



Legislative Assembly of the Northern Territory

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

INFORMATION PAPER No. 1

**NORTHERN TERRITORY CONSTITUTIONAL DEVELOPMENT AND
STATEHOOD**

A CHRONOLOGY OF EVENTS

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LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

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Northern Territory Constitutional Development and Statehood

A Chronology of Events

June 2002

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1. INTRODUCTION

On 3 October 1998, a majority of the Northern Territory voting community rejected Statehood in a Territory wide indicative referendum, thus bringing to an end for the time being the Northern Territory's push to become Australia's Seventh State. If the referendum had been successful, it had been proposed to use it as a mandate for a grant of Statehood by 2001.

In the aftermath of the failed referendum, criticisms were levelled at a number of matters, and in particular at an alleged flawed process. In the subsequent investigations carried out by this Standing Committee to determine why the referendum failed, the Committee, on 27 April 1999, tabled its findings in its *Report into Appropriate Measures to Facilitate Statehood* in the Legislative Assembly of the Northern Territory.

In summary, the Standing Committee found that there was:

- a lack of information on the process of constitution-making;
- a lack of understanding about Statehood;
- concern and a lack of trust about the conduct of the Statehood Convention and the events surrounding it, including, the role and approach the Territory Government had undertaken in organising the Convention and referendum;
- inadequate community consultation; and
- a protest against the then Chief Minister.

Most importantly, the Committee found that there was overwhelming community support for Statehood within the Northern Territory, and that the community still wanted the process of constitutional development to continue.

Further, the Standing Committee noted that for an inclusive constitutional process to be effective, Aboriginal interests and the protection of their rights had to be seriously addressed, if Statehood was to be achieved.

The Committee recommended, among other things, that the constitutional development process in the Territory recommence, but not before an inclusive and comprehensive community education program on the implications of Statehood had been conducted.

With the election of a new Northern Territory Government in August 2001, Statehood was put back on the agenda as part of the new Government's program. The following is an excerpt from the Administrator's Address to the Legislative Assembly of 16 October 2001, outlining the Government's program on Statehood:

Statehood: Territorians quite rightly want the opportunity for their direct involvement in this process of constitutional development. On that basis, the pursuit of statehood will only occur after a fully inclusive process of education and consultation. The government will only proceed to statehood if and when a statehood proposal has gained the widespread support of Territorians.

2. TERMS OF REFERENCE

On 20 August 1998, the Legislative Assembly of the Northern Territory, established by resolution the Standing Committee on Legal and Constitutional Affairs. In accordance with the Legislative Assembly's Standing Order 21B, this Standing Committee is appointed at the commencement of each Assembly session, to inquire, report and make recommendations to the Assembly upon such constitutional and legal matters as may be referred to it by:

- (i) the Attorney-General; or
- (ii) resolution of the Assembly.

On 25 October 2001, the Legislative Assembly resolved to provide the Standing Committee with additional references¹ namely, that the Committee:

1. shall inquire, consider, make recommendations and report to the Assembly from time to time on:
 - (a) any matter concerned with legal or constitutional issues, including law reform, parliamentary reform, administrative law, legislative review and inter-governmental relations;
 - (b) the legal or constitutional relationship between the Northern Territory and the Commonwealth;
 - (c) any proposed changes to that legal or constitutional relationship, including the admission of the Northern Territory as a new state of the Commonwealth; or
 - (d) any proposed changes to the Commonwealth Constitution that may affect the Northern Territory and/or its residents;
2. with the approval of the Attorney-General, any other matter concerning the relationship between the Northern Territory and the Commonwealth and/or the states in the Australian federation;
3. meet with any other state or Commonwealth parliamentary committees to inquire into matters of mutual concern;
4. The Committee shall report to the Assembly as soon as possible after 30 June each year on its activities during the preceding financial year.

3. PURPOSE OF THIS INFORMATION PAPER

The Committee's *Report into Appropriate Measures to Facilitate Statehood* recommended, among other things, 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.

In restarting the process of community education, public consultation and involvement on this issue, the Committee has decided to prepare various Discussion and Information Papers for publication. In doing so the Papers will call for public submissions or recommendations, identify options and issues associated with a comprehensive community education program and on the implications of Northern Territory Statehood and constitutional development generally.

This Information Paper is the first one in this series. Its purpose is to provide a background (chronology of events) to Northern Territory constitutional development and the Statehood campaign conducted by successive Territory Governments. This should assist Territorians to understand the basic constitutional position of the Territory at its various stages of historical development up to the present time, and how this compares with the rest of Australia. It also provides a background to the Statehood campaign and some understanding concerning Statehood.

The Committee stresses that this Paper is an Information Paper only and does not put forward any particular position or view.

The Territory community are welcome to comment on any issues that are addressed within this Paper.

¹ The new Clauses were inserted into the Standing Orders by motion moved by Attorney General Dr Toyne dated 25 October 2001, adopted 25 October 2001

4. TERRITORY CONSTITUTIONAL DEVELOPMENT

In 1911, the Northern Territory, then a part of the original State of South Australia, was transferred to the Commonwealth as a dependent territory of the Commonwealth. No longer being part of an 'Original' State in terms of the Commonwealth Constitution within the recently formed Australian federation, the Territory lost all semblance of representative democratic rule. A major concern for Northern Territory residents at the time (being former South Australian residents) was the loss of representation in both Houses of the South Australian Parliament and in both Houses of the Commonwealth Parliament.

Since 1911, when Territorians were stripped of the constitutional rights that were guaranteed to the States and State residents under the Commonwealth *Constitution*, there has been the slow and difficult process of clawing-back those rights. This has been partly achieved through Commonwealth responses to the increasing calls from successive Northern Territory administrations for greater autonomy from the Commonwealth, but the process remains incomplete.

In 1978, the Northern Territory was granted a wide but not comprehensive form of self-government by force of the *Northern Territory (Self-Government) Act 1978*, an Act of the Commonwealth Parliament. However, it was the federal Government that determined the framework and scope of this new system of governance, with limited input from Territory politicians and virtually no consultation with the Territory population. Although not a "State" in the federation, the Northern Territory operates in much the same manner as the States of Australia and for most purposes is treated as if it was a "State". For example, the Territory has elected representatives in the Commonwealth Parliament (although not on the same basis as the States), it attends the Council of Australian Governments conferences, it negotiates Commonwealth funding, is subject to the Grants Commission process and it participates in intergovernmental ministerial councils.

The other significant feature of Territory self-government is that the grant established a new body politic under the Crown separate from the Commonwealth, with its own Ministers selected from and responsible to the Northern Territory Legislative Assembly. The 'executive authority' of this new polity is specified through Commonwealth Regulations made by the Governor-General on Commonwealth Government advice and encompasses most (but not all) of the conventional State-type functions.

These functions, for example, include responsibility for the Territory public service, education, local government, health, land use and control, electricity and water resources, police and the administration of the Territory justice system. However, major exclusions that remain within the control of the federal Government are: industrial relations, uranium mining, Aboriginal land rights, and the management and control of Uluru and Kakadu National Parks.

The *Northern Territory (Self-Government) Act* is regarded as the Northern Territory's 'constitution'. However, it is important to note that this legislation is an ordinary Act of the Commonwealth Parliament, capable of being amended or repealed by that Parliament as it sees fit (unlike the constitutions of the States). There have been a number of amendments to this Act since 1978. While some of them have been significant, none of them have radically changed the nature of the grant of self-government. Whether the Commonwealth Parliament would ever seek to retract the grant or significantly reduce it, has yet to be tested. In legal theory, however, the power remains with the Commonwealth Parliament.

The *Northern Territory (Self-Government) Act* also provides for a Northern Territory Administrator as head of government, appointed by the Governor-General, with the right to withhold assent to Territory laws and to recommend amendments to proposed Territory laws. Although these powers have not so far been exercised, there has been talk of such action in the past, and there has been one instance when the plenary power of the

Commonwealth was invoked to expressly override Territory laws. In this regard, there seems to be no legal doubt that Commonwealth laws on any subject are capable of overriding inconsistent Territory laws on the same subject. This has highlighted the limited nature of the Northern Territory's grant of self-government. In 1997, the Commonwealth Parliament enacted the *Euthanasia Laws Act 1997*. The main purpose of this Act was to amend the *Northern Territory (Self-Government) Act* to prospectively remove the power of the Legislative Assembly to make laws with respect to euthanasia and assisted suicide. This amendment also rendered the *Rights of the Terminally Ill Act 1995*, a Northern Territory made law, of no force or effect within the Territory. The same Commonwealth Act was extended to other Commonwealth territories but not to the States.

Debate in the Commonwealth Parliament made it clear that the conventions of self-government, which would dictate against Commonwealth intervention, were regarded as unimportant when compared with the ethical, social and political issues surrounding euthanasia. The Commonwealth politicians involved continued to regard the self-governing Territory as a Commonwealth "fiefdom" under their control.

Despite the recent actions of the Commonwealth Parliament, and the limitations that have been placed on Territory self-government, it can be argued that self-government is a major improvement on the administrative arrangements that existed in the Northern Territory before 1978. Self-government has resulted in a much greater degree of representative local involvement in matters affecting Territorians. Members of the Legislative Assembly are all directly elected by the Territory voting public on a wide franchise rather than being appointed (a position first established towards the end of 1974), with Ministers in the Territory Government being chosen only from the elected members, thus enhancing the democratic nature of the system. In the main, the Commonwealth appointed Administrator as head of government acts on the advice of his Territory Ministers in accordance with the traditional Westminster conventions of responsible government. But as mentioned earlier, these constitutional arrangements exist only by the grace of the Commonwealth Parliament, and the associated conventions of self-government are not strong.

For more information on the Territory's milestones in its constitutional history prior to 1978, see Appendix 1.

5. THE PUSH FOR STATEHOOD AND FURTHER CONSTITUTIONAL DEVELOPMENT

During the mid 1980's, the deteriorating financial relationship between the Territory and the Commonwealth provided impetus to push for further legal protection to the constitutional position of the Territory. The Northern Territory was gradually brought within the same financial arrangements that apply to the States, but without the constitutional guarantees applicable to the States. For example, the protection from compulsory acquisition of Territory Crown property by the Commonwealth on other than on just terms — see Section 51 (xxxi) of the Commonwealth *Constitution*. This, combined with the ever-present ability of a federal Government to "veto" any Northern Territory legislation which it did not approve, brought home to Territorians the tenuous nature of their basic constitutional rights compared to other Australians.

With this backdrop, the following chronology of events summarises the drive for Northern Territory Statehood since 1975 that has been undertaken by successive Northern Territory Governments.

6. BACKGROUND TO THE STATEHOOD CAMPAIGN

6.1. 1975-1985 (*Chief Ministers' Everingham/Tuxworth*)

6.1.1. Preparing for Statehood

The proposal for a grant of Statehood to the Northern Territory has been around for a long time. But until former Prime Minister Fraser announced at about the time of grant of self-government that Statehood would follow in five years, it was not taken very seriously. Prime Minister Fraser's predictions were not accurate, but they put the issue firmly on the agenda as a serious proposition. The perceived success of Northern Territory self-government since has added support to this proposition.

Little was done in the years both before and immediately following the grant of self-government to specifically work towards a grant of Statehood, as most effort was put into the establishment of the new Northern Territory Government and to ensure its political, constitutional and financial viability. Indirectly, however, these efforts have worked in support of a future grant of Statehood by helping to create the conditions which in some respects at least can be said to be conducive to such a grant. The Northern Territory is now virtually a defacto State.

The issue of Territory representation in the national Parliament, resulting from the High Court decisions in the two *Territory Representation* cases in 1975 and 1977, lead to discussion in the Australian Constitutional Convention during the 1980's on the possible future representation of a new State in that Parliament. Suggestions for constitutional change were put forward that were unfavourable to the Northern Territory as a future new State. Chief Minister Everingham responded to those at the Convention in 1983, and this was followed up by further submissions made on the subject by Mr Robertson in 1985. The matter seemed to lose its way after that, and the Convention ceased to operate.

In the mid 1980's, the Northern Territory Government took the initiative and established an in-house Statehood Executive Group to directly examine in detail the Statehood issues. That Group prepared a number of papers, including:

- *Land Matters Upon Statehood* (November 1986)
- *Minerals and Energy Resources Upon Statehood* (April 1987)
- *National Parks Upon Statehood* (September 1987)

In addition, a Working Party of three Northern Territory officers made a Report on Statehood to the Steering Committee of the Group (26 June 1985), based on the assumption that the Northern Territory Government favoured a grant of Statehood. That Report for the first time discussed in some detail the issues relevant to such a grant.

Further, a paper was commissioned from Sir John Moore on the appropriate form of an industrial relations system upon Statehood. The Report was delivered later (August 1988).

A proposed Options paper on the financial aspects of Statehood was completed in draft but not published.

Also at about the same time, Senator Kilgariff took up the cause. He published a paper *The State of the Northern Territory* (April 1985). Other politicians also raised the matter, and it became more topical.

6.1.2. Establishment of the Constitutional Development Committee

Parallel with these developments, on 28 August 1985 the Legislative Assembly passed a resolution to establish a Select Committee on Constitutional Development under the Chairmanship of Mr Robertson. A summary of the history and work of that Committee is set out in Chapter 4 of Volume 1 of the Committee's Report on a Final Draft Constitution².

6.2. 1986-1988 (Chief Minister Hatton)

6.2.1. Towards Statehood campaign

Mr Hatton became Chief Minister in 1986, took over chairmanship of the Select Committee, and in that same year mounted a concerted campaign in support of a grant of Statehood to the Northern Territory. The main written document was the Ministerial statement - *Towards Statehood* (August 1986), as well as the paper *Northern Territory Constitutional Disadvantages*. Much of the promotional work was carried out through the Committee. Discussion and Information Papers were issued, submissions invited and received, and public hearings held. The campaign continued for some time, with the busiest time being 1988/1989, when 54 Committee meetings were held and most Aboriginal communities in the Northern Territory were visited by the Committee or one of its sub-committees'.

6.2.2. First Constitutional/Statehood Conference

Further consideration of the Statehood issue resulted from the October 1986 Conference in Darwin, *Australia's Seventh State*, sponsored by the Law Society and North Australia Research Unit of the Australian National University (NARU), the papers for which have been published.

However none of this evoked any significant response from the Commonwealth Government at the time.

6.3. 1988-1994 (Chief Minister Perron)

6.3.1. Enhanced Self-Government

In July 1988, new Chief Minister Perron took office but was initially less enthusiastic about Statehood. He was more concerned with obtaining an enhanced form of self-government, and he pursued this with the Commonwealth Government. The main written document for this was *Full Self-Government; The Further Transfer of Power to the Northern Territory: A Submission to the Commonwealth* (June 1989). It is fair to say that it did not achieve a great deal at that time.

However, the Select Committee (now a Sessional Committee) continued its work during Mr Perron's period of office, subject to budgetary restraints.

² *Foundations for a Common Future: The Report on Paragraph 1 (a) of the Committee's Terms of Reference on a Final Draft Constitution for the Northern Territory* - Volumes 1-6 (November 1996). The report also included a draft constitution for the Northern Territory.

6.3.2. Alice Springs indigenous peoples conference and issues

During this period, a few significant events occurred. These included the 1989 Alice Springs indigenous peoples conference, *Future of Government*, which issued a warning on Statehood. This followed an earlier paper by the NLC *Statehood: A New Threat to Land Rights* and the tape *Statehood* by the CLC. The Land Council's were not drawn into the Committee's processes at that time, although the opportunity was afforded to them on many occasions.

6.3.3. Constitutional Centenary Foundation

In 1992, the Sessional Committee met with the Constitutional Centenary Foundation in Melbourne, and continued to have dialogue with that organisation on national and Northern Territory constitutional issues, including Statehood, until the Committee's demise in 1997.

6.3.4. Second Constitutional/Statehood Conference

Also in 1992, the Sessional Committee organised and hosted in Darwin the *Constitutional Change in the 1990's* Conference. This Conference revived and continued interest in the issue of Statehood and Territory constitutional development generally. The papers were published by NARU. Also in that year, the High Court made it clear in the *Capital Duplicators* case that constitutionally it was open for the Northern Territory to become a new State.

The Committee continued with its Discussion Paper program and public submissions, although fewer public hearings were held after 1989.

6.3.5. Centenary of Federation Advisory Committee

In June 1994, the Centenary of Federation Advisory Committee under the chairmanship of Ms Joan Kirner held hearings in Darwin. Mr Perron made a submission to it supportive of a grant of Statehood, including for a formula for the eventual equal Senate representation of the new State. As a result, that Committee in its Report *2001; A Report from Australia* (August 1994) advocated that the Council of Australian Governments (COAG) should consider setting up a joint Commonwealth/States/Northern Territory committee to further discuss the possible terms under which the Territory could become a new State.

6.3.6. Northern Territory Statehood Working Group

The matter was pursued at COAG, and in April 1995 the Commonwealth Government agreed to a joint Commonwealth/Northern Territory Statehood Working Group of officers to examine the complexities of Statehood. The Commonwealth conceded a right to consult Commonwealth officers but without any Commonwealth commitment to outcomes. Under the chairmanship of the Secretary of the Commonwealth Department of Environment, Youth, Sport and Territories, the Working Group was set up with a number of sub-committees on specific subjects, and they began their work.

In the meantime the Sessional Committee was considering all the submissions and other responses to its work.

6.4. 1995-2000 (Chief Ministers' Stone/Burke)

6.4.1. The Committee's first interim report

In February 1995 the Sessional Committee issued its Interim Report No. 1 *A Northern Territory Constitutional Convention*, recommending the holding of a Northern Territory Constitutional Convention, with a majority of elected members, to finalise the new Northern Territory Constitution, to be followed by a Territory referendum. It followed this up with the first drafts of the new Northern Territory Constitution³. Submissions continued to be received by the Committee, including from the Northern Land Council (NLC) and the Central Land Council (CLC) in August 1995, indicating that they were now prepared to consider the proposal for a new Northern Territory Constitution subject to adequate protection of Aboriginal rights and a comprehensive educational program. Workshops were also commenced with regional councils of Aboriginal and Torres Strait Islander Commission (ATSIC), and further promotional work was carried out.

6.4.2. Statehood Polling

A Newspoll 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. The survey concluded that most Territorians wanted the Northern Territory to become a State. The people polled did, however, need reassurance that Statehood was not the same thing as financial secession and that the name 'Northern Territory' would not change upon Statehood. More detail of the 1995 polling can be obtained in the Standing Committee on Legal and Constitutional Affairs April 1999 *Report into Appropriate Measures to Facilitate Statehood*.

6.4.3. Statehood on the horizon

Mr Stone, who became Chief Minister in May 1995, strongly advocated a grant of Statehood by 2001. He obtained a commitment to Statehood from Prime Minister Howard and from all State Premiers (with some reservations by New South Wales).

6.4.4. Northern Territory Statehood Working Group-Final Report

The Northern Territory Statehood Working Group, established in 1994, presented its *Final Report* (May 1996) to the Northern Territory and Commonwealth Governments. The Report discussed in detail the issues and options concerning a grant of Statehood to the Northern Territory, although not necessarily favouring the Northern Territory proposals. The work of the Sessional Committee was extensively noted in that Final Report, as were that Committee's recommendations for a Northern Territory Constitutional Convention and Territory referendum. This Final Report went to COAG on 14 June 1996 and is now a public document.

³ see (*Exposure Draft - Parts 1 to 7, A New Constitution for the Northern Territory and Tabling Statement* (June 1995) and *Additional Provisions to the Exposure Draft on a New Constitution for the Northern Territory* (November 1995)).

6.4.5. Remonstrance of 1996

On 10 October 1996, the Legislative Assembly unanimously passed a resolution, in the form of a Remonstrance, to petition the Commonwealth Parliament in connection with the exercise for the first time since self-government of the Commonwealth's power to override the Territory's legislation, in that case on euthanasia⁴. The Remonstrance outlined a series of grievances in regard to the Commonwealth Parliament's intention to override the Territory's euthanasia law. Needless to say the Commonwealth did not accede to the Northern Territory's wishes.

6.4.6. The Committee's report on a final draft Constitution for the Northern Territory-Foundations for a Common Future

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, and set out the text of a draft new State Constitution prepared by the Committee.

The Sessional Committee's Report noted that strategies for the future included an on-going role for that Committee in over sighting matters of constitutional process and in contributing to that process 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 the Committee's draft Constitution to a Northern Territory Constitutional Convention, with broad representation from across the Northern Territory community and comprising a majority of elected members, with the draft Constitution as adopted by that Convention to be subsequently submitted to a referendum of Northern Territory electors.

6.4.7. The Commonwealth exercises its plenary power over Euthanasia legislation

In March 1997, the plenary power of the Commonwealth in respect of the Territory was exercised for the first time since self-government, when the Commonwealth Parliament enacted the *Euthanasia Laws Act 1997* so as to amend the *Northern Territory (Self-Government) Act* to remove the power of the Legislative Assembly to make laws with respect to euthanasia and assisted suicide and to override the Territory law on that subject⁵.

⁴ *Rights of the Terminally III Act 1995*.

⁵ This amendment effectively rendered the *Rights of the Terminally III Act 1995* of the Territory of no force or effect from the date of commencement of the Commonwealth Act. The voting on the Commonwealth legislation was on non-party lines.

6.4.8. The Sessional Committee ceases to exist

Although the Sessional Committee on Constitutional Development was re-appointed on 27 June 1994, it ceased to exist at the prorogation of the seventh Assembly on the 12 August 1997. The Committee was not re-established in the eighth Assembly.

6.4.9. Third Constitutional/Statehood Conference

One of the Sessional Committee's last major activity in promoting constitutional awareness was the organising and co-sponsoring with (Northern Territory University (NTU), North Australia Research Unit (NARU) and the Constitutional Centenary Foundation (CCF) of the *Constitutional Foundations; Reconciling a Diversity of Interests in a New Northern Territory Constitution for the 21st Century* Conference — Darwin, 4-6 September 1997. This was a major constitutional conference involving eminent international, national and local speakers. The Conference confronted and questioned the role of governments in the evolving process of constitutional development and considered the issue of citizens' participation. The Conference in particular proved a focal point on issues that are pertinent to the Northern Territory's claim for admission into the Australian federation as Australia's seventh State.

6.4.10. The Statehood Convention

Early in 1998, a constitutional convention called the *Statehood Convention* was administratively convened on limited advance notice by the Territory Government and sat for eight days over a period of three weeks between 26 March and 9 April 1998.

Of the 53 delegates appointed to the Convention, 26 were elected or otherwise chosen by Government-nominated organisations and 27 were appointed, mostly by Government, including the Chairman and 2 Deputy Chairmen.

Delegates to the Convention were given four issues to consider:

- Should the Northern Territory become a State?
- What should be the name of the new State of the Northern Territory?
- When should the Northern Territory become a State?
- What should be the form of the Constitution for the new State?

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

- the Northern and Central Land Councils' boycotted the Convention;
- an activist group, Territorians for a Democratic Statehood, was established; and
- a number of delegates withdrew part way through the Convention. The following is an excerpt from the Chairman of the *Statehood Convention's* introduction from the *Statehood Convention Report*.

Some delegates withdrew from the Convention. On day 7, Mr Gatjil Djerrkura OAM, Chairman of the Aboriginal and Torres Strait Islander Commission (ATSIC), informed the Convention that ATSIC delegates could no longer participate in the Convention because of a perceived lack of recognition of

indigenous Territorians and a lack of support for the process of reconciliation. It was, of course, the prerogative of delegates to withdraw from the Convention. I was disappointed, however, by the withdrawal of the ATSIC delegates. With great respect to these delegates, as any reading of the proceedings will show, a high level of support and eagerness to understand the position of indigenous Territorians existed amongst the delegates, and it was personally saddening to me and, I believe, to many other delegates to witness a missed opportunity. I was, however, heartened to see that some other Aboriginal delegates remained and continued to contribute to the outcomes of the Convention. I draw particular attention to the extremely strong support for the landmark decision to recognise Aboriginal customary law as a source of law in the Territory. On day 8, Mr Charlie Phillips, representing the Northern Territory Trades and Labor Council, informed the Convention that he had received instructions from his organisation to withdraw from the Convention in support of indigenous Territorians. Mr Phillips had made important and useful contributions to the Convention. While fully understanding his position, I was sorry that thereafter we lost his assistance.

In considering the form of the Constitution for the new State, delegates resolved to adopt the *Final Draft Constitution for the Northern Territory* that was prepared by the Sessional Committee on Constitution Development, in preference to a draft introduced by Mr Burke, subject to the alterations made by resolution of the Convention after it had commenced.

The Convention formulated fifty-nine (59) resolutions and thirty-six (36) were passed by the Convention. There were six (6) resolutions of note that were passed either unanimously or with near unanimity by that Convention. These were:

- that the Northern Territory should become a new State in the Commonwealth of Australia;
- that the new State be called the State of the Northern Territory;
- that the Northern Territory become a State as soon as possible;
- the recognition of Aboriginal customary law as a source of law in the new constitution;
- the level of Senate representation; and
- a *Declaration of Statehood*.

The *Report of the Statehood Convention* was tabled in the Legislative Assembly on 30 April 1998. Debate on the Report was completed during the August sittings of that year. The Convention's work was adopted by the Parliament on party lines.

6.4.11. Territorians for a Democratic Statehood

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.

6.4.12. 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.

6.4.13. The referendum campaign

In the August sittings of the Legislative Assembly the Territory Government introduced and passed the *Referendums Act*. The first action under this legislation was to provide for a question on Statehood to be put to Territory voters.

The referendum question, as proposed by the Chief Minister, was debated in the Legislative Assembly on 19 August 1998. At that time, the Legislative Assembly's Member for Barkly proposed that the question should contain three parts as recommended by the Statehood Convention, that is, with a question relating as 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 twice divided on the content of the Chief Minister's proposed question, and consequently the Member for Barkly's amendment was defeated. As a result of the Resolution of the Assembly to adopt the single 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?"

6.4.14. The Kalkaringi Indigenous Constitutional Convention

Between 17-20 August 1998, an *Indigenous Constitutional Convention* was held at Kalkaringi in the north west of the Northern Territory and was attended by 800 people⁶.

The objective of the Convention was to discuss the issues of Statehood for the Northern Territory, the draft constitution that 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 that draft constitution.

6.4.15. Establishment of the Standing Committee on Legal and Constitutional Affairs

On 20 August 1998, the Legislative Assembly of the Northern Territory, by resolution established the Standing Committee of Legal and Constitutional Affairs. Under its Terms of Reference, the Committee could inquire into, report and make recommendations upon such constitutional and legal matters as may be referred to it by:

- (i) the Attorney-General; or
- (ii) resolution of the Assembly.

6.4.16. The Statehood Referendum

On 3 October 1998, a majority of the Northern Territory voting community rejected Statehood in a Territory wide indicative referendum, thus halting the Northern Territory's push in becoming Australia's seventh State by 2001.

6.4.17. Facilitation of Statehood Reference to the Committee on Legal and Constitutional Affairs

On 7 October 1998, the Legislative Assembly resolved⁷ that the Standing Committee conduct an inquiry into and report on reasons for the failure of the Northern Territory Referendum of October 1998 and to ascertain support for the Northern Territory gaining Statehood by 2001⁸. The Committee was also required to recommend to the Assembly appropriate means whereby community support for Statehood could be achieved.

⁶ The Kalkaringi Convention and its outcomes are outlined in more detail in Chapter 3 of the Standing Committee on Legal and Constitutional Affairs' *Report into appropriate measures to facilitate Statehood*.

⁷ "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."

⁸ Report into appropriate measures to facilitate Statehood (April 1999).

6.4.18. The Batchelor Indigenous Constitutional Convention

A week-long *Indigenous Constitutional Convention* was held at Batchelor College from 29 November – 4 December 1998⁹.

The 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.

6.4.19. Committee's Report into appropriate measures to facilitate Statehood

In the aftermath of the failed Territory referendum, criticisms were made of a number of matters, and in particular at what was seen as being a flawed process. In the subsequent investigation carried out by the Standing Committee to determine why the referendum failed, the Committee, on 27 April 1999, tabled its *Report into Appropriate Measures to Facilitate Statehood*.

The Committee found that there was:

- a lack of information on the process of constitution-making;
- a lack of understanding about Statehood;
- concern and a lack of trust about the conduct of the Statehood Convention and the events surrounding it, including the role and approach the Territory Government had undertaken in organising the Convention and referendum;
- inadequate community consultation; and
- a protest against the then Chief Minister.

Most importantly, the Committee found that there was overwhelming community support for Statehood within the Northern Territory, and that the community wanted the process of constitutional development to continue.

Further, it noted that for an inclusive process to be effective, Aboriginal interests and the protection of their rights had to be seriously addressed, if Statehood was to be achieved.

⁹ The Batchelor Convention and its outcomes are outlined in more detail in Chapter 3 of the Standing Committee on Legal and Constitutional Affairs' *Report into appropriate measures to facilitate Statehood*.

Subsequently, the Committee recommended, among other things, that the constitutional development process recommence, but not before an inclusive and comprehensive community education program on the implications of Statehood had been conducted.

Debate on the Report was completed during the August 1999 sittings of the Legislative Assembly, with the Government, under new Chief Minister Burke, adopting Recommendations 1 and 3 of the Report, but only noting Recommendations 2, 4, 5 and 6.

6.4.20. Statehood public education program reference to the Standing Committee on Legal and Constitutional Affairs

Following the tabling of the Standing Committee's Report, on 12 October 1999 the Attorney-General referred to that Committee a reference¹⁰ to evaluate proposed specifications, including program guidelines, for the engagement of an independent consultant to devise and implement a Statehood public education program.

It is important to note that the Committee's role in this process was to develop and evaluate specifications for the proposed tender only. The Government was to be responsible for the implementation and management of program.

The Government placed advertisements in local and national papers on 23 October 1999 calling for 'Expression of Interests' on a 'Community Information Program on Constitutional Development'. Submissions closed on 17 November 1999. Seven organisations submitted proposals to the Procurement Board in November 1999. However, the matter was not pursued by the Government and was never followed through.

6.4.21. Commonwealth position on Statehood

On 21 February 2001, Chief Minister Burke, in responding to a question in the Legislative Assembly on the federal Government's position on Statehood, reported the following position relayed from the Prime Minister:

It remains the policy of the federal government that the Northern Territory should achieve full statehood. It's for the people of the Northern Territory to make a decision on the matter. We won't stand in your way and we won't be reluctant to put in place the necessary support and necessary government decisions that are needed.

¹⁰ "1. That the Legal and Constitutional Affairs Committee of the Legislative Assembly (the Committee) carry out the following reference:

- (a) evaluate proposed specifications, including program guidelines, for the engagement of an independent consultant to devise and implement a Statehood public education program; and
- (b) advise and consult with the Chief Minister as to the outcome of the Committee's evaluation within twenty-one days of receipt of the proposed specifications.

2. the Committee nominate one of its members to participate in the evaluation and assessment of tenders received and the selection of the recommended tenderer to be engaged as the independent consultant.

3. the Committee be available for consultation with, and to provide advice to, the independent consultant as may be required during the course of the consultancy."

6.5. 2001-2002 (Chief Minister Martin)

6.5.1. The Statehood campaign 2001 and beyond

With the election of a new Government in August 2001, Statehood was put back on the agenda as part of the new Government's program. The following is an excerpt from the Administrator's Address to the Legislative Assembly of 16 October 2001, outlining the Government's program on Statehood:

Statehood: Territorians quite rightly want the opportunity for their direct involvement in this process of constitutional development. On that basis, the pursuit of statehood will only occur after a fully inclusive process of education and consultation. The government will only proceed to statehood if and when a statehood proposal has gained the widespread support of Territorians.

6.5.2. Additional references to the Standing Committee on Legal and Constitutional Affairs

On 25 October 2001, the Legislative Assembly resolved that the Standing Committee on Legal and Constitutional Affairs would have the power to inquire, consider, make recommendations and report to the Assembly from time to time on:

- (a) any matter concerned with legal or constitutional issues, including law reform, parliamentary reform, administrative law, legislative review and inter-governmental relations;
- (b) the legal or constitutional relationship between the Northern Territory and the Commonwealth;
- (c) any proposed changes to that legal or constitutional relationship, including the admission of the Northern Territory as a new state of the Commonwealth; or
- (d) any proposed changes to the Commonwealth Constitution that may affect the Northern Territory and/or its residents.

Currently, the Committee is reviewing and developing a comprehensive program in respect of the above.

6.5.3. Formation of the Northern Territorians for Statehood Association

On 4 February 2002, a new lobby group called the *Northern Territorians for Statehood Association* was formed by interested residents of the Northern Territory. The main aim of this group is to reinvigorate debate on Statehood.

6.5.4. Chief Minister rules out taking statehood campaign to next poll

On 24 February 2002, in an interview with *Sky News* (cable TV), the Chief Minister ruled out any referendum to coincide with the next election. The Chief Ministers opined that the community was still suspicious of politicians' involvement in the Statehood process and that the process had to be community driven.

7. CONCLUSION

This Paper does not seek to make specific proposals and recommendations in connection with a possible future grant of Statehood to the Northern Territory. It is only an Information paper, the first of a series of papers proposed by the Standing Committee, and is designed to chronologically record matters that are relevant to Territory constitutional development and to such a grant and to inform the public on the issue of Statehood generally.

The Standing Committee re-iterates that it is not the public education program referred to in the previous Report of the Standing Committee, although it can be regarded as being preliminary to such a campaign.

While the Committee does not at this time specifically invite comments on the contents of the Paper or otherwise on matters of Territory constitutional development or Statehood, it would be pleased to receive any comments, suggestions, requests for assistance or further information and questions from the public.

8. SUBMISSIONS AND VIEWS TO THE COMMITTEE

Any person or organisations wishing to express views or to present a submission on this matter are welcome to present them to the Standing Committee.

Requests for further information, appointments for individual meetings with the Committee, or queries about the work of the Committee, should be directed to:

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**APPENDIX 1: MILESTONES IN THE CONSTITUTIONAL HISTORY OF THE
NORTHERN TERRITORY: 1824 - 2000**

**MILESTONES IN THE CONSTITUTIONAL HISTORY
OF THE NORTHERN TERRITORY:
1824 - 2000**

- 1824** Captain Bremer took possession of the Northern Australian coastline for Great Britain as part of New South Wales.
- 1863** The Colonial Office of Great Britain vested the control of the Northern Territory in the Government of the Colony of South Australia.
- 1888** The South Australian *Northern Territory Representation Act* constituted the Territory as a single electoral district sending two members to the Legislative Assembly and gave representation in the Upper House.
- 1890** The South Australian Government extended to the white residents of the Territory full adult suffrage.
- 1901** Federation - bringing together the former self-governing Colonies of New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia into one "indissoluble Federal Commonwealth".
- 1901** Federation gave Northern Territory, as a corporate part of South Australia, representation in both Houses of the Federal Parliament. The Commonwealth Constitution Act, however, made provision for the surrender to the Commonwealth of any Territory of any State.
- 1902** Negotiations began for the transfer of the Northern Territory from South Australia to the Commonwealth.
- 1907** South Australia passed the *Northern Territory Surrender Act*.
- 1910** The Commonwealth Parliament passed the *Northern Territory Acceptance Act*.
- 1910** The Commonwealth Parliament pursuant to its powers under section 122 of the Constitution passed the *Northern Territory Administration Act* providing for the government of the Territory by an Administrator appointed by the Governor-General.
- 1911** The Northern Territory formally passed to the control of the Commonwealth Government and so with it the entitlement of the NT citizens to vote in Federal elections lapsed.
- 1922** The *Northern Territory Representation Act* provided for a single member from the Territory in the House of Representatives without voting powers.
- 1926** The *Northern Australian Act* passed by the Commonwealth Parliament established a North Australia Commission, the powers of which extended to matters relating to the development of North Australia and the administration of Crown Land in North and Central Australia.
- 1927** Under the provisions of the *Northern Australia Act* the Northern Territory divided into two administrative areas; Central Australia and Northern Australia, each controlled by a Government Resident assisted by an Advisory Council.
- 1931** The division and commission legislation was repealed and the Territory was reconstituted as a single administrative entity.

- 1936** The member for the Northern Territory in the House of Representatives gained the right to vote on matters relating to Ordinances of the Territory.
- 1942** The northern part of the Territory was placed under military control and the NT Administration was moved to Alice Springs.
- 1946** Full civil Administration was resumed.
- 1947** A Legislative Council with six elected members and seven official members presided over by the Administrator was created. The Council was given the power to make Ordinances for the peace, order and good government of the Territory, subject to assent by the Administrator or the pleasure of the Governor-General.
- 1948** The Legislative Council met for the first time.
- 1956** Legislative Council establishes Select Committee on Constitutional Reform
- 1957** Select Committee on Constitutional Reform tables its Report suggesting constitutional changes- including increase in numbers of elected Council members, and some control over finance and executive government.
- 1958** The member for the Northern Territory in the House of Representatives allowed voting on any proposed law or matter relating solely or principally to the Territory.
- 1958** All six elected members of the Legislative Council resign in protest against undue government delay in considering the Select Committee on Constitutional Reform's recommendations.
- 1959** Membership of the Legislative Council increased to seventeen: eight elected members, six official members and three non-official members. The Administrator's Council comprising the Administrator, two official members and three elected members of the Council was established as an advisory body to the Administrator.
- 1962** A Remonstrance to the Senate and House of Representatives from the Legislative Council outlines constitutional grievances and seeks greater control over Territory affairs.
- 1962** Aborigines are given voting rights - but are not obliged to enrol.
- 1963** The Legislative Council vested with power to define its privileges, immunities and powers within certain limitations.
- 1965** The Administrator removed from membership of the Legislative Council and replaced by a member elected from the elected or non-official members.
- 1967** National Referendum repeals s127 of the Australian *Constitution* that provided for Aborigines should not be counted in calculating the numbers of the people of the Commonwealth, or the States or other parts of the Commonwealth, and amends s51(xxvi) of the *Constitution* by removing the words "other than the aboriginal race in any State" thus allowing the Commonwealth Parliament having concurrent power with the States when making special laws in respect of any race including Aborigines.

- 1968** The non-official seats abolished and recreated as elected member seats making the composition of the Council eleven elected and six official members.
- 1968** The member for the Northern Territory in the House of Representatives granted full voting rights.
- 1972** The Minister for the Interior made an offer on 25 October for the transfer of certain executive functions to a Local Executive responsible to the Legislative Council. The offer was not debated by the Legislative Council before the change of Commonwealth Government in December 1972.
- 1973** A Joint Commonwealth Parliamentary Committee on the Northern Territory is established to review constitutional progress and reform.
- 1974.** A fully elected Legislative Assembly comprising nineteen members established. The triennial general election returned 17 CLP (Country Liberal Party) and 2 Independent members. The Administrator's Council reconstituted to comprise the Administrator and five elected members.
- 1974** Commonwealth Parliament passed the *Senate (Representation of Territories) Act 1974* giving the Northern Territory two Senators in the next federal elections.
- 1974** Report on *Constitutional Development in the Northern Territory* from a Joint Parliamentary Committee on the Northern Territory recommended the first steps in the devolution of executive responsibility.
- 1975** Supplementary Report from a reconvened Joint Commonwealth Parliamentary Committee stated that despite the devastation caused by Cyclone Tracy (Dec, 1974) there should be no alteration to the original Joint Commonwealth Parliamentary Committee's recommendations - including the call for progressive transfer of functions towards self-government.
- 1976** Amendment of *Northern Territory (Administration) Act 1910* established offices of Executive Member of the Legislative Assembly to perform executive functions in the Administration of the Northern Territory and exercise powers under laws of the Territory or in relation to departments of its Public Service as determined by the Administrator. Administrator's Council renamed to the Executive Council. Revised updated NT Public Service Ordinance enacted and the *Commonwealth Public Service Act* amended to facilitate transfer of Commonwealth Public Servants to NT Public Service.
- 1977** Initial transfer of functions to an NT Executive and Public Service and appointment and assumption of executive responsibility by 5 Executive members.
- 1977** Government announced program to grant Northern Territory responsible self-government from 1 July 1978 with a view to eventual Statehood. The program provides for the establishment of a separate Government of the Northern Territory from 1 July, 1978 with local Ministers and exercising executive control over and responsibility for its own finances.
- 1977** Legislative Assembly general election returned 19 CLP, 6 ALP (Australian Labor Party) and 1 Independent member.
- 1977** Appointment of new NT Executive of 5 Executive Members and re-designation and re-determination of portfolios, responsibilities and departments.

- 1978** Further transfer of functions to NT Executive and Public Service.
- 1978** The Commonwealth Parliament passed the *Northern Territory (Self-Government) Act*, establishing a body politic in the name of Northern Territory of Australia.
- 1978** The establishment of the Government of the Northern Territory with responsible Ministers having executive control over and responsibility for its own finances. The transfer of the bulk of 'State-type' functions to the new Government.
- 1979** Transfer of health function to the Northern Territory.
- 1979** Transfer of education function to the Northern Territory.
- 1980** Transfer of judicial function to the Northern Territory.
- 1981** First Legislative Assembly elections since Self-Government. The elections returned eleven CLP members, seven ALP members and one Independent. Transfer of civil aviation and of state-style functions in major Aboriginal communities.
- 1981** Transfer of civil aviation and of state-style functions in major Aboriginal communities to the Northern Territory
- 1981** Transfer of marine navigation within Northern Territory waters function, and archives function.
- 1983** Northern Territory Legislative Assembly elections held with an additional six electorates. The elections returned nineteen CLP members and six ALP members.
- 1985** Beginning of the Statehood campaign by the Northern Territory Government.
- 1985** Northern Territory Legislative Assembly establishes a bi-partisan Select Committee on Constitutional Development to report and make recommendations on a Constitution for the new State and the principles upon which it should be drawn; the method to be adopted to have a draft new state Constitution approved by or on behalf of the people of the Northern Territory; and the issues, conditions and procedures pertinent to the entry of the Northern Territory into the Federation as a new State.
- 1987** Northern Territory Legislative Assembly elections. Sixteen CLP members, six ALP, one National Party and two Independents returned.
- 1990** Northern Territory Legislative Assembly elections. Fourteen CLP members, nine ALP and two Independents returned.
- 1994** Northern Territory Government secures from the Commonwealth Government, following submissions from the Northern Territory to the Council of Australian Governments (COAG), a joint Commonwealth/Northern Territory Working Group to examine and report on the implications of a grant of statehood to the Northern Territory.
- 1994** Northern Territory Legislative Assembly elections. Seventeen CLP, six ALP and one Independent members returned.
- 1996** The joint Commonwealth/Northern Territory Working Group submits its Report on Statehood.

- 1996** | The Sessional Committee on Constitutional Development (formerly the Select Committee on Constitutional Development) tables its Report in the Legislative Assembly on issues relating to Statehood for the Northern Territory including a draft constitution.
- 1997** | Northern Territory Legislative Assembly elections. Nineteen CLP and six ALP members returned.
- 1997** | The Sessional Committee on Constitutional Development not reconvened in the new Legislative Assembly session.
- 1997** | A Remonstrance to the Senate and House of Representatives from the Legislative Assembly outlining a series of grievances in regard to the Commonwealth Parliament's intention to override the Territory's euthanasia law.
- 1997** | The Commonwealth Parliament passes legislation to override the Territory's euthanasia law.
- 1998** | A Constitutional Convention (The Statehood Convention) convened comprising 53 delegates and recommends the form of a 'Statehood Constitution' to the Legislative Assembly and urges Statehood for the Northern Territory 'as soon as possible'
- 1998** | The Legislative Assembly establishes the Standing Committee on Legal and Constitutional Affairs.
- 1998** | The Legislative Assembly passes Referendum legislation
- 1998** | Territory Referendum on Statehood for the Northern Territory held and is voted down
- 1998** | In the wake of Referendum's 'No' vote, the Legislative Assembly's Standing Committee on Legal and Constitutional Affairs receives a reference to inquire into the appropriate measures to facilitate Statehood by 2001
- 1999** | The Standing Committee on Legal and Constitutional Affairs tables its Report in the Legislative Assembly recommending, among other things, that a series of referendums be held after a concerted community education program on Statehood issues.
- 2000** | The Northern Territory Government gives tacit support to restart the Statehood campaign.