP\ entitlement$

$$=\quad \dfrac{51456}{137\,167} \div 2$$

$$=\quad 18.8\%$$

As the oversize fraction is > 10%, the ACT would receive 3 seats.

2. South Australia

This example illustrates how States are not at a disadvantage under this system. Since all States are guaranteed 5 seats, they will receive an extra quota before the oversize fraction reaches 10 per cent:

SA population	=	1 522 467
Quota size	=	133 369
SA quota calculation	=	11.4154 (11 + remainder 55403)

Oversize fraction $\quad=\quad \dfrac{55\,403}{133\,369} \div 11$

$$=\quad 3.78\%$$

Notes

[1] Note that 'quota' has two meanings in terms of the *Commonwealth Electoral Act 1918*. Section 48(2) defines a quota in terms of the population required for an entitlement in the House of Representatives (the 2005 determination set this as 137,167.118 people). The second meaning of quota is the 'enrolment quota' used in section 65 that sets limits on the number of enrolled people allowed for an electorate. It is calculated as follows:

$$\textbf{Current quota} \quad = \quad \frac{\text{Current no. of electors}}{\text{MP entitlement}} \pm 10\%$$

$$\textbf{Projected quota} \quad = \quad \frac{\text{Projected no. of electors}}{\text{MP entitlement}} \pm 3.5\%$$

[2] As defined by subsection 66(3) of the *Commonwealth Electoral Act 1918*.

[3] The second guaranteed seat was legislated by the *Australian Capital Territory (House of Representatives) Act 1973*, but subsequently repealed and replaced by the *Electoral and Referendum Amendment Act 1989*, in which the state quota system was extended to the Territories.

[4] Parliamentary Paper no. 1/86, "Determining the entitlement of Federal Territories and new States to representation in the Commonwealth Parliament".

[5] The calculation for the population quota in 2003 was:

$$\textbf{Population quota} \quad = \quad \frac{\text{Population of the six states}}{2 \times \text{No. of senators}}$$

$$= \quad \frac{19\,205\,190}{2 \times 72} \quad = \quad 133\,369.375$$

[6] The calculation for the population quota in 2005 was:

$$\textbf{Population quota} \quad = \quad \frac{\text{Population of the six states}}{2 \times \text{No. of senators}}$$

$$= \quad \frac{19\,752\,065}{2 \times 72} \quad = \quad 137\,167.118$$

[7] cf. *Commonwealth Electoral Amendment (Representation In The House Of Representatives) Act 2004*, inserted sections (2E) and (2F).

[8] Australian Constitution, s.122.