

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
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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.