
The Parliament of the Commonwealth of Australia

The long road to statehood

**Report of the inquiry into the federal implications of statehood for
the Northern Territory**

House of Representatives
Standing Committee on Legal and Constitutional Affairs

May 2007
Canberra

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Foreword

There is no question about the significance of the Northern Territory in the story of Australia. Historically, the Territory gained prominence as the Australian front line in the Second World War and the national stage of the Aboriginal land rights movement. The national importance of the Northern Territory has also emerged as the home to some of the key mineral resource regions in the country, its proximity to Asia, its world heritage environment and its growing and diverse population. The Northern Territory faces a number of state-like issues.

It seems to be an anomaly that the Territory does not have the status of statehood. Despite a level of self-government, the Northern Territory is ultimately subject to the legislative control of the Commonwealth. By contrast, the Australian Constitution outlines a number of powers for states in relation to the Commonwealth. The Northern Territory is represented by two Senators in the Commonwealth Parliament whereas each state is represented by twelve Senators. Territorians are also in a different position in that their votes in national referenda are counted only once, in the overall tally, but not counted towards a state tally, which is the second criteria for a successful referendum. Some state-like responsibilities, such as control over uranium mining, remain, to some degree, in Commonwealth control.

In 1998, the people of the Northern Territory rejected a proposal for statehood at a referendum. Yet many Territorians seem to be in favour of statehood. However, the main stumbling block for statehood appears to be the process and strategy required to achieve it.

In 2003, the Northern Territory Chief Minister Hon Clare Martin MLA, announced a new campaign for statehood. Now that statehood is back on the agenda, it is timely for this Committee to consider the federal implications of this important development. The establishment of the first new state in the constitutional history of Australia is no simple matter. The prospect of statehood raises a host of unresolved constitutional, policy and administrative issues that may impact on current federal arrangements. These issues include Commonwealth land and Aboriginal land rights, representation and legislative arrangements, industrial

relations, financial relations, mining and uranium resource issues and national parks and marine protected areas.

The aim of this report is to identify and highlight some of the major issues surrounding statehood and the associated federal implications. The Committee believes that statehood should be something that unites Territorians. There is a long road ahead. The evidence before the Committee indicates that Territorians hold a variety of views on statehood issues. Territorians themselves will need to come to a community decision on whether they want statehood and, if so, on what basis. Once Territorians have determined their own position on statehood and their approach to the associated issues, they will be in a position to engage meaningfully with the Commonwealth in discussions on the terms and conditions. The Commonwealth also has a role to play in helping to shape discussions on the terms and conditions of the potential new state.

The primary source of information for this report was a seminar on Northern Territory statehood convened by the Committee in Alice Springs on 14 November 2006 and in Darwin on 15-16 November 2006. The seminar was supplemented by a public hearing with Commonwealth government departments in Canberra on 6 February 2007.

I would like to thank the members of the Committee who worked so conscientiously during the course of the inquiry. On behalf of the Committee I would also like to express my great appreciation for the contribution and assistance of the Northern Territory Statehood Steering Committee and the Legislative Assembly Standing Committee on Legal and Constitutional Affairs, and, in particular, Ms Barbara McCarthy MLA who Chairs both Committees. I would also like to convey my thanks to the staff of the Committee Secretariat.

The Committee hopes that the statehood seminar and this report will assist Territorians in continuing their discussions and developing their approach to statehood issues. The Committee also trusts that this report will play a role in opening up the dialogue between the Territory and Commonwealth Governments in discussing the possible way forward on the road to statehood.



Membership of the Committee

Chairman The Hon Peter Slipper MP

Deputy
Chairman Mr John Murphy MP

Members Mr Michael Ferguson MP
(from 09/02/2006)

Mrs Kay Hull MP

The Hon Duncan Kerr SC MP

Mr Daryl Melham MP

Mrs Sophie Mirabella MP

Ms Nicola Roxon MP
(to 11/01/2007)

Mr Patrick Secker MP

Mr David Tollner MP

Mr Malcolm Turnbull MP
(to 07/02/2006)

The Hon Malcolm Turnbull MP
(from 07/02/2006 to 09/02/2006)

Mr Kelvin Thomson MP
(from 11/01/2007)

Committee Secretariat

Secretary

Ms Joanne Towner

(to 11/08/2006 and from 8/01/2007)

Ms Cheryl Scarlett

(A/g from 11/08/2006 to 08/01/2007)

Inquiry Secretary

Dr Nicholas Horne

(to 16/02/2007)

Mr Michael Crawford

(from 19/02/2007)

Principal Research Officer

Dr Mark Rodrigues

Administrative Officers

Ms Melita Caulfield

Ms Kate Tremble

Ms Jazmine De Roza



Terms of reference

On 9 May 2005 the Attorney-General, the Hon Philip Ruddock MP, referred to the Committee the question of Northern Territory statehood, focusing on:

- recent developments in the Northern Territory on the question of statehood, including any proposals to advance statehood; and
- emerging issues which may have implications for federal arrangements.



List of abbreviations

ACT	Australian Capital Territory
AEC	Australian Electoral Commission
ALRA	<i>Aboriginal Land Rights (Northern Territory) Act 1976 (Cwlth)</i>
ANSTO	Australian Nuclear Science and Technology Organisation
EL	Exploration licence
EPBC	<i>Environment Protection and Biodiversity Conservation Act 1999 (Cwlth)</i>
IDC	Inter-Departmental Committee
ILUA	Indigenous Land Use Agreement
LCAC	Legal and Constitutional Affairs Committee (Northern Territory)
NT	Northern Territory
SSC	Statehood Steering Committee (Northern Territory)



Recommendation

Recommendation (paragraph 3.63)

The Committee recommends that the Australian Government update and refine its position on Northern Territory statehood and re-commence work on unresolved federal issues.

Introduction

Background to the inquiry

- 1.1 In 1901, the six British colonies of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania federated to create the Commonwealth of Australia. Shortly after federation the South Australian Government reached an agreement with the Commonwealth to surrender the control of the Northern Territory¹ and on 1 January 1911, the Territory became a federal territory under the control of the Commonwealth under the *Northern Territory Acceptance Act* 1910.
- 1.2 Since federation, the Northern Territory has achieved numerous milestones in its political development, for example, gaining representatives in the Federal Parliament with full voting rights in 1968 and the grant of self-government in 1978.
- 1.3 Unlike the original states, however, the Northern Territory is subject to the legislative power of the Commonwealth under section 122 of the Constitution.² The Northern Territory is represented by two

1 The *Northern Territory Act* 1863 (SA) extended the laws of South Australia to the newly annexed Northern Territory, formerly a nameless part of New South Wales. The *Northern Territory Surrender Act* 1908 (SA) enabled the transfer of the Territory from South Australia.

2 In 1997 the Commonwealth used its power to override Northern Territory legislation on euthanasia. The Commonwealth *Euthanasia Laws Act* 1997 amended the *Northern Territory (Self-Government) Act* 1978 to overturn the *Rights of the Terminally Ill Act* 1995 (NT) and

Senators in the Commonwealth Parliament in contrast to twelve Senators from each state. Territorians are also in a different position in that their votes in national referenda are counted only once, in the overall tally, but not counted towards a state tally, which is the second criteria for a successful referendum.³

- 1.4 The Northern Territory is also without certain state-like responsibilities in the areas of uranium mining, land and some national parks. In addition, constitutionally guaranteed rights of states and their citizens do not extend to the Northern Territory and its people.⁴ For Territorians, statehood presents the opportunity to protect their rights constitutionally and to implement a framework for their own governance. Statehood also offers the opportunity for the Northern Territory to assume state-like legislative responsibility and achieve constitutional equality with other states.⁵
- 1.5 In the 1980s and 1990s the issue of Northern Territory statehood was considered and developed, culminating in a failed referendum on the matter in 1998. That referendum put to Territorians the question of whether the Territory should become a state. The referendum was voted down with a majority 'No' vote of 51.3%. A Northern Territory parliamentary committee examining the failed referendum concluded that a 'lack of information and understanding about statehood', among other issues, was a key reason behind the 'No' vote.⁶
- 1.6 In May 2003, the Northern Territory Chief Minister, the Hon Clare Martin MLA, announced a new campaign to achieve statehood, with the intention of statehood coinciding with the 30th anniversary of self-government on 1 July 2008.⁷
- 1.7 Establishing the first new State since federation is a complex matter that raises a broad range of constitutional, policy and administrative

effectively ban the practice of euthanasia. The Commonwealth legislation prohibited the legalisation of euthanasia in the territories but not in the states.

- 3 The constitutional position of the Northern Territory in relation to the states has been well documented. See for example, Hon S Hatton, *Towards Statehood*, 1986, pp. 12-23; Northern Territory Statehood Steering Committee, Fact Sheet 2, 'How the Territory is not equal to the States', 2006.
- 4 See discussion of constitutional matters in Chapter 4.
- 5 Northern Territory Legislative Assembly Standing Committee on Legal and Constitutional Affairs, *Report into appropriate measures to facilitate statehood*, 1999, p. 2.
- 6 Northern Territory Legislative Assembly Standing Committee on Legal and Constitutional Affairs, *Report into appropriate measures to facilitate statehood*, 1999, p. 2.
- 7 The Hon Clare Martin MLA, Chief Minister, Speech to the Charles Darwin Symposium Series, 22 May 2003, p. 2.

issues, not just for the Northern Territory, but also for existing states and for the Commonwealth itself. In 1996, the Northern Territory Statehood Working Group reported on major issues that would arise on the grant of statehood.⁸ These included legal and constitutional matters, financial and economic arrangements and implications for Indigenous residents, the environment and national parks, uranium mining, mining on Commonwealth land, industrial relations and trade, and the implications for other Commonwealth territories.

- 1.8 As it is now ten years since the broader implications of statehood were last examined and statehood is again on the agenda of the Northern Territory Government, the Committee thought it timely to revisit the issue of statehood; both its development and its federal implications. The Committee believes that its inquiry and its report will not only inform the Commonwealth of current statehood developments, but also assist both the Commonwealth and the Northern Territory Governments as they move down the road to statehood for the Northern Territory.

The inquiry and report of the Committee

Referral of the inquiry

- 1.9 On 8 March 2005, the Committee wrote to the Attorney-General, the Hon Philip Ruddock MP, regarding a possible inquiry into Northern Territory statehood. On 9 May 2005, the Attorney-General referred to the Committee the task of convening a seminar in Darwin to inquire into recent developments in the Northern Territory on the question of statehood and emerging issues which may have implications for federal arrangements.

Conduct of the inquiry

- 1.10 The Northern Territory Government called an election shortly after the Committee received its reference for the statehood inquiry. The Committee decided to defer the commencement of the inquiry until

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

after the Northern Territory election. Work on the inquiry was further deferred while the Committee conducted two other urgent inquiries.⁹

- 1.11 On 14-16 November 2006, the Committee held a statehood seminar in Alice Springs and Darwin. The Committee felt it was important to visit Alice Springs and hear the views of Territorians from central Australia regarding statehood issues. The Committee held the seminar at the Alice Springs Convention Centre on 14 November 2006 and at the Northern Territory Legislative Assembly on 15-16 November 2006.
- 1.12 Each day of the seminar consisted of individual sessions focusing on particular statehood issues. In each session, principal speakers were invited to address the Committee for approximately ten minutes each, followed by questions from the Committee. The Committee then opened a wider discussion with other invited seminar participants. Members of the public were invited to contribute their views in an open discussion in each afternoon of the seminar. All participants and members of the public were welcome to attend and observe the seminar in both Alice Springs and Darwin.
- 1.13 The Committee had the privilege of hearing from 60 principal speakers and invited group discussion participants representing a range of key stakeholder groups in the Territory including:
- Aboriginal service providers and Land Councils;
 - Current and former Territory and federal parliamentarians;
 - Senior public servants;
 - University academics;
 - Current and former Supreme Court Justices;
 - Union and commerce representatives; and
 - Community organisations.
- 1.14 The Committee found the discussion over the course of the seminar to be stimulating and enlightening and was encouraged by the strong response to its invitations to the seminar. The participants possessed a high level of expertise and experience across a number of relevant areas and the Committee greatly appreciated their time and effort in
-

⁹ The inquiry into the exposure draft of the Family Law Amendment (Shared Parental Responsibility) Bill 2005 (report tabled 18 August 2005) and the inquiry into technological protection measures exceptions (report tabled 1 March 2006).

attending. It is the contributions of participants which make up the majority of the evidence for this inquiry.

- 1.15 A strong theme emerging from the seminar was that Territorians were uncertain of the current position of the Australian Government on Northern Territory statehood and associated issues. This view was particularly evident among some members of the Northern Territory Statehood Steering Committee.¹⁰ The Committee noted this view and considered that the inquiry would benefit from a further exploration of matters at a public hearing with representatives of Commonwealth Government departments. This final hearing was held on 6 February 2007 with representations from the Department of the Prime Minister and Cabinet, the Attorney-General's Department, and the Department of Transport and Regional Services.

The approach of the Committee

- 1.16 The Northern Territory statehood seminar was the primary means of gathering information for the inquiry. The Committee also received a number of submissions from interested parties and invited submissions from those who were unable to participate in the seminar.
- 1.17 The Committee received 13 submissions and 16 exhibits. Details of the submissions and exhibits are at Appendices A and C. Details of the witnesses who appeared at the seminar and the public hearing are at Appendix B. The seminar programme is at Appendix D.
- 1.18 The Committee viewed the seminar process as an information gathering exercise and took care to ensure that the seminar did not promote a particular approach to Northern Territory statehood. Rather, the Committee was interested to hear a range of views on statehood developments and key statehood matters relevant to the relationship between the Territory and the Commonwealth Government.
- 1.19 The Committee was also conscious that many of the issues concerning Northern Territory statehood are specific to the Territory and need to be worked through by Territorians. Down the track, the Committee envisages that statehood matters will no doubt require detailed consideration and negotiation between the Territory and Commonwealth Governments in preparation for any change.

¹⁰ See for example, Mrs Sue Bradley, Mr Jamey Robertson, Mr Terry Mills MLA, Mr Brian Martin, *Transcript of Evidence*, 15 November 2006, pp. 12, 16, 28.

- 1.20 In examining emerging issues which may have implications for federal arrangements, the Committee considered a range of matters likely to impact on the relationship between the Northern Territory and Commonwealth in the transition to statehood as well as the implications of Northern Territory statehood for other states and for the federal system.

The report

- 1.21 Chapter 2 of this report provides a contextual historical overview of statehood, the 1998 referendum and developments following the referendum. The Chapter also provides a brief overview of the main issues raised at the seminar.
- 1.22 Chapter 3 explores the most recent developments in the Northern Territory on the question of statehood including the activities of the Northern Territory Standing Committee on Legal and Constitutional Affairs and the Northern Territory Statehood Steering Committee.
- 1.23 Chapters 4 to 8 examine issues relating to the federal implications of statehood including constitutional matters, Aboriginal land rights, representation and legislative arrangements, industrial relations, financial relations, mining and uranium resource issues and national parks and marine protected areas.

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.¹ 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.²

- 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.³
- 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'.⁴ 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*.⁵ 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.⁶

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.⁷
- 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.⁸
- 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.⁹
- 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:

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.¹⁰
- 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.¹¹

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.¹² 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

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.¹³

- 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.¹⁴ 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.¹⁵

- 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.¹⁶

- 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

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.¹⁷

- 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.¹⁸

- 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.¹⁹ 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.²⁰
- 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 30th anniversary of self-government in the Northern Territory.²¹

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 2005.²² 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'.²³
- 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.²⁴

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 ²)	0.15	2.6
Indigenous ²⁵ 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.

- 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.²⁶
- 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.

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.²⁷ 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.

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.²⁸ The *Work Choices* judgement of the High Court endorsed the use of the corporations power by the Commonwealth.²⁹ 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.³⁰
- 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

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.³¹

- 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.³²
- 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.³³

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.

Recent developments towards statehood

- 3.1 The Northern Territory Government has ensured that the current push for statehood is community driven, based on a bipartisan approach and recognises the particular interests of Aboriginal Territorians.¹
- 3.2 The Northern Territory Government is also concerned to ensure that proper processes are put in place to advance statehood. In announcing the recommitment to statehood, Territory Chief Minister the Hon Clare Martin MLA noted the shortcomings of the processes leading up to the 1998 referendum, particularly the controversial Statehood Convention:
- Statehood was lost because ideas that didn't suit some politicians were marginalised and indeed excluded from the debate. It was lost because those politicians did not allow Territorians to democratically elect a Constitutional Convention and determine what would be discussed at such a gathering. Statehood was lost, or perhaps a better word is abandoned, because those politicians did not trust the people.²
- 3.3 Recent developments towards statehood in the Northern Territory have centred on the activities of the Legislative Assembly Legal and

1 See Mr Kiely MLA, *Transcript of Evidence*, 14 November 2006, p. 40; Ms McCarthy MLA, *Transcript of Evidence*, 15 November 2006, pp. 6-8; Mrs Bradley, *Transcript of Evidence*, 15 November 2006, pp. 8-12.

2 Chief Minister the Hon Clare Martin MLA, Speech to the Charles Darwin Symposium Series, 22 May 2003, p. 4.

Constitutional Affairs Committee (LCAC), the Minister for Statehood and the Statehood Steering Committee.

Legislative Assembly Standing Committee on Legal and Constitutional Affairs

- 3.4 The Legislative Assembly Standing Committee on Legal and Constitutional Affairs (also known as the Legal and Constitutional Affairs Committee or LCAC) was established by the Northern Territory Parliament in August 1998 to inquire into, report and make recommendations on legal and constitutional matters referred to it by the Attorney-General or the Assembly.
- 3.5 The first reference for LCAC was to inquire into the failed 1998 statehood referendum and, in consultation with the community, report and make recommendations on appropriate measures to facilitate statehood.³ LCAC concluded that Territorians generally support statehood and recommended that the government recommence a push for statehood in the following stages:
- A comprehensive community education programme;
 - A referendum on whether the Territory should proceed to statehood, if required by the Commonwealth Government. Alternatively the Territory should commence negotiations with the Commonwealth on terms and conditions of a grant of statehood;
 - Refer the negotiated terms and conditions to a Northern Territory Constitutional Convention with popularly elected delegates;
 - An education campaign on the outcome of the Constitutional Convention leading to referenda on the terms and conditions of a grant of statehood and the draft Constitution of the new State;
 - Once the referenda are passed, the Commonwealth should commence processes to give effect to the grant of statehood and new Constitution. The Commonwealth should refer any major changes it wishes to make to the terms and conditions and/or constitution, back to the Northern Territory for the matter to be resolved by a further referendum; and

3 The key reasons for the 'No vote' identified by LCAC are discussed in paragraph 2.16.

- The Commonwealth enacts legislation to give effect to the final terms and conditions of the grant of statehood and new Constitution of the Northern Territory.⁴
- 3.6 The Legislative Assembly considered the LCAC report in August 1999 and accepted the following recommendations:
- That the government re-commence the push for statehood without a fixed timeframe; and
 - That a public education campaign commence, to be implemented by an independent consultant, with oversight by the Standing Committee and employ specific strategies for Aboriginal communities.⁵
- 3.7 The Assembly noted the other recommendations of the report, namely:
- That the Northern Territory Government ascertain whether the Commonwealth Government requires another referendum to progress statehood;
 - That the Territory Government, with Aboriginal organisations, commence discussions on developing a 'framework agreement' (The issue of a framework agreement is further discussed in Chapter 5);
 - That the Standing Committee be given a reference to advise the Assembly on a future Constitutional Convention; and
 - That at the conclusion of the public education programme, the Territory Government commence:
 - ⇒ negotiations with the Commonwealth Government on the terms and conditions of a grant of statehood; and
 - ⇒ a process for developing a new draft Northern Territory Constitution.⁶
- 3.8 In 2001 the Legislative Assembly resolved to expand the terms of reference of LCAC by granting the Committee:

4 Northern Territory Legislative Assembly Standing Committee on Legal and Constitutional Affairs, *Appropriate measures to facilitate statehood*, pp. 7-8.

5 Northern Territory Legislative Assembly Standing Committee on Legal and Constitutional Affairs, *Appropriate measures to facilitate statehood*, p. 8.

6 Northern Territory Legislative Assembly Standing Committee on Legal and Constitutional Affairs, *Appropriate measures to facilitate statehood*, p. 8.

The power upon its own motion to address matters concerning ... the Northern Territory's ongoing constitutional development that may also be tied to a future grant of statehood.⁷

- 3.9 LCAC continued to work on public education on statehood and in 2002 released an information paper detailing a background history of Northern Territory constitutional development and the push towards statehood. The Chronology of Events was the first in a series of papers.⁸
- 3.10 Following the May 2003 announcement of a new 'community based' campaign for statehood⁹, the Government referred to LCAC the following framework to guide its work:
- (a) The process [campaign for statehood] would be community based, not imposed upon the community.
 - (b) The Standing Committee would facilitate and provide resources to this community based process.
 - (c) The Government's aim to achieve Statehood by 1 July 2008, which would include:
 - (i) the drafting of a new constitution;
 - (ii) the holding of an elected Constitutional Convention;
 - and
 - (iii) the holding of a referendum.
 - (d) A central principle for the Northern Territory to achieve Statehood is the respect for and proper recognition of the Indigenous people of the Territory and that the Indigenous people are to be involved in all stages of the process.¹⁰
- 3.11 One member of LCAC reported that the committee 'has been the most confusing and probably discouraging committee that I have been involved in'.¹¹ The Committee heard that the primary cause of the frustration felt by the LCAC member was the lack of engagement by the Commonwealth on Northern Territory Statehood. The role of the Commonwealth in progressing statehood is discussed further below.

7 Northern Territory Statehood Steering Committee, Terms of Reference 2005, p. ii.

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

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

10 Northern Territory Statehood Steering Committee, Terms of Reference 2005, p. i.

11 Mr Mills MLA, *Transcript of Evidence*, 15 November 2006, p. 28.

- 3.12 In early 2004 LCAC resolved to establish a Statehood Steering Committee comprising members of LCAC and key community stakeholders. In August 2004, the Legislative Assembly endorsed the terms of reference for the Steering Committee and authorised LCAC to appoint its membership. The role and activities of the Statehood Steering Committee are further discussed below.

Northern Territory Statehood Steering Committee

- 3.13 The main purpose of the Statehood Steering Committee is to advise and assist LCAC on statehood issues.

This committee has been charged with the advancement of statehood in three interlinked ways – education of and consultation with Territorians; defining and developing issues around constitutional development; and provision of advice to the LCAC regarding process and other emerging matters of significance.¹²

- 3.14 The Steering Committee is comprised of 17 members, three of whom are also members of the Legislative Assembly.¹³ The terms of reference for the Statehood Steering Committee list the following stakeholder groups from which members may be drawn:

- Northern Territory Indigenous groups/organisations;
- Northern Territory municipal, local and community governments;
- Business and pastoral groups/organisations;
- Trade Unions and Industry groups/organisations;
- Ethnic community groups/organisations;
- Educational or marketing institutions, groups or organisations;
- Women's organisations;
- Northern Territory Council of Churches and the Ministers Fraternal and other religious groups;
- Specific pressure, lobby or interest groups, that have a commitment to the achievement of Statehood for the Northern Territory;
- Young Territorians; and

12 Mrs Bradley, *Transcript of Evidence*, 15 November 2006, p. 9.

13 As at February 2007.

■ Senior Territorians.¹⁴

3.15 Mr Elliot McAdam MLA was appointed as the first Chair of the Steering Committee in 2005 and was replaced by Ms Barbara McCarthy MLA in September 2006. Ms McCarthy is also the Chair of LCAC. Mrs Sue Bradley, a community representative, is the current Co-Chair of the Committee. An Executive Group acts as the interface between the Steering Committee and LCAC with regard to reporting to LCAC and overseeing the work of the Steering Committee. The Executive Group is made up of the Chair, Co-Chair and two members of the Steering Committee, and two members of LCAC.¹⁵

The approach to statehood by the Steering Committee

3.16 The Statehood Steering Committee has identified the legislative power of the Commonwealth over the Northern Territory as the priority statehood issue. Other issues of concern to the Steering Committee include the need for eventual equality with existing states, clear information, agreed and transparent processes in relation to the achievement of statehood, and that the Commonwealth should declare its own position in relation to statehood. Figure 2.1 below outlines the position statement of the Steering Committee.

Figure 2.1 Statehood Steering Committee Position Statement

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1. The Northern Territory is not democratically governed because of the ability of the Commonwealth to override decisions of an elected Northern Territory Government.
 2. Statehood for the Northern Territory must mean eventual equality with the existing States. Anything less than an equal partnership with the other States in the federation would be unacceptable to most Territorians.
 3. Territorians want to know exactly what they would be agreeing to in any future plebiscite or referendum about Statehood.
 4. It is important that an agreed process to determine any terms and conditions is adopted. The process should include realistic time frames for planned outcomes. Such an agreement will assist the Northern Territory to make budget allocations for timely education programs, plebiscites and other requirements and will identify benchmarks against which citizens may assess what
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14 Northern Territory Statehood Steering Committee, Terms of Reference, p. 4.

15 Northern Territory Statehood Steering Committee, Terms of Reference, pp. 7-8.

progress is being made. The previous Northern Territory Committee recommended the negotiation process should go hand in hand with Territory constitutional development.

5. The SSC wants the Commonwealth to be clear on its intentions for Northern Territory Statehood. Does the Commonwealth agree the Northern Territory should become a State? There is no point raising awareness and expectations of Territorians if there is nothing to be gained.¹⁶

3.17 The approach of the Statehood Steering Committee underlines the differences of the Territory concerning law-making powers, the appointment of the executive, national referenda, and representation in the federal Parliament.¹⁷ The 'unique selling point' identified by the Steering Committee is that statehood brings equality and without statehood, Territorians remain second class citizens.¹⁸ While achieving statehood would bring formal equality, it would also involve minimal change to the daily lives of Territorians.

3.18 It was put to the Committee that by adopting this minimalist approach, the Steering Committee neglects the broader opportunities for change that may arise through discussions over statehood:

Congress's view is that the minimalist business-as-usual model of statehood currently being promoted can do nothing to improve the circumstances of Aboriginal people. Congress urges a different approach. Rather than saying that no-one should worry, the government should show how statehood can make a real difference to Aboriginal wellbeing.¹⁹

3.19 It is important that Aboriginal people are listened to and consulted in any future campaign on statehood. Indeed, the Committee acknowledges the good work of the Northern Territory Government, LCAC and the Steering Committee to include Aborigines in the process so far.

16 Statehood Steering Committee, *Submission No. 1*, p. 3.

17 Statehood Steering Committee, 'Self-Government and Statehood – What's the Difference?', Fact Sheet No. 1; 'How the Territory is not equal to States', Fact Sheet No. 2.

18 Northern Territory Statehood Steering Committee, *Report to the Legislative Assembly Standing Committee on Legal and Constitutional Affairs*, Annexure 4 – Communication Strategy, 2006.

19 Mr Liddle, *Transcript of Evidence*, 14 November 2006, p. 12. Similar sentiments were expressed by the Central Land Council, see Ms Weepers, *Transcript of Evidence*, 14 November 2006, p. 26.

- 3.20 While discussions on statehood are an opportunity to raise issues of Aboriginal disadvantage, the Committee notes that issues of Aboriginal disadvantage are not technically related to statehood. Appropriate policy mechanisms should certainly be employed to address Aboriginal disadvantage regardless of statehood. The issue of Aborigines and statehood, including the future treatment of the Commonwealth *Aboriginal Land Rights (Northern Territory) Act 1976* is further discussed in Chapter 5.
- 3.21 The Committee considers that the work of the Steering Committee and its approach to statehood may be described as minimalist, but it is also a reasonable course to take given the diverse population of the Northern Territory and the wide variety of views on statehood. Many other seminar participants were supportive of the work of the Steering Committee.
- 3.22 However, the Committee also considers the claim that the Northern Territory is not democratically governed because it is subject to the legislative power of the Commonwealth is perhaps an overstatement. The claim implies that a grant of statehood would bring democracy to the Northern Territory. Moreover, this claim:
- ... fails to recognise that other, more significant, criteria for democracy such as freedom of speech and free and fair elections operate in the Territory and that in any democratic country with different levels of government there are restrictions on what those levels can and cannot do.²⁰

Recent proposals to advance statehood

- 3.23 The Statehood Work Plan²¹ of the Steering Committee provides an outline of the Northern Territory strategy to advance statehood. The plan updates the six stages to advance statehood identified by LCAC²² and consists of the following seven phases over five to six years:
- Establishing the Statehood Steering Committee;
 - Community Consultation;

20 Professor Carment, *Submission No. 2*, p. 3.

21 Northern Territory Statehood Steering Committee, *Report to the Legislative Assembly Standing Committee on Legal and Constitutional Affairs – 2005 Calendar Year Activities*, Annexure 3 Statehood Work Plan.

22 Northern Territory Legislative Assembly Standing Committee on Legal and Constitutional Affairs, *Appropriate measures to facilitate statehood*, 1999, pp. 7-8.

- Community Education;
 - Public Meetings and Hearings;
 - Legal Requirements;
 - Statehood Convention; and
 - Referendum.
- 3.24 Year one of the plan, 2005, saw the establishment of the Steering Committee, its staff and office systems and the commencement of community consultation. Community consultation included statehood displays at regional shows (Alice Springs, Tennant Creek Katherine and Darwin), the development and dissemination of fact sheets, and the development of communication strategies with Aboriginal communities.
- 3.25 In the second year of the plan (2006), the Steering Committee continued to focus on community consultation and education and undertook a number of community visits and considered legal issues concerning the terms and conditions of a grant of statehood. The Steering Committee also worked on a constitutional development discussion paper covering the Commonwealth *Northern Territory (Self-Government) Act 1978*, the 1998 Statehood Convention and the Aboriginal constitutional statements.²³
- 3.26 In year three of the plan (2007), the Steering Committee plans to commence ‘a process of examining the parameters of Territory Statehood with the Commonwealth toward creating a Memorandum of Understanding on the Terms and Conditions of Statehood’. At this stage the Steering Committee would also seek the views of the community on whether the Territory should continue to proceed towards statehood. A plebiscite on the matter may be conducted by the end of the 2007 dry season (September).²⁴
- 3.27 According to the plan, in 2007 the Steering Committee will also take stock of its achievements, its progress on the Indigenous Framework (further discussed in Chapter 5), and progress against its community consultation and education strategy. As a result of this review, the

23 It is expected that the discussion paper on constitutional development will be released in 2007. See Northern Territory Statehood Steering Committee, Newsletter, Volume 1, Issue 2, 2007, p. 4.

24 Northern Territory Statehood Steering Committee, *Report to the Legislative Assembly Standing Committee on Legal and Constitutional Affairs – 2005 Calendar Year Activities*, Annexure 3 Statehood Work Plan.

Steering Committee may then decide on whether to proceed to a Statehood Convention or Summit. Most delegates to the Convention would be elected, however some legal experts or community representatives may be appointed by LCAC.

- 3.28 The Convention would have the aim of drafting a Constitution for the new State and meet over a twelve month period with 40 sitting days. Following the Convention, the Legislative Assembly would consider the draft constitution and, if it was adopted, put in place mechanisms for another referendum on statehood. If passed at referendum, the Territory would pursue a grant of statehood via Commonwealth legislation in accordance with s. 121 of the Australian Constitution, and the Memorandum of Understanding previously negotiated with the Commonwealth.
- 3.29 The flowchart in Appendix E provides an outline of the various Northern Territory bodies involved with statehood and their role in the process to advance statehood. The flowchart highlights how proposals, feedback and decisions progress through:
- Northern Territory community;
 - Working Committees of the Statehood Steering Committee;
 - The Statehood Steering Committee;
 - The Statehood Executive Group;
 - The Legislative Assembly Standing Committee on Legal and Constitutional Affairs (LCAC);
 - The Legislative Assembly and the Office of the Clerk;
 - The Minister for Statehood and the Northern Territory Government; and
 - The Commonwealth Government and the Federal Parliament.²⁵
- 3.30 The Committee heard that the Steering Committee is not working towards a set timeframe for statehood.²⁶ It appears that the initial target for achieving statehood by the 30th anniversary of self-government in 2008 will not be met. Indeed, another possible timeframe for Northern Territory statehood may be 2011, the centenary of the transfer of the Territory to the Commonwealth.²⁷

25 Mrs Bradley, *Exhibit No. 7*.

26 Mrs Bradley, *Transcript of Evidence*, 15 November 2006, p. 12.

27 Mrs Bradley, *Lunchtime Talk*, Northern Territory Library, 27 June 2006.

Communication strategies

3.31 A challenge for the Steering Committee will be to build a sense of enthusiasm for statehood in the broad community. There is anecdotal evidence to suggest that Territorians may lack interest in statehood because they view themselves as temporary residents of the Territory.²⁸ This is supported by the high rate of population turnover of the non-Aboriginal Territory population.²⁹

3.32 While polling suggests that most Territorians support statehood,³⁰ the issue does not appear to rank as a major priority for many. According to the Hon Warren Snowdon MP, the Federal Member for Lingiari:

I have been in the parliament for approaching 18 years. In the last 10 years I would have had people come up to me on not more than five or six occasions to raise the question of statehood. It has not been their top priority.³¹

3.33 Mr David Tollner MP, the Member for Solomon stated that:

In my dealings with people I would have far more people come to me and say, 'Let's just abolish the states', ... [than] I do have people coming to me saying, 'When is the Northern Territory going to become a state?'³²

3.34 For independent MLA, Mr Gerry Wood, statehood is a 'luxury item' that is not on the agenda of most Territorians:

They are happy enough if they can get in their tinny and go out on the harbour and catch a few fish on the weekend. Statehood is not hitting them right between the eyes.³³

3.35 It was put to the Committee that greater Commonwealth involvement would help to generate enthusiasm about statehood in the Territory community:

28 See for example, Professor Carment, *Submission No. 2*, p. 2.

29 Northern Territory News, 'NT born, NT bred, not likely: study said' 9 February 2007. The implications of the high rate of non-Aboriginal population turnover is further discussed in Chapter 5.

30 Northern Territory Statehood Steering Committee, 2006 Statehood Survey Results, <http://www.dcm.nt.gov.au/dcm/statehood/documents/2006STATEHOODSURVEYRESULTS.pdf> (accessed 22 February 2007).

31 The Hon Mr Snowdon MP, *Transcript of Evidence*, 14 November 2006, p. 8.

32 Mr Tollner MP, *Transcript of Evidence*, 15 November 2006, p. 70.

33 Mr Wood MLA, *Transcript of Evidence*, 16 November 2006, p. 78.

When the Commonwealth is serious about a model for Northern Territory Statehood it is likely that Territorians, who have hitherto shown little interest, will be energised.³⁴

3.36 The Committee heard that the Steering Committee developed 32 fact sheets on statehood to promote the cause. The fact sheet topics include:

- Self-government and Statehood – What’s the Difference?
- Will Statehood give us a bigger voice in Canberra?
- Will defence forces still be based in the Territory?
- A new name for a new State? and
- Statehood – What does it mean for me?³⁵

3.37 The Steering Committee is also working with the Northern Territory Education Department:

In 2007 this committee, in conjunction with the Northern Territory Department of Education, Employment and Training, is rolling out curriculum relevant materials to all Northern Territory schools.³⁶

3.38 The Steering Committee Schools Education Programme includes ‘statehood quest’ class room activities, storyboards, school visits (incorporated into the civics programme and National Celebrating Democracy Week activities) and future plans for teacher workshops on civics and statehood.³⁷

3.39 In addition, the Steering Committee has commenced discussions with the Australian Electoral Commission concerning projects to inform the public about the voting process. The Steering Committee is also developing a programme of ambassadors for statehood, discussion papers, and a network of supporters.³⁸

34 Northern Territory Statehood Steering Committee, *Submission No. 1*, p. 11. The role of the Commonwealth is discussed below.

35 The fact sheets and storyboards are available on the website of the Statehood Steering Committee: <http://www.statehood.nt.gov.au/>

36 Mrs Bradley, *Transcript of Evidence*, 15 November 2006, p. 9.

37 Northern Territory Statehood Steering Committee, Newsletter, Volume 1, Issue 2, 2007, p. 4.

38 Mrs Bradley, *Transcript of Evidence*, 15 November 2006, pp. 9-10.

Minister for Statehood

- 3.40 In September 2006, the Chief Minister announced the appointment of a Minister for Statehood, the Deputy Chief Minister, Treasurer, Attorney-General and Minister for Justice, the Hon Syd Stirling MLA.
- 3.41 The Minister for Statehood is the government spokesman on statehood matters and operates without a dedicated government agency for this responsibility. While the Statehood Steering Committee and LCAC are advisory bodies to the Legislative Assembly, their focal point in government is the Minister for Statehood.
- 3.42 The relationship between the Statehood Steering Committee, LCAC and the Minister for Statehood was delineated in a November 2006 amendment to the terms of reference of the Steering Committee. The amendment supports the bipartisan approach to statehood by enabling the Minister and the Shadow Minister for Statehood to receive advice from the Steering Committee via the Clerk of the Legislative Assembly.³⁹
- 3.43 The Minister for Statehood, on behalf of the Northern Territory Government, also has the responsibility to lead the negotiations with the Commonwealth on the terms and conditions of a grant of statehood:

It is my job to take the collective views and concerns of the community to cabinet to develop Territory government policy. Along with Terry Mills [the opposition spokesperson on statehood], I will also pursue the Commonwealth government on the eventual terms and conditions of statehood, because a unified approach is absolutely critical in achieving statehood.⁴⁰

Role of the Commonwealth

- 3.44 One of the clear messages emerging from the seminar was that people wanted to know more about the Commonwealth position on

39 The Hon Mr Henderson MLA, Motion, Northern Territory Statehood Steering Committee – Terms of Reference, *Northern Territory Legislative Assembly Hansard*, 30 November 2006.

40 The Hon Mr Stirling MLA, *Transcript of Evidence*, 15 November 2006, pp. 4-5.

statehood. Many seminar participants felt that the Commonwealth needed to take a greater role in assisting to progress the issue of statehood:

For the Commonwealth to turn around and say, 'We're not going to grant you statehood until we get a clear indication from the Northern Territory that the population wants it' is a massive cop-out by the Commonwealth. ... The fact is that nothing can happen with statehood until the Commonwealth gives some indication of what it intends to do.⁴¹

- 3.45 The Committee heard that as it is within the power of the Commonwealth to grant statehood, it is the responsibility of the Commonwealth to progress the issue:

The process of establishing a state is four steps. The first is to take the decision to make the NT a state. This matter is solely for the federal government under section 121 of the Australian Constitution. Only the federal government can make that decision. Lobbying and submissions on this question may be involved to influence the government to that decision, but the decision rests solely with the federal government.⁴²

- 3.46 The Statehood Steering Committee expressed the view that the Commonwealth should restart discussions with the Northern Territory over a grant of statehood:

The SSC feels the Commonwealth should state clearly and publicly its intentions with regard to Northern Territory Statehood. The SSC submits the Commonwealth needs to re-engage with the Northern Territory in a meaningful manner on Statehood and for both parties to clearly state their intentions.⁴³

- 3.47 The Northern Territory Shadow Minister for Statehood expressed frustration with the lack of engagement on statehood by the Commonwealth:

We want to know that our parent, the federal government, is actively engaged in this. Otherwise we are just talking quietly amongst ourselves, looking at documents, wonderful work

41 Mr Tollner MP, *Transcript of Evidence*, 15 November 2006, p. 66.

42 The Hon Mr Hatton, *Transcript of Evidence*, 15 November 2006, p. 14.

43 Statehood Steering Committee, *Submission No. 1*, p. 7.

that has been done by many Territorians over many years, and it has come to the point that we need to know that our parent is actively engaged and that we will no longer be illegitimate children.⁴⁴

- 3.48 An alternative view expressed at the seminar was that the Territory should not expect the Commonwealth to deliver statehood for them.

I do not see that it is unreasonable for the Commonwealth to say, 'Let's think about it a bit further.' I come back to the point that we must earn statehood, and that is what we are doing. We are moving towards it. We must earn it. We do not want the Commonwealth to hand it to us.⁴⁵

- 3.49 The Committee understands that the Commonwealth Department of the Prime Minister and Cabinet, the Attorney-General's Department and the Department of Transport and Regional Services have not undertaken significant work on statehood issues since the failed referendum of 1998.⁴⁶ Furthermore, the Commonwealth has not updated its position on Northern Territory statehood since 1998, when the Prime Minister indicated the in-principle support of the Government for the proposal.

- 3.50 The Committee notes the concern that the Commonwealth Government has not taken a lead on progressing the issue of Northern Territory statehood and resolving the associated terms and conditions of a grant of statehood. It appears that the Commonwealth has continued its long-held position following the failed referendum that it would only consider statehood matters as a result of the initiative of the Northern Territory Government.

The February 2007 Ministerial meeting and the way forward

- 3.51 On 6 February 2007, the Northern Territory Minister and Shadow Minister for Statehood met with the Australian Government Attorney-General and Minister for Local Government Territories and Roads 'to place the issue of statehood back onto the Federal

44 Mr Mills MLA, *Transcript of Evidence*, 15 November 2006, p. 28.

45 The Hon Justice Asche, *Transcript of Evidence*, 15 November 2006, pp. 67-68.

46 Mr Anderson, *Transcript of Evidence*, 6 February 2007, p. 2; Mr Faulkner, *Transcript of Evidence*, 6 February 2007, p. 3; Mr Angley, *Transcript of Evidence*, 6 February 2007, p. 3.

Government's agenda'.⁴⁷ According to the Steering Committee, the Territory representatives went to the meeting to:

Outline to the Commonwealth that whoever forms Government after the next election will have to provide Territorians with information about what the Commonwealth will agree to about the terms and conditions of Statehood.

...

The Commonwealth will need to tell us about things like the levels of representation of both houses of the Federal parliament and whether or not we are going to be an equal state.⁴⁸

- 3.52 Following the meeting, it was reported that Commonwealth Attorney-General the Hon Philip Ruddock MP was not convinced that Territorians had changed their minds since the failed referendum. The message from the Commonwealth was that Territorians needed to demonstrate their desire for statehood before the Commonwealth would significantly engage with the Territory on the issue.⁴⁹
- 3.53 It is up to the Commonwealth to determine what it considers to be the level of public support for statehood that is necessary in order for it to participate in discussions at an inter-governmental level. The Commonwealth may also wish to postpone inter-governmental discussions until the Northern Territory clarifies its views on the terms and conditions for a grant of statehood and its position on various outstanding issues. As noted by the representative from the Department of the Prime Minister and Cabinet, '[i]t would be a question for the government as to what degree of clarity of views from the Northern Territory would take the debate further'.⁵⁰
- 3.54 The Committee considers that it is not appropriate for the Commonwealth to drive the statehood agenda for the Northern Territory, particularly given the failed referenda on the issue in 1998 and the strong sentiment against statehood by sections of the

47 The Hon Syd Stirling MLA, Minister for Statehood, Joint Press Release with the Shadow Minister for Statehood Mr Terry Mills MLA, 5 February 2007.

48 Sue Bradley AM, 'Committee welcomes exploratory trip to Canberra', Media Release, Statehood Steering Committee, 5 February 2007.

49 ABC News Online, 'Ruddock questions NT's statehood push' 7 February 2007, <http://www.abc.net.au/news/newsitems/200702/s1841951.htm> (accessed 7 February 2007)

50 Mr Anderson, *Transcript of Evidence*, 6 February 2007, p. 6.

Aboriginal community in the Territory. Presumably the Commonwealth also wishes to avoid potential criticism that it is meddling in domestic Territory politics in regard to statehood issues, many of which, as this report indicates, are complex and unresolved.

- 3.55 One problem with the approach to statehood taken by the Commonwealth is that it may be difficult for the Northern Territory to consult on and promote a model for statehood that has not been agreed to by the Commonwealth. It could potentially be a futile exercise for the Northern Territory to invest years of work on a particular approach to statehood, gain community acceptance, and then find that this approach is not supported by the Commonwealth Government.
- 3.56 Without some Commonwealth involvement at a reasonably early stage, Territorians may be asked again to vote on a broad proposal for statehood that does not address the outstanding statehood questions including representation in the federal parliament, land rights, and uranium mining. Such an approach would seem unlikely to succeed given past experience.

Territory people will not under any circumstances, in my opinion – whether you call it a pig in a poke or anything else – go towards statehood without knowing what the Commonwealth intends to do when it gets before the chambers of the Commonwealth parliament in the forms of the enabling bills. It just will not happen. If that is the way the Commonwealth wants to stop the process, let it say so now and be done with it.⁵¹

- 3.57 Understandably, the Northern Territory Government would not wish to hold another referendum without some prior negotiation or discussion with the Commonwealth regarding statehood terms and conditions. According to the Minister for Statehood:

Territorians have clearly told us that they want to know the terms and conditions of statehood before they vote on such an issue in a referendum. It is a very important and valuable lesson that we have learnt from history and it has shaped the new approach to statehood.⁵²

- 3.58 The Commonwealth could feasibly assist the statehood process by re-commencing work on the various issues related to statehood
-

51 Mr Martin, *Transcript of Evidence*, 15 November 2006, p. 29.

52 The Hon Mr Stirling MLA, *Transcript of Evidence*, 15 November 2006, p. 4.

(including constitutional, legislative and administrative matters) and updating and refining its position on statehood, while leaving other matters (such as a new constitution) for the Northern Territory to address or to be negotiated at a later date. There does not appear to be any major administrative or technical barrier to the Commonwealth updating its position on Northern Territory Statehood.⁵³

The view of the Committee

- 3.59 The Committee considers that there is a real danger of statehood being in a stalemate if the Commonwealth does not progress matters in some way. In the case of such a stalemate, the role of the Steering Committee may be reduced to endlessly consulting and promoting statehood. While there is an important role for consultation and promotion, the difficulty lies in implementing a strategy to achieve statehood with the support of the Commonwealth and Territory Governments and the people of the Northern Territory.
- 3.60 Another possibility would be for the Northern Territory and Commonwealth Governments to negotiate a settlement on the main areas of legislative responsibility yet to be transferred following self-government and effectively remove those matters from the statehood agenda. The Commonwealth could even conceivably wind back the powers it has in the Territory and declare that it would not exercise power in the Territory that it cannot exercise in states.⁵⁴
- 3.61 On balance, the Committee considers that there is a role for the Commonwealth Government to play in assisting the Northern Territory work through some of the unresolved issues of statehood, without driving the agenda. This would involve the Commonwealth updating its broad position on statehood and clarifying its approach to some of the unresolved issues including, for example, the representation of the new State in the Federal Parliament.
- 3.62 By refreshing its position on Northern Territory statehood, the Commonwealth would assist the Northern Territory in further developing its own position on statehood and allow the Territory Government to consult its citizens with more concrete proposals. The people of the Northern Territory would be in a better position to come to a view on statehood if they had a clearer understanding of the associated terms and conditions.

53 Mr Anderson, *Transcript of Evidence*, 6 February 2007, p. 7.

54 Mr Martin, *Transcript of Evidence*, 15 November 2006, p. 30.

Recommendation

- 3.63 **The Committee recommends that the Australian Government update and refine its position on Northern Territory statehood and recommence work on unresolved federal issues.**

Constitutional matters and achieving statehood

States and territories in the Australian Constitution

- 4.1 The *Commonwealth of Australia Constitution Act* 1901 (the Constitution) makes numerous references to 'The States'. Chapter V of the Constitution specifically provides for the recognition of State Constitutions, state parliaments and state laws. The Constitution is guided by the general principle of equality in its treatment of states. For example,
- s. 51(ii) - no discrimination between Commonwealth taxation laws between states;
 - s. 51(xxxi) - Commonwealth laws for the acquisition of property on just terms;
 - s. 92 - Trade within the Commonwealth to be free;
 - s. 99 - Commonwealth not to give preference (to one state, in relation to any law or regulation of trade, commerce, or revenue);
 - s. 117 - Rights of residents in states;
 - s. 118 - Recognition of laws etc. of states;
 - s. 119 - Protection of States from invasion and violence; and
 - s. 123 - Alteration of limits of states.

4.2 Constitutional judicial guarantees also relate to states. Judicial guarantees include the right of appeal from state Supreme Courts to the High Court (s. 73) and the entrenched original jurisdiction of the High Court in all matters between states, between residents of different states, or between a state and a resident of another state (s. 75).

4.3 The Constitution provides for the different treatment of territories compared to states. 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 ...

4.4 While in many respects the Northern Territory is treated as a state, Constitutional provisions relating to the states are not necessarily applicable to the Northern Territory. Constitutional guarantees to states may extend to the Northern Territory upon a grant of statehood.¹

Method of grant

4.5 Creating a new State under the Constitution is not a straightforward matter:

The whole Constitution is framed around the centrality of this notion of a federation of Commonwealth and states in an entrenched constitution with certain rights given to protect the smaller states against the larger. The whole question of territories and new states was quite an incidental issue.²

1 J. Toohey, 'New States and the Constitution: An Overview', in P. Loveday and P. McNab (eds.) *Australia's Seventh State*, The Law Society of the Northern Territory and the North Australia Research Unit, Australian National University, 1988, p. 9.

2 Mr Nicholson, *Transcript of Evidence*, 15 November 2006, p. 42.

- 4.6 There are two constitutional mechanisms for granting statehood:
- To amend the Constitution via a referendum in accordance with S.128, inserting the Territory as a new state, and possibly including any terms and conditions of a grant (such as the level of representation of the new State and the Federal Parliament); or
 - To admit the new State via an Act of the Commonwealth Parliament in accordance with s. 121.³
- 4.7 The main advantage of using s. 121 to grant statehood is that it does not require a referendum, and that it would be easier to incorporate any terms and conditions related to the grant. On the other hand, an amendment to the Constitution could remove any potential legal doubt about the power of the new State in relation to original states.⁴
- 4.8 A number of participants at the Northern Territory Statehood seminar indicated a preference for the admission/establishment of the new State by means of Commonwealth legislation under s. 121 of the Constitution rather than by a referendum to amend the Constitution under s. 128.⁵ The Prime Minister also indicated in 1998 the preference of the Commonwealth Government to use s. 121.⁶ The Committee agrees that s. 121 is the preferred mechanism for granting statehood because it is a more straightforward and flexible path to statehood.
- 4.9 Part VI of the Constitution deals with new states. Section 121 of the Constitution provides for the admission or establishment of new states:

The Parliament may admit to the Commonwealth or establish new States, and may upon such admission or establishment make or impose such terms and conditions, including the extent of representation in either House of the Parliament, as it thinks fit.

3 The 1992 *Capital Duplicators* decision of the High Court confirmed that it is constitutionally possible for the Northern Territory to become a state. *Capital Duplicators Pty Limited and another v. Australian Capital Territory and another*, HCA 51, 177 CLR 248, FC 92/037.

4 Northern Territory Statehood Working Group, Final Report, 1996, pp. 12-15.

5 The Hon Justice Mildren, *Transcript of Evidence*, 15 November 2006, p. 35; Mr Nicholson, *Transcript of Evidence*, 15 November 2006, p. 39; Mr Pauling, *Transcript of Evidence*, 15 November 2006, p. 41.

6 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.

- 4.10 The Committee heard that there has previously been some debate about whether the Northern Territory should be admitted or established as a new State under s. 121. As there appears to be no major difference between the admission and establishment of the new State, the Committee is in agreement with Justices Mildren and Asche that it is more appropriate to admit the new State, as the Territory is already a self-governing 'body politic under the Crown', with existing institutions of parliament, executive and judiciary.⁷
- 4.11 The Committee also heard that while the Commonwealth may grant statehood to the Northern Territory through legislation, it also has the power to amend that legislation, as with any other Act of Parliament. The Commonwealth has previously exercised its power to override self-government in the Territories by passing of the *Euthanasia Laws Act 1997*, which amended the *Northern Territory (Self-Government) Act 1978* and the *Australian Capital Territory (Self-Government) Act 1988*, to prevent the Legislative Assemblies from legalising the practice of euthanasia.⁸
- 4.12 The power of the Commonwealth to amend its legislation granting statehood to the Northern Territory may be limited by other provisions in the Commonwealth Constitution including those outlined in paragraph 4.2,⁹ s. 106 to the extent that the proposed amendment relates to the Constitution of the new State, or by the particular terms and conditions associated with the grant of statehood.

Terms and conditions of a grant of statehood

- 4.13 The Committee heard differing views on the constitutional power of the Commonwealth to create a new state that is unequal to the original states particularly with regard to the issue of representation.
- 4.14 There has been legal doubt on whether the Commonwealth can admit a new state with terms and conditions that differ from those of the original states. The admission of a new state that is constitutionally

7 The Hon Justice Mildren, *Transcript of Evidence*, 15 November 2006, p. 35; The Hon Justice Asche, *Transcript of Evidence*, 15 November 2006, p. 62.

8 Mr Pauling, *Transcript of Evidence*, 15 November 2006, p. 41.

9 J. Toohey, 'New States and the Constitution: An Overview', in P. Loveday and P. McNab (eds.) *Australia's Seventh State*, The Law Society of the Northern Territory and the North Australia Research Unit, Australian National University, 1988, pp. 8-9.

weaker than existing states undermines a key principle of federation, that of equality between states.¹⁰ The Hon Justice Dean Mildren of the Northern Territory Supreme Court put to the Committee that ‘the new state be admitted on the same terms and conditions as the original states’.¹¹

- 4.15 The terms and conditions of a grant of statehood may be limited by other provisions in the Commonwealth Constitution including those outlined in paragraph 4.2.¹²
- 4.16 There also appears to be legal uncertainty over whether the nexus and quota provisions of s. 24 of the Constitution applies to new states. The legal advisor to the Statehood Steering Committee suggested that this question would be resolved by bringing the statehood legislation before the High Court prior to the proclamation of the new State. This would ensure that there is a valid basis for the negotiated representation arrangements of the new State, once statehood is proclaimed.¹³ Otherwise, there would be a strong likelihood of a High Court challenge by the original states.¹⁴
- 4.17 Chapter 6 contains further discussion of the issues of the representation of the new State.

Constitution of the new State

- 4.18 The Constitution of the new State will need to pass through the Commonwealth Parliament and cover the power of the Northern Territory Parliament, and its executive, the Governor of the new State and provisions for the continuation of senior legal and government appointments.¹⁵

10 The principle of equality between states was supported by a number of participants in the seminar. For example, Mr Burke MLA, *Transcript of Evidence*, 15 November 2006, p. 65.

11 The Hon Justice Mildren, *Transcript of Evidence*, 15 November 2006, p. 35.

12 J. Toohey, ‘New States and the Constitution: An Overview’, in P. Loveday and P. McNab (eds.) *Australia’s Seventh State*, The Law Society of the Northern Territory and the North Australia Research Unit, Australian National University, 1988, pp. 8-9.

13 Mr Nicholson, *Transcript of Evidence*, 15 November 2006, p. 45.

14 Mr Pauling, *Transcript of Evidence*, 15 November 2006, p. 49.

15 The Hon Justice Mildren, *Transcript of Evidence*, 15 November 2006, p. 38.

- 4.19 The new Constitution should also have the support of the existing states:

... the new constitution should not be radically different from the constitutions of the other states if agreement is to be reached on its terms – bearing in mind that not only must the agreement be reached as between Territorians but it must be reached with the parliament, and therefore it must be in a form which will be acceptable to the states as well.¹⁶

- 4.20 However, the Statehood Steering Committee is of the view that the Constitution of the new State is a matter for Territorians alone:

In accordance with democratic principles, Territorians should have the say on the formation and content of this document. It is for Territorians to determine this process. It should not be a matter for Commonwealth intrusion or dictation. Once the new State Constitution is adopted by Territorians in accordance with their own processes, it is then for the Commonwealth Government and Parliament to decide whether to accept it or reject it.¹⁷

- 4.21 As an Act of the Commonwealth Parliament, the Constitution of the new State may also be subject to amendment by the Commonwealth. This may create a situation where the state Constitution can be amended by the Commonwealth without reference to the people. However, according to s. 106 of the Constitution, subject to other provisions of that Constitution, a state may alter its Constitution in accordance with its own procedures as defined by the state Constitution:

The Constitution of each State of the Commonwealth shall, subject to this Constitution, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State.

- 4.22 The Committee heard that there is some uncertainty about the potential use of s. 106 as the issue has not been settled by the High Court. The Statehood Steering Committee is continuing to investigate this matter.¹⁸

16 The Hon Justice Mildren, *Transcript of Evidence*, 15 November 2006, p. 36.

17 Statehood Steering Committee, *Submission No. 1*, p. 4.

18 Mr Nicholson, *Transcript of Evidence*, 15 November 2006, p. 52.

- 4.23 Members of the public who participated in open discussions at the seminar also raised the issue of including a Bill of Rights in the Constitution of the new State.¹⁹ The former Northern Territory Sessional Committee on Constitutional Development previously examined this issue of a Bill of Rights for the Territory. The Statehood Steering Committee is also exploring the views of Territorians on this issue.²⁰
- 4.24 The Committee heard that entrenching a Bill of Rights in the new Constitution may risk the support of original States:
- I would not attempt to provide for the protection of fundamental rights or freedoms in such a document, especially as provisions of this kind might give Territorians rights *vide* section 106 of the Constitution even as against the Commonwealth not enjoyed by citizens of other states and are likely to be divisive.²¹

Future referenda

- 4.25 Section 128 of the Constitution requires that Constitution alteration bills be put to referendum, which then must be approved by a majority of electors and a majority of electors in a majority of states (or four out of six states) to enable an amendment to the Constitution. Following a 1977 referendum, Territorians were able to have their votes counted towards the overall tally in referenda, however their votes are still not included in the state tally, the second requirement for a successful referendum.
- 4.26 With the inclusion of a new state, the second majority required for a successful referendum would be a majority of electors in four out of seven states rather than four out of six states, thus reducing one of the impediments to Constitutional change.²²
- 4.27 Since Federation there have been a total of 44 referenda held of which only eight have been successful. Had the Northern Territory been included in the state count it could be argued that there would have been little difference in referenda outcomes. Of the 36 rejected

19 Mr Turner, *Transcript of Evidence*, 14 November 2006, p. 46; Mr Wu, *Transcript of Evidence*, 15 November 2006, p. 75.

20 Legislative Assembly Sessional Committee on Constitutional Development, *A Northern Territory Bill of Rights?*, 1995, Northern Territory Statehood Steering Committee, 'What is a Bill of Rights?' Fact Sheet No. 29.

21 The Hon Justice Mildren, *Transcript of Evidence*, 15 November 2006, p. 36.

22 Mr Faulkner, *Transcript of Evidence*, 15 November 2006, pp. 53-54.

referenda, only five have gained a majority of national support but lacked the support of four states.²³

23 Tasmania did not support each of the five state-rejected referenda. Tasmania also holds the record of most rejections out of all the states (34 out of 44).

Aboriginal interests and statehood

- 5.1 The Aboriginal population in the Northern Territory tends to be younger, and resides in more remote locations, than the non-Aboriginal population. The Aboriginal population also has a higher fertility rate than the non-Aboriginal population and it has been estimated that by 2031 Aboriginal Territorians will comprise 34.5 per cent of the total Territory population.¹
- 5.2 It is estimated that 40 per cent of the non-Aboriginal population in the Territory arrived in the past ten years.² The Aboriginal population makes up the majority of what may be described as 'long term stakeholders' in statehood.³ Aboriginal freehold makes up about 42 per cent of the Territory land mass with most of the remainder subject to native title under the Commonwealth *Native Title Act* 1993.⁴

Aboriginal land rights

- 5.3 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

1 T. Wilson & J. R. Condon, 'Indigenous population change in the Northern Territory 1966 to 2031', *People and Place*, Vol. 14, No. 4, 2007, p. 73.

2 Northern Territory News, 'NT born, NT bred, not likely: study said' 9 February 2007.

3 Central Australian Aboriginal Congress, *Submission No. 5*, p. 7.

4 Mr Bree, *Transcript of Evidence*, 16 November 2006, p. 32.

remains unresolved. The Act only applies in the Northern Territory. Aboriginal land rights is a particularly sensitive issue in the Northern Territory.

- 5.4 The *Aboriginal Land Rights (Northern Territory) Act 1976* vested title in Crown Land to Land Trusts on behalf of the traditional owners. Title granted under the Act is the equivalent to freehold title but the land is held communally. The Act established Land Councils to represent the interests of traditional owners concerning Aboriginal land management issues including negotiating on mineral exploration and development. The Act also established the Aboriginals Benefit Account (ABA) into which the Commonwealth makes royalty payments in respect to mining activities. Payments into ABA are then distributed to Land Councils and traditional owners.
- 5.5 In 2006, the *Aboriginal Land Rights (Northern Territory) Act 1976* was amended to 'provide for individual property rights in Aboriginal townships, streamline processes for development of Aboriginal land and improve efficiency and enhance accountability of organisations under the act'.⁵
- 5.6 The amendment did not provide any greater certainty for the Northern Territory in terms of resolving the issue of controlling land rights following statehood:
- The SSC notes recent amendments introduced in the House of Representatives on 31 May 2006 do not provide the Northern Territory equal status with the existing States. The Territory will exercise delegated powers. It is also clear the Commonwealth could potentially retain the ALRA upon Northern Territory Statehood using other heads of power apart from the terms and conditions power in s.121.⁶
- 5.7 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. It was argued that patriation of the Act would bring the new State to a position of parity with the existing states.⁷

5 The Hon Mr Brough, Second Reading Speech, *Aboriginal Land Rights (Northern Territory) Amendment Bill 2006*, *House of Representatives Hansard*, 31 May 2006, p. 5.

6 Statehood Steering Committee, *Submission No. 1*, p. 23.

7 Northern Territory Statehood Working Group, *Final Report*, May 1996, p. 44; Northern Territory Statehood Executive Group, *Towards Statehood: Land Matters Upon Statehood*, 1986, p. 1. This view was supported by the Northern Territory Minerals Council, see Ms Purick, *Transcript of Evidence*, 16 November 2006, p. 51.

5.8 At the time of the statehood referendum the Central and Northern Land Councils opposed the patriation of the Act. In its presentations to the seminar, both Land Councils expressed a number of concerns with the prospect of patriating the Act to the Northern Territory. For the Central Land Council, these concerns include:

... the generally adversarial and hostile approach taken to the act and land councils by successive Territory governments; the unicameral nature of the Territory parliament; the difficulty of sustaining majority support for Indigenous rights within the wider electorate in the face of sustained campaigns to the contrary; the risk of comparatively little national and international attention on proposed amendments, compared with the current situation with the federal parliament; the nonapplication to state laws of some key guarantees entrenched in the Commonwealth Constitution, such as just terms and freedom of religion; and ... the question mark over the capacity for effective entrenchment of state constitutional provisions.⁸

5.9 The Committee was interested to note that the Land Councils appear to hold greater trust in the constitutionally guaranteed accountability mechanisms of the Commonwealth Parliament,⁹ regardless of which party was in power, rather than the accountability mechanisms of the Legislative Assembly of the Northern Territory, while having a greater representation of the Aboriginal population.

5.10 Both Land Councils expressed their continued support for the Kalkaringi and Batchelor statements in reference to their position on the future status of the *Aboriginal Land Rights (Northern Territory) Act 1976*.¹⁰ These statements are further discussed below.

5.11 The Statehood Steering Committee sees its role as an 'agent for discussion' on the question over the future treatment of the Act.

Detailed negotiation should be undertaken at a Government to Government level involving the relevant interest groups

8 Ms Weepers, *Transcript of Evidence*, 14 November 2006, p. 26.

9 Ms Weepers, *Transcript of Evidence*, 14 November 2006, p. 26; Mr Daly, *Transcript of Evidence*, 16 November 2006, p. 37.

10 Ms Weepers, *Transcript of Evidence*, 14 November 2006, p. 26; Mr Daly, *Transcript of Evidence*, 16 November 2006, p. 29. The Kalkaringi and Batchelor statements were also supported by Mr Tilmouth, *Transcript of Evidence*, 16 November 2006, p. 71.

either after the SSC education and consultation process has concluded or at the same time.¹¹

- 5.12 As with other issues, the Steering Committee is interested in hearing the intentions of the Commonwealth with regard to the *Aboriginal Land Rights (Northern Territory) Act 1976*.
- 5.13 It was also suggested at the seminar that the *Aboriginal Land Rights (Northern Territory) Act 1976* should be patriated to the Northern Territory to provide future state governments greater control of land issues and minimise delays caused by negotiations over land. Indeed, the issue of land rights could be removed from the statehood agenda by patriating the Act to the Territory Government as soon as possible.¹²
- 5.14 Another issue raised with the Committee is that of defining traditional owners of land under schedule 1 of the *Aboriginal Land Rights (Northern Territory) Act 1976*.¹³

The Native Title Act 1993

- 5.15 It is important to differentiate land rights and native title in the Northern Territory. The *Native Title Act 1993* seeks to recognise pre-existing rights to land for Aboriginal and Torres Strait Islander people in accordance with their traditional laws and customs. The Act applies across Australia with no different application to the Northern Territory, however holders of Aboriginal freehold title under the *Aboriginal Land Rights (Northern Territory) Act 1976* have no incentive to make a native title claim.¹⁴ Further, the *Native Title Act 1993* can apply to areas in the Territory not covered by the *Aboriginal Land Rights (Northern Territory) Act 1976*.¹⁵
- 5.16 The *Native Title Act 1993* provides a framework for the negotiation and resolution of issues concerning exploration and mining grants. The Committee heard that in November 2006, there were around 185 native title claims in the Northern Territory that were yet to be

11 Statehood Steering Committee, *Submission No. 1*, p. 23.

12 Mr Tollner MP, *Transcript of Evidence*, 15 November 2006, pp. 61, 80.

13 Mr Tilmouth, *Transcript of Evidence*, 16 November 2006, p. 67.

14 Mr Neate, *Transcript of Evidence*, 16 November 2006, p. 44.

15 National Native Title Tribunal, *Submission No. 8*, p. 5.

resolved, about half of which were made to secure the right to negotiate over exploration and mining grants.¹⁶

- 5.17 The Committee heard that while the *Native Title Act 1993* added an additional layer of bureaucracy to mining related activity, it is now considered an established part of the legal framework and encouraged the practice of cooperation and relationship building through Indigenous Land Use Agreements.¹⁷

Broader Aboriginal interests

- 5.18 The Committee heard that the issue of Aboriginal land rights and statehood is broader than the *Aboriginal Land Rights (Northern Territory) Act 1976* itself, and it is linked to Aboriginal interests in improving service provision and addressing socio-economic disadvantage.
- 5.19 Aboriginal disadvantage is well documented. The Productivity Commission has identified the following 'headline indicators' which outline the main areas where Aboriginal and Torres Strait Islanders have disproportionately poorer outcomes than other Australians:
- Life expectancy at birth;
 - Rates of disability and/or core activity restriction;
 - Years 10 and 12 retention and attainment;
 - Post secondary education – participation and attainment;
 - Labour force participation and unemployment;
 - Household and individual income;
 - Home ownership;
 - Suicide and self-harm;
 - Substantiated child protection notifications;
 - Deaths from homicide and hospitalisations for assault;
 - Victim rates for crime; and

16 Mr Neate, *Transcript of Evidence*, 16 November 2006, p. 53.

17 Mr Neate, *Transcript of Evidence*, 16 November 2006, p. 55.

- Imprisonment and juvenile detention rates.¹⁸
- 5.20 The Coordinator of the Larrakia Nation Aboriginal Corporation (the only Aboriginal representative at the seminar to make a strong statement in favour of statehood) saw a new state constitution as a means to protect the rights of Aboriginal people:
- Creation of such a crucial legal instrument would generate an opportunity to include better recognition of Indigenous rights of justice, our cultural values and our right to self-determination. It should also enshrine a particular and key role of Indigenous peoples in land management and environmental protection of our traditional lands.¹⁹
- 5.21 The Northern Land Council indicated to the Committee that the path to statehood provides an opportunity to ‘challenge the way in which governments allocate resources to Aboriginal people’.²⁰ An example of poor allocation of resources put before the Committee was the lower level of funding per school age child in the Aboriginal community in Wadeye, compared with the average funding per student across the Territory.²¹
- 5.22 The Northern Territory Government informed the Committee of its new ‘whole of government’ framework to improve the well-being of Aboriginal Territorians that focuses on childhood education, economic development, governance, community infrastructure, and community safety.²²
- 5.23 The Committee was interested to hear the views of seminar participants on whether inalienable freehold title prevents Aboriginal people from maximising employment and business opportunities from land and acts as an impediment to development. Aboriginal representatives considered that inalienable freehold title can make a

18 Productivity Commission, *Overcoming Indigenous Disadvantage, Key Indicators 2005*, Steering Committee for the Review of Government Service Provision, p. xxii.

19 Mr Costello, *Transcript of Evidence*, 16 November 2006, p. 74.

20 Mr Daly, *Transcript of Evidence*, 16 November 2006, p. 30. A similar sentiment was expressed by most Aboriginal representatives appearing before the Committee.

21 Mr Daly, *Transcript of Evidence*, 16 November 2006, p. 30; see also J. Taylor & O. Stanley, *The Opportunity Costs of the Status Quo in the Thamarrurr Region*, Centre for Aboriginal Economic Policy Research Working paper No. 28, 2005, p. 63.

22 *Exhibit No. 11*, Northern Territory Government, *Agenda for Action*, 2005, p. 2.

positive economic contribution to Aboriginal communities through the use of 99-year leases.²³

- 5.24 The Committee also heard about the recent collaboration and partnership activities between the Indigenous Land Corporation and the Northern Territory Government that provide training opportunities and generate employment outcomes for Aboriginal people.²⁴

The Kalkaringi and Batchelor statements

- 5.25 The Northern and Central Land Councils boycotted the 1998 Northern Territory Constitutional Convention due to what they considered to be the 'undemocratic' process for selecting delegates. In the lead up to the referendum, the Combined Aboriginal Nations of Central Australia met in Kalkaringi and agreed on a statement to express their collective concerns about the implications of statehood for Aboriginal people.
- 5.26 The Kalkaringi statement set out a number of Aboriginal rights covering self-determination, land rights, rights to sacred sites, human rights and rights to political participation, services and infrastructure, education and justice, under the following general principles:
- 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.
 - 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.
 - That the Northern Territory Government must provide adequate resources and negotiate in good faith a realistic timetable for such negotiations.²⁵

23 Mr Procter, *Transcript of Evidence*, 16 November 2006, p. 40; Mr Daly, *Transcript of Evidence*, 16 November 2006, p. 47; Mr Costello, *Transcript of Evidence*, 16 November 2006, p. 76.

24 Ms McPherson, *Transcript of Evidence*, 14 November 2006, p. 24.

25 Constitutional Convention of the Combined Aboriginal Nations of Central Australia, Kalkaringi, 17-20 August 1998, *Exhibit No. 5*.

- 5.27 Shortly following the referendum a further Aboriginal Constitutional Convention was held at Batchelor College that endorsed the Kalkaringi resolutions, and released its own statement called Standards for Constitutional Development.²⁶
- 5.28 At a meeting with the Northern Territory Legal and Constitutional Affairs Committee (LCAC), the Convention Committee advised that '[n]egotiation over statehood can only proceed when the NT Government makes a commitment to the negotiation of a framework agreement'.²⁷ Such a framework would include a government commitment not to patriate the *Aboriginal Land Rights (Northern Territory) Act 1976*, to gain Aboriginal consent for policy reform that affects them, and recognition of Aboriginal law and traditional land ownership.²⁸
- 5.29 It appears that the Land Councils have the power to derail the statehood process if they are not satisfied with the government response to the Kalkaringi and Batchelor statements. As one submission to the inquiry observed:
- If any senior government were to leave out or pay inadequate attention the full participation of Indigenous peoples in design at every level of the new NT – that is, were they denied a sufficient positive role – they would later play another role, by negative sanction as it were, by resistance and making things unworkable, as is the age-old 'power' of minorities or second-class citizens from Ireland to Quebec in the past, to northern territories abroad in more recent years.²⁹
- 5.30 In 1999, LCAC recommended that the Territory make a serious attempt at engaging Aboriginal parties on the content of a framework agreement. In 2003, the Northern Territory Government placed Aboriginal people at the centre of their approach to statehood:

A central principle for the Northern Territory to achieve Statehood is the respect for and proper recognition of the

26 Northern Territory Indigenous Constitutional Convention, Standards for Constitutional Development, Batchelor College, 30 November – 4 December 1998.

27 Northern Territory Standing Committee on Legal and Constitutional Affairs, *Report into appropriate measures to facilitate statehood*, 1999, p. 29.

28 Northern Territory Standing Committee on Legal and Constitutional Affairs, *An Examination of Structural Relationships in Indigenous Affairs and Indigenous Governance in the Northern Territory*, Discussion Paper No. 1, 2002, p. 15.

29 Australian Centre for Peace and Conflict Studies, *Submission No. 9*, p. 12.

Indigenous people of the Territory and that the Indigenous people are to be involved in all stages of the process.³⁰

- 5.31 It was put to the Committee that progress needed to be made on the framework agreement, regardless of statehood:

I ask now has anything been done to deal with developing a framework agreement between the Northern Territory government, the indigenous constitutional convention committee and the Indigenous communities on future developments, addressing issues of self-determination and self-governance within their communities, and recognition of Aboriginal customary law? These do not need statehood to happen, they need government to get off their backsides and go and do the job.³¹

- 5.32 During the course of the seminar the Committee noted that the Kalkaringi statement sought negotiation between the Northern Territory Government and the **freely chosen** representatives of the Aboriginal Territorians,³² rather than their democratically elected representatives. The Committee raised the question of how matters could be negotiated with representatives that may not have the democratic authority to speak on behalf of Aboriginal people.³³ It also appears that some Aboriginal people will be excluded from the decision making process.

- 5.33 Aboriginal representatives at the seminar put forward the view that democratic and the traditional decision making processes are two different systems.³⁴ These systems are based on the cultural context of a group and imposing one system onto another group would not assist the process of negotiation:

How they make their decisions on who represents them is done through a cultural and social process that people who are not expert in understanding it will have difficulty with, and we will head off looking for the new Fallujah to impose a democratic process that no-one understands.³⁵

30 Statehood Steering Committee, Terms of Reference, p. i.

31 The Hon Mr Hatton, *Transcript of Evidence*, 15 November 2006, p. 14.

32 *Exhibit No. 5*, Constitutional Convention of the Combined Aboriginal Nations of Central Australia, Kalkaringi, 17-20 August 1998. Emphasis added.

33 Mr Tollner MP, *Transcript of Evidence*, 16 November 2006, p. 71.

34 Ms Weepers, *Transcript of Evidence*, 14 November 2006, p. 33.

35 Mr Tilmouth, *Transcript of Evidence*, 16 November 2006, p. 73.

- 5.34 The Statehood Steering Committee expressed enthusiasm for engaging with Aboriginal people on constitutional development. According to the Steering Committee Chairperson, Ms Barbara McCarthy MLA (herself indigenous):

A new Northern Territory Constitution must provide for the continuance of Aboriginal cultures and societies within a contemporary nation state of Australia. It must provide the constitutional protections that have until now been provided by federal legislation and oversight of the Northern Territory.³⁶

- 5.35 It is not clear if the Commonwealth Parliament would have enthusiastically legislated for statehood if the referendum had narrowly passed but with only about a quarter of the Aboriginal population voting in favour of the change. As one speaker remarked at the seminar:

If [the rights of Indigenous Australians] are overridden or undermined, we will not become a state – at least in my view – because I doubt if the Commonwealth parliament would agree to imposing terms and conditions on the people of the Northern Territory which a large proportion of them would not support.³⁷

Strategies to include Aboriginal Territorians

- 5.36 The Committee heard that the Aboriginal Interpreter Service caters for about 100 languages for the legal, health and education systems in the Territory.³⁸ Literacy rates are also low. Communicating the more complex concepts of governance will also be a challenge.³⁹
- 5.37 The Aboriginal population tend not to participate in elections to the extent of the non-Aboriginal population.⁴⁰ Table 5.1 below shows a much lower voter turnout rate for the federal division of Lingiari, which encompasses the remote areas of the Northern Territory, compared with the rate for the federal division of Solomon and the national average. The lower voter turnout in remote areas occurs despite the provision of mobile polling services and the high level of

36 Ms McCarthy MLA, *Transcript of Evidence*, 15 November 2006, p. 7.

37 The Hon Mr Snowdon MP, *Transcript of Evidence*, 14 November 2006, p. 8.

38 Ms McCarthy MLA, *Transcript of Evidence*, 14 November 2006, p. 36.

39 The Hon Mr Snowdon MP, *Transcript of Evidence*, 14 November 2006, p. 49.

40 Mr Connop, *Transcript of Evidence*, 15 November 2006, p. 72.

assisted voting in many remote Aboriginal communities. The Northern Territory Electoral Commission has observed that a 'lack of electoral awareness' in remote areas contributes to low voter turnout rates.⁴¹

Table 5.1 Voter Turnout - 2004 Federal Election

Division	House of Representatives (%)	Senate (%)
Lingiari	77.71	77.85
Solomon	91.21	91.38
National	94.32	94.82

Source Australian Electoral Commission, *2004 Federal Election Voter Turnout by Division*, http://www.aec.gov.au/_content/What/voting/turnout/2004.htm (accessed 21 February 2007).

5.38 The Australian Electoral Commission raised concerns about the provision of assistance to Aboriginal voters in the Northern Territory who had to contend with the statehood referendum, in addition to the House of Representatives and Senate ballot papers, in the 1998 federal election.⁴² It has been reported that about 70% of the Northern Territory Aboriginal population voted 'No' in the 1998 statehood referendum.⁴³

5.39 The Steering Committee is aware of the need for statehood material to meet the needs of Aboriginal communities:

Across the Northern Territory there are over 100 Aboriginal languages spoken quite fluently today ... It is clear that one of the fundamental challenges for the Statehood Steering Committee is the method we use in educating and informing all people so they can be intrinsically involved in the direction of their own future.⁴⁴

5.40 It was put to the Committee that the voting system should prioritise the views of long term Territorians considering the high turnover of the non-Aboriginal population in the Northern Territory:

41 Northern Territory Electoral Commission, *Submission to the Joint Select Committee on Electoral Matters Inquiry into Civics and Electoral Education*, 2006, p. 9.

42 House of Representatives Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the conduct of the 1998 Federal Election and matters related thereto*, 2000, p. 73.

43 *Exhibit 5*, Indigenous Constitutional Convention, *Indigenous Constitutional Strategy Northern Territory*, 1998, p. 4.

44 Ms McCarthy MLA, *Transcript of Evidence*, 15 November 2006, p. 7.

... only continuing residents should vote in a future referendum on statehood. This could be on the basis of a qualifying period of time, say 10 years. The same rule should apply to the establishment of a Northern Territory constitution. A future electoral system should be a proportionate one, ensuring that transient Australian voters do not have the disproportionate influence they now enjoy.⁴⁵

- 5.41 It was also suggested that with adequate political representation, there would be greater capacity to provide funding for Aboriginal health, and also to increase the social status of Aboriginal people.⁴⁶ Greater inclusion and participation in the political process, it was argued, has positive health benefits for Aboriginal people.

Where people feel excluded, where they feel, see and experience themselves at the bottom of the socioeconomic order, they are more likely – not all of them – to involve themselves in self-destructive or violent behaviour and other kinds of behaviour in terms of diet and exercise that are not the best for their health.⁴⁷

The view of the Committee

- 5.42 While the Committee acknowledges the particular demographic circumstances of the Northern Territory, the Committee believes that it would be impractical, divisive and contrary to democratic principles to restrict voting on a statehood referendum to long term Territorians only.
- 5.43 The Committee considers that Aboriginal disadvantage in the Northern Territory should be addressed through appropriate policy measures. Aboriginal people should be consulted on statehood matters, particularly on the future treatment of the *Aboriginal Land Rights (Northern Territory) Act 1976*. Discussions with the Aboriginal community concerning the constitutional statements and a possible framework agreement (or agreements), is generally a matter for the Northern Territory Government.⁴⁸ The Committee notes that

45 Central Australian Aboriginal Congress, *Submission No. 5*, p. 9.

46 Mr Liddle, *Transcript of Evidence*, 14 November 2006, p. 13. The link between Aboriginal ill-health and political participation was also raised in *Exhibit No. 16*, M. Anne Brown, *Human Rights and the Borders of Suffering: The promotion of human rights in international politics*, Manchester University Press, 2002, p. 175.

47 Dr Mowbray, *Transcript of Evidence*, 15 November 2006, p. 82.

48 Subject to the agreement of the Commonwealth and the States where their interests intersect.

discussions between the Northern Territory Government and its Aboriginal community may very well determine the outcome of a future referendum on statehood.

Representation of the new State and the status of Commonwealth legislation

Future representation of the new State in the Federal Parliament

- 6.1 Following the transfer of the Northern Territory to the Commonwealth in 1911, residents of the Territory lost their voting and representation rights.¹ Unlike the original states, which must have a minimum of five members of the House of Representatives and six Senators each, there is no constitutionally guaranteed minimal level of representation in the Federal Parliament for the territories.
- 6.2 Section 122 of the Constitution enables the Commonwealth to determine the extent of representation in the territories as it sees fit. Continued political agitation brought the Commonwealth to pass the *Northern Territory Representation Act 1922* which provided the Territory with its first House of Representatives member, but without the power to speak or vote.
- 6.3 Restricted voting rights for the Territory member were introduced in 1936, and expanded to matters relating to the Territory in 1957. The Territory member was for the first time able to exercise full voting rights in 1968 under the *Northern Territory Representation Act 1968*.

¹ However, prior to 1911 most Territory residents were of Aboriginal or Asian ancestry and unable to effectively exercise their voting rights. See Professor Carment, *Submission No. 2*, p. 3.

- 6.4 The *Senate (Representation of Territories) Act 1973* enabled the representation of the Territory in the Senate, notwithstanding a failed High Court challenge in 1975.² The Act provided representation of two Senators each from the Northern Territory and the Australian Capital Territory with full voting rights. The first two Senators from the Territory were elected in 1975.
- 6.5 Unlike Senators from states, the length of the term of Territory Senators was fixed in line with House of Representative elections. The Committee heard that the number of Territory Senators was deliberately set at two to ensure that, with the proportional representation voting system, both major parties would be represented. This result was considered to be 'proper' and 'more democratic'.³
- 6.6 Representation of the Territory in the Federal Parliament is an issue that states would be interested in as any changes to the current arrangements may impact on the level of their representation. Political parties would also be interested in the issue of representation of the potential new State as different approaches may impact on their representation in Parliament and potentially the composition of government.

House of Representatives

- 6.7 Section 24 of the Constitution sets the parameters for the number of members of the House of Representatives:

The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the senators.

The number of members chosen in the several States shall be in proportion to the respective numbers of their people, and shall, until the Parliament otherwise provides, be determined, whenever necessary, in the following manner:

(i) a quota shall be ascertained by dividing the number of the people of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of the senators;

2 *Western Australia v. Commonwealth* (1975) 134 CLR 201.

3 Senator Crossin, *Submission No. 4*, pp. 1-2.

(ii) the number of members to be chosen in each State shall be determined by dividing the number of the people of the State, as shown by the latest statistics of the Commonwealth, by the quota; and if on such division there is a remainder greater than one-half of the quota, one more member shall be chosen in the State.

But notwithstanding anything in this section, five members at least shall be chosen in each Original State.

- 6.8 Section 48(2B) of the *Commonwealth Electoral Act* 1918 specifies that the Northern Territory and the Australian Capital Territory shall have at least one MP. The need for further MPs from the Territories is then determined by the Commonwealth Election Commissioner 13 months following the first meeting of a newly elected House of Representatives, by dividing the Territory population by the national quota.⁴
- 6.9 In 1999 the Northern Territory entitlement quota increased to warrant the creation of an additional seat in the Northern Territory and the seats of Lingiari and Solomon were created. In the February 2003 determination, the Northern Territory entitlement quota fell below the minimum required for the second seat by 295 people, a figure within the Australian Bureau of Statistics margin of error. The *Commonwealth Electoral Act* 1918 was then amended to set aside the determination of the Commonwealth Electoral Commissioner and maintain the two seats in the Northern Territory until the time of the next determination.⁵
- 6.10 The seminar discussion and submissions concerning the representation of the new State in the House of Representatives tended to centre on questions of population and the constitutional requirement of the quota and the applicability of the requirement that original states should have a minimum of five members.
- 6.11 Some seminar participants argued that equality with existing states required equal representation rights in the Federal Parliament. According to Hon Justice Mildren:

4 The national quota is determined by dividing the national population by twice the number of Senators from the states (excluding Senators from the territories). The population of the territories are not included in the national population statistics. See Joint Standing Committee on Electoral Matters, *Territory Representation, Report of the Inquiry into increasing the minimum representation of the Australian Capital Territory and the Northern Territory in the House of Representatives*, 2003, p. 17.

5 *Commonwealth Electoral Amendment (Representation in the House of Representatives) Act* 2004.

... the act of admission should make it clear that the Northern Territory is admitted on the same terms and conditions as if it were an original state so that the constitutional protections given to the original states under section 7 of the Constitution, ensuring that all states have an equal number of senators being not less than six is maintained, and also ensuring that at least five members of the House of Representatives are elected from the Northern Territory, vide section 24 of the Constitution.⁶

6.12 The Statehood Steering Committee also submitted that there were constitutional doubts that the new State could be treated any differently from the 'original states' on the issue of representation.⁷

6.13 By contrast the Hon Justice Asche put the view that the current Northern Territory population does not warrant the provision of five members of the House of Representatives.

In proportionate numerical terms, therefore, there can be no justification for increasing the number of seats available to the Territory in the House of Representatives, if the Territory became a state, because to do so would be to give the Territory voters a proportionally greater franchise than voters elsewhere in Australia.⁸

6.14 Providing five seats for the new State would result in an average enrolment per electoral division of 22,586, according to the present Northern Territory population. Five House of Representative seats for the new State would be an apparent over-representation of the population compared with average number of electors per member in other states, as outlined in table 6.1 below.

6 The Hon Justice Mildren, *Transcript of Evidence*, 15 November 2006, p. 37. Mr Tollner MP also expressed a similar view, see *Transcript of Evidence*, 15 November 2006, p. 59.

7 Statehood Steering Committee, *Submission No. 1*, p. 11.

8 The Hon Justice Asche, *Transcript of Evidence*, 15 November 2006, p. 62.

Table 6.1 Average enrolment per electoral division in each state and territory

State/territory:	Seats:	Average enrolment:	State/territory:	Seats:	Average enrolment:
New South Wales	50	86,582	South Australia	11	95,629
Victoria	37	89,454	Tasmania	5	68,562
Queensland	28	88,415	Australian Capital Territory	2	113,771 ⁹
Western Australia	15	83,249	Northern Territory	2	56,465 ¹⁰

Source *Parliamentary Handbook of the Commonwealth of Australia* 2005

6.15 The table above suggests that the Northern Territory, and to a lesser extent, Tasmania, benefit from the arrangements for representation in the House of Representatives as their average enrolment per electoral division is lower than other states. In effect, a vote in the Northern Territory or Tasmania carries more weight than a vote in other states. Indeed, the argument that the Australian Capital Territory is under-represented in the House of Representatives is not without merit as it has the highest average enrolment per electorate.¹¹

6.16 Representation in the House of Representatives is also linked to the number of Senators from each state by the nexus provision of s. 24 of the Constitution.

Senate

6.17 Section 7 of the Constitution guarantees a minimum of six Senators for each of the original states:

Until the Parliament otherwise provides there shall be six senators for each Original State. The Parliament may make laws increasing or diminishing the number of senators for each State, but so that equal representation of the several

9 Relative population growth in the mid 1990s nudged the Australian Capital Territory over the quota for three MPs for the 1996 federal election. The population growth of the ACT then stabilised to warrant the return to two MPs from the 1998 federal election.

10 The Northern Territory has the lowest enrolment and voter turnout of all Australian jurisdictions.

11 Small population fluctuations in the smaller jurisdictions such as the NT and the ACT can have a major impact on their level of representation in the House of Representatives. The 2005 determination of the Commonwealth Electoral Commissioner found the Australian Capital Territory only about 17,000 people short of the quota for a third MP. In 2003 the Commission found the NT 285 people short of the quota for its second MP (as discussed in paragraph 6.9 above).

Original States shall be maintained and that no Original State shall have less than six senators.

- 6.18 In 1983, the number of Senators for each state was increased to 12. The prospect of 12 Senators for the Northern Territory was not on the agenda in the lead up to the 1998 referendum. In October 1998, the then Chief Minister of the Northern Territory, the Hon Shane Stone stated, 'we've never sought 12 Senators, no one seriously has ever put that proposition from the Northern Territory'.¹²
- 6.19 The Committee heard that two additional Northern Territory Senators upon statehood would be a reasonable starting point, based on the argument that the population is roughly a third of that in Tasmania, and therefore the Territory should have a third of the Senate allocation for Tasmania. Two additional Senators for the new State would bring the total to four and roughly equal to the representation level of Tasmanian Senators.¹³
- 6.20 The representation of the new State in the Senate could increase over time in line with population increases and economic development, to the point where it reaches the representation of other states, currently 12:
- The terms and conditions of admission of the new state could contain a formula for an increase in the number of senators as demographic and economic circumstances warrant it.¹⁴
- 6.21 If the population benchmark for the grant of 12 Senators to the new State were set at the population of Tasmania, then according to the population projections of the Australian Bureau of Statistics, the new State would not achieve equality in the Senate before the year 2050 (see table 6.2 below).

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

13 Senator Crossin, *Transcript of Evidence*, 15 November 2006, p. 20.

14 Senator Crossin, *Transcript of Evidence*, 15 November 2006, p. 19. This view is consistent with the Statehood Steering Committee proposal for 'eventual equality'.

Table 6.2 Population projections for the Northern Territory and Tasmania

	At 30 June 2004	At 30 June 2021	At 30 June 2051 ¹⁵
Hobart	202,200	220,200	219,600
Total Tasmania	482,200	504,000	453,000
Darwin	109,400	149,700	232,000
Total Northern Territory	199,800	250,900	350,000

Source Australian Bureau of Statistics, *Population Projections Australia 2004-2101*, 2005 Cat No. 3222.0

6.22 An alternative view put before the Committee was that the number of Senators should not be tied with population:

... if you are saying that we cannot have 12 senators based on our population, then surely if we have only two senators Tasmania should now have only four and South Australia should have only 10.¹⁶

6.23 The Hon Justice Asche argued that a fixed date must be set for full equality so the process 'can be seen as a predictable and ascertainable future event rather than contemplating an indecisive series of possible compromises'.¹⁷

6.24 According to Senator Crossin a possible timeframe for the new State to reach equal representation in the Senate (assuming four Senators are granted upon statehood) would be:

A further four senators ... could be added in, say, 12 years time and a further four senators similarly added in another 12 years time. This would then result in equality with the original states based on the present figure of 12 senators for each state but would take 25 years to achieve.¹⁸

6.25 The Hon Justice Mildren noted that some State populations (Tasmania and Western Australia) at 1901 did not differ greatly from the current Northern Territory population. The new State, he argued, should therefore have a minimum of six Senators to be consistent with the

15 The projections assume the following mid-range national trends: fertility rate of 1.7 babies per woman, net overseas migration rate of 110,000 persons per year, and life expectancy at birth of 84.9 years for males and 88 years for females. The figures also include net interstate migration.

16 Mr Wood MLA, *Transcript of Evidence*, 16 November 2006, p. 77.

17 The Hon Justice Asche, *Transcript of Evidence*, 15 November 2006, p. 63.

18 Senator Crossin, *Transcript of Evidence*, 15 November 2006, p. 19.

minimum Constitutional requirements for the 'original States' and the principle of equality among states.¹⁹

- 6.26 The immediate introduction of six to twelve Senators from the Northern Territory upon statehood would have major implications for the redistribution of House of Representative electorate boundaries across the country with the creation of up to 10 additional seats, in accordance with the nexus provision of Section 24 of the Constitution.²⁰
- 6.27 Hon Justice Mildren also noted that the risk of setting a lower level of representation for the Territory compared with the original states was that it may lead to further compromise on other terms and conditions of statehood. Such compromises would produce a 'second-class state'.²¹
- 6.28 It was suggested to the Committee that a proposal for two additional Senators upon statehood would be in accordance with a sense of 'compromise, cooperation and realism'.²²
- 6.29 Furthermore, there does not appear to be popular support for immediately introducing 12 Senators in the Northern Territory upon the grant of statehood:
- I say to people, 'Do you want equal Senate representation?' They say to me, 'You've got to be joking. Feed more politicians? Is everybody going to be born a senator in the Territory? Get real.' I would then ask, 'How many senators do you think you need?' They would reply, 'Two or four. We don't really care.'²³
- 6.30 According to the *Commonwealth Electoral Act 1918* formula for determining the number of House of Representative electoral divisions, the creation of two additional Senators from the Northern Territory may require the creation of two additional electoral divisions in New South Wales, and one additional electoral division each in Victoria, Queensland and South Australia, based on 2005 population data (see Appendix F).

19 The Hon Justice Mildren, *Transcript of Evidence*, 15 November 2006, p. 37.

20 The Constitutional uncertainty over the application of Section 24 to new states was discussed in Chapter 4.

21 The Hon Justice Mildren, *Transcript of Evidence*, 15 November 2006, p. 48.

22 Senator Crossin, *Transcript of Evidence*, 15 November 2006, p. 32.

23 Mrs Bradley, *Transcript of Evidence*, 15 November 2006, p. 32.

6.31 Moreover, if the Northern Territory and Commonwealth Governments negotiated a minimum of five MPs from the Territory following statehood (the minimum for other states), a further three electoral divisions would need to be created in the Northern Territory.

6.32 The Statehood Steering Committee regards the representation of the new State in the Federal Parliament as an issue to be negotiated between the Northern Territory and Commonwealth Governments. It also considers that the principle of state equality is more important than the implementing arrangements in relation to representation in the Federal Parliament:

The SSC supports equality. Whether this is eventual or immediate is less important than the principle at stake. Anything less than a partnership with the other States in a federation will in the eyes of many Territorians probably not be worth fighting for.²⁴

6.33 The Committee also heard that a deeper issue concerning representation in the Senate is that the current provision of 12 Senators is superfluous and s. 27, and by implication, s. 24 of the Constitution, needs to be amended:

The only real reason there are 12 senators per state is to create enough members in the lower house, in the House of Representatives, because section 27 requires a 2:1 ratio. In this day and age that is illogical. As the population of Australia grows, do we keep growing the senate to do no more work and for no more purpose ...²⁵

6.34 The Committee sees some merit in this argument but considers that this is a much wider issue beyond the concern of Northern Territory statehood.

The view of the Committee

6.35 As the granting of five seats to the new State would further increase the uneven distribution of voters in electorates, or malapportionment, in seats among the states in the House and potentially undermine an argument for equal treatment, the Committee considers that it is appropriate for the Northern Territory to retain two members of the House of Representatives upon statehood. The question of

24 Statehood Steering Committee, *Submission No. 1*, p. 11.

25 The Hon Mr Hatton, *Transcript of Evidence*, 15 November 2006, pp. 33-34.

representation of the new State in the House should then be considered by the Australian Electoral Commission at an appropriate time.

- 6.36 The Committee also considers that it is not appropriate for the Northern Territory to gain an additional 10 Senators immediately following statehood. An allocation of 12 Senators from a new state with a population of around 200,000 would present an unacceptable level of malapportionment and would be unlikely to gain the support of the Australian Parliament.
- 6.37 A more reasonable approach would be to grant the new State an additional two Senators with the possibility of additional Senators in the future subject to certain time and/or population requirements as agreed between the Territory and the Commonwealth.
- 6.38 If the Northern Territory gained two additional Senators following statehood, the nexus provision of the Constitution, may require the creation of a further four members of the House of Representatives.²⁶ The new electoral divisions would be created outside the Territory.

The impact on other territories

- 6.39 The Committee heard that Northern Territory statehood may lead to claims of under-representation of the people of the Australian Capital Territory in the Federal Parliament:

In the event that the Northern Territory were to become a state, there would be a significant argument from the people of the ACT about us being overrepresented and them being underrepresented if we were to be given additional senators and they were not.²⁷

- 6.40 The Committee notes that the Australian Capital Territory could appear to be under-represented if the new State had four Senators. In any case, the projected population growth of the Australian Capital Territory compared with the projected population decline of Tasmania over the next 50 years, suggests that questions over the adequacy of representation of the Australian Capital Territory in the

26 It is not clear that the nexus provision would apply in the case of a new State.

27 The Hon Mr Snowdon MP, *Transcript of Evidence*, 14 November 2006, p. 6.

Federal Parliament will continue regardless of Northern Territory statehood.²⁸

- 6.41 The Australian Capital Territory was established under s. 125 of the Constitution specifically to set up a national seat of government. Like the Northern Territory, the Australian Capital Territory is subject to Commonwealth legislation under s. 122. Unlike the Northern Territory, the Australian Capital Territory is also subject to Commonwealth power under s. 52(i) as it is the seat of government. Section 125 is worded in such a way to suggest that that Territory cannot proceed to statehood.²⁹ Furthermore, in the *Capital Duplicators case*, the High Court indicated that the Australian Capital Territory cannot proceed to statehood.³⁰

Future status of Commonwealth legislation applying to the Northern Territory

- 6.42 The Northern Territory is generally treated in the same manner as states in Commonwealth legislation. Interpretation provisions in many Commonwealth Acts provide that 'a State will include the Australian Capital Territory and the Northern Territory'. Nonetheless the Territory has historically been subject to greater Commonwealth legislation than the original states:

The reality is that since 1911 much Commonwealth legislation and administration has necessarily intruded into the territory further than it could have done in the states.³¹

- 6.43 To some extent, the future status of Commonwealth legislative regimes currently applying to the Northern Territory will depend on the nature of the terms and conditions of the grant of statehood negotiated between the Northern Territory and Commonwealth Governments.

28 Australian Bureau of Statistics projects that in 2051 Tasmania may have a population of 453,000 and the Australian Capital Territory may have a population of 401,600, whereas the Northern Territory may have a population of 350,000. See ABS, *Population Projections Australia 2004-2101*, 2005 Cat No. 3222.0.

29 C. Saunders, *The Australian Constitution* (annotated), Constitutional Centenary Foundation, 1997, p. 118.

30 Mr Pauling *Transcript of Evidence*, 15 November 2006, p. 52; *Capital Duplicators Pty Limited and another v. Australian Capital Territory and another*, (1992) HCA 51, 177 CLR 248, FC 92/037.

31 The Hon Justice Ashe, *Transcript of Evidence*, 15 November 2006, p. 64.

6.44 Amendments will be required to legislation that applies specifically to the Northern Territory or applies generally throughout Australia but has an extended application to the Northern Territory. In 1996, the Northern Territory Statehood Working Group identified 28 pieces of major legislation in this category.³² Figure 6.3 below is an updated version of this list.

Figure 6.1 Significant Commonwealth legislation relating to the Northern Territory³³

-
- Aboriginal Land Rights (Northern Territory) Act 1976
 - Administrative Decisions (Judicial Review) Act 1977 – Sect 3; Sect 19A; Sect 19B; Schedule 3; Notes
 - Atomic Energy Act 1953 – Sect 5; Sect 6; Sect 41A; Sect 41C
 - Bankruptcy Act 1966 – Sect 5; Sect 8; Sect 17B; Sect 116
 - Coastal Waters (Northern Territory Title) Act 1980
 - Coastal Waters (Northern Territory Powers) Act 1980
 - Commonwealth Authorities (Northern Territory Pay-Roll Tax) Act 1979
 - Commonwealth Electoral Act 1918- Sect 4; Sect 4B; Sect 5A; Sect 7; Sect 38A; Sect 40; Sect 44; Sect 46; Sect 47; Sect 48; Sect 48A; Sect 49; Sect 55A; Sect 56A; Sect 76A; Sect 79; Sect 84; Sect 86; Sect 90B; Sect 93; Sect 97; Sect 112; Sect 122; Sect 154; Sect 164; Sect 353; Sect 394; Notes
 - Environment Protection (Alligator Rivers Region) Act 1978 – Long title; Sect 3; Sect 18; Sect 21; Sect 28; Sect 29; Sect 30; Sect 31; Sect 32; Sect 33; Sect 36
 - Environment Protection (Northern Territory Supreme Court) Act 1978
 - Family Law Act 1975 – Sect 22; Sect 26H; Sect 31; Sect 60G; Sect 69H; Sect 69N; Sect 97; Sect 112AN
 - Housing Loans Guarantees (Northern Territory) Act 1959
 - Judiciary Act 1903 – Sect 40; Sect 48; Sect 55D; Sect 55H; Sect 55I; Sect 55N; Sect 55 ZF; Part IXA; Sect 78AA
 - Lands Acquisition Act 1989 – Sect 4; Sect 6; Sect 134
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32 Northern Territory Statehood Working Group, *Final Report*, 1996, p. 31.

33 Parliamentary Library, January 2007. The list includes Commonwealth legislation which applies specifically to the Northern Territory or which applies generally throughout Australia but has an extended application to the Northern Territory.

-
- Lands Acquisition (Northern Territory Pastoral Leases) Act 1981
 - Northern Territory Acceptance Act 1910
 - Northern Territory Acceptance Act 1919
 - Northern Territory Grant (Electricity) Act 1989
 - Northern Territory (Self-Government) Act 1978
 - Northern Territory Grant (Special Assistance) Act 1983
 - Northern Territory (Lessees' Loans Guarantee) Act 1954
 - Northern Territory (Commonwealth Lands) Act 1980
 - States and Northern Territory Grants (Rural Adjustment) Act 1979
 - States and Northern Territory Grants (Rural Adjustment) Act 1985
 - Trade Practices Act 1974 – Sect 2B; Sect 4; Sect 4N; Sect 29AA; Sect 44AB; Sect 44AAJ; Sect 44E; Sect 44G; Sect 44H; Sect 44M; Sect 44N; Sect 46B; Sect 51; Sect 86A; Sect 87A; Sect 87AB; Sect 87ZA; Sect 95A; Sect 95C; Sect 95D; Sect 95C; Sect 95 Y; Sect 150A; Sect 150L; Sect 152AD; Schedule
 - Workplace Relations Act 1996 - Sect 4; Sect 116; Sect 130
-

6.45 In addition to the major amendments required to Commonwealth legislation concerning the Northern Territory, a number of minor amendments will also be required to a variety of Commonwealth Acts. Appendix G provides an indicative list of other Commonwealth legislation that may require minor amendments following a grant of statehood. Each Act would need to be considered individually to determine the nature of amendment required.

6.46 If the Northern Territory changed its name following statehood the volume of changes required to Commonwealth legislation would dramatically increase.

Industrial and financial relations

Future control of industrial relations

- 7.1 Industrial relations in the Northern Territory is covered by the Commonwealth *Workplace Relations Act 1996* which is also incorporated into the *Northern Territory Self-Government Act 1978*. Both Acts were amended by the *Workplace Relations Amendment (Work Choices) Act 2005*, which came into affect in 2006. The Australian Fair Pay Commission, established under the *Workplace Relations Amendment (Work Choices) Act 2005*, determines the award wages in the Northern Territory.

The impact of the *Work Choices* judgement of the High Court

- 7.2 In February 2006, the Northern Territory Government joined a number of state governments in their application to the High Court challenging the Commonwealth Work Choices legislation. The legal action challenged the use of the corporations power under s. 51 of the Constitution to impose the Work Choices system on states.
- 7.3 The Commonwealth has a clear power to legislate for the Territory with respect to industrial relations under s. 122 of the Constitution. However, the challengers in the *Work Choices* case argued that parts of

the definition of 'employer' in the *Workplace Relations Act 1996* extended beyond the power of the Commonwealth under s. 122.¹

- 7.4 The *Work Choices* majority judgement of the High Court endorsed the use of the corporations power by the Commonwealth.² This judgement has implications for the future control of industrial relations in the Northern Territory and also sets a precedent for further federal intervention into traditional areas of state responsibility.
- 7.5 The High Court reasoned that the corporations power can be used to regulate the activities, functions and business of a constitutional corporation. The *Work Choices* decision means that states are now further restricted in their ability to legislate on industrial relations and brings them closer to the Northern Territory Government's legislative ability in this area.³ Indeed, corporatised state agencies that currently provide a range of services including energy, transport, environmental protection, health and education could potentially come under Commonwealth regulation.⁴ In effect, the *Work Choices* decision reduced one of the differences between states and territories by further reducing the power of states in relation to the Commonwealth.

Options for industrial relations upon statehood

- 7.6 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.⁵
- 7.7 Depending on the industrial relations arrangements negotiated between the Commonwealth and Northern Territory Governments, the Territory may then be in a position to establish its own industrial relations system, refer industrial relations matters back to the

1 A. Stewart & G. Williams, *Work Choices, What the High Court Said*, Federation Press, 2007, p. 142.

2 *NSW and others v Commonwealth* (2006) HCA 52.

3 Mr Larkin, *Transcript of Evidence*, 16 November 2006, p. 7.

4 In response to the *Work Choices* decision, the Prime Minister indicated that the Commonwealth Government has no desire to further extend its powers over states 'except in the national interest'. Transcript of the Prime Minister the Hon John Howard MP, Press Conference, Phillip Street, Sydney, 14 November 2006.

5 Mr Larkin, *Transcript of Evidence*, 16 November 2006, p. 7.

Commonwealth, or pursue an intermediate option.⁶ However, given the successful defence of Work Choices in the High Court, it seems plausible that the Commonwealth would agree to granting the new State the same power to control industrial relations as currently held by existing states.

- 7.8 It is clear that the Northern Territory and Commonwealth Governments have quite different views on industrial relations. According to the Northern Territory Workplace Advocate, the dispute resolution mechanisms provided by Work Choices (such as the Office of Workplace Services and court action), provide inadequate protections for workers. It was also argued that Work Choices was ill-suited to the particular labour environment in the Northern Territory due to its limited opportunities for unskilled labour, the need to attract skilled labour,⁷ the needs of Aboriginal workers⁸, and poorer electronic communication infrastructure on which the new system relies:⁹

It is clear that a government based in Canberra has quite understandable difficulty in administering a system in such an environment and at such distance. Should statehood be granted, we feel that a system put in place by Territorians would be more responsive, have greater coverage, offer genuine choice, better understand our issues and be better for our community ... and our economy than a system based 4,000 kilometres away.¹⁰

- 7.9 The Committee heard that from a union movement perspective, a possible advantage of statehood is the potential for the Northern Territory to legislate for greater union access to workers.¹¹ Statehood is important only to the extent that it can enhance the current industrial relations arrangements:

Unions NT stresses that it is the quality of the system itself and the rights that it confers on working people that are

6 Mr Larkin, *Transcript of Evidence*, 16 November 2006, p. 7.

7 Mr Robertson, *Transcript of Evidence*, 15 November 2006, pp. 15-16.

8 Ms Monro, *Transcript of Evidence*, 16 November 2006, p. 25.

9 Mr Larkin, *Transcript of Evidence*, 16 November 2006, p. 10.

10 Mr Larkin, *Transcript of Evidence*, 16 November 2006, p. 10. The Committee requested the Commonwealth Department of Workplace Relations (DEWR) to respond to issues raised by the Northern Territory Workplace Advocate at the seminar. The response, prepared by the Office of Workplace Services in DEWR, is available as *Submission No. 10*.

11 Mr Gallagher, *Transcript of Evidence*, 16 November 2006, p. 11.

important rather than the jurisdiction or the constitutional means used to achieve it.¹²

- 7.10 An alternative view presented to the Committee by the Chief Executive of the Northern Territory Chamber of Commerce, was that industrial relations should remain under the control of the Commonwealth in order to reduce the cost of duplicate legislation.

It is the chamber's view that a national set of industrial relations laws is the most effective way for business to be conducted within the Territory we see absolutely no reason for a new state to take on something that would require costly duplication of infrastructure and legislation without any apparent benefit to the end user.¹³

- 7.11 The Northern Territory Statehood Steering Committee does not have a particular view on the Work Choices industrial relations system.¹⁴

Future financial and economic relations with the Commonwealth

- 7.12 The 2005 Northern Territory Statehood Steering Committee Show Surveys identified 'Financial Issues' as the area most Territorians required greater information on in order to support statehood.¹⁵ The Committee was surprised at this as it was advised that the Northern Territory has been treated as a state with regard to its financial relationship with the Commonwealth since 1988. The financial relationship between the Territory and the Commonwealth would not change upon a grant of statehood.
- 7.13 Financial transfers from the Commonwealth to the Northern Territory fall into three broad categories.¹⁶ The first category is made up of payments to individuals such as social security payments and payments from Medicare and the Pharmaceutical Benefits Scheme.

12 Ms Monro, *Transcript of Evidence*, 16 November 2006, p. 13.

13 Mr Young, *Transcript of Evidence*, 16 November 2006, p. 11.

14 Northern Territory Statehood Steering Committee, 'Northern Territory Industrial Relations?', Fact Sheet No. 30.

15 Northern Territory Statehood Steering Committee, *Report to the Legislative Assembly Standing Committee on Legal and Constitutional Affairs*, Annexure 4 – Communication Strategy, 2006.

16 Mr Morris, *Transcript of Evidence*, 16 November 2006, p. 2.

These payments may be accessed by Territorians on an equal basis to other Australians.

- 7.14 The second category of federal transfers are in the form of general purpose or untied grants distributed to all states and territories from the pool of Goods and Services Tax (GST) revenue in accordance with an intergovernmental agreement signed by the Australian and state Governments in June 1999.
- 7.15 The third category of federal transfers to the Northern Territory comprises specific purpose payments or tied grants in which the Commonwealth determines how the money is spent. Specific purpose payments are made under s. 96 of the Constitution which covers financial assistance to states:
- During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit.
- 7.16 Specific purpose payments are made across a variety of areas including education, health, housing and environment programmes to states, through states to local governments or directly to local governments. For the year 2006-07 the Northern Territory expects to receive \$446 million in specific purpose payments.¹⁷
- 7.17 The major specific purpose payments negotiated between the Commonwealth and Territory Governments include:
- Skilling Australia's Workforce (\$60.2 million from the Commonwealth and \$243.9 million from the Territory for 2005-08);
 - Supported Accommodation Assistance Program V (\$25.5 million from the Commonwealth and \$21.9 million from the Territory over five years);
 - Indigenous Housing and Infrastructure Agreement (\$64.3 million from the Commonwealth over two years); and
 - Royal Darwin Hospital - Trauma Centre (\$61.4 million from the Commonwealth over five years).¹⁸

17 Northern Territory Treasury, *Fiscal and Economic Outlook 2006-07*, Budget Paper No. 2, pp. 55-54.

18 Northern Territory Treasury, *Fiscal and Economic Outlook 2006-07*, Budget Paper No. 2, pp. 55-57.

7.18 The Commonwealth Grants Commission (hereafter referred to as the Commission) distributes the approximately \$40 billion GST pool according to the principle of horizontal fiscal equalisation:

State governments should receive funding from the pool of Goods and Services Tax revenue and Health Care Grants such that, if each made the same effort to raise revenue from its own sources and operated at the same level of efficiency, each would have the capacity to provide services at the same standard.¹⁹

7.19 The Commission seeks to equalise the fiscal capacities of states and territories through a variety of complex and data intensive assessments calculating the capacity of each jurisdiction to raise revenue from its own tax base and the particular circumstances or 'disabilities', beyond the control of the jurisdiction, 'to spend more or less than the average in order to deliver the average range or standard of services'.²⁰ In 2005-06 the Northern Territory received \$1,929.4 million in GST revenue.²¹

7.20 The formula used to calculate revenue and spending capacity is policy-neutral in that a state that chooses to tax at a low rate, or spend less, will not receive a greater distribution of GST revenue. The Commission uses revenue and expenditure disabilities to calculate a 'relativity' which can be compared with other jurisdictions.

7.21 The Committee heard that the relativity of the Northern Territory is 4.327, which means that the Territory receives 4.327 times per person more than the all-state average.²² Table 7.1 below provides a breakdown of state and territory relativities, their population and grant share.

19 Commonwealth Grants Commission, *Report on State Revenue Sharing Relativities 2006 Update*, p. 4.

20 Mr Morris, *Transcript of Evidence*, 16 November 2006, p. 3.

21 Northern Territory Treasury, *Fiscal and Economic Outlook 2006-07*, Budget Paper No. 2, pp. 55-46.

22 Mr Morris, *Transcript of Evidence*, 16 November 2006, p. 4.

Table 7.1 GST Relativities, population and grant share

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Relativity	0.87332	0.89559	1.02387	1.00480	1.18862	1.54931	1.14575	4.32755
Population Share (%)	33.3	24.7	19.5	9.9	7.6	2.4	1.6	1.0
Grant Share (%)	29.1	22.1	20.0	10.0	9.0	3.7	1.8	4.3

Source Northern Territory Treasury, *Fiscal and Economic Outlook 2006-07*, Budget Paper No. 2, p. 47.

7.22 The revenue source of the Northern Territory has a much higher proportion of Commonwealth grants than states. About 85% of Northern Territory revenue is sourced from the Commonwealth whereas the average of all states is around 50%. Table 7.2 below compares the Northern Territory funding sources with that of states.

Table 7.2 Sources of revenue for the Northern Territory and all other states in 2006-07

	Northern Territory % of total revenue	All states % of total revenue
General purpose payments	69.9	28.2
Specific purpose payments	14.7	19.7
Own-source revenue	15.4	52.1
Total	100.0	100.0

Source Northern Territory Treasury, *Fiscal and Economic Outlook 2006-07*, Budget Paper No. 2, p. 47.

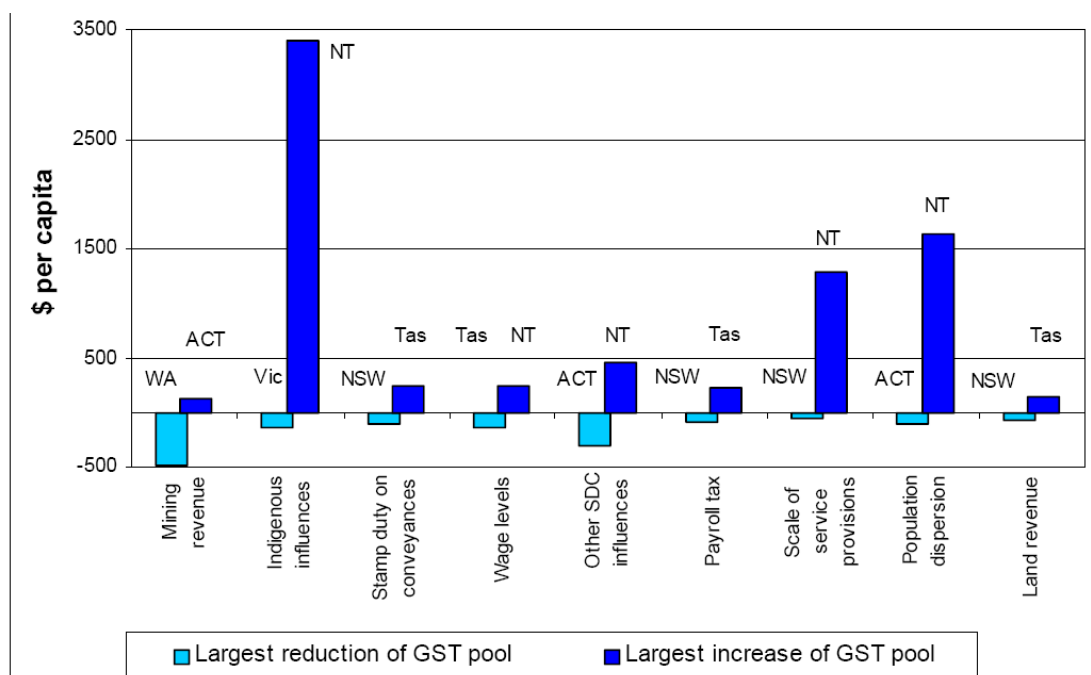
7.23 The greater need for Commonwealth grants by the Northern Territory is due to the higher demand for, and cost of delivering services to its population, and the lower capacity to raise revenue compared with other states. The Committee heard that the high level of relativity for the Territory exists for a number of reasons:

... our small population, our vast distances and also the very high share of Indigenous people that we have in our population.²³

7.24 The Commission recognises the disproportionate socio-economic disadvantage of the Aboriginal population in the Territory and the higher costs of delivering services to the more remote areas in which they are more likely to reside, compared with non-Aboriginal people. Figure 7.1 below highlights 'Indigenous influences' as a key driver of the higher GST relativity of the Northern Territory.

23 Ms Prince, *Transcript of Evidence*, 16 November 2006, p. 5.

Figure 7.1 Largest State impacts of drivers of the redistribution of the GST pool



Source Commonwealth Grants Commission, *Report on State Revenue Sharing Relativities 2006 Update*, p. xvii.

7.25 The Northern Territory Government expressed satisfaction with the arrangements for the distribution of Commonwealth funds:

Our view is that the arrangements that currently exist in Australia are excellent from a national point of view and a subnational point of view in that they give Australia as a nation the benefits that exist with a unitary form of government ...²⁴

7.26 New South Wales, Victoria and Western Australia have been critical of the approach to horizontal fiscal equalisation by the Commission and have argued that the relativity calculations are overly complex, put them at a disadvantage compared with other states, and lack appropriate incentives for states to pursue economic growth.²⁵

Above average revenues are equalised away and there is no incentive to improve efficiency. There is a disincentive against expanding the revenue base, either through increasing

24 Ms Prince, *Transcript of Evidence*, 16 November 2006, p. 5.

25 Richard Webb, 'Horizontal Fiscal Equalisation', *Research Note, No. 1*, Department of the Parliamentary Library, 2002, p. 1; New South Wales Government, *Submission to the Commonwealth Grants Commission 2010 Review*, 2005, p. 5.

activity in the state or through undertaking additional expenditure to fund economic development, as the increased revenue capacity will result in lower GST revenue.²⁶

7.27 States are not compelled to spend their untied grants in the particular areas of their disability. The Northern Territory, in particular, has been criticised for receiving additional funding due to the increased cost of providing services to remote Aboriginal communities, but choosing not to spend that funding on services for Aboriginal people.²⁷

7.28 According to the Chairman of the Commonwealth Grants Commission:

... it is absolutely fundamental that that revenue is untied in the hands of the states and territories. They are free to do with it whatever they choose. They do not have to spend it in accordance with any reflection of the way in which we reached our conclusions about what the share should be.²⁸

7.29 The Indigenous Expenditure Review by the Northern Territory Government nonetheless suggests that close to 50 per cent of 2004-05 government expenditure related to the Aboriginal population, whereas about 43 per cent of total revenue was related to the Aboriginal population for the same period.²⁹

7.30 In accordance with the *Commonwealth Grants Commission Act 1973*, the Commission is conducting a review of State Revenue Sharing Relativities to examine ways to simplify its assessments and address issues of unreliable assessments due to unsatisfactory data. The conclusions of the review are to be implemented by the year 2010.³⁰

7.31 The 2010 review carries the risk for the Northern Territory that 'valid disabilities are discarded simply because they are subjectively judged to be immaterial or data is considered unreliable'.³¹

26 New South Wales Government, Submission to the Commonwealth Grants Commission 2010 Review, 2005, p. 5.

27 Central Australian Aboriginal Congress, *Submission No. 5*, p. 11; J. Taylor & O. Stanley, *The Opportunity Costs of the Status Quo in the Thamarrurr Region*, Centre for Aboriginal Economic Policy Research, Working paper No. 28, 2005, p. 63.

28 Mr Morris, *Transcript of Evidence*, 16 November 2006, p. 23.

29 Northern Territory Treasury, *Indigenous Expenditure Review 2006*, p. 3; *Exhibit No. 9*.

30 The Hon Dr Sharman Stone MP, Terms of Reference for the 2010 Commonwealth Grants Commission Methodology Review, 2005.

31 Northern Territory Treasury, *Fiscal and Economic Outlook 2006-07*, Budget Paper No. 2, p. 49.

The financial implications of other legislative changes

- 7.32 Depending on the terms and conditions negotiated between the Territory and Australian Governments, certain legislative responsibilities may be transferred to the Territory following statehood and some of these legislative changes may have financial implications.
- 7.33 For example, potential changes to the *Commonwealth Atomic Energy Act 1953* and the *Aboriginal Land Rights (Northern Territory) Act 1976* may require that royalty payments from mining leases in the Territory be paid directly to the Territory, rather than being paid to the Commonwealth and then distributed to the Territory under current arrangements.³²
- 7.34 If the new State directly received royalty payments for mining, the Northern Territory would have an increased capacity to raise its own revenue. However, these changes would have a negligible impact on the aggregate revenues of the Territory (own-source revenue plus Commonwealth grants). Further, if the new State imposed its own uranium royalty, its impact on the quantum of general assistance through untied Commonwealth grants provided to the Territory would be marginal.³³
- 7.35 The potential increase in the own source revenue capacity of the Territory would be taken into account by the Commonwealth Grants Commission and offset by a reduction in untied grants as a result of the horizontal fiscal equalisation process. If the Northern Territory changed its royalty rate from the standard royalty rate, there would be a fractional adjustment to the level of untied grants it receives. In sum, there is no practical implication of the Territory levying its own uranium royalties.³⁴
- 7.36 Similarly, other potential legislative changes following statehood would have minimal financial implications. Other legislative changes may involve for example, the transfer of responsibility for national parks and the island territories of Ashmore and Cartier. Any additional administrative costs born by the new State in respect of its

32 For example the *Aboriginal Land Rights (Northern Territory) Act 1976* requires that the Commonwealth pay the equivalent royalty payments it collects to the Aboriginal Benefits Account. The value of this payment is about \$3 million.

33 Ms Prince, *Transcript of Evidence*, 16 November 2006, p. 15; Mr Morris, *Transcript of Evidence*, 16 November 2006, p. 16.

34 Mr Morris, *Transcript of Evidence*, 16 November 2006, p. 16.

new responsibilities for national parks and the island territories of Ashmore and Cartier would be treated as 'disabilities' by the Commonwealth Grants Commission, and offset through untied grants.³⁵

- 7.37 In sum, it is clear that the financial implications of Northern Territory statehood would be minimal. Ongoing public concern over the issue highlights the need for further community education on the matter.

35 Northern Territory Statehood Working Group, *Final Report*, May 1996, p. 36.

Mining and the environment

Mining in the Northern Territory

- 8.1 The mining sector makes the largest contribution to the Northern Territory economy with a gross production value of over \$3 billion in 2005-06 representing 25 per cent of nominal Gross State Product. The mining sector directly employs about 4,500 people in the Territory and indirectly supports the employment of an additional 10,000 people.¹
- 8.2 In 2005-06, the mining sector in the Northern Territory continued to gain in importance by registering the strongest growth, increasing by 35.5 per cent.² The Committee heard that 'the Territory is currently undergoing a resurgence of interest and activity in the minerals, in particular uranium, petroleum and petrochemical sectors'.³
- 8.3 It appears that much of this resurgence relates to the world price of commodities. Applications for exploration licences (ELs) have more than doubled between 2004-05 and 2006-07:

There are currently 843 granted ELs, of which 249 are on Aboriginal land, and there are also currently 879 EL applications on foot, of which 614 of the as yet ungranted

1 Statehood Steering Committee, Northern Territory Mines and Minerals, Fact Sheet No. 27.

2 Northern Territory Treasury, Gross State Product, November 2006, p. 2.

3 Ms Purick, *Transcript of Evidence*, 16 November 2006, p. 50.

applications are on Aboriginal land, and 200 of those are currently in the veto category.⁴

- 8.4 The *Native Title Act 1993* provides for the negotiation of Indigenous Land Use Agreements (ILUAs) between a native title group and others about the use and management of land and waters:

At 10 November 2006 there were 78 registered ILUAs in relation to land in the Northern Territory, dealing with such matters as exploration and mining (20), petroleum, gas and pipeline projects, community living areas, government projects and infrastructure, and various forms of development (including the agreements about national parks and reserves). They make up 30 per cent of the national total of 260 registered ILUAs.⁵

- 8.5 The Committee heard that there are few Aboriginal companies that own exploration licences or undertake mining activities.⁶
- 8.6 The major pieces of Northern Territory legislation regulating mining in the Territory (including uranium mining) are the *Mining Act 1980* and the *Mining Management Act 2001*. The Northern Territory *Mineral Royalty Act 1982* enables the Territory to levy royalties for most mining activities. Royalties for uranium mining and mining on Aboriginal land are paid directly to the Commonwealth and distributed back to the Territory.

Future ownership and control of uranium resources

- 8.7 The issue of uranium mining and nuclear power has recently gained prominence following the report of the Uranium Mining, Processing and Nuclear Energy Review. That Review identified an opportunity for Australia to increase significantly the export of uranium over the next 25 years.⁷
- 8.8 Unlike other minerals, uranium resources in the Territories are the property of the Commonwealth under Part II of the *Commonwealth*

4 Mr Adams, *Transcript of Evidence*, 16 November 2006, p. 63.

5 National Native Title Tribunal, *Submission No. 8*, p. 13.

6 Mr Whitfield, *Transcript of Evidence*, 16 November 2006, p. 66.

7 Uranium Mining, Processing and Nuclear Energy Review, *Uranium Mining, Processing and Nuclear Energy – Opportunities for Australia*, 2006, p. 31.

Atomic Energy Act 1953. Mineral resources in the states (including uranium) are the property of the Crown in right of the states.⁸

- 8.9 The Commonwealth retains export control of uranium under the *Commonwealth Customs Act 1901* and associated regulations. Uranium in Australia is mined almost solely for export.
- 8.10 The Commonwealth has expressly reserved executive authority over the mining of uranium and other prescribed substances in the Northern Territory by means of subregulation 4(2)(a) of the *Northern Territory (Self-Government) Regulations 1978*.
- 8.11 A number of other Commonwealth Acts cover the involvement of the Commonwealth in the regulation of uranium mining, such as the *Environment Protection (Alligator Rivers Region) Act 1978*, which established the Office of the Supervising Scientist, and the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).
- 8.12 Since 1978, the regulation of uranium mining in the Northern Territory has been shared between the Commonwealth and Northern Territory Governments by virtue of a series of intergovernmental agreements. The arrangement has been characterised as one whereby the Commonwealth focuses on the environmental protection of the Alligator Rivers Region (containing the Ranger and Jabiluka mine sites) while the Northern Territory Government oversees the day-to-day regulation of uranium mining.
- 8.13 The Northern Territory Government has indicated its view in the past (1987, 1996) that, with regard to the ownership of mineral deposits, the transfer of ownership and control of all uranium and other minerals to the new State upon statehood would ensure constitutional equality between the new State and the existing states.⁹
- 8.14 Consistent with the principle of eventual equality with the states, the Statehood Steering Committee has indicated that the Northern Territory should gain the responsibility for the ownership and

8 See Senate Environment, Communications, Information Technology and the Arts References Committee, *Regulating the Ranger, Jabiluka, Beverley and Honeymoon uranium mines*, 2003, p. 2. South Australia is the only other jurisdiction currently operating uranium mines.

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

management of mineral resources including uranium upon statehood.¹⁰

- 8.15 The Northern Territory Minerals Council also supported the transfer of the responsibility for uranium to the new State:

... there are approximately 445 nuclear power plants around the world and the number is growing. Australia has approximately 40 per cent of the known world resources. It is low cost, high grade uranium ... The potential for the Northern Territory to gain economically is enormous in the future, assuming the explorers can get out there and explore, find the deposits, shore them up and start to develop.¹¹

- 8.16 The transfer of ownership of uranium resources to the new State would have minimal implications for financial relations with the Commonwealth depending on any changes to the existing royalty payment arrangements. The implications of statehood and royalty payment arrangements for the financial relationship between the new State and the Commonwealth were discussed in Chapter 7.

- 8.17 The future arrangements for royalty payments is a matter to be negotiated between the Commonwealth and Territory Governments and relevant Aboriginal bodies as it also dependent on any change to the *Aboriginal Land Rights (Northern Territory) Act 1978* upon statehood.

- 8.18 State ownership of uranium resources would also require changes to regulatory structures, management and monitoring, and the arrangements for the operation of the Ranger mine. The future of operational and regulatory arrangements of the Ranger mine would need to be negotiated by the Territory and Commonwealth Governments.¹²

- 8.19 The Statehood Steering Committee informed the Committee that there is a level of confusion over the Commonwealth and Territory responsibilities for the control and administration of the uranium industry in the Territory, and that this confusion threatens the

10 Statehood Steering Committee, *Submission No. 1*, p. 14.

11 Ms Purick, *Transcript of Evidence*, 16 November 2006, p. 61.

12 The Uranium Mining, Processing and Nuclear Energy Review also found that existing arrangements for the regulation of uranium mining could be streamlined, namely, by removing existing legislative provisions from Section 140 A in the EPBC Act 1999. See *Uranium Mining, Processing and Nuclear Energy – Opportunities for Australia*, 2006, p. 126.

economic growth of the Territory. Further, the split in responsibilities does not seem logical.

As an example; the Territory administration, controls the prosecuting authority which saw the Ranger mine being penalised for the contamination of workers' drinking water in March 2004. The incident however, was identified by the Supervising Scientist who is a Commonwealth appointee under the ARR arrangements to ensure the mine does not compromise the integrity of the surrounding Kakadu National Park (also administered by the Commonwealth).

The Commonwealth retains all minerals not just uranium in the ARR, whereas the Territory controls other minerals occurring elsewhere in the Territory.¹³

8.20 The Committee heard that from the Environment Centre of the Northern Territory perspective, it did not particularly matter whether the new State or the Commonwealth controlled uranium mining:

... if the Commonwealth government opposed uranium mining, then we would prefer it was with them, and if the Territory government opposed it, then we would prefer it was with them.¹⁴

Future management of radioactive waste

8.21 In December 2005, the Commonwealth Parliament passed the *Radioactive Waste Management Act 2005*. The Act commenced on 15 December 2005. The Act empowers the Commonwealth to select specified Commonwealth land for the establishment of a low and medium level radioactive waste management facility.

8.22 The Explanatory Memorandum to the *Radioactive Waste Management Bill* summarises the power of the Minister under the Act and the effect of the Bill:

The Bill provides that the Minister may declare one, or a specified part of one, of the specified sites, as the place where a facility may be established and operated. The Bill also provides that the Minister may declare land to provide for suitable road access to the declared site.

13 Statehood Steering Committee, *Submission No. 1*, pp. 14-15.

14 Ms King, *Transcript of Evidence*, 16 November 2006, p. 61.

...The Bill effects the acquisition or extinguishment of all interests in the site, or part of the site, chosen for a facility that the Commonwealth has not already acquired or extinguished (if any), and provides for any affected parties to be compensated.¹⁵

- 8.23 Schedule 1 to the Act lists the three sites in the Northern Territory that have been specified as potential locations for a radioactive waste management facility: Mt Everard and Harts Range (both near Alice Springs), and Fishers Ridge (near Katherine). All three sites are Defence Department properties on Commonwealth land.¹⁶
- 8.24 The issue of radioactive waste management, and the Act itself, have generated considerable controversy. The Northern Territory Government, with the support of the opposition, opposed the radioactive waste management plan for the Northern Territory. In October 2005 Chief Minister the Hon Clare Martin MLA described the Commonwealth plan as the 'worst-ever federal attack on Territory rights - worse than the overthrow of the Rights of the Terminally Ill Act in 1997'.¹⁷
- 8.25 However, it is not clear that the dispute over the waste management facility is a statehood issue. The Northern Territory *Nuclear Waste Transport, Storage and Disposal Prohibition Act 2004* prohibits such a facility in the Territory. While the *Radioactive Waste Management Act 2005* overrides the Northern Territory legislation, the Commonwealth *Australian Nuclear Science and Technology Organisation (ANSTO) Act 1987* already empowered the Commonwealth to store ANSTO radioactive waste in states and territories.¹⁸
- 8.26 The Committee was advised that the community concern over the waste facility centred more on the scientific and environmental issues rather than the lack of rights of the Territory in relation to the Commonwealth.¹⁹
- 8.27 On the other hand, as a state, the Northern Territory may have had stronger grounds to oppose the *Radioactive Waste Management Act*

15 Explanatory Memorandum to the Commonwealth Radioactive Waste Management Bill 2005, p. 2.

16 The sites were first announced on 15 July 2005 in a media release by the Hon Dr Brendan Nelson MP, (then) Minister for Education, Science and Training.

17 Nigel Adlam, 'Nuclear warfare', *Northern Territory News*, 14 October 2005.

18 Statehood Steering Committee, 'Statehood and the Proposed Radioactive Waste Management Facility', Fact Sheet No. 22.

19 Professor Carment, *Submission No. 2*, p. 4.

2005 if it were not subject to the full legislative power of the Commonwealth under s. 122 of the Constitution. Furthermore, with lower representation in the Federal Parliament compared with states, the Northern Territory had less capacity to block the Commonwealth legislation.²⁰

- 8.28 The Northern Land Council emerged as a supporter of the Commonwealth Act and entered into discussions with traditional owners to negotiate with the Commonwealth on a site at Muckaty Station.²¹ The Land Council also supported amendments to the Act in 2006 which sought to 'ensure, should a volunteer site be selected for the facility, that there is a mechanism for the land to be returned to its original owners or successors when the site is no longer required for the facility'.²²
- 8.29 The Statehood Steering Committee does not have a view on the merits of the radioactive waste management plan.²³

Future ownership and management of Commonwealth National Parks and Marine Protected Areas

Kakadu and Uluru-Kata Tjuta National Parks

- 8.30 Title to approximately 50% of Kakadu National Park is held by Aboriginal land trusts which have leased the land to the Director of National Parks. Title to the remainder is held by the Director of National Parks, with a majority of that remainder currently under claim by Aboriginal people. The Park is jointly managed by the Aboriginal traditional owners and the Director of National Parks.
- 8.31 Title to Uluru-Kata Tjuta National Park is held by the Aboriginal traditional owners who have leased the Park to the Director of National Parks on a 99-year lease basis. The Park is jointly managed by the Aboriginal traditional owners and the Director of National Parks.

20 Statehood Steering Committee, *Submission No. 1*, p. 17.

21 Statehood Steering Committee, *Submission No. 1*, p. 17.

22 The Hon Ms Julie Bishop MP, Second Reading Speech, Radioactive Waste Management Legislation Amendment Bill 2006, *House of Representatives Hansard*, 2 November 2006, p. 1.

23 Statehood Steering Committee, Fact Sheet No. 22.

- 8.32 The Commonwealth retains responsibility for managing certain activities such as research, commercial activities in Kakadu and Uluru-Kata Tjuta under the *Environment Protection and Biodiversity Conservation (EPBC) Act 1999*.
- 8.33 Title to National Park land in the 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.²⁴ The Statehood Steering Committee also maintains this view and argued that the Commonwealth should state its position on the matter.
- The Commonwealth needs to determine as a matter of policy whether it wishes to retain control over the two subject national parks as a term or condition of Northern Territory Statehood or whether it would transfer the land held on its behalf by the Director of National Parks to the Northern Territory along with the assignment of any lease from traditional owners.²⁵
- 8.34 Transfer of the national parks to the Northern Territory would also require the agreement of the traditional owners.²⁶

Other national parks

- 8.35 The 2002 High Court judgement on *Western Australia v Ward* put in doubt the validity of 49 Northern Territory Parks.²⁷ The Northern Territory Government received legal advice that re-declaring the parks would not resolve claims made under the *Aboriginal Land Rights (Northern Territory) Act 1976* and the *Native Title Act 1993*.
- 8.36 The Northern Territory Government consulted and negotiated with Land Councils, traditional owners and native title holders to establish new park management arrangements. This process resulted in the *Northern Territory Parks and Reserves (Framework for the Future) Act 2003* 'to provide a framework for negotiations between the Territory and the traditional Aboriginal owners of certain parks and reserves

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

25 Statehood Steering Committee, *Submission No. 1*, p. 19.

26 Mr de Koning, *Transcript of Evidence*, 16 November 2006, p. 65.

27 *Western Australia v Ward* (2002) 213 CLR 1.

for the establishment, maintenance and management of a comprehensive system of parks and reserves'.²⁸

8.37 The *Parks and Reserves (Framework for the Future) Act 2003* set out three schedules for parks and reserves:

- Schedule 1 – Parks and reserves to be added to schedule 1 of the *Aboriginal Land Rights (Northern Territory) Act 1976*, by the Commonwealth, to become freehold Aboriginal title (including Corroboree Rock Conservation Reserve and Finke Gorge National Park);
- Schedule 2 – Parks and reserves over which freehold title is to be granted (including Dulcie Range National Park and Kuyunba Conservation Reserve); and
- Schedule 3 – Parks and areas to be subject to joint management agreements (including Alice Springs Telegraph Station Historical Reserve and Flora River Nature Park).²⁹

8.38 In 2005 the Northern Territory Government negotiated 31 Indigenous Land Use Agreements under the Commonwealth *Native Title Act 1993*. The agreements involved cooperative planning and management arrangements between the Territory Government and Aboriginal groups covering over 27 national parks and reserves.³⁰

8.39 Arrangements under the *Parks and Reserves (Framework for the Future) Act 2003* are still in their early stages and the Northern Territory Parks and Wildlife Commission are undertaking capacity building with Aboriginal groups in some areas. Nonetheless, the Committee heard that the Northern Territory Parks and Wildlife Commission are happy with the joint management arrangements for the parks and reserves. Nitmiluk National Park, which has been under joint management arrangements for about 18 years, was identified as a particular success.³¹

28 *Parks and Reserves (Framework for the Future) Act 2003*, Section 3.

29 *Parks and Reserves (Framework for the Future) Act 2003*.

30 National Native Title Tribunal, *Submission No. 8*, p. 13.

31 Mr de Koning, *Transcript of Evidence*, 16 November 2006, p. 65.

Ashmore Reef National Nature Reserve and Cartier Island Marine Reserve

- 8.40 Ashmore Reef National Nature Reserve is a Marine Protected Area some 840 km west of Darwin and 610 km north of Broome. From 1938 to 1978 the area was annexed to the Northern Territory and administered by the Territory. It was established as Ashmore Reef National Nature Reserve in 1983 and is managed by the Commonwealth under the EPBC Act.
- 8.41 Cartier Island Marine Reserve is a Marine Protected Area 45 km south-east of Ashmore Reef. As with Ashmore, prior to Northern Territory self-government the area was annexed to the Northern Territory and administered by the Territory, until its transferred to the Commonwealth in 1978. It was established as Cartier Island Marine Reserve in 2000 and is managed by the Commonwealth under the EPBC Act.
- 8.42 The House of Representatives Standing Committee on Legal and Constitutional Affairs recommended in its 1991 report *Islands in the Sun* that the Ashmore and Cartier Islands should be incorporated into the Northern Territory. The Commonwealth Government response was that such incorporation was being considered in the context of statehood proposals for the Northern Territory.³²
- 8.43 The Northern Territory Government has argued in the past (1989, 1996) that the Islands were 'disannexed' from the Northern Territory without consultation and that they should be reincorporated within the Northern Territory.³³
- 8.44 While the Ashmore and Cartier Islands are under Commonwealth jurisdiction, they nonetheless fall under the legal jurisdiction of the Northern Territory. Adjacent to (but not within) the Reserves are a number of petroleum tenement areas and petroleum fields. Petroleum related activities in that area are controlled by the Commonwealth but administered by the Northern Territory. The Committee heard that the Northern Territory Minerals Council would support the transfer of Ashmore Reef National Nature Reserve and Cartier Island Marine

32 Government Response to report of the House of Representatives Standing Committee on Legal and Constitutional Affairs titled *Islands in the Sun: The Legal Regimes of Australia's External Territories and the Jervis Bay Territory*, 1991 p. 4.

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.

Reserve back to the Territory while recognising the national and international responsibilities of Australia to protect the areas.³⁴

- 8.45 The Statehood Steering Committee advised the Committee that there is no reason for the Commonwealth to wait for discussions over statehood to commence in order to consult and determine the arrangements for the future control of the Ashmore and Cartier Islands.³⁵

The future status of Commonwealth land in the Northern Territory

- 8.46 The Northern Territory Government has indicated its view in the past (1989) that all land held by the Commonwealth in the Territory should be transferred to the new State at no cost except areas agreed to be reasonably required for Commonwealth purposes.³⁶
- 8.47 The Statehood Steering Committee has indicated to the Committee that the future status of Commonwealth land in the Northern Territory is a matter to be negotiated between the Commonwealth and Territory Governments.³⁷

Hon Peter Slipper MP

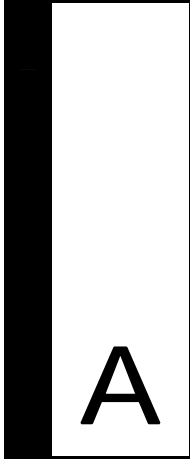
Chairman

34 Ms Purick, *Transcript of Evidence*, 16 November 2006, pp. 51.

35 Statehood Steering Committee, *Submission No. 1*, p. 20.

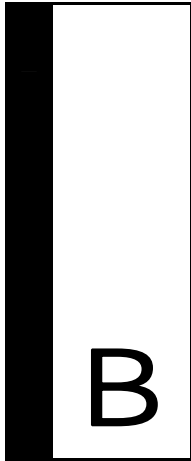
36 Northern Territory Statehood Working Group, *Final Report*, 1996, p. 67, citing the submission of the NT Government to the Commonwealth, *Full Self-Government, The Further Transfer of Power to the Northern Territory*, 1989.

37 Statehood Steering Committee, *Submission No. 1*, p. 13.



Appendix A: List of Submissions

Submission No.	Individual/organisation
1	Northern Territory Statehood Steering Committee
2	Professor David Carment
3	Mr Graham Nicholson
4	Senator Trish Crossin
5	Central Australian Aboriginal Congress
6	Stephen Paul Hatton
7	The Hon Justice D Mildren RFD
8	National Native Title Tribunal
9	Australian Centre for Peace and Conflict Studies
10	Office of Workplace Services
11	Commonwealth Attorney-General's Department
12	Department of the Prime Minister and Cabinet



Appendix B: List of Witnesses

Tuesday 14 November 2006 – Alice Springs

Mrs Loraine Braham MLA, Member for Braitling, and Member, Legal and Constitutional Affairs Committee, Northern Territory Legislative Assembly; and Member, Northern Territory Statehood Steering Committee

Mr Paul Hayes, Principal Legal Officer, Indigenous Land Corporation

Mr Len Kiely MLA, Member for Sanderson, and Member, Legal and Constitutional Affairs Committee, Northern Territory Legislative Assembly

Mr Bernard Francis Kilgariff, former Senator, Private capacity

Mr John Liddle, Male Health Coordinator, Central Australian Aboriginal Congress

Ms Barbara McCarthy MLA, Member for Arnhem, Chair, Legal and Constitutional Affairs Committee, Northern Territory Legislative Assembly, Chair, Northern Territory Statehood Steering Committee

Ms Shirley McPherson, Chairperson, Indigenous Land Corporation

Dr Martin Mowbray, Research and Policy Officer, Central Australian Aboriginal Congress

The Hon Warren Snowdon MP, Member for Lingiari, Australian Parliament

Ms Jayne Weepers, Senior Policy Officer, Central Land Council

Wednesday 15 November 2006 - Darwin

The Hon Justice Austin Asche, Chairman, Law Reform Committee

Mr John Bailey, Private capacity

Mrs Susanne Bradley, Co-chair, Northern Territory Statehood Steering Committee

Mr James Burke MLA, Member for Brennan, Northern Territory Legislative Assembly

Mr Wayne Connop, Member, Northern Territory Statehood Steering Committee

Senator Patricia Crossin, Parliament of Australia

Ms Jenni Daniel-Yee, Department of Justice, Northern Territory

Mr James Faulkner, Assistant Secretary, Constitutional Policy Unit, Attorney-General's Department

The Hon Stephen Hatton, Private capacity

Reverend Doctor Lloyd Kent, Private capacity

Mr John Liddle, Central Australian Aboriginal Congress

Mr Iain Loganathan, Australian Electoral Officer, Australian Electoral Commission

Mr Brian Martin AO MBE, Member, Northern Territory Statehood Steering Committee

Ms Barbara McCarthy MLA, Member for Arnhem, Chair, Legal and Constitutional Affairs Committee, Northern Territory Legislative Assembly, Chair, Northern Territory Statehood Steering Committee

The Hon Justice Dean Mildren, Justice of the Northern Territory Supreme Court.

Mr Terrance Mills MLA, Member for Blain, Northern Territory Legislative Assembly

Dr Martin Mowbray, Research and Policy Officer, Central Australian Aboriginal Congress

Mr Graham Richard Nicholson, Legal Advisor, Northern Territory Statehood Steering Committee

Mr Thomas Pauling, Solicitor-General, Northern Territory

Mr Jamey Robertson, Junior Vice President, Unions NT

Mr William Shepherd, Electoral Commissioner, Northern Territory Electoral Commission

The Hon Sydney (Syd) Stirling MLA, Minister for Statehood, Northern Territory Government

Mr Tony Tapsell, Chief Executive Officer, Local Government Association of the Northern Territory

Mr Michael Tatham, Executive Officer, Northern Territory Statehood Steering Committee

Mr Kenneth Wu, Private capacity

Thursday 16 November 2006 - Darwin

Mr Robert Adams, Principal Advisor, Minerals and Energy, Department of Primary Industry, Fisheries and Mines, Northern Territory

Reverend William Bassett, Private capacity

Mrs Susanne Bradley, Co-chair, Northern Territory Statehood Steering Committee

Mr Dennis Bree, Deputy Chief Executive, Department of the Chief Minister, Northern Territory

Mr James Burke MLA, Member for Brennan, Northern Territory Legislative Assembly

Mr Edward Cole, Acting Group Manager, Workplace Relations Policy Group, Department of Employment and Workplace Relations

Mr Wayne Connop, Member, Northern Territory Statehood Steering Committee

Mr Kelvin Costello, Coordinator, Larrakia Nation Aboriginal Corporation

Mr John Daly, Chairman, Northern Land Council

Mr John de Koning, Regional Director, Parks and Wildlife Commission, Northern Territory

Mr Joseph Gallagher, Executive Member, Unions Northern Territory

Ms Ione Jolly, Private capacity

Reverend Dr Lloyd Kent, Private capacity

Ms Emma King, Uranium Campaigner, Environment Centre of the Northern Territory

Mr Justin Larkin, Workplace Advocate, Office of the Commissioner for Public Employment, Northern Territory

Mr John Liddle, Male Health Coordinator, Central Australian Aboriginal Congress

Mr Brian Martin AO MBE, Member, Northern Territory Statehood Steering Committee

Ms Barbara McCarthy MLA, Member for Arnhem, Chair, Legal and Constitutional Affairs Committee, Northern Territory Legislative Assembly, Chair, Northern Territory Statehood Steering Committee

Mrs Fay Miller MLA, Member for Katherine, and Member, Northern Territory Statehood Steering Committee

Ms Irene Monro, Secretary, Unions Northern Territory

Mr Alan Morris, Chairman, Commonwealth Grants Commission

Mr Graeme Neate, President, National Native Title Tribunal

Ms Jennifer Prince, Under Treasurer, Northern Territory Department of Treasury

Mr Joseph Procter, Managing Director, Indigenous Energy Pty Ltd

Ms Kezia Purick, Chief Executive, Northern Territory Minerals Council Inc.

Mr Leigh Tilmouth ('Tracker'), Private capacity

Mrs Margaret Vigants, Member, Northern Territory Statehood Steering Committee

Mr Jerry Whitfield, Director, Minerals and Energy Titles, Department of Primary Industry, Fisheries and Mines, Northern Territory

Mr Gerry Wood, Member of the Legislative Assembly, Northern Territory

Mr Kenneth Wu, Private capacity

Mr Christopher Young, Chief Executive, Northern Territory Chamber of Commerce

Tuesday 6 February 2007 – Canberra

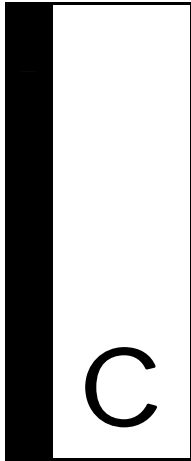
Mr Alexander Anderson, Assistant Secretary, Legal Policy Branch, Government Division,
Department of the Prime Minister and Cabinet

Mr John Angley, Executive Director, Territories and Local Government Division, Department
of Transport and Regional Services

Mr James Faulkner, Assistant Secretary, Constitutional Policy Unit, Attorney-General's
Department

Mr Adam Kirk, Senior Legal Officer, Constitutional Policy Unit, Attorney-General's
Department

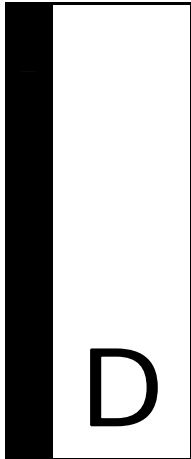
Mr Michael Tatham, Executive Officer, Northern Territory Statehood Steering Committee



Appendix C: List of Exhibits

Exhibit no.	Individual/organisation
1	'The Kalkaringi Statement', as printed in the Australian Indigenous Law Reporter, provided by the Hon Warren Snowdon MP
2	'Alice Springs News, Vol. 13, Issue 45, 9 November 2006', provided by Mr Bernie Kilgariff
3	'They Started Something: A Biography of Bern and Aileen Kilgariff', provided by Mr Bernie Kilgariff
4	'Presentation to the House of Representatives Standing Committee on Legal and Constitutional Affairs' provided by Ms Shirley McPherson
5	'Indigenous Constitutional Strategy Northern Territory', provided by Ms Jayne Weepers
6	'The Kalkaringi Statement', provided by Ms Jayne Weepers
7	'Statehood entities and relationships - November 2006', presented by Ms Sue Bradley (relates to Submission No. 1)
8	'It's your place to talk about statehood', provided by the Northern Territory Statehood Steering Committee (relates to Submission No. 1)
9	'Indigenous Expenditure Review September 2006' provided by Ms Jennifer Prince
10	'ACTU Congress 2006 Industrial Relations Legislation Policy' provided by Mr Joe Gallagher
11	'Agenda for Action: A whole of government approach to Indigenous affairs in the Northern Territory', provided by Mr Dennis Bree

- 12 'Information Sheets on Uranium; Mineral Exploration; Value of Mining on Indigenous Land; and Mining Sector', provided by the Northern Territory Department of Primary Industry, Fisheries and Mines
- 13 'Map: Native Title Applications', provided by Mr Graeme Neate (related to Submission No. 8)
- 14 'What will change if the Territory becomes a State' and 'What will not change if the Territory becomes a State', provided by Ms Margaret Vigants
- 15 'Maps of Native Title Application and Determination Areas, Determinations of Native Title and a list of Indigenous Land Use Agreements', provided by Mr Graeme Neate (related to Submission No. 8)
- 16 'The Status of Indigenous Australians' by M Anne Brown, provided by Professor Peter Jull (related to Submission No. 9)



Appendix D: Northern Territory Statehood seminar programme¹

Venues:

Alice Springs - 14 November 2006

Ellery Room
Alice Springs Convention Centre

Darwin - 15-16 November 2006

Strangers Lounge
Legislative Assembly
of the Northern Territory

Darwin format:

Each 90 minute session in Darwin to consist of:

Principal speakers	10 minutes per speaker
Questions from Committee members to the principal speakers	20-30 minutes
Comments from additional invited guests and public	20-30 minutes
Plus additional open discussion session at conclusion of each day	30-45 minutes

¹ This version of the programme reflects the structure of the seminar and those who attended, but not the order of speakers.

Tuesday 14 November 2006 – Alice Springs

10:25am	Welcome	The Hon Peter Slipper MP
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10:30am	Future status of Commonwealth land in the Northern Territory and Aboriginal land rights
(10:30am – 11:10am)	<ul style="list-style-type: none"> ▪ The Hon Warren Snowdon MP (Member for Lingiari) ▪ Mr Bernie Kilgariff (former NT Senator) ▪ Mr John Liddle (Male Health Coordinator, Central Australian Aboriginal Congress) with <ul style="list-style-type: none"> – Dr Martin Mowbray (Congress Research and Policy Officer)
(11:10am – 11:30am)	(Questions from the Committee)
(11:30am – 12:00pm)	Group discussion <ul style="list-style-type: none"> ▪ Members of the NT Statehood Steering Committee ▪ Members of the NT Legal and Constitutional Affairs Committee

12:00pm **Lunch**

1:00pm	Session resumption
(1:00pm – 1:40pm)	<ul style="list-style-type: none"> ▪ Ms Shirley McPherson (Chairperson, Indigenous Land Corporation) with <ul style="list-style-type: none"> – Mr Paul Hayes (ILC Principal Legal Officer) ▪ Ms Jayne Weepers (Policy Officer, Central Land Council)
(1:40 – 2:00pm)	(Questions from the Committee)
(2:00pm – 2:25pm)	Group discussion <ul style="list-style-type: none"> ▪ Members of the NT Statehood Steering Committee ▪ Members of the NT Legal and Constitutional Affairs Committee

2:25pm **Open Public Discussion**

2:45pm **Conclusion of Alice Springs session**

Wednesday 15 November 2006 - Darwin

8:30am Registration

<p>9:00am Session One <i>Principal Speakers</i></p>	<p>Seminar Opening and Welcome</p> <ul style="list-style-type: none"> ▪ The Hon Peter Slipper MP - Welcome ▪ The Hon Syd Stirling MLA (Minister for Statehood, NT Government)
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<p>9:30am Session Two <i>Principal Speakers</i></p>	<p>Recent Northern Territory Developments on statehood and proposals to advance statehood</p> <ul style="list-style-type: none"> ▪ Ms Barbara McCarthy MLA (Chair NT Statehood Steering Committee) ▪ Mrs Sue Bradley (Co-chair NT Statehood Steering Committee) ▪ The Hon Stephen Hatton (Former Chief Minister, NT) ▪ Mr Jamey Robertson (Secretary, Unions NT) ▪ Senator Trish Crossin (NT Senator)
<p><i>Other session participants</i></p>	<ul style="list-style-type: none"> ▪ Representative of the NT Local Government Association ▪ Members of the NT Statehood Steering Committee ▪ Members of the NT Legal and Constitutional Affairs Committee

11:15am Morning Break

<p>11:30am Session Three <i>Principal Speakers</i></p>	<p>Commonwealth constitutional matters and achieving statehood</p> <ul style="list-style-type: none"> ▪ The Hon Dean Mildren (Justice of the NT Supreme Court) ▪ Mr Graham Nicholson (Legal adviser to NT Statehood Steering Committee) ▪ Mr Tom Pauling QC (NT Solicitor-General)
<p><i>Other session participants</i></p>	<ul style="list-style-type: none"> ▪ Representative of the Constitutional Policy Unit, Commonwealth Attorney-General's Department ▪ Representative of the NT Department of Justice ▪ Members of the NT Statehood Steering Committee ▪ Members of the NT Legal and Constitutional Affairs Committee

1:00pm Lunch

2:15pm Session Four **Representation of the new state in the Federal Parliament and future status of Commonwealth legislation currently applying to the Northern Territory**

Principal Speakers

- Mr David Tollner MP (Member for Solomon)
- The Hon Austin Asche AC QC (Chair, NT Law Reform Committee)

Other session participants

- Representative of the Australian Electoral Commission
- Representative of the NT Electoral Commission
- Representative of the NT Department of Justice
- Members of the NT Statehood Steering Committee
- Members of the NT Legal and Constitutional Affairs Committee

3:30pm **Afternoon break**

4:00pm Session Five **Open Public Discussion**

4:45pm **Conclusion of Day One of Darwin sessions**

Thursday 16 November 2006 - Darwin

<p>9:00am Session One</p> <p><i>Principal Speakers</i></p>	<p>Future control of industrial relations and financial relations between a new state and the Commonwealth</p> <p>Financial Relations:</p> <ul style="list-style-type: none"> ▪ Mr Alan Morris (Chairperson, Commonwealth Grants Commission) ▪ Ms Jennifer Prince (Under Treasurer, NT Department of Treasury) <p>Industrial Relations:</p> <ul style="list-style-type: none"> ▪ Mr Justin Larkin (Employment Advocate of the Office of Commissioner for Public Employment) ▪ Mr Chris Young (CEO, Chamber of Commerce NT) ▪ Mr Joe Gallagher (President, Unions NT)
<p><i>Other session participants</i></p>	<ul style="list-style-type: none"> ▪ Representative of the Commonwealth Department of Employment and Workplace Relations ▪ Representative of the NT Trades and Labour Council ▪ Representative of NT Department of Business, Economic and Regional Development ▪ Members of the NT Statehood Steering Committee ▪ Members of the NT Legal and Constitutional Affairs Committee

10:45am Morning break

<p>11:00am Session Two</p> <p><i>Principal Speakers</i></p>	<p>Future Status of Commonwealth Land in the Northern Territory and Aboriginal land rights</p> <ul style="list-style-type: none"> ▪ Mr Kelvin Costello (Coordinator, Larrakia Nation Aboriginal Corporation) ▪ Mr John Daly (Chairman, Northern Land Council) ▪ Mr Dennis Bree (Deputy Chief Executive, NT Office of Indigenous Policy) ▪ Mr Joe Procter (Managing Director, Indigenous Energy Pty Ltd)
<p><i>Other session participants</i></p>	<ul style="list-style-type: none"> ▪ Representative of the National Native Title Tribunal ▪ Representative of the NT Local Government Association ▪ Representative of the NT Department of Primary Industry, Fisheries and Mines ▪ Members of the NT Statehood Steering Committee ▪ Members of the NT Legal and Constitutional Affairs Committee

12:30pm Lunch

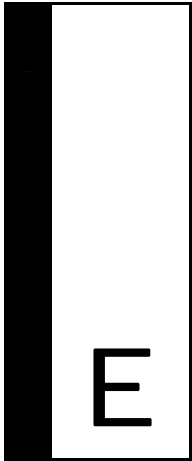
1:30pm Session Three	Mineral and uranium resource issues, and future ownership and management of Commonwealth National Parks and Marine Protected Areas
<i>Principal Speakers</i>	<ul style="list-style-type: none"> ▪ Ms Kezia Purick (Chief Executive, NT Minerals Council) ▪ Mr Graeme Neate (President, National Native Title Tribunal)
<i>Other session participants</i>	<ul style="list-style-type: none"> ▪ Representative of the Northern Land Council ▪ Representatives of the NT Department of Natural Resources, Environment and the Arts ▪ Representatives of the NT Department of Primary Industry, Fisheries and Mines ▪ Representative of the Environment Centre of the NT ▪ Members of the NT Statehood Steering Committee ▪ Members of the NT Legal and Constitutional Affairs Committee

3:00pm Afternoon Break

3:30pm Session Four Open Public Discussion

4:15pm Concluding Remarks **The Hon Peter Slipper MP**

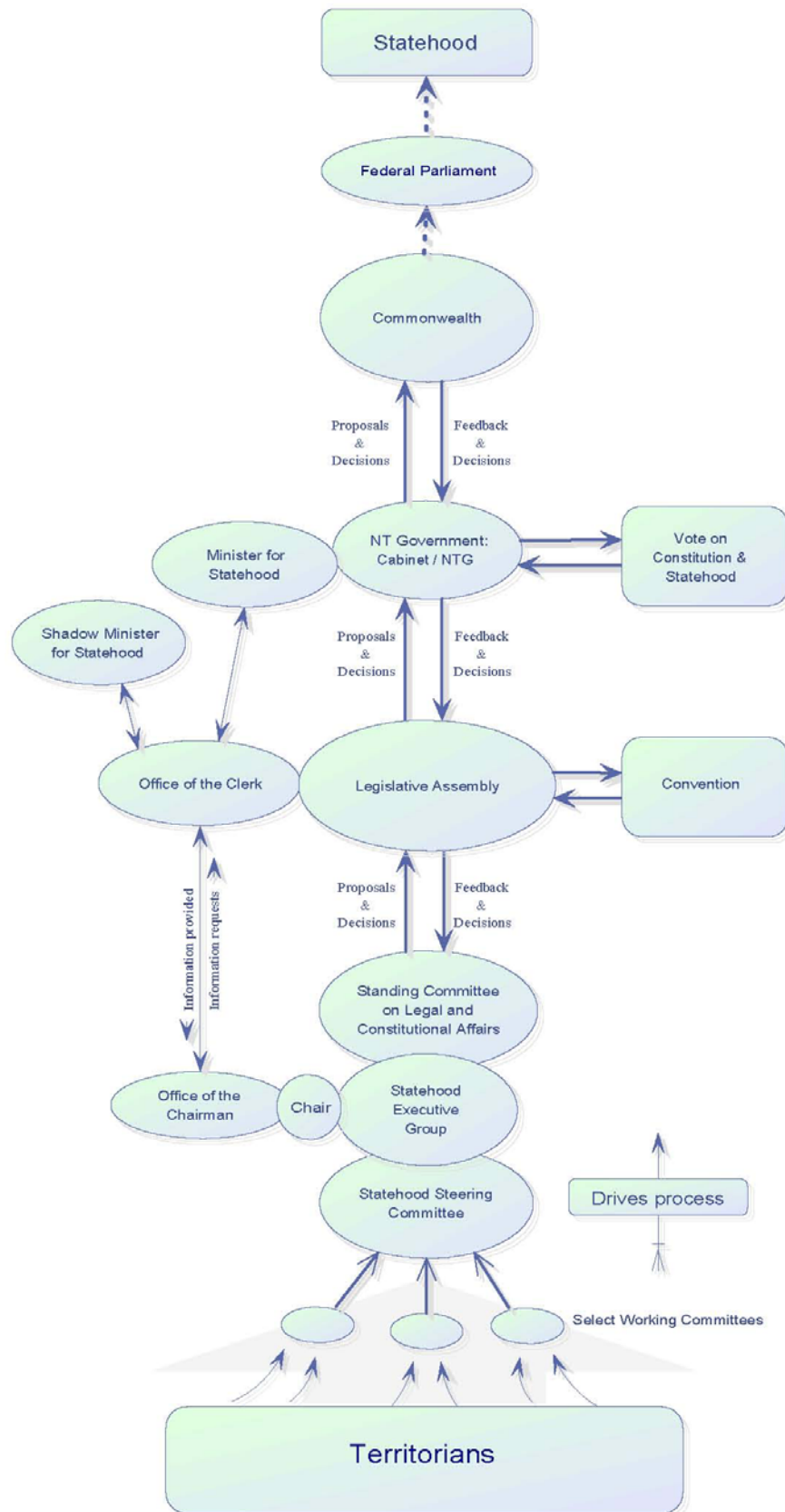
4:30pm Seminar Close



Appendix E: Statehood entities and relationships – November 2006¹

¹ *Exhibit No. 7.*

Statehood entities & relationships — November 2006



Roles and responsibilities :

Federal Parliament:

- Votes on Bill/s

Commonwealth:

- Feedback, advice, decisions on —
- Constitutional parameters,
- Policy positions, and
- Presents legislation to Federal Parliament.

NTG:

- Responds to SSC,
- Formulates policy, and
- Makes representations to Commonwealth.

Minister & Shadow:

- Sponsor Statehood process; and
- Bipartisan approach.

Legislative Assembly:

- Debates, votes on and ratifies legislative instruments.

Office of the Clerk:

- Acts as bureau for Minister & Shadow.
- Information requested by Minister, Shadow to be reported to Statehood Executive Group.

Legal and Constitutional Affairs:

- Liaises with and reports to Legislative Assembly on Statehood process, and
- Provides oversight, parameters.

Statehood Executive Group:

- Board of management for Office of Chairman, and
- Coordinate & liaise between SSC & LCAC.

Office of the Chairman, provides:

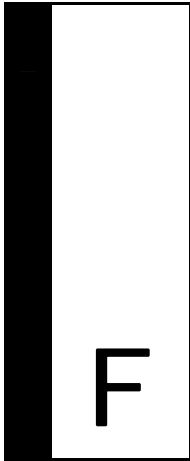
- Research,
- Discussion papers,
- Advice and information, and
- Education / engagement.

Statehood Steering Committee:

- Engages Community through:
- Consultation, and.
- Education
- Provides recommendations.

Territorians:

- Grass-roots inputs to Statehood process,
- Vote in referenda.



Appendix F: Indicative House of Representatives division allocation

Indicative House of Representatives division allocation if the Northern Territory were granted two additional Senators upon statehood

The *Commonwealth Electoral Act 1918* outlines the following formula to determine the number of members in the House of Representatives:

- The Electoral Commissioner ascertains the population of the Commonwealth (excluding the territories).
- The Commissioner then calculates an entitlement quota, by dividing this population figure by twice the number of state senators ($72 \times 2 = 144$).¹
- The number of electorates for each state or territory is then established by dividing the population of each state by the quota. If this exercise leaves a remainder greater than one-half of the quota, one more Member shall be allocated to a state or territory.²

The table F.1 below shows the calculation by the Commonwealth Electoral Commissioner of the November 2005 quota determination using the Commonwealth population (excluding the territories) and the number of Senators from the states. Table F.2 uses the population of the states including the population of the Northern Territory and the Territory of Cocos (Keeling)

1 In 1977, the High Court ruled that the four Senators from the NT and ACT could not be used for calculating the number of Members of the House under the nexus provision in the Constitution. See *Queensland v. The Commonwealth* 1977 HCA 60; 139 CLR 585.

2 S. Bennett & G. Newman, 'A Fair Deal for Territory Voters?' Parliamentary Library Research Note No. 27, 2003, p. 1.

Islands, and the number of Senators from the states including four from the Northern Territory.

Table F.1 November 2005 quota determination (excluding the territories)

Number of people of the Commonwealth	=	19 752 065
Twice the number of Senators from the states	=	144
Quota	=	137 167.1181

Table F.2 November 2005 quota determination

(including the NT population in the national population and four Senators from the NT)

Number of people of the Commonwealth	=	19 959 149
Twice the number of Senators from the states (74 Senators from the original states, plus 4 Senators from the new State, time 2)	=	152
Quota	=	131 310.1908

Table F.3 below compares the outcome of the 2005 electoral determination and the impact of two additional Senators from the Northern Territory (if it were counted as a state), with the 2003 determination. The table indicates that, if the Northern Territory gained two additional Senators following statehood, redistributions may be required to create two additional electoral divisions in New South Wales, and one additional electoral division each in Victoria, Queensland and South Australia, based on 2005 population data. Moreover, if the Northern Territory and Commonwealth Governments negotiated a minimum of five MPs from the Territory following statehood (the minimum for original states), a further three electoral divisions would need to be created in the Northern Territory. In sum, an additional two Senators from the Northern Territory upon statehood may require the creation of five or eight new electoral divisions.

Note that table F.3 provides an indicative assessment only. The actual implications for the House of Representatives of two additional Senators from the Northern Territory would differ to that shown in the table according to the agreed terms and conditions of statehood and the national and state populations at the time of the determination following a grant of statehood.

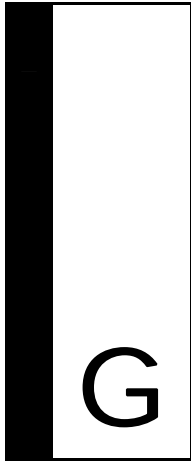
Table F.3 Potential implication of two additional Northern Territory Senators on House of Representatives electoral divisions³

State/Territory	Population	Result (population divided by 2005 quota 137 167.1181)	Number of Members to be chosen	Change (from 2003 deter- mination)	Result (population divided by quota, NT treated as a state 131 310.1908)	Number of Member s to be chosen	Change (from 2003 deter- mination)
New South Wales	6 764 690	49.3171	49	-1	51.5169	52	+ 2
Victoria	5 012 689	36.5444	37	-	38.1744	38	+ 1
Queensland	3 945 940	28.7674	29	+1	30.0505	30	+ 1
Western Australia	2 003 778	14.6083	15	-	15.2599	15	-
South Australia	1 540 223	11.2288	11	-	11.7297	12	+ 1
Tasmania ⁴	484 745	3.5340	5	-	3.6916	5	-
Australian Capital Territory	325 790	2.3751	2	-	2.4811	2	-
Northern Territory ⁵	206 492	1.5054	2	-	1.5726	5	+ 3

3 The table uses population and 2005 quota data from Australian Electoral Commission, Redistribution Backgrounder, 'Why is a redistribution undertaken?', pp. 1 - 2 & 4.

4 Section 24 of the Constitution guarantees each original state a minimum of five MPs.

5 Assumes that the NT is guaranteed a minimum of five MPs in accordance with s. 24 of the Constitution. This would be subject to negotiation between the NT and Commonwealth Governments.



Appendix G: Commonwealth legislation requiring minor amendment

Commonwealth legislation requiring minor amendment following a grant of statehood for the Northern Territory¹

Aboriginal and Torres Strait Islander Act 2005 – Sect 5; Sect 191U; Sect 193X; Sect 193Y

A.C.T. Self-Government (Consequential Provisions) Act 1988 - Schedule 5

Acts Interpretation Act 1901 – Sect 17; Notes

Air Navigation Act 1920 – Sect 2A; Sect 24; Sect 27; Sect 30

Air Services Act 1995 - Sect 4

Archives Act 1983 – Sect 3; Sect 6; Sect 23; Sect 32; Sect 33; Sect 37

Ashmore and Cartier Islands Acceptance Act 1933 – Sect 6; Sect 11A; Sect 12

Australian Industry Development Corporation 1970 – Sect 4C

Australian Securities and Investments Commission Act 2001 – Sect 5; Sect 12BAA; Sect 12GK; Sect 12GNA; Sect 148; Sect 172; Sect 253; Sect 254; Sect 256; Sect 257; Sect 266; Sect 267; Sect 268; Sect 268B; Sect 269; Sect 271; Sect 272; Sect 275; Sect 276; Sect 277; Sect 278; Sect 279; Sect 281; Sect 282; Sect 283; Sect 284; Sect 285

Child Support (Registration and Collection) Act 1988 - Sect 20; Sect 21

¹ Compiled by the Parliamentary Library January 2007 and includes compilations of Commonwealth legislation. This list is indicative only.

Commonwealth Functions (Statutes Review) Act 1981 - Sect 157; Sect 159

Commonwealth Grants Commission Act 1973 - Sect 5; Sect 16A

Commonwealth Motor Vehicles (Liability) Act 1959 - Sect 3; Sect 7; notes

Commonwealth Places (Application of Laws) Act 1970 - Sect 5

Complaints (Australian Federal Police) Act 1981 - Sect 21; Sect 5; Sect 21; Sect 27; Sect 56; Sect 58; notes

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