

## Overview: The historical context of Northern Territory statehood

- 2.1 Following the surrender of the Northern Territory by South Australia in 1911, the Territory came under the legislative control of the Commonwealth. Section 122 of the Constitution deals with the government of territories:

The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, 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.

- 2.2 Through a number of legislative amendments over time, Territorians slowly gained representation in the Federal Parliament, culminating in the Commonwealth *Senate (Representation of Territories) Act 1973* which provided for two Senators for the Northern Territory (commenced 1975), and a 1990 amendment to the *Commonwealth Electoral Act 1918* which guaranteed a minimum of one member in the House of Representatives for the Territory. The representation of the Northern Territory in the Federal Parliament is discussed further in Chapter 6.
- 2.3 Constitutional development in the Northern Territory was generally associated with the economic and financial advancement of the

Territory.<sup>1</sup> In the years prior to self-government, Territorians developed a resentment towards their Canberra based administrators:

The people in those days – I am speaking of several years ago – abhorred the fact, for example, that they had to obey Canberra, that they had to obey the government of the day, where seven people in charge of departments under a minister who sat in Canberra should hear and on so many occasions ignore the people of the Territory.<sup>2</sup>

- 2.4 A proposal for an elected Legislative Council was considered and rejected by the Commonwealth Parliament in 1930. In 1947 a Legislative Council was established and comprised six elected and seven appointed members. It was not until 1974 that a fully elected Legislative Assembly was established.<sup>3</sup>
- 2.5 During the 1975 federal election campaign, caretaker Prime Minister Malcolm Fraser made a surprise announcement that the Territory would be granted ‘statehood in five years’.<sup>4</sup> In 1977, an interdepartmental Committee on Northern Territory Constitutional Development, in consultation with the Northern Territory Cabinet, decided to defer the issue of statehood until the achievement of self-government.
- 2.6 The Northern Territory was granted self-government in 1978 with the passage of the Commonwealth *Northern Territory (Self-Government) Act 1978*.<sup>5</sup> Following self-government, the Northern Territory government undertook work on statehood issues, and the matter was discussed at a Premier’s Conference and a Constitutional Convention in the early 1980s.<sup>6</sup>

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- 1 A Heatley, *Almost Australians: The Politics of Northern Territory Self-Government*, Australian National University North Australia Research Unit Monograph, 1990, p. 52.
- 2 Mr Kilgariff, *Transcript of Evidence*, 14 November 2006, p. 9.
- 3 Northern Territory Legislative Assembly Standing Committee on Legal and Constitutional Affairs, *Report into appropriate measures to facilitate statehood*, April 1999, pp. 12-14.
- 4 A Heatley, *Almost Australians: The Politics of Northern Territory Self-Government*, Australian National University North Australia Research Unit Monograph, 1990, p. 63.
- 5 The *Northern Territory (Self-Government) Act 1978* established the Northern Territory as a body politic under the Crown, with responsibility for most ‘state-type’ functions. Health, education and judicial functions were transferred at a later date. However, other matters remained under Commonwealth control such as industrial relations, uranium mining, Aboriginal land rights, and the management and control of Uluru and Kakadu National Parks.
- 6 A Heatley, *Almost Australians: The Politics of Northern Territory Self-Government*, Australian National University North Australia Research Unit Monograph, 1990, pp. 134-35.

- 2.7 The position of the Commonwealth on Northern Territory statehood in the early 1980s was that it would consider the matter only at the request of the Northern Territory. A major step towards statehood was taken in 1985 with a Northern Territory Government announcement of its intention to seek statehood by 1988, and the establishment of a Legislative Assembly Select Committee on Constitutional Development and a Statehood Executive Group to advise the Government. The Group conducted a detailed examination of a number of issues relating to statehood and released a series of option papers.<sup>7</sup>
- 2.8 The push for statehood in the 1980s lost momentum and in 1989 the Northern Territory Legislative Assembly broadened the terms of reference for the Committee on Constitutional Development and made it a sessional committee.
- 2.9 In the early 1990s, the issue of statehood was progressed through such fora as the Constitutional Development Committee, a conference on constitutional change, the Centenary of Federation Advisory Committee and the Council of Australian Governments. In 1995 the Commonwealth Government agreed to establish a joint working group with the Territory to explore major constitutional and legislative issues arising from a possible grant of statehood.<sup>8</sup>
- 2.10 In 1996, a draft new state constitution prepared by the Constitutional Development Committee was tabled in the Legislative Assembly. The draft constitution was brought before the 1998 Statehood Convention and adopted as the Final Draft Constitution for the Northern Territory. However, the Convention generated controversy concerning the approach of the Northern Territory Government to appointing delegates.<sup>9</sup>
- 2.11 The Minister for Territories established an Interdepartmental Committee (IDC) in 1997 to advise the Commonwealth Government in preparation for negotiating the terms and conditions for a grant of statehood. Chaired by the Secretary of the Department of Sports and Territories, the IDC established seven taskforces focusing on:

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7 Northern Territory Legislative Assembly Standing Committee on Legal and Constitutional Affairs, *Report into appropriate measures to facilitate statehood*, April 1999, p. 16.

8 Northern Territory Statehood Working Group, *Final Report*, 1996.

9 Some of those dissatisfied with the Statehood Convention formed a group called Territorians for Democratic Statehood and campaigned against the October referendum.

- Legal and Constitutional Affairs (including representation);
  - Indigenous issues;
  - Environment, National Parks and Commonwealth Land;
  - Uranium mining;
  - Commonwealth Territories;
  - Industrial relations; and
  - Financial implications.<sup>10</sup>
- 2.12 By the time of the referendum, six of the taskforces had reported to the Commonwealth Government, although it appears that the IDC did not report to Cabinet. As a result, the position of the Commonwealth on statehood was not finalised and negotiations between the Commonwealth and Northern Territory Governments on the terms and conditions of a grant of statehood did not commence.<sup>11</sup>

## The 1998 referendum

- 2.13 In August 1998, Prime Minister John Howard announced that the Commonwealth Government had made an in-principle decision to grant statehood to the Northern Territory, subject to a referendum on the matter at the time of the next federal election.<sup>12</sup> Constitutional matters and statehood are discussed further in Chapter 4.
- 2.14 The referendum of 3 October 1998 posed the following question to Northern Territory residents:
- Now that a constitution for the 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?
- 2.15 The result was a 'No' vote with a majority of 51.3%.
- 2.16 During its subsequent inquiry into the appropriate measures to facilitate statehood by 2001, the Northern Territory Legal and Constitutional Affairs Committee (LCAC) found that key reasons given for voting 'No' in the referendum included inadequate information and understanding about statehood, inadequate

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10 Northern Territory Statehood Steering Committee, *Submission No. 1*, p. 5.

11 Mr Tatham, *Transcript of Evidence*, 15 November 2006, p. 31; Northern Territory Statehood Steering Committee, *Submission No. 1*, pp. 5-6.

12 The Hon John Howard MP, Joint Press Conference with the Hon Shane Stone MLA, Chief Minister of the Northern Territory, Parliament House, Canberra, 11 August 1998.

consultation, concerns about the Constitutional Convention process, a lack of trust in those responsible for the statehood processes of 1998, and antagonism towards the Chief Minister and politicians. Aboriginal people also cited a lack of understanding about the meaning of statehood, distrust of the Northern Territory Government, concerns about losing existing rights (especially land rights), and concerns about the impact of statehood on law, culture, and language.<sup>13</sup>

- 2.17 It was put to the Committee during the seminar that Territorians did not reject statehood at the 1998 referendum, but that they rejected the particular referendum question that was put before them.<sup>14</sup> The process for arriving at the referendum was also questioned. It was suggested that the bipartisan committee strategy for moving towards statehood was overridden in the lead up to the referendum.

Chief Minister Shane Stone totally hijacked that agenda, established a Constitutional Convention that had nothing to do with all the work that had been done previously, and was then stacked in such a way that a predetermined agenda could be got through.<sup>15</sup>

- 2.18 The Committee learned that the Hon Stephen Hatton, former Chief Minister of the Northern Territory and Chair of the Statehood Committee, did not participate in the Constitutional Convention. The Hon Mr Hatton and Mr John Bailey (a former MLA) were part of a group called Territorians for Democratic Statehood, the main 'no' campaigner in the lead up the referendum.<sup>16</sup>

- 2.19 The Committee also heard that questions surrounding the terms and conditions of statehood were not resolved at the time of the 1998 referendum:

... before the convention and referendum took place in the Territory, the memorandum of agreement should have been

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13 Northern Territory Legislative Assembly Standing Committee on Legal and Constitutional Affairs, *Report into appropriate measures to facilitate statehood*, April 1999, p. 31.

14 Mr Bailey, *Transcript of Evidence*, 15 November 2006, p. 77.

15 Mr Bailey, *Transcript of Evidence*, 15 November 2006, p. 77.

16 Mr Bailey, *Transcript of Evidence*, 15 November 2006, p. 77. Territorians for Democratic Statehood formed in protest against the Statehood Convention. Their main aim was to promote discussion and debate on statehood and the new constitution and a directly elected people's Statehood Convention. Legislative Assembly Standing Committee on Legal and Constitutional Affairs, *Northern Territory Constitutional Development and Statehood, A Chronology of Events*, Information Paper 1, 2002, p. 12.

settled, covering all the terms and conditions, including representation, so that when people voted in the Territory they had both the terms of the Constitution and the agreed terms of the terms and conditions before them so that they had the whole package.<sup>17</sup>

- 2.20 The Statehood Steering Committee suggested that the Commonwealth could take a greater lead in assisting the resolution of the terms and conditions of a grant of statehood prior to bringing the matter back to the people at a future referendum.

I hope a clear message that the Commonwealth committee takes back is that the Territory must never again be asked to vote in that vacuum.<sup>18</sup>

- 2.21 The role of the Commonwealth Government on the road to statehood is discussed further in Chapter 3.

## Developments following the referendum

- 2.22 In its report on the failed bid for statehood, LCAC recommended that the Territory re-commence a campaign for statehood.<sup>19</sup> That recommendation was accepted by the Legislative Assembly later that year.
- 2.23 The new Northern Territory Government in 2001 kept statehood on the public agenda. The position of the Territory Government at that time was that statehood would only be pursued with the widespread approval of Territorians.<sup>20</sup>
- 2.24 Following consultation with stakeholders, in May 2003 the Chief Minister of the Northern Territory, the Hon Clare Martin MLA, launched a new 'community based' campaign for statehood. The target date for statehood was 2008, the 30<sup>th</sup> anniversary of self-government in the Northern Territory.<sup>21</sup>

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17 Mr Nicholson, *Transcript of Evidence*, 15 November 2006, p. 39.

18 Mrs Bradley, *Transcript of Evidence*, 15 November 2006, p. 11.

19 Legislative Assembly Standing Committee on Legal and Constitutional Affairs, *Report into appropriate measures to facilitate statehood*, 1999, p. 8.

20 Legislative Assembly Standing Committee on Legal and Constitutional Affairs, *Northern Territory Constitutional Development and Statehood, A Chronology of Events*, Information Paper 1, 2002, p. 1.

21 The Hon Clare Martin MLA, Chief Minister, Speech to the Charles Darwin Symposium Series 22 May 2003, p. 2.

- 2.25 In August 2004, the Legislative Assembly endorsed the terms of reference for a Northern Territory Statehood Steering Committee to be comprised of community representatives and members of the LCAC. The Steering Committee had its first meeting in April 2005.<sup>22</sup> To date, the work of the Steering Committee has focused on developing and implementing community consultation and public education strategies concerning statehood.
- 2.26 In September 2006, the Northern Territory Government appointed their first Minister for Statehood to 'provide a focal point for the Statehood Steering Committee and the Standing Committee on Legal and Constitutional Affairs to have Statehood policy matters considered by the Northern Territory Government'.<sup>23</sup>
- 2.27 The activities of LCAC, the Statehood Steering Committee and the Minister for Statehood are discussed further in Chapter 3.

## The demographic characteristics of the Northern Territory

- 2.28 While the Northern Territory has the lowest population of all Australian jurisdictions, it has the fourth largest Aboriginal population and the highest proportion of Aboriginal people at about 29% (see Table 2.1 below). In June 2006 the Territory also registered the third highest rate of population growth for all jurisdictions.<sup>24</sup>

Table 2.1 Northern Territory characteristics 2005-06

	NT	Australia
Population ('000)	204 453	20 452 334
Economic Growth (%)	6.7	2.5
Population Density (pop/km <sup>2</sup> )	0.15	2.6
Indigenous <sup>25</sup> Population (%)	29	2.4
Median Age (years)	30.3	36.5
Population Growth (%)	1.8	1.2

Source Jennifer Prince, *Under Treasurer for the Northern Territory (2006) 'Innovation with attitude ... the Northern Territory government's response to present realities and future challenges'*, Institute of Public Administration Australia, National Conference, Alice Springs, 14 September 2006.

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- 22 Northern Territory Statehood Steering Committee, *Report to the Legislative Assembly Standing Committee on Legal and Constitutional Affairs*, 2006.
- 23 Northern Territory Government, 'Minister for Statehood', Media Release, 1 September 2006.
- 24 Australian Bureau of Statistics, 3101.0 - Australian Demographic Statistics, June 2006.
- 25 Aboriginal and Torres Strait Islander.

- 2.29 The demographic characteristics of the Northern Territory have implications for statehood matters including representation, financial relations and service delivery to Aboriginal communities.

## **Summary of federal issues relating to Northern Territory statehood**

### **Constitutional matters and achieving statehood**

- 2.30 A grant of statehood to the Northern Territory would occur by means of either Commonwealth legislation under s.121 of the Constitution or via an amendment to the Constitution under s. 128. The admission or establishment of a new state under s.121 allows the Parliament to impose such terms and conditions as it thinks fit, including the extent of representation in the Federal Parliament.
- 2.31 Issues relating to constitutional matters and achieving statehood include the nature of the terms and conditions of a grant of statehood, the extent of the power of the Commonwealth to legislate for the Northern Territory following a grant of statehood, the constitutional equality of the new State with the existing states, and the establishment of a Constitution for the new State.

### **Aboriginal interests and statehood**

- 2.32 The Commonwealth has expressly reserved executive authority over rights in respect of Aboriginal land under the *Aboriginal Land Rights (Northern Territory) Act 1976* by means of subregulation 4(2)(b) of the Northern Territory (Self-Government) Regulations 1978. The future status of the *Aboriginal Land Rights (Northern Territory) Act 1976* remains unresolved. The Northern Territory Government has indicated its view in the past (1986, 1996) that the Act should be patriated to the new State upon statehood.<sup>26</sup>
- 2.33 Aboriginal groups in the Territory have also utilised statehood discussions to promote their broader interests in improved service delivery and participation of Aboriginal communities.

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26 Northern Territory Statehood Working Group, *Final Report*, May 1996, p. 44, and the earlier publication of the Northern Territory Statehood Executive Group, *Towards Statehood: Land Matters Upon Statehood*, November 1986, p. 1.



## Representation of the new State and the status of Commonwealth legislation

- 2.34 There are no guarantees of federal representation for the Northern Territory in the Constitution. Section 122 of the Constitution enables the Australian Government to determine the level of representation of the Northern Territory in the Federal Parliament.
- 2.35 The level of representation for the new State in the Senate and the House of Representatives would need to be determined in the context of the terms and conditions of a grant of statehood, under s. 121 of the Constitution, and/or possible amendments to the Constitution and the *Commonwealth Electoral Act 1918*.
- 2.36 One possibility would be to extend the minimum representation levels for the 'Original States' under ss. 7 and 24 to the new State by means of s. 121 (or by amending the Constitution). The level of representation also raises the question of whether the nexus between the Senate and the House of Representatives for the 'Original States' (s. 24) would apply to the new State.
- 2.37 Depending on the nature of the grant of statehood, amendments and/or repeals could be required for relevant Commonwealth legislation currently applying to the Northern Territory so as to ensure constitutional equality and consistency with statehood. Commonwealth legislation that may require amendment would include the *Northern Territory (Self-Government) Act 1978*, the *Aboriginal Land Rights (Northern Territory) Act 1976*, and the *Commonwealth Electoral Act 1918*.
- 2.38 The continued operation of Commonwealth legislation currently applying to the Northern Territory and/or joint schemes established under Commonwealth and Northern Territory legislation could require the introduction of special arrangements or legislation.

## Industrial and financial relations

- 2.39 Industrial relations in the Northern Territory are generally governed by Commonwealth legislation.<sup>27</sup> As part of the terms and conditions of a grant of statehood under s. 121 of the Constitution, the Commonwealth may retain its industrial relations powers, grant limited industrial relations powers to the new State or grant the new State the same industrial relations powers as other states.

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27 The *Northern Territory (Self-Government) Act 1978*, *Workplace Relations Act 1996*.

- 2.40 In February 2006, the Northern Territory Government joined a number of state governments challenging the national industrial relations legislation, the *Workplace Relations Amendment (Work Choices) Act 2005*. The challenge centred on the use of corporations power under s. 51 of the Constitution to impose the Work Choices legislation on the states.<sup>28</sup> The *Work Choices* judgement of the High Court endorsed the use of the corporations power by the Commonwealth.<sup>29</sup> This judgement has implications for the future control of industrial relations in the Northern Territory.
- 2.41 The Northern Territory is effectively treated as a state in regard to its financial relationship with the Commonwealth. Commonwealth-state financial relations were restructured in 1999 as part of broader reforms to the Australian taxation system. Key aspects of the restructure are detailed in the 1999 Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations.

## Mining and uranium resource issues, National Parks and Marine Protected Areas

- 2.42 The Commonwealth retains ownership and control of uranium resources in the Northern Territory under the Commonwealth *Atomic Energy Act 1953*, whereas, in the states, control of uranium and other mineral resources rests with the state governments. The regulation of uranium mining in the Northern Territory is shared between the Commonwealth and Northern Territory Governments. The Northern Territory Government has previously maintained that ownership and control of uranium and mineral resources should be transferred to the new State upon a grant of statehood.<sup>30</sup>
- 2.43 In December 2005, the Commonwealth Parliament passed the *Radioactive Waste Management Act 2005*. The Act specifies three sites in the Northern Territory for the potential location of a waste management facility. The Northern Territory Government is strongly

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28 The Hon Dr Chris Burns, Minister for Public Employment, 'NT Government Joins High Court Challenge', Media Release 9 February 2006.

29 *NSW and others v Commonwealth* [2006] HCA 52.

30 Northern Territory Statehood Working Group, *Final Report*, 1996, p. 47. See also the earlier publication of the Northern Territory Statehood Executive Group, *Towards Statehood: Minerals and Energy Resources Upon Statehood*, April 1987, p. 1.

opposed to the establishment of a radioactive waste management facility in the Territory.<sup>31</sup>

- 2.44 The future ownership and control of Commonwealth National Parks and Marine Protected Areas is also an issue. Title to Kakadu National Park is shared between Aboriginal Land Trusts and the Director of National Parks. Title to Uluru-Kata Tjuta National Park is held by the Aboriginal traditional owners. Title to national park land in states generally belongs to the states. The Northern Territory Government has indicated its view in the past (1986, 1996) that in this context it should be admitted as a state on the basis of equality with the existing states.<sup>32</sup>
- 2.45 Ashmore Reef National Nature Reserve and Cartier Island Marine Reserve are Marine Protected Areas that have been managed by the Commonwealth since 1978. The Northern Territory Government has maintained in the past (1989, 1996) that the Islands were 'disannexed' from the Territory without consultation and that they should be reincorporated within the new State.<sup>33</sup>

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31 The Hon Marion Scrymgour MLA, Minister for Environment and Heritage, 'Commonwealth Deceives Territorians On Nuclear Waste', Media Release, 15 July 2005.

32 Northern Territory Statehood Working Group, *Final Report*, 1996, p. 54. See also Northern Territory Statehood Executive Group, *Towards Statehood: Land Matters Upon Statehood*, 1986, p.1, and *Towards Statehood: National Parks Upon Statehood*, 1987, p.1.

33 Northern Territory Statehood Working Group, *Final Report*, May 1996, p. 73. See also the submission of the Northern Territory Government to the Commonwealth, *Full Self-Government, The Further Transfer of Power to the Northern Territory*, 1989.

