

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.

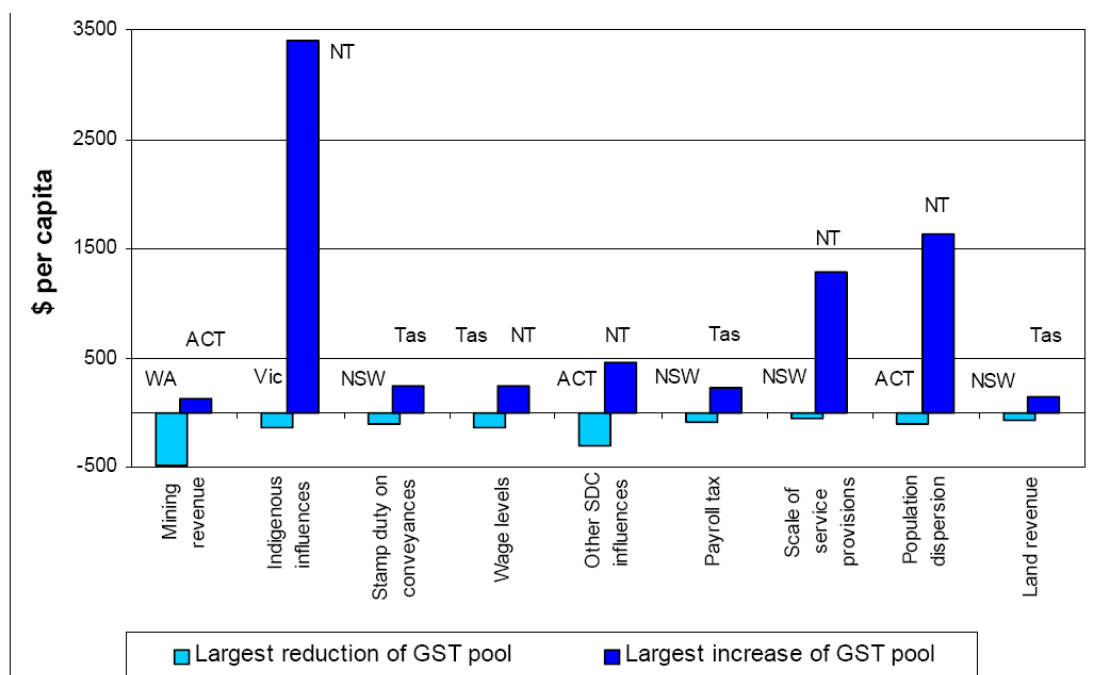
7.23 The greater need for Commonwealth grants by the Northern Territory is due to the higher demand for, and cost of delivering services to its population, and the lower capacity to raise revenue compared with other states. The Committee heard that the high level of relativity for the Territory exists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

