

Legislative Assembly of the Northern Territory

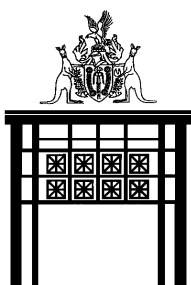
Standing Committee on Legal and Constitutional Affairs

Report into appropriate measures to
facilitate Statehood

April 1999

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Standing Committee on Legal and Constitutional Affairs

Report on the Reference that the Legal and Constitutional Affairs Committee of the Legislative Assembly –

- (a) inquire into the appropriate measures to facilitate Statehood by 2001; and
- (b) the Committee consult widely with the Territory community and report its progress with recommendations to the Legislative Assembly within six months.

April 1999

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

On 3 October 1998, Territorians voted on a referendum which asked the question: "Now that a constitution for a State of the Northern Territory has been recommended by the Statehood Convention and endorsed by the Northern Territory Parliament: Do you agree that we should become a State?"

The result was a No vote with a majority of 51.3%.

On 7 October 1998, the Legislative Assembly referred the following matter to the Committee:

"That the Legal and Constitutional Affairs Committee of the Legislative Assembly,

- (a) inquire into the appropriate measures to facilitate Statehood by 2001; and*
- (b) the Committee consult widely with the Territory community and report its progress with recommendations to the Legislative Assembly within six months of the day."*

This reference was a direct result of the negative outcome of the Statehood referendum of 3 October 1999.

As required by its terms of reference, this Committee conducted extensive community consultations over the course of its Inquiry to establish whether there was community support for further work towards Statehood for the Northern Territory and, if so, what measures were considered by the community to be appropriate next steps.

The context – what does Statehood mean?

Statehood offers Territorians a number of opportunities:

1. Statehood offers Territorians the opportunity to constitutionally protect those rights won over the past 88 years - these are the rights which citizens of the States have held as constitutional guarantees since 1901. They include the right to have Northern Territory representatives in Commonwealth Parliament and the right of residents in any State not to be subject to any disability or discrimination imposed by the Commonwealth unless it applies to all States. The only way to guarantee those rights for Territorians is to become a State;
2. Statehood means the opportunity to take up the remaining state-type powers that were denied the Territory when self-government was granted in 1978; and
3. Statehood is the opportunity to write our own constitution, and to put in place our own framework for the way Parliament is elected, Government is formed and the Northern Territory is governed.

As a territory of the Commonwealth, the Northern Territory remains subject to the almost unlimited legislative power of the Commonwealth pursuant to section 122 of the Constitution. Even after the Commonwealth has conferred self-government on a territory, as in the Northern Territory and the Australian Capital Territory, it retains ultimate power to legislate. Section 122 of the Australian Constitution (the “territories power”) states –

The Parliament may make laws for the government of any territory . . . and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.

This section makes it abundantly clear that the Commonwealth Parliament can virtually do what it wants in relation to laws for the Northern Territory (as the debate on the Northern Territory's euthanasia legislation has shown) and in relation to our Federal representation. It is equally clear that even those rights which have been so hard-fought over the years can never be guaranteed while the Northern Territory remains a territory because of the broad power contained in section 122. However, if the Northern Territory becomes a State, Territorians immediately gain those protections guaranteed by the Australian Constitution.

Only Statehood can protect our existing rights under the Australian Constitution. This is what Statehood is really about. It is the final step in an 88 year campaign.

The No vote

As a result of the Committee's extensive consultation program, it became apparent that there were a number of key reasons why people voted No in the October 1998 referendum. This has been reinforced by the quantitative market research commissioned by the Committee. In addition, the Committee found that some issues were of particular concern to Aboriginal people, particularly in remote areas.

In summary, while there is a small core of people (approximately 23% according to the market research) who are opposed to Statehood, most who voted No are not opposed to Statehood *per se* but listed certain deficiencies in past processes as the reasons for the No vote. These included a lack of information and understanding about Statehood, concern about the Statehood Convention process and the events surrounding it, a lack of trust in those responsible for last year's process, inadequate consultation, the role and approach of the Chief Minister, and a protest against the then Chief Minister and “the arrogance of politicians”.

It should be noted that the main reason for the No vote expressed throughout the Committee's community consultations is quite consistent with the Newpoll market research conducted in 1995 which identified a demand for more information as the key issue. Long term concerns such as the uncertainty about the impact of Statehood, which were identified in the 1995 polling, were not properly addressed in last year's process and, until they are, they will continue to be an impediment.

Aboriginal people voted very much as a block No vote and while the factors described above also featured, particular issues stood out. These were an almost total lack of understanding of what Statehood meant and a distrust of the Northern Territory Government. There was a fear that Statehood would increase the power of the NT Government, a strong lobby for the No vote from ATSIC, the Central Land Council and the

Northern Land Council (and virtually no alternative information), and no knowledge of the provisions of the Draft Constitution. These factors led to serious concerns in respect of losing existing rights, especially land rights, and concern about the impact of Statehood on law, culture and language. This view was reinforced by the Reeves Review into the *Land Rights Act* which had taken place during 1998. Subsequent events such as the decision on bilingual education have served to reinforce this concern.

Attitudes towards continuing the move towards Statehood

The overwhelming message from all over the Territory - whether it was from the public or individual meetings, written submissions or from the independent market research - was that Territorians do support Statehood and want the process of constitutional development to continue.

While there is a small percentage of people who believe that “No means No”, the greater majority of people who participated in the community consultations expressed the view that the Territory should continue towards Statehood.

Approximately 50% of people support the Yes case but, more significantly, 28% of people surveyed are what could be called “swinging voters”, a majority of whom are likely to vote Yes given another chance. The market research analysis describes these people as interested in Statehood, wanting more information and acknowledging it is their responsibility to become fully informed and make their own decision. Taking into account these findings, the market research report concludes “Territorians are sure they want Statehood and that eventually this will happen.”

The Indigenous Constitutional Conventions

Two Indigenous Constitutional Conventions were held in 1998: one at Kalkaringi in August and one at Batchelor in December. The Batchelor Convention resulted in a document entitled *Standards for Constitutional Development*. This document adopted and endorsed the Kalkaringi resolutions and proceeded to deal with such matters as an Inquiry into Self-Government, the Reeves’ Review of the Land Rights Act, Aboriginal law, land rights and other rights, human rights, education, good government, self-government, political participation, Aboriginal self-determination and process issues.

The Batchelor Convention noted that constitutional reform to recognise, enhance and protect Aboriginal rights is an ongoing process requiring further investigation, research, negotiation and development.

The Convention affirmed the principle embodied in the *Kalkaringi Statement* that Aboriginal people will not consent to Statehood until and unless there is a commitment that their rights and interests be recognised, enhanced and protected in a Territory Constitution and the NT Government is willing to enter into good faith negotiations under a framework agreement which will allow recognition of Aboriginal self-government.

An executive group arose from the Batchelor Convention, known as the Committee of the Indigenous Constitutional Convention, with the objective of pursuing those matters raised in the Kalkaringi Statement and the Batchelor resolutions.

Committee of the Indigenous Constitutional Convention

The Standing Committee met with the Committee of the Indigenous Constitutional Convention on 24 April 1999. The Convention Committee presented the Standing Committee with a position statement and asked that it be included in the Committee's report and that it be read in Parliament.

The position statement requested that the Standing Committee –

“acknowledge the Kalkaringi and Batchelor statements as the representative position of Aboriginal people and the framework for inclusive constitutional development in the NT. The statements spell out the content and the process for negotiation with Aboriginal people. Negotiation over Statehood can only proceed when the NT Government makes a commitment to the negotiation of a framework agreement including:

- The NT Government commits itself to protecting the Aboriginal Land Rights Act in its current form, and no change without the informed consent of Aboriginal people;
- No major reforms affecting Aboriginal people and their inherent rights (e.g. local government, health, education and housing) are to proceed without recognition of Aboriginal law, recognition of traditional land ownership, or informed consent of Aboriginal people.”

The most powerful message from the Indigenous Convention Committee was that its call for a **framework agreement** must be addressed - with or without Statehood. The Committee of the Indigenous Constitutional Convention has made it clear that, prior to considering the Statehood question, Aboriginal people want to negotiate a framework agreement on the future relationship between the Northern Territory Government and Aboriginal people aimed at addressing the social and economic disadvantages of Aborigines and working towards their full, active and equal participation in the Northern Territory's future. It recognises that this issue is quite distinct from Statehood but is not prepared to address constitutional development issues until its other concerns are met.

Aboriginal people are no longer prepared to come to the table to negotiate other people's priorities until their own concerns are resolved.

Aboriginal people tend to make communal decisions on political and voting issues. In arriving at their decisions, there is usually a high degree of community discussion, and advice is often sought from Aboriginal organisations such as ATSIC and the Land Councils. These organisations exercise great influence over the views of Aboriginal people, particularly in the communities. The conflict and controversy in Aboriginal affairs has left a high level of distrust amongst Aboriginal people and their organisations, much as it has amongst the non-Aboriginal population and the Government.

This Committee is under no illusions about the difficulty in reaching a balanced and mutually acceptable answer, particularly after so many years of suspicion and conflict. However, **this proposal may create the opportunity for a new beginning** where agreed strategies can be developed to bring the Northern Territory community closer together to address the continuing serious health, education and social problems of Aboriginal people and to open up opportunities for economic development on Aboriginal

land and enable the whole of the Territory and all of its people to achieve their potential. **The Committee is of the opinion that the attempt should seriously be made.**

Not only may such a process pave the way for removing the opposition of Aboriginal organisations to progressing towards Statehood, it will be a major contributor to overcoming the entrenched suspicion of the NT Government which exists within much of the Aboriginal community. Overcoming this distrust, combined with effective community consultation and education will, the Committee believes, lead to a broad community support for Statehood within the Aboriginal population.

Appropriate measures to progress Statehood

Given the broad community support for continuing the movement towards Statehood, the key aspect of the public meetings, oral submissions and many of the written submissions was the identification of strategies to progress Statehood.

Community education programs:

The first and most important priority was to ensure that the community was properly informed on the question of Statehood. People want to understand this issue, particularly from the perspective of themselves, their families and their jobs. Research also indicates that people are now far more conscious of the importance of understanding Statehood and making a personal assessment.

In light of the above, the first step should be the implementation of a comprehensive community education program. This was the single issue most consistently identified across the Territory. It is clear to the Committee that this will be a critical first step. A very detailed program is needed to respond to the range of information needs identified in the consultations and the market research. The education program will need to clearly differentiate between the question "What does Statehood mean?" and the issues associated with constitution-making, including the staging of a Constitutional Convention and options for the content of the Constitution.

Particular strategies will need to be developed to consult with and inform Aboriginal communities. This will probably require specific field staff resources because traditional information distribution through the various media and "mail outs" has been demonstrated to be totally inadequate.

Aboriginal people had different priorities to urban communities in the area of future measures. As in urban communities, there was very strong support for an education campaign, but the information sought focussed on the impact of Statehood on land rights, traditional law, culture and language. There was a widespread lack of trust in the Northern Territory Government, which information and consultation will to some extent overcome, although the extent of mistrust goes far beyond the Statehood issue. Considerable concern was expressed about the lack of consultation, the requirement for more time to be taken in the move to Statehood and protection of Aboriginal rights. Given the level of distrust of the Northern Territory Government as demonstrated across Aboriginal communities, it is the Committee's view that other measures need to be taken as an indication of good faith from both the Parliament and the Government.

Constitutional Convention:

Most people who participated in community consultations and many who provided written submissions agreed there should be another Convention to draft a Constitution for the Northern Territory. There was considerable support for a fully elected Convention or at

least one where a majority of delegates are popularly elected and which makes provision for the appointment of representatives from minority groups and/or of experts to assist the delegates.

Legislative and policy issues:

Legislative and policy issues were a further category of measures raised consistently throughout the consultations, for example, the desirability of freedom of information legislation, the need for a Bill of Rights, future control of the *Land Rights Act* and bilingual education.

Timing

The Committee's community consultations delivered a clear message that the process of moving towards Statehood is far more important than any particular date. Most people who commented on the time frame felt that 2001 is now inappropriate and that it is not important to set a target date.

A future process

The view that the Northern Territory should re-commence the process of working towards Statehood was supported by the vast majority of people. Further, there was a high degree of consistency on the appropriate way in which the Territory should proceed. Therefore the Committee is confident that the recommendations of this report will carry a high degree of community support.

The proposed stages of a future process are as follows:

Stage 1

The first and most important stage of the process must be a comprehensive community education program to provide a full and balanced understanding of the three distinct but related components of the movement towards Statehood:

- (a) what Statehood means and what it doesn't mean;
- (b) the role of a constitution for a new State, the issues which need to be debated and their implications, and how to bring a constitution into being; and
- (c) the issues which need to be resolved in negotiation with the Commonwealth Parliament to determine the conditions of the grant of Statehood.

The education campaign should be carried out, commencing as soon as possible, and using all forms of media, educational institutions, direct mail, the Internet and dedicated field staff, particularly for Aboriginal communities. The Committee notes that the Aboriginal constituency has special issues which need to be addressed as part of any move to Statehood. Specific strategies, including the use of dedicated field officers, are critical to ensure there develops a sufficient understanding of the issues involved within the Aboriginal population.

Only when there is evidence which indicates a sufficient level of understanding of the issues, and not before, should a move to the next stages commence. The Committee anticipates that, if sufficient resources were made available, this would take from six to twelve months.

Stage 2

Following the community education program:

- (a) if the Commonwealth Government requires a referendum to re-commence the process, hold such a referendum, but only ask one question: "Do you agree that the Northern Territory should proceed towards Statehood?"; or
- (b) if the Commonwealth Government does not require a referendum to re-commence the process, that the Northern Territory Government commence negotiations immediately on the conditions of a grant of Statehood.

Stage 3

Elections for, and the staging of, a Northern Territory Constitutional Convention where all, or at least the majority of delegates are popularly elected. The Convention must have sufficient time and resources to fully debate the issues in developing the Constitution. The draft Constitution approved by the Convention must be referred to a referendum for acceptance by the people of the Northern Territory.

The outcomes of the negotiations over the terms and conditions of Statehood which are relevant to the Convention are to be referred to it. The outcomes of negotiations over the recognition of customary law and legal systems are to be referred to the Convention as appropriate.

This is a complex subject and we recommend that this Committee be given a further reference to examine it and make recommendations to Parliament on an appropriate procedure for developing and adopting a Northern Territory Constitution for referral to the Commonwealth Parliament. In developing the recommendations, it will be necessary to take into account the relevant resolutions of the Kalkaringi and Batchelor Conventions.

The Committee's inquiry could be carried out concurrently with the public education campaign and the report to Parliament. This would also be the appropriate time for any necessary legislation for the staging of the Convention to be introduced into Parliament.

Stage 4

An education campaign should follow the conclusion of the negotiations over the terms and conditions of a grant of Statehood and the conclusion of the Constitutional Convention. This would lead to either separate referendums or a single referendum, depending on the timing of the processes, on the terms and conditions and the content of the Draft Constitution.

If a No result is the outcome of the referendum on terms and conditions of a grant of Statehood and/or the content of the Draft Constitution, the relevant processes will need to be repeated until an outcome satisfactory to Territorians is achieved.

Stage 5

Once a Yes result is achieved at a referendum on the terms and conditions of a grant of Statehood and the content of the Draft Constitution, Commonwealth processes should be

commenced at the earliest possible time to finalise the grant of Statehood and to refer the Constitution for the Northern Territory to the Commonwealth Parliament.

If the Commonwealth Parliament makes any changes of substance to the Constitution, it may be appropriate to hold a further Northern Territory referendum to determine whether the Constitution remains acceptable to the people of the Northern Territory.

Stage 6

Grant of Statehood and bringing into force of a Northern Territory Constitution.

Recommendations

Recommendation 1:

That the Northern Territory should re-commence the process of Statehood and that no fixed target date be set. Any timeframe should be flexible to ensure ample time for community consultation and discussion. The process is more important than the timetable.

Recommendation 2:

2.1 *That the Northern Territory Government approach the Commonwealth Government to ascertain whether a further referendum would be required to re-commence the process of Statehood.*

2.2 *If the Commonwealth Government does require a referendum, that it be held following an education campaign and only when it is considered that knowledge of the issues in the community is at a sufficient level.*

Recommendation 3:

That there be a public education program to inform Territorians about what Statehood means and about the process of constitutional development, presented in a dispassionate, balanced and informative manner. It is essential that the education program not be presented in a 'political propaganda' manner and it should be validated by independent sources. It is recommended that the Standing Committee on Legal and Constitutional Affairs be directly involved in the broad development of the education program and the engagement of an independent consultant to devise and implement the program. Specific strategies should be developed for effective consultations and education in Aboriginal communities. This should commence as soon as possible to take advantage of the enhanced awareness of the issue which currently exists in the community.

Recommendation 4:

4.1 *That the Northern Territory Government commence discussions as soon as possible to explore the development of a framework agreement as called for by the Committee for the Indigenous Constitutional Conventions.*

- 4.2 *That specific priority be accorded to commencing the process of recognition and integration of Aboriginal customary law within the broader legal system. This work does not need to await the re-commencement of the Statehood process. The work of the Sessional Committee on Constitutional Development and its draft Constitution and the Draft Constitution prepared by the Statehood Convention, which was subsequently endorsed by the Legislative Assembly, could serve as a basis to commence this process.*

Recommendation 5:

That the Standing Committee on Legal and Constitutional Affairs be given a reference to research, and prepare recommendations for the Legislative Assembly on, the staging of a future Northern Territory Constitutional Convention consistent with the following framework:

- *that all, or at least the majority, of the delegates to the Convention be popularly elected;*
- *that the Convention be allowed sufficient time and resources to fully debate the issues in developing the Constitution; and*
- *that the draft Constitution approved by the Convention be referred to a referendum of the people of the Northern Territory.*

In developing recommendations for the Legislative Assembly, the Standing Committee is to take into account the outcomes of the Indigenous Constitutional Conventions held in Kalkaringi and Batchelor in 1998. The Committee to have the power to send for persons, papers and records, to adjourn from place to place, to meet and transact business in public or private session and to sit during any adjournment of the Assembly, to appoint sub-committees, to be provided with all necessary staff, facilities and resources, to appoint persons with specialist knowledge for the purposes of the Committee, and to have such powers as are ordinarily assigned to Committees of the Legislative Assembly.

Recommendation 6:

Following the public education program, it is recommended that two parallel processes be commenced –

- 6.1 *That negotiations commence with the Commonwealth Government over the terms and conditions of a grant of Statehood; and*
- 6.2 *That the process of developing a Northern Territory Constitution be commenced.*

MEMBERSHIP OF COMMITTEE

On 13 October 1998, by Resolution of the Assembly, Mrs Hickey and Ms Martin were discharged from further attendance on the Committee and Mr John Bailey MLA, Mr John Ah Kit MLA, and Mr Peter Toyne MLA were appointed as alternate Opposition Members. At this time, Mr Terry McCarthy MLA was also appointed as an alternate Government Member.

Mr Syd Stirling MLA was appointed to the Committee in the stead of Mr John Ah Kit MLA on 24 November 1999. On 16 February 1999, Mr Steve Balch MLA, was appointed in the stead of Mr McCarthy, following Mr McCarthy's election as Speaker.

Current Membership

Mr Steve Hatton MLA (Chairman)
 Mr John Bailey MLA (Deputy Chairman) (alternate)
 Mr Steve Balch MLA (alternate)
 Mr John Elferink MLA
 Mr Chris Lugg MLA
 Mr Syd Stirling MLA (alternate)
 Mr Peter Toyne MLA (alternate)

Committee Staffing

Executive Officer: Mr Rick Gray (October to November 1998)
 Ms Julie Nicholson (November 1998 - present)

Administration/Research Officer: Dianna Harris

CHAPTER 1: BACKGROUND

What does Statehood mean for the Northern Territory?

Statehood offers Territorians a number of opportunities:

1. Statehood offers Territorians the opportunity to constitutionally protect those rights gained over the past 88 years - these are the rights which citizens of the States have held as constitutional guarantees since 1901. They include the right to have Northern Territory representatives in Commonwealth Parliament and the right of residents in any State not to be subject to any disability or discrimination imposed by the Commonwealth unless it applies to all States. The only way to guarantee those rights for Territorians is to become a State;
2. Statehood means the opportunity to take up the remaining state-type powers that were denied us when self-government was granted in 1978; and
3. Statehood is the opportunity to write our own constitution, and to put in place our own framework for the method by which Parliament is elected, Government is formed and the Northern Territory is governed.

Historical context

From the questions people asked at meetings with the Committee, it was clear that many want to better understand the essence of Statehood. To do this and to properly understand the context of last October's referendum, the Committee considers it important to outline the history of the Northern Territory's struggle to recover those constitutional and political rights which were lost when it was surrendered by South Australia to become a Commonwealth territory in 1911.

At Federation on 1 January 1901, citizens of the Northern Territory (then part of the State of South Australia) enjoyed the same rights as all other Australians. They were represented in the South Australian Parliament and were part of the Federal Electorate of Gray.

On 1 January 1911, South Australia surrendered its Northern Territory to the Commonwealth and it became a Federal territory. On that day, Territorians ceased to have a right to the vote, had no Member of Parliament and lost virtually all the protections of the Australian Constitution. The Commonwealth could impose legislation on the Territory which it could not impose on the States. It could acquire land in the Territory without paying compensation. The Commonwealth was not required to give equal treatment to Territorians in respect of taxation, trade and the legal status of residents. In such ways, residents of the Territory could be singled out for discriminatory treatment.

The Northern Territory's history since that time is punctuated with demands and protests to recover our democratic rights; it is a history of Territorians railing against dictatorial authority, official disinterest and government from afar. Much of the character and attitudes of Territorians as we know them today have arisen from this 88 year struggle.

Below is a brief history of that struggle.

Commonwealth Parliamentary representation

- 1922 The NT gains its first House of Representatives member. However, the member is refused the right to speak or vote and his role is effectively nothing more than that of an observer.
- 1936 The Territory's Federal member gains the right to vote, but only as to matters relating to ordinances of the Territory. He cannot vote on other matters affecting the Territory, or on matters affecting the States, or on any national issue.
- 1957 The Federal member is allowed to vote on any question relating to Territory matters, so long as it solely relates to Territory matters.
- 1968 Finally, 46 years after the Territory was first granted Federal representation, the NT's Federal member is able to exercise the same full voting rights as every other member in the Parliament.
- 1974 The Northern Territory is granted 2 Senate seats. However, before our Senators can take up their role, the granting of the 2 seats is challenged by the States through the High Court on two occasions. Both challenges were unsuccessful.
- 1975 NT citizens are now represented by 2 Senators in Commonwealth Parliament.

Constitutional amendment

- 1977 Territorians may now vote in referendums, at least for so long as there remains in force a Commonwealth law allowing Territory representation in the House of Representatives. There is an important limitation: referendums involve two counts – one to determine the view of the majority of Australians and one to determine the view of the majority of States. While Territorians are included in the population majority count, the Territory is not counted in determining the view of the majority of States.

A Government for the Northern Territory

- 1918 "The Darwin Rebellion". Civil unrest in Darwin in December 1918 saw residents march upon Government House to protest against autocratic rule from Canberra. The Administrator flees Darwin by warship two months later.
- 1926 The Commonwealth Parliament establishes a North Australia Commission to administer the Territory. The *Northern Australia Act* divides the Territory into North Australia and Central Australia – each with its own "Government Resident".
- 1930 The Commonwealth Government proposals for an elected Legislative Council for the Territory are defeated by the Senate.

- 1931 The experiment of dividing the Territory in half fails and the two parts are re-combined as a single entity with government through an Administrator but without any Advisory Council.
- 1946 There is strong local agitation for constitutional reform led by the Northern Territory Development League in Central Australia, and the Labor Party and unions in Darwin.
- 1947 A Territory Legislative Council is established with the power to make laws for the peace, order and good government of the Territory. The Council comprises 6 elected members and 7 official members (appointed), with the Administrator presiding.
- 1948 The inaugural sittings of the Legislative Council take place in a Sidney Williams hut in Mitchell Street, Darwin.
- 1956-1957 A Select Committee of the Legislative Council is appointed to inquire into all aspects of the Commonwealth *Northern Territory (Administration) Act*. Recommendations for constitutional reform are made in November 1957.
- 1958 April: All 6 elected members of the Legislative Council resign in protest against undue government delay in considering calls for constitutional reform.
June: All 6 members are re-elected - 5 unopposed.
- 1959 The Legislative Council is expanded to include 8 elected members and 9 appointed members, but it still has no power over financial or public service matters.
- 1962 The Legislative Council is given power to define its own privileges and immunities.

A Remonstrance to the Commonwealth Parliament in Canberra from the Territory's Legislative Council sets out a list of grievances, including a protest about the lack of constitutional advancement for the Territory, and seeks greater local control over Territory affairs.
- 1965 The Administrator is replaced as presiding officer of the Legislative Council by elected member, Harry Chan. He is the first elected president of the Council.
- 1968 The Legislative Council passes a motion of no-confidence in the Commonwealth Territories Minister.

The 3 non-official appointed Legislative Council members are replaced by additional elected members. However, the Commonwealth Government reserves the power to veto all or part of Council ordinances.
- 1972 The Commonwealth Government offers the Legislative Council limited executive control, including some financial powers but the offer lapses with a change of government in December.
- 1973 A joint Parliamentary Committee is established to review the Territory's constitutional progress and to suggest reform.

- 1974 A fully elected Legislative Assembly of 19 members is established. The Territory now has a fully representative (but not yet responsible) government.
- 1975 Prime Minister Malcolm Fraser promises Statehood for the Territory within 5 years. Following the 1975 Federal election, it was agreed the NT would go through an interim phase of limited self-government to put in place the infrastructure necessary for Statehood.
- NT citizens are now represented by 2 Senators in Commonwealth Parliament.
- 1978 The Northern Territory is granted self-government. For the first time, the NT has a ministry responsible for Territory finances and administration and assumes responsibility for a range of State-type functions. A Memorandum of Understanding establishes special funding arrangements for the Territory.
- 1979 Responsibility for education, health and the Supreme Court is progressively transferred to the Territory during the course of this year.
- 1988 The 1978 Memorandum of Understanding on financial arrangements is terminated. The Northern Territory is now funded on exactly the same basis as the States, and joins the Commonwealth and the States as a member of the Loan Council.

As this history shows, many, but not all, of the rights lost in 1911 have gradually been regained over the past 88 years. However, Territorians today possess these “rights” only by the grace of the Commonwealth; these rights carry no constitutional protection and can be removed or changed at any time.

The difference between being a territory and being a State

The above history tells of Territorians’ struggle for the opportunity to control our own affairs and our own destiny. Self-Government in 1978 represented a major step forward in this regard. However, the Northern Territory continues to be the subject of ongoing disadvantages simply because it is a territory.

As a territory of the Commonwealth, the Northern Territory remains subject to the almost unlimited legislative power of the Commonwealth under section 122 of the Constitution. Even after the Commonwealth has conferred self-government on a territory, as in the Northern Territory and the Australian Capital Territory, it retains ultimate power to legislate. Section 122 of the Australian Constitution (the “territories power”) states –

The Parliament may make laws for the government of any territory . . . and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.

This section makes it abundantly clear that the Commonwealth Parliament can virtually do what it wants in relation to laws for the Northern Territory (as the debate on euthanasia has shown) and in relation to our Federal representation. It is equally clear that even those rights, which have been so hard-fought over the years, can never be guaranteed while the Northern Territory remains a territory because of the broad power contained in section 122. However, if the Northern Territory becomes a State, Territorians are immediately accorded those protections guaranteed by the Australian Constitution.

The disadvantages that Territorians will continue to experience for so long as we remain a territory include the lack of guaranteed Federal representation, discriminatory land acquisition by the Commonwealth within the Territory without just compensation, the power of the Commonwealth Government to disallow any Territory law within six months of the Administrator giving assent to that law, the ability of the Commonwealth to remove the Administrator at any time and the fact of the Territory not being counted in “the majority of States” count in national referendums.

Only Statehood can protect our existing rights under the Australian Constitution. This is what Statehood is really about. It is the final step in an 88 year campaign.

Pushing on towards Statehood

In August 1985, a decision was made to move to Statehood. The Legislative Assembly appointed a Select Committee on Constitutional Development whose task was to inquire into and report back to the Legislative Assembly on a new Constitution for a new State, on terms resulting in equality with the other States. The Committee was given a wide-ranging reference to inquire into, report and make recommendations to the Legislative Assembly on:

- (a) the constitutional issues arising between the Northern Territory of Australia and the Commonwealth of Australia, and the Northern Territory of Australia and the States of Australia concerning the entry of the Northern Territory of Australia into the federation as a new State including, but without limiting the generality of the foregoing:
 - (i) the representation of the new State in both Houses of the Commonwealth Parliament;
 - (ii) legislative powers;
 - (iii) executive powers;
 - (iv) judicial powers;
- (b) the framework of a new State constitution and the principles upon which it should be drawn;
- (c) the method to be adopted to have a draft new State constitution approved by or on behalf of the people of the Northern Territory of Australia; and
- (d) the steps required or desirable to be taken by the Northern Territory of Australia, the Commonwealth and the States for the grant of Statehood to the Northern Territory of Australia as a new State within the federation.

Most of the Committee’s work in the first few years was directed at producing a number of initial papers, which were released for public comment in 1987. This was followed by an extensive program of public consultations throughout the Territory. In addition, further publications were issued by the Committee, and some promotional activities were undertaken.

In 1988, Chief Minister Perron wrote to the Prime Minister requesting full Self-Government. The Northern Territory did not even receive a reply.

From 1989, the Select Committee’s work focussed almost exclusively on NT constitutional matters and there was no further developmental work on Statehood issues.

In 1989, the Legislative Assembly resolved to amend the Committee's terms of reference to change it from a Select Committee (with a set time to report) to a Sessional Committee. In addition, the functions of the Committee were extended to other constitutional and legal matters referred to it either by a Minister or by the Assembly.

In April 1995, following submissions by the Northern Territory to the Council of Australian Governments, the then Prime Minister, Mr Paul Keating, agreed to the establishment of a joint Commonwealth/Northern Territory working group to examine and report on the implications of a grant of Statehood to the Northern Territory. The report of the working group was finalised in May 1996 and explores the major constitutional and policy issues that would arise upon a grant of Statehood.

On 26 November 1996, the Sessional Committee's report on a final draft Constitution for the Northern Territory, *Foundations for a Common Future*, was tabled in the Legislative Assembly. The report recommended that a new Constitution be adopted for the Northern Territory to replace the *Northern Territory (Self-Government) Act*, to be prepared by Territorians having regard to the Committee's final draft Constitution. The report also recommended that the draft Territory Constitution be referred to a Territory Constitutional Convention for finalisation and to a Territory referendum for approval.

The Sessional Committee's report noted that strategies for the future included –

- an on-going role for the Committee in overseeing matters of constitutional process and in contributing to that process where appropriate;
- overseeing progress towards a grant of Statehood for the Territory and in contributing to those developments where appropriate; and
- the undertaking of a role in promoting the awareness of constitutional issues to the Northern Territory and Australian populations.

The recommendations of the report were never formally endorsed or rejected by the Legislative Assembly.

The report also identified a preferred procedure for adopting a Northern Territory Constitution. This included referring a draft Constitution to a Northern Territory Constitutional Convention with broad representation from across the Northern Territory community, with the draft Constitution subsequently to be submitted to a referendum of Northern Territory electors.

1995 Polling

A Newspann poll conducted in March 1995 found that Territorians were strongly in support of the proposition to make the Northern Territory Australia's seventh State. The findings were based on a sample of 1000 adults throughout the Territory. The survey found that 68% were in favour of the Territory becoming a State, with 46% strongly in favour. A qualitative assessment of community attitudes towards Statehood found that there was a demand for more information on Statehood from virtually all sections of the NT population. People wanted to know how Statehood would affect their families and their lifestyles. The polling suggested that the information campaign needed to be factual rather than party political. People wanted an assessment of the advantages and

disadvantages to be presented in an impartial manner ideally by someone who was not seen to be strongly identified with any one side of politics.

The survey found that because most people did not understand the Federal/Territory fiscal relationship, there was an underlying current of fear in their discussion of Statehood. Some appeared to believe that all Federal funding would be immediately curtailed if the NT became a State. The survey concluded that the only inhibition towards full embracement of Statehood is the fear of economic disadvantage. This fear was induced by ignorance in that people do not have any real comprehension of the way the Northern Territory is financed or indeed the way any of the States operate their fiscal relationship with the Commonwealth Government.

The survey found that very few people had even a vague awareness of how the Territory differs constitutionally to the other States and that most people did not know that the NT has 2 Senators and the States have twelve.

According to the 1995 survey, Territorians were acutely aware that because they are small numerically, the Northern Territory is financially vulnerable. There is a belief that the Northern Territory only exists because of the largess of the Commonwealth Government. This is a view which is strongly resented and is very much responsible for Territorians' insistence on superiority to people down south in just about every way.

The survey concluded that most Territorians wanted the Northern Territory to become a State. They did however need reassurance that Statehood is not the same thing as financial secession and that the name 'Northern Territory' would not change.

Events leading to the Statehood referendum

The Statehood Convention

In March 1998, a Statehood Convention was held in Darwin to consider and report on four important issues relating to Northern Territory Statehood. These were:

- whether the Northern Territory should become a State;
- the form of a Constitution for the State of the Northern Territory;
- the name of a new State of the Northern Territory; and
- when should the Northern Territory become a State.

Of the 53 delegates appointed to the Convention, 26 were elected from government-nominated organisations and 27 were appointed, including the Chairman and 2 Deputy Chairmen.

The Convention sat over a period of three weeks on 26 and 27 March 1998, 31 March, 1 and 2 April 1998, and 7, 8 and 9 April 1998.

The organisation and structure of the Convention generated controversy from the outset because of the method applied in appointing delegates, its timing and duration. This had the following outcomes:

- the Northern Land Council and the Central Land Council boycotted the Convention;
- an activist group, Territorians for a Democratic Statehood, was established; and
- a number of delegates withdrew part way through the Convention.

On 27 March 1998, one of the Government representatives introduced a model for a draft Constitution as an alternative to that drafted by the Sessional Committee on Constitutional Development. This was seen by some as having pushed aside the Sessional Committee's *Final Draft Constitution for the Northern Territory* which was developed following ten years of community consultation. On 1 April 1998, the Convention Chairman announced a ruling from the Resolutions Group that the primary purpose of the plenary sessions was to speak in general terms to the *Final Draft Constitution for the Northern Territory* and that the Resolutions Group, with the assistance of Parliamentary Counsel, would draft resolutions that would be sequenced to aid correlation with that draft.

The Convention finalised a draft Constitution and resolved that three questions should be put to the people of the Territory at a referendum. These were:

- Should the Northern Territory become a State?
- What should the State be called?
- Do you accept the draft Constitution?

Amendment of the draft Constitution

The Statehood Convention's report, including its preferred Constitution, was tabled in the Legislative Assembly on 30 April 1998 and debate on its recommendations concluded in the August Sittings. A number of amendments were made to the draft Constitution by the Government before its tabling. These were:

- the inclusion of transitional provisions in the event of Australia becoming a republic before the commencement of the Constitution;
- to provide for the appointment of a Lieutenant-Governor and an acting Premier;
- a reduction in the period of time from 7 days to 3 days that a member may be absent from the Assembly without permission (in line with prevailing practice); and
- minor drafting amendments.

The Convention's work was adopted by the Parliament on party lines.

Referendums Act

On 30 April, following the tabling of the Report of the Northern Territory Statehood Convention, the then Chief Minister introduced the Referendums Bill (Serial 74 of 1998).

Debate on the Bill was resumed and it was passed, with amendments, on 12 August 1998. During debate, certain Members of the Opposition expressed concern about the forms of advertising on which the legislation would permit expenditure of public monies. The then Leader of the Opposition moved an amendment to the Bill to ensure expenditure would be limited to actions taken by the Chief Electoral Officer. The motion was defeated.

Date for the referendum

During an address to the Legislative Assembly on 11 August 1998, the then Minister for Territories and Local Government, the Honourable Alex Somlyay, MP, announced that, at the request of the Chief Minister, the Commonwealth Parliament had agreed that a referendum on the Statehood issue would be put to residents of the Northern Territory at the next Federal election.

Target date for Statehood - 1 January 2001

On 11 August 1998, the Prime Minister announced in Canberra that the Commonwealth Government supported Statehood for the Northern Territory and set 1 January 2001 as the target date.

The referendum question

The referendum question, as proposed by the Chief Minister, was debated on 19 August 1998. At that time, the Member for Barkly proposed that the question should contain three parts as recommended by the Statehood Convention, that is, with a question relating to whether the Northern Territory should become a State, whether there was support for the name "the State of the Northern Territory" and whether the draft Constitution should be adopted. The Assembly divided on the content of the Chief Minister's proposed question twice and, consequently, the Member for Barkly's amendment was defeated.

As a result of the Resolution of the Assembly to adopt the referendum question as proposed by the Chief Minister, on 20 August 1998 the Speaker called for nominations by Members in favour of or not in favour of the question. All Members nominated that they were in favour of the single referendum question as follows –

"Now that a constitution for a State of the Northern Territory has been recommended by the Statehood Convention and endorsed by the Northern Territory Parliament:

DO YOU AGREE that we should become a State?"

The absence of an official No case

When the Legislative Assembly voted on the issue of the Statehood referendum, all members voted in support of the motion. This exposed a problem in the construction of the *Referendums Act*, which resulted in there being no capacity to prepare an official No case. Accordingly, the Northern Territory Electoral Office prepared and distributed a yes case but did not prepare a corresponding No case.

Petitions

On 20 August 1998, the Member for Nightcliff presented two petitions, with a total of 2,182 signatures, relating to a demand for democratic and popularly elected peoples' constitutional conventions. The petitions further requested that any future Constitution be decided by the people in a referendum and not the Parliament.

The Kalkaringi Convention

An Indigenous Constitutional Convention was held from 17-20 August 1998 at Kalkaringi in the north west of the Northern Territory and was attended by 800 people. The objective was to discuss the issues of Statehood for the Northern Territory, the draft Constitution which had been endorsed by the Northern Territory Legislative Assembly and the proposed referendum on Statehood. The Kalkaringi Convention endorsed a “No” position on the referendum due to concern that the process was being rushed, a perceived stifling of public debate in the lead up to the Convention, the lack of popularly elected delegates to the Convention and concern about the legal validity of some parts of the draft Constitution.

The Kalkaringi Convention and its outcomes are outlined in more detail in Chapter 3.

The referendum campaign

During the course of the Convention in March 1998, a community group named “Territorians for a Democratic Statehood” was formed with the primary aims of promoting the cause of democratic Statehood for the Northern Territory, promoting discussion and debate on both Statehood for the Northern Territory and the new State’s Constitution, and to further the cause of directly-elected and representative people’s conventions with majority input into the question of Statehood and the new State’s Constitution. Territorians for a Democratic Statehood became the principal “No” campaigner leading to the October referendum.

The smaller political parties, the Trades and Labor Council, the Aboriginal Land Councils and ATSIC also campaigned for a “No” vote.

The “No” campaign focused on concerns about the process of drafting the Constitution, the absence of popularly elected delegates to the Convention, the referendum question, and the lack of an official “No” case.

While both sides of politics officially sanctioned the Yes case and the Government ran an aggressive advertising campaign for the Yes case, the Opposition raised concerns over the process.

The Statehood referendum

The Statehood referendum was held on 3 October 1998, concurrent with a general Federal election. The result was a 51.3% No vote.

The formal voting figures by polling category are as set out in the following table.

Table 1.1

	Yes vote	No vote	Informal		% Yes	% No	%Informal
Static polling booths	33864	31848	677		51.0	48.0	1.0
Special Hospital teams	128	111	2		53.1	46.1	0.8
Remote Mobile Teams	3315	9921	298		24.5	73.3	2.2
Prison Mobile Teams	74	158	2		31.6	67.5	0.9
Postal Votes	1696	1084	6		60.9	38.9	0.2
PrePoll Votes	4677	3760	48		55.1	44.3	0.6
Provisional Votes (names not on the roll on the day)	948	1359	35		40.5	58.0	1.5
TOTAL	44702	48241	1068		47.5	51.3	1.1

The urban vote (static polling booths, postal votes, pre-poll votes) delivered a majority Yes vote by a margin of 3545 votes - 40237 to 36692.

The remote area vote (remote mobile teams and the prison mobile teams) delivered a majority No vote by a margin of 6690 votes - 10079 to 3389.

This result reflects a dichotomous vote between predominantly non-Aboriginal and predominantly Aboriginal voting blocks.

CHAPTER 2: PROCEDURES AND APPROACH ADOPTED BY THE COMMITTEE

Broad approach

In order to provide as many Territorians as possible with the opportunity to have their say on the constitutional development process in 1998 and on appropriate measures for progressing Statehood if desired, the Committee:

- invited written submissions;
- conducted public meetings; and
- held meetings with, and took oral submissions from, individuals and organisations.

In addition, the Committee arranged for polling to be conducted to check whether the feedback being received through the submissions and meetings was reflective of wide community opinion.

Community consultations

An extensive advertising campaign utilising television, newspaper and radio was undertaken from October 1998 to March 1999 to notify the public of various meetings to be conducted in their respective areas and to call for submissions.

The official deadline for receiving written submissions was extended from 27 November 1998 to 29 January 1999, although the Committee agreed that late submissions would be accepted and continued to invite and receive written comments through to April.

During the course of its Inquiry, the Committee –

- received 87 written submissions (4 of which came from Members of the Legislative Assembly advising of surveys they had conducted in their respective electorates, which resulted in responses from 257 constituents)
- held 40 public meetings throughout the Territory attended by approximately 1151 people
- met individually with 14 organisations and 13 individuals – a total of 248 persons in all.

Between October and December 1998, the Committee conducted public meetings and individual consultations at Batchelor, Bees Creek, Yulara, Alice Springs, Tennant Creek, Katherine, Pine Creek and Darwin. The Committee also attended part of the final day of the Batchelor Indigenous Constitutional Convention on 4 December 1998. In February 1999, the Committee held meetings in the Darwin CBD, Nightcliff, Casuarina, Sanderson, Palmerston, Howard Springs and Humpty Doo.

During the recess of the Assembly between the February and April Sittings, the Committee conducted meetings principally in Aboriginal and other remote communities.

Across the "Top End", the Committee held meetings at Angurugu, Umbakumba, Alyangula, Yirrkala, Nhulunbuy, Milingimbi, Ramingining, Maningrida, Minjilang, Jabiru, Nguiu and Pirlangimpi. The meeting at Pirlangimpi involved delegates from Milikapiti.

Consultations were then conducted in Katherine and its region and these included Barunga, Bulman, Timber Creek, Wadeye, Daly River, Ngukurr, and Borroloola in the Barkly Region. Communities visited in Central Australia were Lake Nash, Mutitjulu, Papunya, Yuendumu, Utopia, Santa Teresa and Hermannsburg.

Meetings were also scheduled at Galiwin'ku, Kalkaringi, Lajamanu, Numbulwar and Oenpelli but due to circumstances beyond the Committee's control, these meetings were unable to proceed.

Additionally, meetings were held with ATSIC, the Nightcliff Evergreens, the Central Australian Tourism Industry Association, Elliott Town Council, representatives from the Waanyi/Garawa Aboriginal Land Trust, Mr P Morgan, Mr I Fraser, Mr T Dunstan, Mr C Jeffries, Mr P Carroll, Dr P Kruse, Ms B Auld, Mr R Brunt, Ms J Watford, Mr P Somers, Mr J Duguid (Lawyers for Reconciliation), Mr R Hitchcock (Miscellaneous Workers Union), Mr C Draffin, Mr T Webb, Wadeye elders group, Alpururulam Community Government Council, Ltyentye Purte Community Government Council (Santa Teresa), Mr L Silvester, representatives from the Ethnic Communities Council, representatives from Jabiru Town Council, Territorians for a Democratic Statehood, and the Committee of the Indigenous Constitutional Convention.

Procedure at meetings

The approach adopted by the Committee at meetings was not to promote Statehood but to turn the meeting over to the attendees for their comments on why people voted No in the referendum and what future processes would be appropriate if Statehood is to proceed.

An indication by way of a show of hands was usually sought at meetings as to the proportion of people who voted Yes and No, and what proportion of people supported Statehood in principle, subject to the process adopted.

In almost all cases a majority of the attendees indicated they had voted No while a large majority of people at meetings indicated that Statehood ought to be pursued.

Reporting period

The Committee was originally required to report to the Assembly within six months. This would have resulted in its report being presented during the February 1999 Sittings - there being no further Sittings until late April 1999 - an effective consultation period of less than three months taking into account the December-January holiday period.

The Committee was strongly of the view that this timeframe was inadequate to conduct comprehensive and effective community consultations. This was reinforced following a request from the Northern and Central Land Councils that consultations not be conducted in Aboriginal communities until after the Indigenous Constitutional Convention which was scheduled for Batchelor in early December 1998.

As a result, on 16 February 1999, the Legislative Assembly granted approval for the Committee to defer the presentation of its report until the April 1999 Sittings.

Market research

This Committee was mindful of the possibility that, by relying only on public meetings and written submissions, it may not be receiving the views of a full cross-section of the public. In addition, the information being received in these ways was strictly qualitative in nature and was not able to be extrapolated with any confidence.

For this reason, the Committee decided that independent market research would provide a measure against which other feedback could be assessed and would provide a more reliable statistical indication of the views of Territorians than the qualitative findings.

As a result, the Chief Minister's Office commissioned Market Equity (SA) Pty Ltd to undertake a post-referendum poll for the Standing Committee. The purpose of the study was to provide a quantitative measure of general opinion on the issue of Statehood. In addition, the Committee requested that the poll measure public feeling on Statehood as it was last October and identify where, if at all, there have been changes in attitude or opinions about this question since then.

The study was conducted by telephone and was directed at a randomly generated sample of 550 persons, representative of the Territory by location, age, gender, and work status. Interviewing was conducted at the end of February 1999.

CHAPTER 3: THE INDIGENOUS CONSTITUTIONAL CONVENTIONS

3.1 Introduction

Two Indigenous Constitutional Conventions were held in 1998. These conventions resulted in two documents: the *Kalkaringi Statement* and *Standards for Constitutional Development*.

Following the boycott and walkout from the Convention, ATSIC, the Northern Land Council and the Central Land Council took the decision to campaign for a No vote and to separately develop their own Constitutional Convention process, essentially ignoring the work of the February Convention, and focussing on issues specifically of interest to Aboriginal people.

As a result, a Constitutional Convention of Central Australian Aboriginal people was held at Kalkaringi in August 1998. The Convention resulted in the *Kalkaringi Statement*.

This was followed in December by an Indigenous Constitutional Convention held at Batchelor which agreed on principles and standards for constitutional development in the Northern Territory. The Batchelor Convention documents are known as the *Standards for Constitutional Development*.

3.2 The Kalkaringi Statement

A meeting of the group known as the Combined Aboriginal Nations of Central Australia met at Kalkaringi over the period 17-20 August 1998. More than 800 people came together to discuss the issues of Statehood, the draft Constitution which had been endorsed by the Northern Territory Legislative Assembly and the proposed referendum on Statehood.

The Convention adopted a set of aspirations and concerns identified by delegates in relation to Statehood, constitutional development and governance. This is entitled the *Kalkaringi Statement*.

The Kalkaringi Convention endorsed a "No" position on the Statehood referendum (irrespective of the wording of the question). There was widespread concern at the rush by Chief Minister Shane Stone to achieve Statehood by 2001 and about the Northern Territory Constitutional Convention held in March 1998.

The *Kalkaringi Statement* adopted the following general principles.

- (a) *That we do not consent to the establishment of a new State of the Northern Territory on the terms set out in the Draft Constitution adopted by the Legislative Assembly on 13 August 1998.*

- (b) *That we will withhold our consent until there are good faith negotiations between the Northern Territory Government and the freely chosen representatives of the Aboriginal peoples of the Northern Territory leading to a Constitution based upon equality, co-existence and mutual respect.*
- (c) *That the Northern Territory Government must provide adequate resources and negotiate in good faith a realistic timetable for such negotiations.*

The *Kalkaringi Statement* is attached to this report at Appendix B.

3.3 The Batchelor Convention Resolutions: Standards for Constitutional Development

A week-long Indigenous Constitutional Convention was held at Batchelor College from 29 November – 4 December 1998. Arising from the Convention was a set of resolutions entitled *Standards for Constitutional Development*.

Standards for Constitutional Development adopted and endorsed the *Kalkaringi Statement* and went on to deal with such matters as an Inquiry into Self-Government, the Reeves' Review of the *Aboriginal Land Rights (NT) Act*, Aboriginal law, land rights and other rights, human rights, education, good government, self-government, political participation, Aboriginal self-determination and process issues.

The Batchelor Convention noted that constitutional reform to recognise, enhance and protect Aboriginal rights is an ongoing process requiring further investigation, research, negotiation and development.

The Convention affirmed the principle embodied in the *Kalkaringi Statement* that Aboriginal people will not consent to Statehood until and unless their rights and interests are recognised, enhanced and protected in its Constitution and the NT Government is willing to enter into good faith negotiations under a framework agreement which will allow recognition of Aboriginal self-government.

The Convention also called upon Northern Territory and Commonwealth Governments to make adequate resources available to implement the resolutions of the Convention.

It was agreed that the executive committee which was formed at the Batchelor Convention would commence a process of negotiation with relevant political organs, government representatives and others regarding the further development and entrenchment of Indigenous rights and interests in the Australian and NT Constitutions, in particular the terms and conditions for the establishment of the Northern Territory as a State.

A full copy of *Standards for Constitutional Development* is attached to this report at Appendix B.

3.4 General comment

The list of demands from the *Kalkaringi* and *Batchelor* Conventions is long and detailed and will have a significant influence on the Northern Territory's constitutional development.

The outcomes from the two Indigenous Conventions set out very clear conditions upon which Aboriginal support for Statehood would be forthcoming. It is not for this Committee to adopt a position on the resolutions of the two Conventions. Many of the resolutions would be most appropriately dealt with at a properly constituted Convention specifically tasked with the drafting of a Northern Territory Constitution.

Irrespective of how the resolutions are progressed, the Committee is of the view that there must be ample opportunity for discussion and negotiation of the resolutions.

Several resolutions and issues warrant specific mention. These are addressed in the following sections.

3.5 Recognition of customary law

The Kalkaringi and Batchelor Conventions call for the recognition of Aboriginal law through Aboriginal traditional law holders and Aboriginal structures of law and governance. The Conventions also seek to have Aboriginal law recognised as a source of law in the Constitution.

The Committee recommends that this resolution be addressed.

It should be noted that both the draft Constitution prepared by the Sessional Committee on Constitutional Development and the draft Constitution that resulted from the 1998 Statehood Convention contained significant references to the recognition customary law in a Northern Territory Constitution. The recognition of customary law in the draft Constitutions was not acknowledged in either the *Kalkaringi Statement* or the Batchelor Convention's *Standards for Constitutional Development*. The reason for this is not clear.

This would be the first time that Aboriginal customary law was recognised in any Australian constitution, State or Commonwealth. As such, it would appear to be a significant and substantial step forward for Aboriginal people in their aim to have their history, culture and law recognised within the formal governance structures of this country.

3.6 Constitutional protection for Aboriginal rights

The Indigenous Conventions' call for constitutional protection for Aboriginal rights generally, the rights of the Aboriginal peoples in relation to land, and to the lands, air, waters, flora and fauna and other resources which Aboriginal people traditionally own, occupy or use or have otherwise occupied or used, and in respect of cultural and intellectual property, amongst others.

The Committee notes that the protections sought could be achieved through the Constitution or by way of other legislation.

3.7 Inquiry into the experience of Aboriginal people

This Committee notes that the Batchelor Convention resolutions call for a Commonwealth inquiry into the experience of Aboriginal peoples under the *Northern Territory (Self-Government) Act 1978*. The aim of this inquiry would be to review (a) the political, social and cultural impact on Aboriginal peoples of the legislation, and (b) the financial arrangements for the provision of services to Aboriginal communities, and to make

recommendations for future relationships between the NT Government and Aboriginal peoples.

3.8 Consultation, information and education campaign

The Standing Committee welcomes the resolution that the Committee of the Indigenous Constitutional Convention shall undertake an extensive consultation, information and education campaign to inform all Aboriginal people of the Northern Territory of the outcomes of the two Conventions.

Similarly, the Committee welcomes the proposal that the Convention Committee will inform and involve non-Indigenous Territorians with an interest in constitutional development.

As will be discussed in more detail in subsequent chapters, the Standing Committee has found that the strongest message from communities throughout the Territory - whether they be urban, Aboriginal, rural or remote - was the request for an appropriately targeted, objective education program on Statehood. This Committee sees this step as imperative if Statehood is to proceed with the support of the community (as it only can) and is recommending that as a first priority there be a public education program to inform Territorians about what Statehood means and about the process of constitutional development.

The Standing Committee very strongly encourages the Convention Committee to work together with those responsible for developing the community education program recommended by this report. A combined effort on this task will serve to deliver a comprehensive and appropriate program for all Territorians. The Standing Committee also urges the Convention Committee to fully participate in any such programs which might be instigated in the future so that its own networks and consultative processes ensure the education program reaches all Territorians.

3.9 Meeting with the Committee of the Indigenous Constitutional Convention

Recognising the importance of Aboriginal people in the constitutional development process and the impact of the resolutions at the Kalkaringi and Batchelor Conventions on the future shape of Territory Statehood, the Standing Committee placed considerable importance on meeting with the representatives elected at the Batchelor Indigenous Constitutional Convention.

The Committee of the Indigenous Constitutional Convention held its first meeting on 24 April 1999 in Alice Springs and the Standing Committee took up an invitation to meet with the Convention Committee on that day.

The Convention Committee presented this Committee with a position statement which they asked be included in the Standing Committee's report and read out in Parliament. The position statement is as follows:

The Legal and Constitutional Affairs Committee must acknowledge the Kalkaringi and Batchelor statements as the representative position of Aboriginal people and the framework for inclusive constitutional development in the NT. The statements spell out the content and the process for negotiation with Aboriginal people.

Negotiation over statehood can only proceed when the NT Government makes a commitment to the negotiation of a framework agreement including:

- *The NT Government commits itself to protecting the Aboriginal Land Rights Act in its current form, and no change without the informed consent of Aboriginal people;*
- *No major reforms affecting Aboriginal people and their inherent rights (e.g. local government, health, education and housing) are to proceed without:*
 - (a) recognition of Aboriginal law;*
 - (b) recognition of traditional land ownership;*
 - (c) informed consent of Aboriginal people.*

The most powerful message from the Indigenous Convention Committee was that its call for a **framework agreement** must be addressed - with or without Statehood. The Committee of the Indigenous Constitutional Convention has made it clear that, prior to considering the Statehood question, Aboriginal people want to negotiate a framework agreement on the future relationship between the Northern Territory Government and Aboriginal people aimed at addressing the social and economic disadvantages of Aborigines and working towards their full, active and equal participation in the Northern Territory's future. It recognises that this issue is quite distinct from Statehood but is not prepared to address constitutional development issues until its other concerns are met.

Aboriginal people are no longer prepared to come to the table to negotiate other people's priorities until their own concerns are resolved.

Aboriginal people tend to make communal decisions on political and voting issues. In arriving at their decisions, there is usually a high degree of community discussion, and advice is often sought from Aboriginal organisations such as ATSIC and the Land Councils. These organisations exercise great influence over the views of Aboriginal people, particularly in the communities. The conflict and controversy in Aboriginal affairs has left a high level of distrust amongst Aboriginal people and their organisations, much as it has amongst the non-Aboriginal population and the Government.

The group identified the development of the framework agreement as an essential starting point to enable self-determination for Aboriginal people. The Convention Committee reaffirmed that self-determination was not about "nations within nations" but about individual communities choosing the extent to which they achieved greater control of their own affairs.

The Convention Committee pointed out that there was a feeling that Aboriginal people cannot afford Statehood because of the perceived risk to Aboriginal advancement that Statehood posed. There was an emphasis on the need for a concerted effort to improve the economic circumstances and viability of Aboriginal communities as a priority. They made the point that protection of land rights is not the only answer to Aboriginal people's concerns because protection of land rights means little without economic development for Aboriginal people.

The Convention Committee observed that Aboriginal people were primarily responsible for the No result in the October referendum. They stressed the point that they are not prepared to even enter into the early processes of moving towards Statehood until the priorities of Aboriginal people are dealt with. Accordingly, they did not see the need for another Constitutional Convention in the immediate future. However, if the Northern Territory Government makes a commitment to the negotiation of a framework agreement and to implement the Kalkaringi and Batchelor Convention resolutions, Aboriginal people

would be prepared to participate in the Statehood process. It is important to Aboriginal people that they are the ones determining their future and that constitutional development be a fully inclusive process. In this regard, the Chairman of the Convention Committee, Mr Galarrwuy Yunupingu, indicated that he would expect the membership of the Convention Committee to be included as delegates to any future Constitutional Convention.

The feeling of the meeting was that there would need to be a tremendous increase in the level of trust which Aboriginal people placed in the Government before there could be any consideration of issues such as the transfer of the *Aboriginal Land Rights (NT) Act* to the Northern Territory, even if the legislation enjoyed special protection within the Northern Territory Constitution.

The Standing Committee is under no illusions about the difficulty in reaching a balanced and mutually acceptable answer, particularly after so many years of suspicion and conflict. However, **this proposal may create the opportunity for a new beginning** where agreed strategies can be developed to bring the Northern Territory community closer together to address the continuing serious health, education and social problems of Aboriginal people and to open up opportunities for economic development on Aboriginal land and enable the whole of the Territory and all of its people to achieve their potential. **The Committee is of the opinion that the attempt should seriously be made.**

Not only may such a process pave the way for removing the opposition of Aboriginal organisations to progressing towards Statehood, it will be a major contributor to overcoming the entrenched suspicion of the NT Government which exists within much of the Aboriginal community. Overcoming this distrust, combined with effective community consultation and education will, the Standing Committee believes, lead to a broad community support for Statehood within the Aboriginal population.

CHAPTER 4: REASONS FOR THE “NO” VOTE IN THE OCTOBER 1998 STATEHOOD REFERENDUM

The major task of the Committee was to consult Territorians on their views following the Statehood referendum. As a result of the extensive consultation program outlined earlier in this report, it became apparent that there were a number of key reasons that people voted No in the October 1998 referendum. This has been reinforced by the quantitative market research commissioned by the Committee. In addition, the Committee found that some additional issues were of particular concern to Aboriginal people, especially in remote areas.

In summary, while there is a small core of people (about 23%) who are opposed to Statehood, most who voted No are not opposed to Statehood *per se* but listed certain deficiencies in past processes as the reasons for their No vote. These included a lack of information and understanding about Statehood, concern about the Statehood Convention process and the events surrounding it, a lack of trust in those responsible for last year's process, inadequate consultation, the role of the Chief Minister seemingly pushing the issue too fast, and a protest against the then Chief Minister and “the arrogance of politicians”.

Aboriginal people voted very much as a block No vote and while the above factors also featured, particular issues stood out. There was an almost total lack of understanding of what Statehood meant and a distrust of the Northern Territory Government. There was a fear that Statehood would increase the power of the NT Government, a strong lobby for the No vote from ATSIC, the Central Land Council and the Northern Land Council (and virtually no alternative information), and no knowledge of the provisions of the Draft Constitution. These factors led to serious concerns about losing existing rights, especially land rights and concern about the impact of Statehood on law, culture and language.

This view was reinforced by the Reeves Review into the Land Rights Act which had taken place during 1998. Subsequent events such as the decision on bilingual education have served to reinforce this concern.

A more detailed analysis of the reasons for the No vote is set out in the remainder of this chapter.

A summary of the frequency of comments made at community consultations and through written submissions is at Appendix A. While the statistics drawn from the Committee's public meetings have limitations due to the nature of taking evidence at such meetings, the figures are considered by the Committee to provide an accurate reflection of the relative frequency with which comments were made.

It should be noted that the reasons for the No vote expressed throughout the Committee's community consultations are quite consistent with the Newspoll market research conducted in 1995 which identified a demand for more information as the key issue. Long term issues which were identified in the 1995 polling were not properly addressed in last year's process and, until they are, they will continue to be an impediment.

The full report of Market Equity (SA) Pty Ltd, which gives the findings of the polling commissioned by the Committee, is attached at Appendix C.

4.1 Do not support Statehood - “No means No”

Committee consultations

A small number of people voted No because they do not support Statehood. There were 9 people in the urban meetings who indicated this was the reason for their No vote and 4 in remote communities. From those who provided written submissions, there were 10 individuals and two groups/organisations who stated they did not support Statehood, or who did not see any reason for it.

Market research

The market research found that 14.8% of respondents voted No because they like the Territory the way it is and 7.4% considered the Territory’s population is too small to justify Statehood (Table 16, Market Equity report). Both issues reflect a more entrenched negative view on Statehood than the other main reasons given by respondents for their No vote, although it is possible the group concerned about population may change their view following a comprehensive education campaign.

A segmentation analysis of the polling results identified 23% of the respondents as “pessimistic, disinterested in the Statehood debate, and believe that it is someone else’s responsibility. They believe that they already have had sufficient information, and are likely to vote No a second time.” (Table 30, Market Equity report).

4.2 A lack of information

Committee consultations

One of the reasons most commonly given for the No vote was that people did not understand what Statehood meant and that there was insufficient information available to people about Statehood and its implications. While some people pointed out that the ten years of public consultation by the Sessional Committee on Constitutional Development should have meant people were informed, the vast majority of feedback reflected that people did not consider they had enough information about Statehood.

This reason was frequently identified in both urban and Aboriginal communities: in the meetings in urban communities, 50 people indicated this was a reason for their No vote, while in Aboriginal communities/groups, this was given as a reason for the No vote on 48 occasions. A lack of information was given as a reason for the No vote in 12 of the written submissions (4 individuals and 8 groups).

I drive taxis and the most common comment I heard was that there was not enough information - Darwin.

The reasons for Statehood were not discussed. Without this, there is no reason to vote for it - Nhulunbuy.

If you want my support I need to know whether I am going to be affected - Yulara.

People around here do not understand it - Utopia.

That people did not understand the implications of Statehood was evidenced in the types of matters they thought may be or would be affected by a grant of Statehood. These included: pensioner entitlements and concessions, taxes, Commonwealth funding (cuts to which would lead to deteriorating health, education and road standards and facilities in the Territory), the railway, job opportunities, funding to remote communities, small business and the financial viability of the Territory. Some people thought that Statehood depended on matters such as a sufficient population level, a sound industrial base, and an increased level of Commonwealth parliamentary representation.

These matters are not affected by, nor do they influence, a grant of Statehood.

The issue of lack of information to some extent overlaps with people's concern about a lack of consultation on Statehood: this was raised on 24 occasions in urban meetings, on 34 occasions in meetings with Aboriginal groups, and in 15 written submissions.

Market research

The poll findings stated that “(t)he most often cited reason for forming opinions on the issues or actually voting a certain way in October was “lack of information” (19.8% of respondents) (Table 16, Market Equity report). The research report observes that this statement is not directed at the providers of information – most agree that information was available. It is more that the public did not feel that they were personally informed on aspects of the issues. At the same time, 40.6% of respondents indicated they had no knowledge at all or did not have enough knowledge in the week or so prior to the referendum (Table 7).

The poll found that specific topics on which people required more information were how Statehood would affect life in the Territory, how Statehood would affect me/my family, the No case, content of the draft Constitution, how Statehood would affect my community, the Constitution (process of Convention), and the cost involved (Table 8, Market Equity report). Further, 64.9% of respondents indicated that to make a decision on the Statehood question they needed information on both the Yes case and the No case (Table 25).

4.3 Convention process

Committee consultations

Many people commented that their concern about the processes of the Statehood Convention contributed to their decision to vote No. This was particularly the case at urban meetings (81 people) but was also mentioned at some meetings with Aboriginal groups (11 people). Typically these concerns pertained to the absence of popularly elected delegates to the Statehood Convention, and the introduction of an alternative draft Constitution prepared by the Government, which many perceived as a sidelining of the draft developed by the Sessional Committee on Constitutional Development following years of community consultation.

Comments made during public and individual meetings included –

The Denis Burke constitution collapsed the timeline far too much and provided a far too limited opportunity for the [Convention] delegates to study it - Alice Springs.

We had that people's Convention, but it was a Convention by invitation - Alyangula.

In addition, concern was expressed about the Convention process in 28 of the written submissions (14 individuals and 14 groups).

Market research

Interestingly, this issue did not rate in the Market Equity polling as a reason for the No vote. However, 14% of respondents to the poll nominated "Constitution (Process of convention)" as a specific matter on which they required more information (Table 8, Market Equity report).

4.4 A lack of trust

Committee consultations

Significant numbers of people stated that as a result of last year's Statehood process, they felt distrustful of politicians and this lack of confidence contributed to their decision to vote No. This issue was raised on 31 occasions in the urban meetings and 24 times in meetings with Aboriginal groups. It rated highly in the written submissions, being raised in almost one third (27) of the submissions.

Politicians need to persuade people they can be trusted before people will feel comfortable about proceeding - Umbakumba.

I voted No because of a total mistrust of Shane Stone and his Government - Alice Springs.

The No vote occurred because the trust was not there - Pine Creek.

Trust is the main issue. There are too many instances where people have not been listened to - Papunya.

Market research

The trust issue featured in the polling as a reason for the No vote although it tended to be expressed in different ways. The reason "arrogance of politicians" reflects a lack of trust in the people's elected representatives (18% nominated this as an issue they considered in forming their opinion on the referendum question and 9.2% gave this as their main reason for voting No). People were also concerned about the politicisation of the process ("too political - Chief Minister pushing it) and 10.2% of respondents gave this as their main reason for voting No (Tables 12 and 16, Market Equity report).

4.5 Issues raised specifically by Aboriginal communities

4.5.1 Indigenous issues

Committee consultations

Not surprisingly, “Indigenous issues” as a reason for the No vote was raised most frequently at the meetings in Aboriginal communities (raised on 63 occasions) and was in fact the single issue of most concern. Nevertheless, the issue was also raised regularly at the urban meetings (33 people).

Examples of indigenous issues included concern about losing existing rights, especially land rights, and concern about the impact of Statehood on law, culture, land rights, sacred sites, ceremony and language.

Market research

The poll asked respondents to nominate issues which they considered in forming their opinions on the referendum question and 7.8% of respondents nominated “Indigenous issues” as at least one of the issues they had taken into account (Table 12, Market Equity report).

4.5.2 Inadequate consultation

Committee consultations

The issue of inadequate consultation did not rate highly in urban meetings (raised by 24 people) but was a comparatively high rating issue in remote communities where it was the third most common issue raised after indigenous issues and lack of information (34 times).

There was no meaningful consultation regarding the Convention - Ramingining.

People voted No because they had no input. We want to be consulted and to move ahead as one people - Bulman.

Voted No because I felt I had no say in Statehood. Would support Statehood following a better consultation process - Borroloola.

Market research

The issue of consultation did not specifically arise through the polling, probably because of the low number of Aboriginal people contacted in the survey. However, it may be possible to infer that the reasons respondents gave for the No vote relating to the approach and attitude of politicians may reflect a view that the Government (or politicians generally) did not sufficiently consult the public during the Statehood process in 1998.

4.6 Perceptions of the role of the Chief Minister

Committee consultations

Another issue which Territorians raised consistently throughout the Standing Committee's consultations was their concern about the constitutional development process in 1998 and the role of the Chief Minister. A regular comment was that people voted against "Stonehood" not Statehood. Many comments reflected a mistrust of the then Chief Minister and the Northern Territory Government:

The way this patronising campaign was run by the Chief Minister earlier in the year shows we are not ready for Statehood - Alice Springs.

Point the finger at the Chief Minister, who was arrogantly defying 28% or 30% of the NT population in the Aboriginal community - Batchelor.

Last year it was like a dictator telling the people how it would be done - not democratic, especially the Convention - Santa Teresa.

Forty-one people at the urban meetings stated this was a reason for the No vote, while 15 people gave it as a reason in the Aboriginal communities. Concern about the Chief Minister's role in the process was raised in 15 of the written submissions. However, there is an argument for reading this together with the broader issue of lack of trust or confidence in politicians which was mentioned by 31 people in the urban meetings and by 24 people in the meetings with Aboriginal communities/groups.

It is noted that in the polling, 35.7% of the 112 unsolicited comments to a question on the respondent's reaction to the outcome of the referendum made the point that "people were rejecting the party, not Statehood" (Table 18, Market Equity report).

Market research

The polling revealed that for those who voted No, three reasons relating to the Chief Minister, and/or politicians generally, rated in the top six:

Table 4.1

MAIN REASON FOR NO VOTE	Number	Percentage
Lack of information	56	19.8
Like the Territory the way it is	42	14.8
Don't like Shane Stone	30	10.6
Too political – Chief Minister pushing it	29	10.2
Arrogance of politicians	26	9.2
Population too small	21	7.4

From Table 16, Market Equity report.

4.7 The referendum question

Committee consultations

The referendum question was an issue raised less frequently than the above matters but nevertheless it was mentioned consistently during the public meetings and in the written submissions. It was raised on 35 occasions in the urban meetings, 7 times in Aboriginal communities/meetings and in 12 of the written submissions. It appears in many instances to have galvanised people's decision to vote No.

Some people reported that they went into the polling booth intending to vote Yes, but were sufficiently confused when they read the question to change their vote to No. At least one person reported going into the polling booth and standing there for ten minutes trying to work about what the preamble and the question actually meant.

Others told the Committee that when the then Chief Minister made his media statement before the referendum to the effect "if people do not agree with the Draft Constitution, they should vote No", they decided "to take his advice".

It is noted that almost 10% of the written submissions supported a single-topic referendum question or separate questions on different topics at any future referendum.

Market research

Respondents were asked to recall their reaction to the outcome of the referendum. Twenty-four per cent of respondents said they were "Not really surprised – there was a lot of confusion as to what the question really meant". This ranked as the second most common response to the question (Table 17, Market Equity report).

Respondents were also asked to indicate whether they personally considered the question too complex or whether they found it straightforward. Of the Yes voters, 15.3% considered the question too complex, while 25.6% considered it straightforward. Of the No voters, 28.4% considered the question too complex, and 17.6% considered it straightforward (Table 24).

4.8 A final word

The reasons given for the No vote were varied as discussed above but were consistent across the Territory. Some Territorians also expressed a view as to what the No vote was not about:

One thing's for sure, gentlemen - it's never been about cracker night and speed limits - Alice Springs.

Took exception to comments by the former Chief Minister following the No vote. Considered the outcome reflected the maturity of the electorate - Nhulunbuy.

CHAPTER 5: ATTITUDES TOWARDS CONTINUING TO PURSUE STATEHOOD - DOES NO MEAN NO?

5.1 General

The overwhelming message from all over the Territory - whether it was from the public or individual meetings, written submissions or from the independent market research - was that Territorians do support Statehood and want the process of constitutional development to continue.

While there is a small percentage of people who believe that “No means No”, the great majority of people who participated in the community consultations expressed the view that the Territory should continue towards Statehood. This is more quantitatively demonstrated through the market research results: only 23% of the sample are strongly of the view that Statehood should not proceed and are unlikely to change their minds.

The market research found that approximately 50% of people support the Yes case but, more significantly, 28% of people surveyed are what could be called “swinging voters”, a majority of whom are likely to vote Yes given another chance. The market research analysis describes these people as interested in Statehood, wanting more information and acknowledging it is their responsibility to become fully informed and make their own decision. Taking into account these findings, the market research report concludes “Territorians are sure they want Statehood and that eventually this will happen.”

People are not saying “No, stop – we are sick of it.” But what we are saying is that it needs to be open, it needs to be fair. We want this process to have integrity and we expect our politicians to deliver that - Alice Springs.

Keep going with Statehood, You cannot throw it away after years of support just because of one “No” vote - Borroloola.

The Convention was a problem but I would not have reservations about Statehood if provided with the information. People do not fear Statehood; it was a fear of the way it was gone about - Yulara.

We are reminded these comments are particularly relevant in urban communities; the great majority of Aboriginal communities reserved their position on Statehood *per se*, but almost all agreed to starting the process again with better information and more consultation. A specialised and dedicated program of education, particularly in Aboriginal communities, will be integral and vital in addressing this matter.

Aboriginal people represent 27% of the Northern Territory population and tend to vote as a block. Therefore their particular concerns, particular issues and particular priorities will need to be addressed for them to be supportive of Statehood. The need for inclusiveness and close consultation are key strategies to address the concerns of this part of the Northern Territory constituency.

Initial community education topics could comprise:

- placing the move to Statehood in the context of 88 years of hard-fought constitutional development in the Territory;
- the implications/advantages of Statehood;
- a Yes case and a No case;
- the (lack of) financial implications flowing from a grant of Statehood;
- how Statehood may affect Aboriginal land rights and its possible impact on law, culture and language;
- the process of achieving Statehood; and
- information on constitutional issues and on constitution-making processes.

The Committee's findings are set out in more detail in the remainder of this chapter.

5.2 Issues for Aboriginal Communities

While Aboriginal people had similar views to non-Aboriginal people on many issues, they were particularly concerned to protect rights previously won and to protect land, law, language, and culture.

The great majority of Aboriginal communities reserved their position on Statehood *per se*, but almost all agreed to starting the process again with better information and more consultation. Two Aboriginal communities visited by the Standing Committee stated they wanted to give more consideration to whether or not they were prepared to support a move to Statehood.

It is noted that this issue was not exclusive to Aboriginal communities, being raised by 4 urban communities/groups and, in the written submissions, by 6 individuals and 3 groups/organisations.

Other Aboriginal communities were prepared to support Statehood without a threshold caveat, but did make it clear that the process must address issues important to Aboriginal people.

Not only would the Aboriginal Land Rights (Northern Territory) Act need to be talked about in the process, we would also have to talk about regional services and regional agreements, which goes to all types of structure of government: health, law and justice, roads, housing, education - Tennant Creek.

Everyone is looking forward to Statehood but wants recognition and protection of rights - Ramingining.

There is a feeling that Statehood should be proceeded with, but Aboriginal people will be concerned to ensure their land is protected. This is a big issue for the Northern Territory - Daly River.

Put our rights inside the law, then we will walk with you to Statehood - Ramingining.

As discussed in Chapter 3, two Indigenous Constitutional Conventions were held in 1998 which agreed on principles and standards for constitutional development in the Northern Territory.

The *Kalkaringi Statement* developed at the Kalkaringi Convention in August 1998 sets out general principles essential to Aboriginal people's consent to Statehood, Aboriginal self-determination and self-government, Aboriginal law, land rights and other rights, sacred sites and significant areas, political participation, human rights, essential services and infrastructure, education, and justice issues.

The resolutions of the Indigenous Constitutional Convention at Batchelor in December 1998 raise a number of threshold issues for Statehood such as an Inquiry into Self-Government, the Reeves' Review of the *Aboriginal Land Rights (NT) Act*, Aboriginal law, land rights and other rights, human rights, education, good government, self-government, political participation, Aboriginal self-determination and process issues.

5.3 Other issues as a priority

Some Aboriginal communities expressed a view that they would be prepared to support Statehood providing other issues were dealt with first, for example, a guarantee not to amalgamate small community governing structures into single regional community government councils against the wishes of the communities concerned, reversal of the decision on bilingual education, and a statement from the NT Government expressing concern about the recommendations of the Reeves Review of the *Aboriginal Land Rights (Northern Territory) Act*.

5.4 Other issues generally

The Batchelor Indigenous Constitutional Convention resolutions called for a review of Northern Territory Self-Government. This issue was also raised on 5 occasions in the public and individual meetings.

Others felt there were legislative measures which should be taken as part of the move towards Statehood, such as reform of the electoral system. Others saw freedom of information legislation and repeal of the mandatory sentencing legislation as appropriately accompanying Statehood.

This topic is also explored in the next chapter.

5.5 Market research

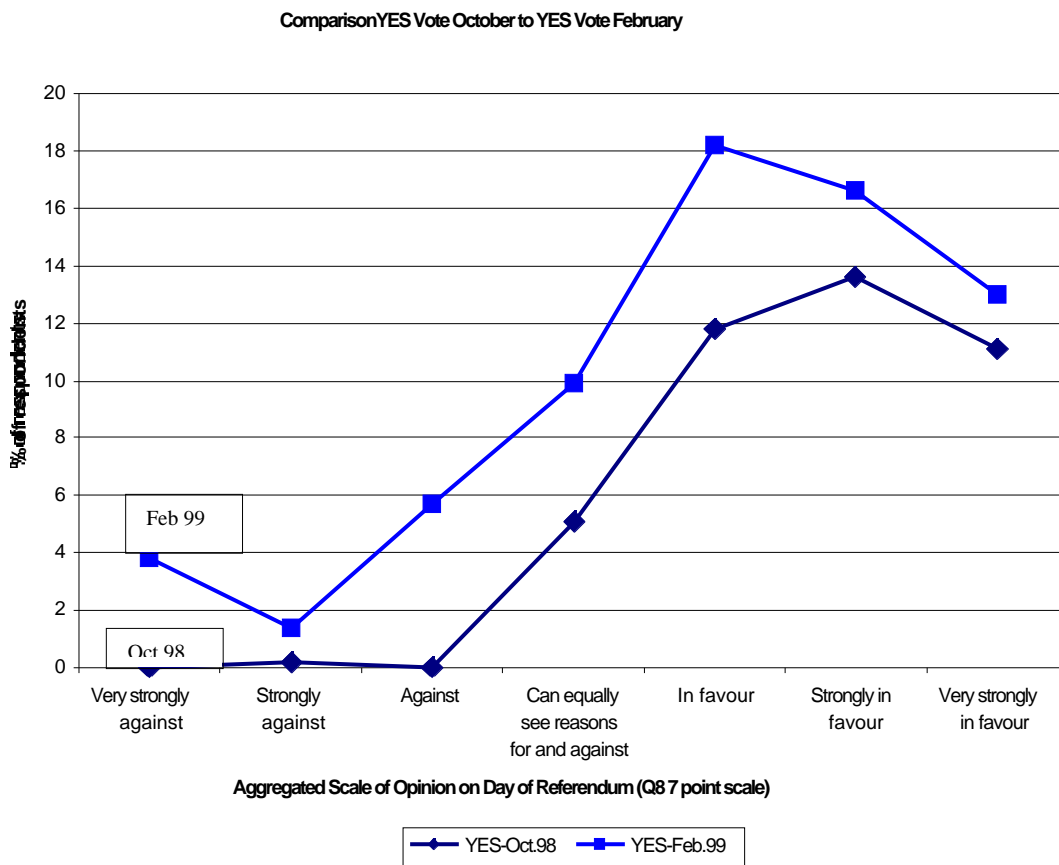
The Committee commissioned a post-referendum poll to provide a measurement of public feeling as it was last October and where, if at all, there have been changes in attitudes or opinions about this question since then. This was intended to provide a measure against which the qualitative feedback from the community consultations could be assessed. The polling was conducted in all regions of the Territory but the Committee acknowledges that the methodology of telephoning people in their homes meant a disproportionately small number of Aboriginal people were polled.

The poll resulted in the following key findings:

- Territorians are sure that they want Statehood and that eventually this will happen. The manner in which Territorians cast their vote during the referendum on 3 October 1998 is not indicative of their belief that the Northern Territory should be a State.

- The general public wants to be fully informed on issues that relate to the effects of constitutional changes at a personal, community and business/employment level. That information would be acceptable to them endorsed by an independent, non-political source. As well, information provided by both political parties, the Parliament and local government is expected.
- The holding of the referendum in conjunction with the Federal election, the phrasing of the referendum question, bipartisan support for the Yes case, and the traditional attitude of Australians in adhering to the known rather than initiating change, created an atmosphere of uncertainty for a large proportion of the general public.
- It appears the phrasing of the referendum question contributed to confusion on the issue and in some cases a rejection of the proposal.

The market research report concluded that generally it is felt that the Statehood question should be posed again and that it will be carried but, as indicated above, only after an appropriate process of community education to enable people to understand the issues involved. According to the market research, opinion on the question of Statehood has moved towards a stronger Yes viewpoint. Comparing the October 1998 vote with opinions as at February 1999, the following graph shows that the number of persons voting Yes increases across the scale. The groups who demonstrated the largest swing to Yes are those who were "Against" (zero to 6%) and those who were "In favour" (12% to 18%). However increases are seen across the entire scale.



A segmentation analysis of the polling was prepared by Market Equity (see Part 4 of the company's report) on the basis that the report findings indicated it was probable that the

population could be categorised in discrete groups or segments. The value of this approach is that it can assist in the development of effective information/communication strategies when required. The segmentation analysis revealed three discrete categories within the population:

Table 5.1

Segment 1 “Against”	Segment 2 “For”	Segment 3 “More Information”
23% of the sample (127 people)	50% of the sample (225 people)	28% of the sample (154 people)
Pessimistic	Optimistic	Pessimistic
Disinterested in Statehood debate	Highly interested in Statehood debate	Interested in the Statehood debate
Believe it is someone else’s responsibility	Believe it is their responsibility	Believe it is their responsibility
Have had sufficient information	Have had sufficient information	Have not had sufficient information
Will continue to vote No.	Are in favour of another vote	Are in favour of another vote
	Those who voted No in October are likely to vote Yes	The majority are likely to vote Yes, given another chance.

* percentage total exceeds 100% due to rounding.

CHAPTER 6: COMMUNITY VIEWS ON APPROPRIATE MEASURES TO PROGRESS STATEHOOD

Given the strong community support for continuing the movement towards Statehood, a key element of the public meetings, oral submissions and many of the written submissions was the identification of strategies to progress Statehood.

Not surprisingly, the recommended procedures for moving towards Statehood were directly related to issues which led to people voting No.

The first and most important priority was to ensure that the community was properly informed on the question of Statehood. People want to understand this issue and particularly from the perspective of themselves, their families and their jobs. Research also indicates that people are now far more conscious of the importance of understanding Statehood and making a personal assessment.

In light of the above, the first step should be a comprehensive community education program. This was the single issue most consistently identified across the Territory. It is clear to the Committee that this will be a critical first step. A very detailed program is needed to respond to the range of information needs identified in the consultations and the market research. The education program will need to clearly differentiate between the question "What does Statehood mean?" and the issues associated with constitution-making, including the staging of a Constitutional Convention and options for the content of the Constitution.

Particular strategies will need to be developed to consult with and inform Aboriginal communities. This will probably require specific field staff resources because traditional information distribution through the various media and "mail outs" has been demonstrated to be totally inadequate.

Another frequently mentioned issue was that of a Constitutional Convention. Most people who took part in the community consultations and many who provided written submissions agreed there should be another Convention to (re)draft a Constitution for the Northern Territory. There was considerable support for both a fully elected Convention and one where a majority of delegates are popularly elected but which makes provision for the appointment of representatives from minority groups and/or of experts to assist delegates.

Aboriginal people had different priorities to urban communities in the area of future measures. As in urban communities, there was very strong support for an education campaign, but the information sought focussed on the impact of Statehood on land rights, traditional law, culture and language. There was a widespread lack of trust in the Northern Territory Government which information and consultation will to some extent overcome, although the extent of mistrust goes far beyond the Statehood issue. Considerable concern was expressed about the lack of consultation, the need for more time to be taken in the move to Statehood and protection of Aboriginal rights.

Given the level of distrust of the Northern Territory Government as evidenced across Aboriginal communities, it is the Committee's view that other measures need to be taken as a demonstration of good faith from both the Parliament and the Government. The

Committee therefore recommends that the processes of consultation towards the recognition of Aboriginal customary law be commenced now and not wait until the grant of Statehood. The Committee also recommends that the Government commence discussions on the issues raised by the Committee of the Indigenous Constitutional Convention (also see Chapter 3).

Legislative and policy issues were a fourth range of matters raised consistently throughout the consultations, for example, the desirability of freedom of information legislation, the need for a Bill of Rights, future control of the *Land Rights Act* and bilingual education.

While many of these concerns reflected issues which will need to be considered either in the debate on the conditions for Statehood or on the NT Constitution, they are also a reflection of the level of influence that political issues of the day can have on colouring people's attitudes towards Statehood. Hopefully the community education campaign can help to differentiate Statehood and constitutional issues from day-to-day legislative and policy issues.

Finally it cannot be emphasised enough that while the great majority of Territorians want to re-commence the move towards Statehood, and work seriously towards that objective, the process is more important than a specific target date (see Chapter 7 for a more detailed discussion on this point).

These issues are addressed in more detail below. It should be noted that while the statistics drawn from the Committee's public meetings as quoted in this section have limitations due to the nature of evidence taken at public meetings, the figures are considered by the Committee to provide an accurate reflection of the relative frequency with which comments were made.

6.1 An Education Program

Committee consultations

The need for an education program on Statehood was raised more consistently across the Territory than any other issue.

In the public and individual meetings, this issue was identified as a requirement in any future process on 138 occasions - on 87 occasions in urban meetings and 51 times in Aboriginal communities/groups.

In the written submissions, the need for an education program was raised in 31 of the 87 submissions.

With so many people expressing the view that a lack of information was relevant to their decision in the October referendum, the Committee sought feedback on what type of information people were interested in and the how information might be conveyed to the public. This information was also volunteered in a number of written submissions.

Content of the information program

Many people wanted information on the advantages and disadvantages of Statehood, including a No case, details of the financial implications, how Statehood would affect Aboriginal land rights, law, culture and language, the draft Constitution, the process of achieving Statehood.

People wanted to know about the options in relation to a Bill of Rights, reform of the electoral system, an upper house of Parliament and Senate representation.

Information was wanted on the practical impact of Statehood on individuals in social, economic and political terms, the ownership of uranium and mining royalties, management of Kakadu and Uluru National Parks, funding for Aboriginal communities, health and education services, culture, religion, tourism, job opportunities, industry, and the future of the *Rights of the Terminally Ill Act*.

Other suggestions were that the Statehood education program address concepts such as responsible, open and representative democracy, and address the misinformation in the community about Statehood.

How the information program may be conducted

In terms of how the information program should be conducted, issues raised included: information to come from non-political sources, an independent/neutral body develop and implement the education campaign, avoid political posturing and point scoring, materials to be in plain English, involve schools and young people, provide information in different languages (particularly Aboriginal languages), use of interpreter and translator services in consultations, use of television to disseminate educational materials.

Other ideas put forward included:

- the information program may need to be conducted on several levels to cater for the varying levels of interest in the subject;
- “find a middle road” so the information is not too simple nor too detailed and complex
- use the annual Show circuit to inform people about Statehood;
- develop small learning groups in communities;
- take into consideration the transient nature of a significant part of the population;
- people need to be able to discuss it in their own forums, clubs, church groups etc.;
- the education program must be culturally appropriate;
- use a “visual” medium rather than “educational documents”;
- take into account illiteracy levels in the NT;
- produce flyers and use pictorial work and comic-book style format;
- get people inspired/inject passion into the debate;
- use television as a forum for debate on various aspects of Statehood;
- use the media to get people interested;
- send out small documents one at a time;
- summarise the Constitution - people do not want a Constitution in their letterboxes;
- information seminars; and
- videos.

In addition, a few people complained about “information overload” in the lead up to the October referendum. This would be a reaction to both the volume of information and the relatively short time frame to absorb it.

The Northern Territory Auditor-General indicated a willingness to appear at public forums to provide briefings and answer questions on Statehood relevant to his role, and suggested that other independent public officials could be a similar source of information.

Market research findings

The polling found that the people of the Territory believe that each as an NT resident must take responsibility for what is to be the constitutional basis of any move to change from a Territory to a State. People required more information on both the Yes and No cases.

Some 80% of respondents were interested in the issues and 58% had sufficient information prior to 3 October 1998. With only the Yes case presented fully, respondents recognised that they really required information on both cases - 40% of those with not enough information stated that they needed information on all aspects of the question (Tables 6, 7 and page 29 of the Market Equity report).

Those who wanted a focus on specific issues expressed those issues in terms of effect on personal life, family life or community life. In particular, respondents required more information on –

- how Statehood would affect life in the Territory (36.8%);
- how Statehood would affect “me/my family” (29.8%);
- the No case (22.8%); and
- the content of the Constitution (21.1%).

(Table 8, Market Equity report)

When asked “Who should present that information?”, 55.3% of respondents indicated it should come from a non-political and independent source, 10.0% nominated “Chief Minister (Parliament)”, 5.1% wanted information to be endorsed by a political party, 4.0% nominated the media and 22.5% of respondents indicated they wanted information from a combination of these sources (Table 29).

When asked “What would be the best medium for you to receive information about the issues?”, 16.2% nominated detailed mailouts, 13.6% nominated television and 11.6% nominated newspapers. Other options included radio, pamphlets, public meetings, local government office, and “other” (Internet, phone hotline, community notice board), each of which was chosen by fewer than 10% of respondents. Almost 40% of respondents indicated they wanted information from a combination of these mediums (Table 28).

6.2 A Future Convention

Committee consultations

Most people who took part in the community consultations and many who provided written submissions agreed there should be another Constitutional Convention to (re)draft a Constitution for the Northern Territory. This was raised by 58 people in the urban meetings and by 8 people in the meetings with Aboriginal communities/groups. A future Convention was discussed in 25 of the written submissions.

There was considerable support for both a fully, popularly elected Convention and one where a majority of delegates are popularly elected but which makes provision for the appointment of delegates from minorities and/or to bring persons of expertise onto the Convention.

Other issues raised included:

- holding any Convention over an extended period to give delegates time to properly research issues, consult the community and debate concerns;
- staging regional Conventions prior to a Territory-wide Convention;
- number of delegates;
- categories of appointed delegates;
- eligibility of candidates;
- exclusion or inclusion of politicians;
- voting systems;
- appointment of chairperson or facilitator;
- secretariat arrangements;
- rules and procedures;
- venue; and
- interpreter services.

This topic was often a focus of discussions and submissions. However, it is simply too significant and complex a topic upon which to make recommendations at this time. Much more detailed consideration needs to be given to how any future Convention is established, comprised and administered. More community feedback may also be required.

Market research findings

In terms of future process, this issue was not raised in the Market Equity polling.

6.3 Time frame

This issue is discussed at Chapter 7.

6.4 Indigenous issues

Committee consultations

Measures to progress Statehood which were of specific relevance to Aboriginal people were raised in 20 written submissions, on 23 occasions at public and individual meetings in urban areas and on 38 occasions at meetings in Aboriginal communities or with Aboriginal groups.

The issues most frequently raised in meetings in Aboriginal communities were the lack of understanding about Statehood and concern about the effect of Statehood on Aboriginal land rights, traditional law, culture and language. There were major concerns that there had been no consultations and negotiations conducted with the indigenous population before the referendum and that the timeframe was too short. There was also a widespread lack of trust in the Northern Territory Government and people were concerned that it would gain more power if Statehood was granted.

In agreeing to recommence the Statehood process, a number of communities stressed the need for the resolutions of the Kalkaringi and Batchelor Indigenous Constitutional Conventions to be acknowledged and adopted. In developing a Northern Territory Constitution, Aboriginal people stated it was essential that issues such as Aboriginal law, culture, land and sea rights, sacred sites and ceremony be recognised and protected.

Greater representation of Aboriginal people in the Legislative Assembly and at future conventions was also raised.

Matters raised in the written submissions included –

- a) Concern over the repercussions of the possible transfer of the *Aboriginal Land Rights (Northern Territory) Act* from Commonwealth to Northern Territory control.
- b) Concerns over the treatment of the Aboriginal population by the NT Government, the Government's "cavalier" attitude towards Aboriginal people and the lack of consultation in respect of the Statehood issue in Aboriginal communities.
- c) The lack of consultation with Aboriginal people and a sense that the interests of the Aboriginal population were not being taken seriously by the Government.
- d) The requirement for more time to be taken and resources allocated to enable extensive consultations and forums with Aboriginal leaders.
- e) A provision for Aboriginal laws to be included in the Constitution.
- f) Aboriginal communities require specific information on funding arrangements for matters such as health, education and housing before negotiations can commence.
- g) Control of the Land Rights Act and Native Title should be determined before a future referendum on Statehood.
- h) The preamble to the Constitution should include the status of Aboriginal people in respect of custody of Aboriginal land, together with recognition of cultural status and traditional laws.

The Reeves Report on the Review of the *Aboriginal Land Rights (NT) Act* was also raised by a number of communities. Although this was a review commissioned by the Commonwealth Government in respect of a Commonwealth Act, Aboriginal people linked the possible impact of the review findings to constitutional development issues in the Territory.

It is noted that concerns about indigenous issues were raised not only by Aboriginal people but throughout the broader community.

Market research findings

In terms of future process, this matter was not raised in the polling. However, it is noted that 7.8% of respondents in the poll nominated “indigenous issues” as an issue which they took into account in forming their opinion on the referendum question.

6.5 Legislative issues

Committee consultations

Legislative issues were frequently raised in the written submissions as matters to be dealt with as part of the Statehood process – by 18 individuals and 12 groups in the written submissions and in meetings with 33 urban communities/groups and 11 Aboriginal communities/groups.

In written submissions and in meetings, the need for freedom of information legislation to be enacted in the Northern Territory either before Statehood or upon Statehood was raised most frequently (31 times by individuals and/or groups), followed by the need for a Bill of Rights (19) and concern about the future status of the *Aboriginal Land Rights (Northern Territory) Act* (12).

Other issues included: reform of the mandatory sentencing legislation; euthanasia (most comments put the view that euthanasia legislation should never be re-enacted or should not become operative upon Statehood or for some years after Statehood); reform of the *Electoral Act* (electoral system); administrative law reform; whistleblower legislation; gun laws; pastoral excisions legislation; the transfer of legislation upon Statehood; and administrative law reform.

Market research findings

In terms of future process, this matter was not raised in the polling. However, it is noted that 18.4% of respondents in the poll nominated “legislative issues” as an issue which they took into account in forming their opinion on the referendum question (Table 12, Market Equity report).

6.6 The Cost of a Future Process – A Community Perspective

The issue of the cost of continuing the process was discussed at a number of public meetings.

When this issue was discussed, the Committee advised the meetings it could cost between \$8-\$10 million over several years to stage a comprehensive constitutional development process. This would include -

- an extensive education program on Statehood;
- a Convention which would sit for a “reasonable” period of time so as to permit full discussion of issues; and
- remuneration of Convention delegates.

In all cases, the general view of the meetings was that this amount of expenditure was reasonable so long as the process was conducted in an open, fair and democratic way.

CHAPTER 7: A TARGET DATE OF 2001

The Committee's community consultations delivered a clear message that the process of moving towards Statehood is far more important than the timeframe in which it is achieved. Most people who commented on the time frame felt that 2001 was now inappropriate and that it was not important to set a target date.

Community consultations

The Committee's reference referred to "appropriate measures to progress Statehood by 2001." Some people supported the target date for Statehood of 2001.

It is good discipline to apply a time line goal. The best way to cause something to die is to give it a never-ending run. Interest will flag - Alice Springs.

Support the 2001 timeframe. If even earlier, so much the better - Tennant Creek.

Most people, however, supported a longer time frame. Some were comfortable with a target date so long as this could be flexible if necessary. They considered this would help to keep the momentum going. Others felt there should be no target date and that the process should take as long as necessary. Generally the view was that the process is more important than any date.

The Committee's terms of reference refer to Statehood by 2001. Once again, you run the risk of putting pressure of time on the process - Batchelor.

People who were seriously interested in proper process would not be nominating a deadline like 2001. Drop the target date of 2001 - Bees Creek.

A 2,3 or 5 year process - whatever is necessary - Barunga.

I accept Statehood logically as something that will occur but there is no need to put a date on it. It is understood that 2001 is symbolically an excellent date, but there is no need to be locked into that - Alice Springs.

The figures below¹ give an indication of the strong support for a longer time frame:

¹ As stated in other parts of this report, the statistics drawn from the Committee's community consultations have limitations due to the nature of evidence taken at public meetings and the reliance on notes from meetings where transcripts were not available at the time of preparing the statistics. However, the figures are considered to provide an accurate reflection of the relative frequency with which comments were made.

Table 7.1

PUBLIC AND INDIVIDUAL MEETINGS - VIEWS ON FUTURE MEASURES TO PROGRESS STATEHOOD - TIME FRAME	URBAN COMMUNITIES/ GROUPS (29 meetings)	ABORIGINAL COMMUNITIES/ GROUPS (26 meetings)	TOTAL (55 meetings)
Wait before re-starting	3	3	6
Aim for 2001 or as soon as possible	10	-	10
Extend time frame/flexible time frame	49	14	63

Table 7.2

WRITTEN SUBMISSIONS - VIEWS ON FUTURE MEASURES TO PROGRESS STATEHOOD - TIME FRAME	NO. OF OCCASIONS RAISED BY INDIVIDUAL	NO. OF OCCASIONS RAISED BY GROUP OR ORGANISATION	TOTAL FREQUENCY INDIVIDUALS AND GROUPS
Wait before re-starting	4	1	5
Aim for 2001 or as soon as possible	3	2	5
Extend time frame/flexible time frame	14	6	20

The Committee is of the view that it is desirable to nominate a target date for the achievement of Statehood. However, that date must allow reasonable time for public education, a further convention or series of conventions and any necessary referendums. The timeframe must also be seen as flexible and able to be adjusted if required. A target date beyond 2001 would now be appropriate.

Market research

The matter of a timeframe for Statehood was not one which was surveyed in the market research.

CHAPTER 8: RECOMMENDATIONS ON MEASURES TO FACILITATE STATEHOOD

The market research commissioned by the Standing Committee concluded that Territorians are sure that they want Statehood and that eventually this will happen.

The reasons why people voted No were shown to be consistent throughout the Northern Territory and the results from the quantitative polling were consistent with comments received from public meetings and the written and oral submissions.

The view that the Northern Territory should re-commence the process of working towards Statehood was supported by the vast majority of people. Further, there was a high degree of consistency on the appropriate way in which we should proceed. Interestingly, the feedback received by the Committee was quite consistent with the concerns expressed in Statehood polling in 1995.

Therefore the Committee has a high confidence that what we are recommending will carry a high degree of community support.

A process for achieving Statehood

Stage 1

The first and most important stage of the process must be a community education program to provide a full and balanced understanding of the three distinct but related components of the movement towards Statehood:

- (a) what Statehood means and what it doesn't mean;
- (b) the role of a constitution for a new State, what issues need to be debated and their implications, and how does this Constitution come into being; and
- (c) the issues which need to be resolved in negotiation with the Commonwealth Parliament to determine the "Conditions of the Grant of Statehood".

The Committee notes that the Aboriginal constituency has special issues which need to be addressed: a level of trust between Aboriginal people and the NT Government needs to be developed, and the usual means of public education are relatively ineffective in remote communities. Specific strategies, including the use of dedicated field officers, are critical to ensure there develops a sufficient understanding of the issues involved within the Aboriginal population.

The Committee's belief is that a comprehensive education campaign should be carried out commencing as soon as possible utilising all forms of media, educational institutions, mail outs, the Internet and dedicated field staff, particularly for Aboriginal communities.

Only when there is evidence which indicates a sufficient level of understanding of the issues, and not before, should a move to future stages commence. The Committee anticipates that if sufficient resources were made available, this would take 6-12 months.

Concurrent with the community education program, the Committee recommends:

- (1) that the Government and Parliament, through the Standing Committee, approach the Commonwealth Government to ascertain whether it would require a further referendum to re-commence the process to Statehood. While the Committee is very conscious of not ignoring the No vote of 3 October 1998, responses received have so strongly indicated a desire to re-commence the process, that a referendum to get approval to re-start is seen as unnecessary, provided the recommended processes are followed. There is probably a need for formal approval of the relevant Federal Minister to establish a Constitutional Convention, and the Commonwealth Government would need to be prepared to meet to negotiate on the conditions of the grant of Statehood. Therefore it is recommended that these issues be clarified as early as possible with the Commonwealth Government;
- (2) that the Government commence discussions towards recognising Aboriginal customary law and legal systems. This was a recommendation of the previous Sessional Committee on Constitutional Development, further developed by the 1998 Statehood Convention in its draft Constitution. There is no good reason for this process to await Statehood and an early start to the consultations would be an excellent indication of the Government's *bona fides*. We believe this major issue will go a long way to breaking down the distrust towards the Government which exists within Aboriginal communities; and
- (3) that the Government enter into discussions with the major Aboriginal organisations, particularly the Committee of the Indigenous Constitutional Convention, to address the issues raised in the *Kalkaringi Statement* and the Batchelor Convention's *Standards for Constitutional Development*.

Stage 2

Following the community education program:

- (a) if the Commonwealth Government requires a referendum to re-commence the process, hold such a referendum, but only ask one question: "Do you agree that the Northern Territory should proceed towards Statehood?" In the event of a Yes outcome, this should then be followed by the immediate commencement of negotiations on the conditions of a grant of Statehood; or
- (b) if the Commonwealth Government does not require a referendum to re-commence the process, that the Northern Territory Government commence negotiations immediately on the conditions of a grant of Statehood.

Stage 3

Elections for, and the staging of, a Northern Territory Constitutional Convention. Many comments and submissions were received on procedures to develop a Northern Territory Constitution. The Standing Committee has not had sufficient time to develop detailed recommendations on this matter except to recommend that, following the community education program:

- a Constitutional Convention be held;
- all, or at least the majority, of the delegates to the Convention be popularly elected;

- the Convention has sufficient time and resources to fully debate the issues in developing the Constitution; and
- the draft Constitution approved by the Convention be referred to a referendum for acceptance by the people of the Northern Territory.

The outcomes of the negotiations over the terms and conditions of Statehood which are relevant to the Convention will need to be referred to it. The outcomes of negotiations over the recognition of customary law and legal systems will also need to be referred to the Convention as appropriate.

This is a complex subject and we recommend that this Committee be given a further reference to examine it and make recommendations to Parliament on an appropriate procedure for developing and adopting a Northern Territory Constitution for referral to the Commonwealth Parliament. In developing the recommendations, it will be necessary to take into account the relevant resolutions of the Kalkaringi and Batchelor Conventions.

This task could be carried out concurrently with the public education campaign and the report to Parliament and any necessary legislation could be introduced into Parliament before moving to Stage 2.

Stage 4

An education campaign should follow the conclusion of the negotiations over the terms and conditions of a grant of Statehood and the conclusion of the Constitutional Convention. This would lead to either separate referendums or a single referendum, depending on the timing of the processes on the terms and conditions and the content of the Draft Constitution.

If a No result is the outcome of the referendum on terms and conditions of a grant of Statehood and/or the content of the Draft Constitution, the relevant processes will need to be repeated until an outcome satisfactory to Territorians is achieved.

Stage 5

Once a Yes result is achieved at a referendum on the terms and conditions of a grant of Statehood and the content of the Draft Constitution, Commonwealth processes should be commenced at the earliest possible time to finalise the grant of Statehood and to refer the Constitution for the Northern Territory to the Commonwealth Parliament.

If the Commonwealth Parliament makes any changes of substance to the Constitution, it may be appropriate to hold a further Northern Territory referendum to determine whether the Constitution remains acceptable to the people of the Northern Territory.

Stage 6

Grant of Statehood and bringing into force of a Northern Territory Constitution.

APPENDIX A

DATA FROM COMMUNITY CONSULTATIONS

REASONS FOR THE "NO" VOTE WRITTEN SUBMISSIONS

ISSUE	NO. OF OCCASIONS RAISED BY INDIVIDUAL	NO. OF OCCASIONS RAISED BY GROUP OR ORGANISATION	TOTAL FREQUENCY INDIVIDUALS AND GROUPS
<i>Do not support Statehood or do not see any reason for it</i>	10	2	12
<i>Lack of information</i>	4	8	12
<i>Lack of consultation</i>	3	12	15
<i>The general process leading to the Referendum</i>	6	13	19
<i>Statehood Convention process</i>	14	14	28
<i>Shane Stone's involvement in the process</i>	9	6	15
<i>Lack of trust and/or confidence in politicians</i>	17	10	27
<i>Concern about financial implications of Statehood</i>	4	5	9
<i>Wording of the referendum question</i>	8	4	12
<i>Maturity of the Northern Territory and/or concerns about Government accountability</i>	11	3	14
<i>Legislative issues (for instance, euthanasia and mandatory sentencing)</i>	3	2	5
<i>Indigenous issues</i>	15	17	32

Note: Shaded rows indicate issues which were most frequently raised.

Other reasons cited in written submissions for voting "No" were:

- *Representation in the Commonwealth Parliament (either that the Northern Territory would not have equal representation with other States, or that it would be over-governed with full representation)*
- *The 1998 Constitutional process ignored the work of the former Committee on Constitutional Development*
- *Freedom of Information would need to be included in the Constitution*
- *There was too much information, or the information was misleading and/or too "legalistic"*
- *There was no "No" case before the Referendum*
- *Would not vote for Statehood unless the management of National Parks was negotiated with the Commonwealth*
- *Electoral reform measures would need to be put in place before the Territory becomes a State*
- *One person wanted management of the tourism industry to be clarified*
- *There was a specific lack of trust in the Commonwealth and Territory Parliaments/Governments conducting satisfactory negotiations in respect of Statehood.*

REASONS FOR THE "NO" VOTE PUBLIC AND INDIVIDUAL MEETINGS

ISSUE	NO. OF OCCASIONS RAISED IN URBAN COMMUNITIES	NO. OF OCCASIONS RAISED IN ABORIGINAL COMMUNITIES/ GROUPS	TOTAL
<i>Do not support Statehood or do not see any reason for it</i>	9	5	14
<i>Lack of information</i>	50	42	92
<i>Lack of consultation</i>	24	34	58
<i>The general process leading to the Referendum</i>	29	9	38
<i>Statehood Convention process</i>	81	11	92
<i>Shane Stone's involvement in the process</i>	41	15	56
<i>Lack of trust and/or confidence in politicians</i>	31	24	55
<i>Concern about financial implications of Statehood</i>	15	6	21
<i>Wording of the referendum question</i>	35	7	42
<i>Maturity of the Northern Territory and/or concerns about Government accountability</i>	8	0	8
<i>Legislative issues (for instance, euthanasia legislation - both sides)</i>	21	5	26
<i>Indigenous issues</i>	33	63	96
<i>Population too small</i>	10	0	10

Note: These figures are to be read as indicative only due to difficulties in interpreting some evidence and the nature of taking evidence at public meetings. However, figures are generally considered to be an accurate reflection of the relative frequency with which comments were raised. Shaded rows indicate issues which were most frequently raised.

Other reasons for voting "No" in urban communities were:

- *Timing - the majority of which expressed the opinion that the timeframe of 2001 is too soon to achieve Statehood*
- *The 1998 process ignored the work of the former Sessional Committee on Constitutional Development*
- *There was no "No" case before the Referendum*
- *Representation in the Commonwealth Parliament (either that the Northern Territory would not have equal representation with other States, or that it would be over-governed with full representation)*
- *Would not vote for Statehood without Electoral reform*
- *Local Government was ignored in the Referendum process*
- *Information provided was either too legalistic or misleading.*

Other reasons for voting "No" in Aboriginal communities were:

- *Timing - the majority of which expressed the opinion that the timeframe of 2001 is too soon to achieve Statehood*
- *Dissatisfaction with materials circulated before the Referendum (e.g., "propaganda")*
- *There is not enough representation of Aboriginal people in the Northern Territory Parliament*
- *Would not vote "Yes" until control of National Parks is determined*
- *Representation in the Commonwealth Parliament needs to be determined*
- *One speaker (a European man who is a resident of an Aboriginal community) voted "No" primarily because of the adverse effect that mandatory sentencing is having in that community*
- *In Central Australia, there was concern that Statehood would result in an increase in population and this would have a detrimental effect on the land, culture, ceremony, etc.*
- *There was a further concern in Central Australia that Aboriginal people of that region were not part of the consultation process and that*

**VIEWS ON FUTURE MEASURES TO PROGRESS STATEHOOD
WRITTEN SUBMISSIONS**

ISSUE	NO. OF OCCASIONS RAISED BY INDIVIDUAL	NO. OF OCCASIONS RAISED BY GROUP OR ORGANISATION	TOTAL FREQUENCY INDIVIDUALS AND GROUPS
Hold an initial referendum	4	-	4
Referendum later in process	13	1	14
Education program needed	15	16	31
Consultative process (meetings, workshops)	6	13	19
Independent or bipartisan Steering Group	9	1	10
Another Convention	12	13	25
Elected Convention/more representative Convention	10	10	20
Appointed reps and/or experts at Convention	4	6	10
Longer or staged Convention	4	3	7
No politicians in process/politicians to be more removed from process	10	1	11
Single referendum question and/or separate referendum questions	7	1	8
Deal with other issues first ¹	6	3	9
Legislative issues to be dealt with in process ²	18	12	30
Indigenous issues a priority (protection of rights, law, culture, language, land rights, sacred sites, ceremony)	10	10	20
Wait before re-starting	4	1	5
Aim for 2001 or as soon as possible	3	2	5
Extend time frame/flexible time frame	14	6	20

Note: Shaded rows indicate issues which were most frequently raised.

- Other issues to be dealt with first included: Accountability issues (10); Reform of the electoral system (7); Lack of maturity in governance of Northern Territory (3); Audit of NT Self-Government (3); Aboriginal traditional rights and customary law (2); Industrial Relations powers (1); Privatisation of essential services (1); Revisit draft Constitution before considering Statehood process (1). Note that where a submission indicated that other issues should be dealt with before a move to Statehood, this was counted as one occasion regardless of how many issues were raised in that submission.
- Legislative issues to be dealt with as a part of the process included: FOI (17); Bill of Rights (11); Mandatory sentencing (4), Euthanasia legislation (4), Aboriginal Land Rights (NT) Act (6), Referendums Act (1), administrative law reform (1).

*VIEWS ON FUTURE MEASURES TO PROGRESS STATEHOOD:
PUBLIC AND INDIVIDUAL MEETINGS*

<i>ISSUE</i>	<i>NO. OF OCCASIONS RAISED IN URBAN COMMUNITIE S</i> <i>(29 meetings)</i>	<i>NO. OF OCCASIONS RAISED IN ABORIGINAL COMMUNITIES/ GROUPS</i> <i>(26 meetings)</i>	<i>TOTAL</i> <i>(55 meetings)</i>
<i>Hold an initial referendum</i>	23	-	23
<i>Referendum later in process</i>	24	2	26
<i>Education program needed</i>	87	51	138
<i>Consultative process (meetings, workshops)</i>	19	30	49
<i>Independent or bipartisan Steering Group</i>	7	-	7
<i>Another Convention</i>	58	8	66
<i>Elected Convention/more representative Convention</i>	52	3	55
<i>Appointed reps and/or experts at Convention</i>	15	-	15
<i>Longer or staged Convention</i>	10	-	10
<i>No politicians in process/politicians to be more removed from process</i>	16	1	17
<i>Single referendum question and/or separate referendum questions</i>	16	-	16
<i>Deal with other issues first ¹</i>	4	6	10
<i>Legislative issues to be dealt with in process ²</i>	33	11	44
<i>Indigenous issues a priority (protection of rights, law, culture, language, land rights, sacred sites, ceremony)</i>	23	38	61
<i>Wait before re-starting</i>	3	3	6
<i>Aim for 2001 or as soon as possible</i>	10	-	10
<i>Extend time frame/flexible time frame</i>	49	14	63

Note: These figures are to be read as indicative only due to difficulties in interpreting some evidence and the need to rely on meeting notes rather than transcripts in some cases (not all transcripts were available at the time of analysis). However, the figures are generally considered to be an accurate reflection of the relative frequency with which comments were raised. Shaded rows indicate issues which were most frequently raised.

1. *Issues to be dealt with first were: Audit of self-government (5); Protection of land rights before Statehood proceeds (1); Local government amalgamation proposal (1); Recognition of Aboriginal law (1); Reverse decision on bilingual education (1); NT Government to issue statement expressing concern about Reeves Report (1).*
2. *"Legislative issues" included: Freedom of Information (14); Bill of Rights (8); Status of Aboriginal Land Rights (NT) Act (6); Reform of electoral system (6); Euthanasia legislation (4); Mandatory sentencing (2); Whistleblower legislation (1); Gun laws (1); Pastoral excisions legislation (1); Transfer of legislation upon Statehood (1).*

APPENDIX B

OUTCOMES FROM THE INDIGENOUS CONSTITUTIONAL CONVENTIONS

THE KALKARINGI STATEMENT

Constitutional Convention of the Combined Aboriginal Nations of Central Australia

Kalkaringi, 17– 20 August 1998

The Aboriginal Nations of Central Australia are governed by our own constitutions (being our systems of Aboriginal law and Aboriginal structures of law and governance, which have been in place since time immemorial). Our constitutions must be recognised on a basis of equality, co-existence and mutual respect with any constitution of the Northern Territory.

The Constitutional Convention of the Combined Aboriginal Nations of Central Australia is deeply concerned about the implications of Statehood for the rights of Aboriginal peoples in the Northern Territory. We are conscious of the hostility that the Northern Territory Government has displayed towards Aboriginal peoples since self-government in 1978.

We deplore the failure of the Northern Territory Government to negotiate with the Aboriginal peoples of the Northern Territory in relation to the proposed move to Statehood, and are disturbed by the inadequate acknowledgment of Aboriginal law and Aboriginal rights in the current Draft Constitution.

We also deplore the lack of provision in the Draft Constitution for the human rights of Territorians generally and for the good governance of the Northern Territory.

Accordingly we adopt this **Kalkaringi Statement** which sets out the aspirations and concerns expressed by delegates in relation to issues of Statehood, Constitutional development and governance. We resolve:

General Principles

1. That we do not consent to the establishment of a new State of the Northern Territory on the terms set out in the Draft Constitution adopted by the Legislative Assembly on 13 August 1998.
2. That we will withhold our consent until there are good faith negotiations between the Northern Territory Government and the freely chosen representatives of the Aboriginal peoples of the Northern Territory leading to a Constitution based upon equality, co-existence and mutual respect.
3. That the Northern Territory Government must provide adequate resources and negotiate in good faith a realistic timetable for such negotiations.

Aboriginal Self-Determination and Self-Government

1. (a) That Aboriginal peoples, being the first peoples to own and govern this land, have the right to self-determination and that our inherent right of self-government must be recognised and protected in any Constitution of the Northern Territory.

(b) That a Northern Territory Constitution must contain a commitment to negotiate with Aboriginal peoples a framework agreement, setting out processes for the mutual recognition of our respective governance structures, the sharing of power and the development of fiscal autonomies.

2. That the Commonwealth establish an independent Commission of Inquiry to consider the experience of Aboriginal peoples under the *Northern Territory Self-Government Act 1978*, to review financial arrangements for the provision of services to Aboriginal communities and to make recommendations for future relationships between the Northern Territory Government and Aboriginal peoples.
3. That there must be direct Commonwealth funding of Aboriginal communities and organisations.

Aboriginal Law

That a Northern Territory Constitution must recognise Aboriginal law through Aboriginal law makers, and Aboriginal structures of law and governance.

Aboriginal Land Rights and Other Rights

1. That the *Aboriginal Land Rights (Northern Territory) Act 1976* must remain Commonwealth legislation administered by the Commonwealth.
2. That the rights of Aboriginal peoples in relation to land (including land subject to current or historical pastoral leases, reserves and national parks) must be respected and afforded effective Constitutional protection.
3. That the rights of Aboriginal peoples as owners of land which is currently (or in future) national park must be recognised by the implementation of cooperative management structures that give them effective control.
4. That our common law and statutory rights (including those currently contained in the *Aboriginal Land Rights (Northern Territory) Act 1976*), as well as those recognised or negotiated in coming years, must be recognised and afforded Constitutional protection.
5. Those arbitrary time limits on the capacity of Aboriginal land owners to assert their rights over land and waters must be removed.
6. That any changes to a Northern Territory Constitution which concern Aboriginal rights must be approved not only by a majority of electors at a referendum, but also by a majority of people of the Aboriginal nations of the Northern Territory.
7. That there must also be recognition and protection of the rights of all Indigenous peoples of Australia in the Commonwealth Constitution.

Sacred Sites and Significant Areas

That a Northern Territory Constitution must provide for Aboriginal control in relation to, and the effective protection of, Aboriginal sacred sites and significant areas.

Political Participation

1. That procedures relating to the election of members to a Parliament of the Northern Territory should ensure effective levels of representation of Aboriginal people, including through multi-member electoral divisions.
2. That any Constitution for the Northern Territory must provide effective mechanisms for the accountability of governments, including:
 - (a) Freedom of information legislation;
 - (b) An independent, adequately resourced Ombudsman Office;
 - (c) An independent, adequately resourced Auditor-General;
 - (d) An independent commission against corruption;
 - (e) An independent electoral office;
 - (f) Adequate provision for judicial and administrative review of government decisions;
 - (g) Measures to ensure fairness in government contracts.

Human Rights

1. That any Northern Territory Constitution must guarantee the human rights embodied in the principal human rights instruments to which Australia is party, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.
2. There must be a particular prohibition of discrimination on any ground such as race, sex, language and religion.

Essential Services and Infrastructure

1. That a Northern Territory Constitution must recognise the right of all residents to equal access to essential services and infrastructure, including health, housing, clean water, roads, communications, education, training and employment. Special measures should operate in relation to people living in remote areas of the Northern Territory.
2. That there must be special measures for the immediate and continuing improvement of the economic and social conditions of Aboriginal people.
3. That Aboriginal peoples have the right to determine our own health, housing and other economic and social programs, and to deliver such programs through our own adequately resourced institutions.

Education

1. That there must be recognition of:
 - (a) the right of Aboriginal children to all levels and forms of education of the State;

- (b) the right of Aboriginal communities to establish and control our own educational institutions, providing education in our own languages, in ways appropriate to our cultural methods of teaching and learning;
 - (c) the right of children living outside their communities to have access to education in their own culture and language.
2. That there be culturally appropriate, compulsory components in the curriculum of Northern Territory schools in relation to the histories and cultures of Aboriginal peoples in the Territory.

Justice Issues

1. That the Northern Territory Government must negotiate in good faith with Aboriginal communities regarding:
- (a) the administration and resourcing of community justice mechanisms; and
 - (b) the effective participation of Aboriginal people in the justice mechanisms of the Northern Territory.
2. That a Northern Territory Constitution must recognise the right of Aboriginal people to understand and be understood in legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.
3. That the Northern Territory mandatory sentencing legislation is contrary to Australia's obligations under the International Covenant on Civil and Political Rights and other international human rights instruments, and must be repealed.

**RESOLUTIONS
OF THE
NORTHERN TERRITORY
ABORIGINAL NATIONS**

ON

**STANDARDS FOR CONSTITUTIONAL
DEVELOPMENT**

Northern Territory Indigenous Constitutional Convention
Batchelor College
December 1998

RESOLUTION 1

Adoption of the Kalkaringi Statement

That the Batchelor Indigenous Constitutional Convention adopts and endorses the Kalkaringi Statement developed by the Central Australian Aboriginal Nations as the basis for this convention and the ongoing development of Indigenous policy on the content of the NT and Australian constitutions.

RESOLUTION 2

Inquiry into Self-Government

That the Commonwealth establish an independent Commission of Inquiry to consider the experience of Aboriginal peoples under the Northern Territory Self-Government Act 1978, to review the political, social and cultural impact on Aboriginal peoples and financial arrangements for the provision of services to Aboriginal communities and to make recommendations for future relationships between the NT Government and Aboriginal peoples.

RESOLUTION 3

Human Rights Complaint

That this meeting endorses a nominated individual or individuals to make a complaint under one or more of the Conventions for which Australia has signed the first optional protocols making specific complaints about abuses of human rights.

RESOLUTIONS 4 & 5

Land Rights Act Review

4. That the Indigenous Constitutional Convention rejects the findings and recommendations of the Reeves Review of the Land Rights Act which diminish or destroy the inherent rights of Indigenous peoples in the NT to their traditional lands, and to the control and management of their lands.

The findings and recommendations of the Reeves Report and the processes undertaken during the course of the Review illustrate clearly the need to develop constitutional measures to protect Aboriginal rights.

5. That research should be undertaken to examine the processes and findings of the Reeves Report, including analysing the primary sources, expert opinions and advice relied on by Reeves and ATSIC to fund it.

RESOLUTIONS 6, 7, 8

Aboriginal Law

6. The Indigenous Constitutional Convention reaffirms the Kalkaringi Statement that a NT Constitution must recognise Aboriginal law through Aboriginal traditional law holders and Aboriginal structures of law and governance.
7. Resolves that Aboriginal law should be recognised as a source of law in the Constitution.
8.
 - a) Further resolves to undertake research and discussion by the Aboriginal people of the Northern Territory regarding functional recognition that will reduce the impact of white law on Aboriginal people in such matters as the criminal justice system, social behaviour and family law.
 - b) Such research shall be carried out within the next twelve months to identify areas where such problems arise and to propose resolutions
 - c) The constitution shall establish a process, involving effective representation of Aboriginal peoples to consider further issues that may arise from time to time involving problems identified by Aboriginal people in the interaction of Aboriginal and non-Aboriginal law and to enact solutions.

RESOLUTIONS 9, 10, 11, 12, 13

Noting that this Convention has adopted and affirmed the Kalkaringi Statement, this Convention further resolves the following:

Aboriginal Land Rights and Other Rights

9. That the common law and statutory rights of Aboriginal peoples in relation to land and waters (including areas subject to current or historical pastoral leases, reserves, and marine and terrestrial parks and conservation areas) must be respected and afforded effective Constitutional protection.
10. That the free and informed consent of relevant Aboriginal peoples' according to Aboriginal laws be obtained prior to the approval of any project affecting their lands, territories, waters and other resources. Pursuant to such agreement, just and fair compensation shall be provided for any such activities and measures taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.
11. That, subject to Aboriginal law, effective constitutional protection be provided to protect the total environment of the lands, air, waters, flora and fauna and other resources which Aboriginal people traditionally own, occupy or use, or have otherwise occupied or used.
12. That constitutional recognition be given to the full ownership, control and protection of Aboriginal cultural and intellectual property. This shall include Aboriginal rights to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs and visual and performing arts.

13. Indigenous peoples have the constitutional right to revitalise, use, develop and transmit to future generations Aboriginal histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places, persons, flora and fauna. The State shall make adequate resources available for the exercise of the rights mentioned in this clause.

RESOLUTIONS 14, 15, 16, 17, 18

Human Rights

14. Every person shall have the right to respect for and protection of his or her dignity.
15. That any Northern Territory Constitution must guarantee the human rights embodied in the principal human rights instruments including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and other forms of Cruel, Inhuman and Degrading Treatment and Punishment; the International Labor Organisation Convention 169 and the Draft Declaration on the Rights of Indigenous Peoples.
16. That any NT Constitution must
 - (1) guarantee the human rights embodied in the Convention on Genocide; and
 - (2) draw particular attention to the history of the separation of Aboriginal people from their families
17. Effective mechanisms for the enforcement of human rights must be provided in the Constitution.
18. An on-going process of negotiation over constitutional change and entrenchment of human rights must be instituted.

RESOLUTIONS 19, 20

Education

19. That there must be recognition of:
 - (d) the right of Aboriginal people to equity in outcomes and access to all levels and forms of education of the State;
 - (e) the right of Aboriginal communities to establish and control our own educational institutions, providing education in our own languages, in ways appropriate to our cultural methods of teaching and learning;
 - (f) the right of people living outside their communities to have access to education in their own culture and language.

20. (a) That there be culturally appropriate, compulsory components in the curricula of Northern Territory schools in relation to the histories and cultures of Aboriginal peoples in the Territory.

(b) All peoples have the right to appropriate and adequate education. The right to education shall be enshrined in the Constitution, which includes bilingual education designed by self-determining Indigenous groups. This Convention notes the existing inadequate provision of education services at all levels to the Aboriginal peoples of the Northern Territory.

This convention further declares that the NT Administration decision to remove bilingual education programs, announced by the Hon. Peter Adamson, MLA, is a denial of our right to education, an attack on Aboriginal cultures, and a retrograde step in providing equitable education services to the Aboriginal citizens of the Northern Territory.

This convention notes that the decision will also redirect Commonwealth grants and allocations for the Aboriginal population to mainstream services, further disadvantaging the Aboriginal people. We therefore resolve to object in the strongest possible terms to the NT Government, the Commonwealth Government and international bodies with responsibility for human rights emphasising the denial of education to NT Aboriginal people.

This Convention notes that views expressed by Aboriginal people to the education review to do with our dissatisfaction with the education system, have been misused and distorted to justify the removal of bilingual education.

RESOLUTION 21

21. The Commonwealth and State shall guarantee adequate resources for the exercise of the rights under any NT Constitution.

RESOLUTIONS 22 & 23

Good government, self-government and political participation

This Convention resolves:

22. That Aboriginal self-government shall be recognised as a fundamental right and a solution to the present disempowerment of the people of the Aboriginal nations of the NT
23. That the committee elected from this Convention to pursue our aims should investigate and report back to the Convention on the mechanisms for achieving Aboriginal self-government, good government in the Northern Territory and improved political participation in the Australian electoral and political systems.

RESOLUTIONS 24 25 26 27 28 29 30

Aboriginal self-government and self-determination

This Convention adopts and affirms the clauses of the Kalkaringi Statement on Self-Government and Self-Determination, and further resolves the following:

24. That this Convention recognises problems and inadequacies with the current financial arrangements for the provision of services to Aboriginal communities in the Northern Territory.
25. The Convention calls for a process of review and in particular calls for investigation into NT Government handling of Commonwealth funds intended for the benefit of Aboriginal people.
26. This Convention reaffirms the call in the Kalkaringi Statement for direct Commonwealth funding of Aboriginal communities and organisations.
27. This Convention calls on ATSIC to fund a committee of this Convention to develop financial, political and legal models to implement this resolution, and develop a framework for self-government and self-determination.
28. That this Convention notes that there is a range of options from domestic and international jurisdictions that provide concrete expressions of the right of all peoples, including Indigenous peoples, to freely determine their political status, and further notes that, as a form of self-determination, Indigenous peoples have the right to self-government in relation to their own affairs. These include culture, religion, education, information, media, health, housing, employment, social security, economic activities, land, water and resources management, environment and entry by non-members.
29. The Convention considered a number of preferred options for self-government and resolves to delegate to its committee the task of investigating and reporting on the options for Aboriginal self-government in the Northern Territory in accordance with Aboriginal law. Those models may include:
 - The models of tribal and band governments established under Indian treaties legislation in the United States of America and in Canada;
 - the emerging regional agreement models being developed in Australia;
 - the Combined Aboriginal Nations of Central Australia;
 - West Arnhem Regional Government model;
 - Miwatj Regional Government model;
 - the Torres Strait Regional Authority.
30. The Committee shall investigate all governance issues, including: direct funding from the federal government; identification of effective service delivery and relationships with other agencies, such as essential services, health, police; and relationships with other tiers and sections of governments.

RESOLUTIONS 31 32 33

Good government

31. This convention adopts and affirms the Kalkaringi Statement in respect of the clauses on Political Participation. This Convention further resolves that in any new Northern Territory Constitution:
32. There shall be a separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness

33. There shall be representative government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters' roll, and, in general, proportional representation.

RESOLUTIONS 34 35

Political participation

34. The Convention notes that Aboriginal people are under-represented in the NT and Commonwealth Parliaments and that international jurisdictions provide a range of options for the empowerment and representation of Indigenous and minority peoples, including:
- Proportional representation
 - Multi-member electorates
 - Special assemblies for Indigenous peoples and issues
 - Reserved Aboriginal seats in Parliament
 - Aboriginal political parties
 - Aboriginal people as candidates for existing parties and electoral system
35. This Convention resolves to establish a committee of the Convention to commission and oversee research into the options for political participation. The Committee is to report back and make recommendations to the Convention within 12 months on how the options would provide for effective Aboriginal political representation.

RESOLUTIONS 36 37 38 39 40 41 42

Process

36. This Convention notes that constitutional reform to recognise, enhance and protect Aboriginal rights is an ongoing process requiring further investigation, research, negotiation and development.
37. The Convention affirms the principle embodied in the Kalkaringi Statement Aboriginal people will not consent to Northern Territory statehood until and unless their rights and interests are recognised, enhanced and protected in its Constitution and the NT Government is willing to enter into good faith negotiations under a framework agreement which will allow recognition of Aboriginal self-government.
38. The Convention Committee shall commence a process of negotiation with relevant political organs, government representatives and others regarding the further development and entrenchment of Indigenous rights and interests in the Federal and NT Constitutions, in particular the terms and conditions for the establishment of the Northern Territory as a state.
39. The outcomes of this Convention shall be formally presented to the NT Legislative Assembly's Committee on Legal and Constitutional Affairs; the NT Leader of the Opposition; Chief Minister of the Northern Territory; the Federal Minister for Territories, the Northern Territory's members of the Commonwealth Parliament; the Federal Minister for Aboriginal and Torres Strait Islander Affairs; the Leader of the Australian Democrats; all Independent members of the Commonwealth Parliament; the Federal Leader of the Opposition and the Prime Minister of Australia on behalf of the Aboriginal nations of the Northern Territory.

40. The Convention Committee shall undertake an extensive consultation, information and education campaign to inform all Aboriginal people of the NT of the outcomes of the Batchelor Indigenous Constitutional Convention and the Kalkaringi Constitutional Convention. The Committee shall also inform and involve non-Indigenous Territorians with interests in Constitutional development.
41. The Convention Committee to undertake work on behalf of the Convention from 4 December 1998 to report back to the Convention at a future date.
42. The Northern Territory and Commonwealth Governments shall make adequate resources available to implement the resolutions of this Convention.

POST REFERENDUM ANALYSIS
“STATEHOOD FOR NORTHERN TERRITORY”
A REPORT OF FINDINGS

Prepared for

NORTHERN TERRITORY LEGISLATIVE ASSEMBLY *STANDING*
COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Prepared by

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1. EXECUTIVE SUMMARY

Market Equity at the request of the Office of the Chief Minister of the Northern Territory conducted a post Referendum Poll with a random sample of Northern Territory residents. The purpose of the study was to provide a quantitative measure of general opinion. The Standing Committee on Legal and Constitutional Affairs has, since the Referendum, conducted extensive consultation by holding public meetings throughout the Territory to gain an understanding of the events and issues that caused Territorians to reject the change to Statehood. This study will be included in the report of that Committee to Parliament in April 1999.

Conducted by telephone, the study included a randomly generated sample, representative of the Territory by location, age, gender, and work status. Interviewing was conducted at the end of February, ten days after the resignation of the previous Chief Minister.

The findings of this study reaffirm the findings of the Newspoll study conducted in April 1995. Territorians are sure that they want Statehood and that eventually this will happen.

The general public wants to be fully informed on issues that relate to the effects of this change at a personal, community and business/employment level. That information would be acceptable to them endorsed by an independent, non-political source. As well information provided by both political parties, the Parliament and local government, is expected. All information should be available through the media, and in pamphlet or mailout formats. The public's level of awareness of the information available certainly needs to be increased prior to them making a personal decision, as they realise they must, to gain Statehood for the Territory.

The timing of the October referendum, the phrasing of the referendum question, bi-partisan support for the YES case, and the traditional attitude of Australians in adhering to the known rather than initiating change, created an atmosphere of uncertainty for a large proportion of the general public.

Generally it is felt that the question should be posed again and that it will be carried. It is possible that the October Referendum has alerted many, who were less informed on issues at that time, to the fact that it is the responsibility of each individual to be as well informed as is possible, and to use the opportunity given to progress the Territory to an equal status with the other states.

Reaction to the outcome in October confirms that for most the result was not what they wanted but due to the previously stated reasons, it was not unexpected. The most often cited reason for forming opinions on the issues or actually voting a certain way in October was "lack of information". This statement is not directed at the providers of information. Most agree that information was available. It is more that the

preparation did not include sufficient sources to provide confidence to vote YES – signifying a change that, for each had unknown consequences.

The following chart indicates what effect that uncertainty of not being fully informed had on the Referendum result by comparing the degree of strength of commitment to the YES and NO cases against the way respondents voted on October 3 1998 and their response to Q19 “How would you vote on that question today” in February 1999.