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NT

The Hon Peter Slipper, MP
Chairman
Standing Committee on Legal and Constitutional Affairs
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Mr Slipper

On behalf of the Northern Territory Statehood Steering Committee it is my pleasure to forward the Steering Committee's Submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs concerning your Committee's reference into the Federal Implications of Northern Territory Statehood.

The content of our Submission reflects the views of the Statehood Steering Committee. These are not necessarily the views of the Legislative Assembly of the Northern Territory or the Northern Territory Government. They are views arrived at by the Statehood Steering Committee over a number of months of research and consultation and our ongoing discussion with the Northern Territory community about Statehood.

It is understood that once a submission is received by your committee, it cannot be published or disclosed to any other person unless or until the committee has authorised its publication. I understand you meet next on 10 October 2006. The Statehood Steering Committee seeks your committee's consideration of our request to publish the submission at that meeting

We look forward to your Committee convening in the Northern Territory in November to further your inquiries into Statehood.

Yours sincerely

SUE BRADLEY
Co-Chair

8 September 2006

Together Towards Statehood

NORTHERN TERRITORY
STATEHOOD
STEERING COMMITTEE

Submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs' Inquiry into the Federal Implications of Northern Territory Statehood

On Monday 9 May 2005 the Commonwealth Attorney-General, Hon Philip Ruddock MP, referred to the House of Representatives Standing Committee on Legal and Constitutional Affairs 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*.[1]

This submission has been prepared in response to that inquiry. The content of the submission reflects the views of the Northern Territory Statehood Steering Committee and does not necessarily reflect the views of the Northern Territory Government or the Legislative Assembly.

[1] See reference at http://www.aph.gov.au/House/committee/laca/index.htm

Submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs' Inquiry into the Federal Implications of Northern Territory Statehood

INTRODUCTION

At its fifth meeting on 1 March 2006 the Legislative Assembly Standing Committee on Legal and Constitutional Affairs (LCAC) requested the Northern Territory Statehood Steering Committee (SSC) prepare a submission to the House of Representatives Committee on Legal and Constitutional Affairs (HRSC) in the context of the Commonwealth Committee's reference on the Federal implications of Statehood for the Northern Territory.

The *Report into Appropriate Measures to Facilitate Statehood* published by the Legislative Assembly in April 1999 (hereafter *1999 Report*), informs what the SSC does and how it does it.

The SSC acknowledges the HRSC appears to be well acquainted with the first part of the Commonwealth Attorney General's reference concerning recent developments on Statehood in the Northern Territory.[3]

However, as the SSC wishes to assist the HRSC understand and report upon recent developments taken toward Statehood in the Northern Territory, The HRSC may wish to examine our website at www.statehood.nt.gov.au or contact us directly. The SSC is able to assist the HRSC with regard to the first part of their reference by providing copies of Territory based media articles on Statehood collected during 2005, as well as archival material including previous reports prepared by former Legislative Assembly committees.

The SSC Co-Chair wrote to the Chair of the HRSC on Monday 8 May 2006 welcoming the proposal the HRSC conduct a public seminar in the Northern Territory in order to inform its own work. The SSC expressed some concern regarding the proposed format in a subsequent letter to the Chair of the LCAC particularly noting an apparent lack of opportunity for participation by Central Australia Territorians. It is understood the LCAC has since written to the HRSC in that regard.

The SSC looks forward to the opportunity to meet with HRSC members and provide any clarification or expansion sought on the views outlined in this submission.

POSITION STATEMENT

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.

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[3] Evident from the Document entitled *Background Brief Northern Territory Statehood* produced by the Commonwealth Committee's secretariat 2006. See also Annexure 2 of this document for a copy of a recent report of activities undertaken by the Statehood Steering Committee.

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 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.

ESTABLISH A PROCESS FOR TERMS AND CONDITIONS

For the SSC, one critical issue for bringing about Statehood is the commencement of Government to Government discussion and finalisation of the terms and conditions of Statehood.

The second part of the HRSC's reference is to examine *emerging issues which may have implications for federal arrange*ments.

With an understanding of the history of past Statehood discussions as outlined later, the SSC maintains that if the **process** for developing the terms and conditions is not settled there is no point getting bogged down into the HRSC Brief's ten identified issues.

Terms and Conditions - The Australian Constitution *s.121: 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.*

There has been considerable academic and political speculation concerning the meaning and interpretation of s.121 terms and conditions and admission or creation are all part of the consideration process[4].

Whilst it is apparent the Commonwealth anticipates there will be some terms and conditions differentiating the Northern Territory from the original States, as indicated above, the Commonwealth has not revealed any detail.[5]

When it comes to managing emerging issues related to the terms and conditions for Statehood, it would be open to the Commonwealth to determine the only 'term and condition' would be equality with the existing States.

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[4] Creation or admission is covered in detail in Australia's Seventh State by Peter Loveday & Peter McNabb 1988. It is generally considered the Northern Territory will be admitted as a new State rather than established by the Commonwealth.

[5] See Media Release issued by the Prime Minister on 11 August 1998 *Statehood for the Northern Territory* which states: "The Federal Government has agreed in principle that Statehood should be granted to the Northern Territory, subject to terms and conditions to be determined by Federal Parliament."

Emerging Issues - It is not clear how broad the Commonwealth Attorney's reference is when it comes to 'emerging issues'. The HRSC Background Brief document assists by outlining a range of longstanding issues such as the administration of the *Aboriginal Land Rights (Northern Territory) Act 1976* and newer issues such as the proposal by the Commonwealth for the placement of a radioactive waste management facility in the Northern Territory.

It is acknowledged by the SSC that when it comes to managing issues and determining terms and conditions, the Commonwealth may decide to retain some of their existing powers without relying upon the s.121 terms and conditions power. If the Commonwealth determines to do this under other heads of constitutional power, it is submitted the Commonwealth should disclose that intention in the context of negotiations on terms and conditions.

If a position of absolute equality is adopted by the Commonwealth, the 'emerging issues' will in essence be irrelevant and the process would involve handing over all powers currently reserved according to the *Northern Territory Self Government Act*, and the commencement of immediate planning for increased Commonwealth parliamentary representation for the Northern Territory.

'Emerging issues' such as action taken with regard to the siting of a national radioactive waste facility in the Northern Territory; the focus upon uranium and nuclear power and proposals to make changes to the *Aboriginal Land Rights (Northern Territory) Act* are politically sensitive and have resonated to some degree with the electorate.

An Equal State - The SSC acknowledges an immediate adoption of absolute equality by the Commonwealth is unlikely[6]; however, the SSC contends **eventual** equality of the Northern Territory as a new State with existing States (except in so far as the Commonwealth Constitution confers certain rights on original States only) should be the focus of any process toward Statehood for the Northern Territory

As the SSC views the matter, there is a clear difference between the processes for negotiating and implementing the terms and conditions of the proposed grant of Statehood on the one hand, and for preparing, adopting and implementing the new State Constitution on the other hand.

The processes for the former are discussed below, and primarily involve Government to Government negotiations and agreement.

The processes for the new State Constitution are quite different. In the SSC's view these are matters 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.

There might be some potential for limited overlap between the content of the new State Constitution and the agreed terms and conditions of the grant. Any attempt by the Commonwealth to autocratically impose unacceptable terms and conditions,

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[6] The Statehood Steering Committee holds copies of Commonwealth generated documents (such as media releases) referring to the need to resolve the terms and conditions, but no documents which indicate the principle of equality with the existing States is the objective.

particularly if they purport to conflict with the new State Constitution, would doom the whole exercise to failure.

Prior Engagement with the Commonwealth - Research undertaken by the Statehood Steering Committee examining prior discussion with the Commonwealth on Territory Statehood shows the Commonwealth has in the past contemplated the imposition of some terms and conditions other than immediate or absolute equality.

In reaching this conclusion, the SSC has taken note of correspondence dated 5 March 1997 when the then Commonwealth Minister for Territories advised Chief Minister Stone that an Interdepartmental Committee (IDC) had been established to examine the implications of Statehood (chaired by the Secretary of the Department of Sport and Territories with representatives from the Prime Minister's and Attorney General's Departments.)

Seven specialist taskforces were established to assist the IDC:

1. Legal and Constitutional Affairs (including representation)
2. Indigenous Issues
3. Environment, National Parks and Commonwealth Land
4. Uranium Mining
5. Commonwealth Territories
6. Industrial Relations
7. Financial Implications

The proposal was for the taskforces to report to the IDC and for the IDC to in turn brief the Cabinet later in 1997 to assist with establishing the Commonwealth's position and provide the basis for the Commonwealth engaging in formal discussions with the Territory Government. Those formal discussions have not taken place. The SSC has discerned during its consultations a lack of progress, or a perceived lack of will on the part of the Commonwealth is a major source of frustration for a number of people in the Northern Territory.

The SSC submits the Commonwealth should undertake detailed discussions with the Northern Territory on the issues canvassed by the IDC and in the 1996 *Final Report of the Northern Territory Statehood Working Group*[7] (hereafter referred to throughout as the *1996 Report*)

An Exchange of Letters - During the lead up to the 1998 Statehood Referendum there was an exchange of letters between the Commonwealth and the Territory which indicates some difficulty in establishing a process to agree on the terms and conditions of Statehood.

Writing to the Prime Minister in July 1996, then Chief Minister Stone proposed the establishment of a joint Commonwealth and Northern Territory Steering Committee on Statehood to have carriage of the transition to Statehood. The letter referred to the *1996 Report* by the Northern Territory Statehood Working Group as a 'sound working document'. The same letter outlined a proposed process encompassing terms of reference, reporting, review of the *1996 Report*, identification of issues (already identified in the *1996 Report*) and subcommittees.

The Prime Minister's reply did not endorse the creation of a joint Steering Committee; rather he suggested the Federal Cabinet would be briefed by the relevant departments 'later in the year'.

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[7] Final Report Northern Territory Edition May 1996

Taskforces - On 5 March 1997 the then Minister for Territories advised Chief Minister Stone the IDC had been established. The proposal was for taskforces to report to the IDC and for the IDC to in turn brief the Cabinet later in 1997 to assist with establishing the Commonwealth's position and provide the basis for the Commonwealth engaging in formal discussions with the Territory Government.

On 15 December 1997, Chief Minister Stone wrote to the Prime Minister to advise the establishment of the Northern Territory Constitutional Convention. The letter also expressed concern there had been no further advice from the Commonwealth on the progress of the IDC. Mr Stone wrote - *The Territory is anxious to commence discussions and I would appreciate your advice as to when the Commonwealth may be in a position to initiate a series of meetings to begin the process of finalising the terms and conditions of Statehood.*

On 16 June 1998, Chief Minister Stone wrote to the Prime Minister enclosing a copy of the Report of the Statehood Convention held in March and April of that year. The Chief Minister also advised the Prime Minister of a Referendums Bill to facilitate the conduct of a Territory Referendum on Statehood. The Chief Minister's main concern in this letter was expressed thus: *It is of some concern to me that discussions between the Northern Territory and the Commonwealth on the terms and conditions of a grant of Statehood have not yet commenced.*

Mr Stone also expressed concern that, of the IDC's seven taskforces, one had still not reported nearly two years after establishment and *the IDC had not consulted the Territory on the Northern Territory's views on any of the substantive issues.*

On 4 July 1998 the Prime Minister advised Chief Minister Stone, that the Minister for Territories had prepared a Cabinet Submission. Subsequent to this correspondence, the Statehood referendum was held in the Northern Territory and there is no further correspondence known to the SSC.

In–Principle but not Conclusive - It is not known whether the Commonwealth Cabinet proceeded to consider such a submission. A media release issued by the Minister for Territories on 11 August 1998 states *The Prime Minister, John Howard, today announced that Federal Cabinet had agreed in principle that Statehood should be granted to the Northern Territory subject to terms and conditions to be determined by Federal Parliament.*

Despite the language of the Prime Minister's Media Release of 11 August 1998, the SSC believes it is unlikely the Commonwealth Government will leave the determination of the issues to the Commonwealth Parliament. Government to Government negotiations, with a view to entering into and releasing a Memorandum of Agreement between the Commonwealth and Territory governments, appears to be the more appropriate process in the initial stages.

Once such a Memorandum is entered into, and Territorians are able to exercise their votes on the proposed grant of Statehood with knowledge of that Memorandum, then the grant can be advanced by the Commonwealth by drafting a Bill incorporating those agreed terms and conditions.

The Minister for Territories, addressing the Northern Territory Legislative Assembly on 11 August 1998 stated – *I assure all members and all Territorians that any terms and conditions of Statehood will be subject to full consultation and negotiation.*

The then Leader of the Northern Territory Opposition noted in the Legislative Assembly in response to the address by the Minister for Territories: *Notwithstanding the Minister's speech there is still no detail on what the proposed terms will be.*[6]

History shows Territorians, in the Referendum of October 1998 were left to vote in a vacuum!

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.

The SSC notes the ten issues canvassed in the Background Brief developed for the HRSC. In developing this submission, the SSC has followed the same format for ease of reference. The SSC addresses each of the topic areas in that document providing the HRSC the views of the SSC on the issues raised along with some suggestions to advance Statehood for the Northern Territory. The SSC's detailed response is attached at Annexure 1.

Signed for and on behalf of the Northern Territory Statehood Steering Committee by Elliot McAdam MLA, Chair and Sue Bradley, Co-Chair

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Elliot McAdam
Dated 11/07/2006.

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Sue Bradley
Dated 28.06.2006

ANNEXURES

1. Statehood Steering Committee Submission to House of Representatives Committee on Legal and Constitutional Affairs – Response to Issues
2. Statehood Steering Committee Report to the Standing Committee on Legal and Constitutional Affairs – 2005 Calendar Year Activities
3. Terms of Reference Northern Territory Statehood Steering Committee

[6] Hansard .Eighth Assembly, First Session, Record No 8. Mrs Hickey.

Annexure 1 SSC RESPONSE to HRSC BACKGROUND BRIEF PAPER

1. COMMONWEALTH CONSTITUTIONAL MATTERS

(Paragraph 1.8 onwards of Background Brief)

Method of Admission - Should the admission of the Northern Territory as a new State in the Australian Federation be by way of s.121 or s.128 of the Australian Constitution?[9] Previous publications[10] have considered this issue. The *1996 Statehood Working Group Report*[11] (hereafter *1996 Report*) analyses the issues but did not make firm recommendations on terms and conditions.

The *1996 Report,* like the previous Committee of the Legislative Assembly, reflected upon the accepted wisdom in favour of the use of s.121. The choice of the s.121 may remain an open question for the HRSC. The SSC would be interested to learn the views of the HRSC and the Commonwealth on this issue.

It was the view of (former High Court Justice) John Toohey QC, when considering the ambit of the Commonwealth's power under s.121: *It is unlikely that the High Court would permit the imposition of any term or condition which derogated from the rights in relation to States as enshrined in the following provisions of the Constitution s.51(ii), s.51(xxxi), s.55, s.80, s.92, s.99, s.116, s.117, s.118, s.119. s.123*[12]

Citing the *Constitution Act*, it was his contention that where the Constitution refers to 'original States' in s.7 and s.24 then it was only referring to original states but when referring to 'States' in other sections it is referring to new as well as original States..

The HRSC Background Brief states *Constitutional equality of the new State with existing States is a central issue, relating to the application of States' and individuals' rights under the Constitution such as the saving of State Constitutions (s.106), the guarantee of free trade and commerce between the States (s.92), the delineation of Commonwealth legislative powers (s.51) the acquisition of property by the Commonwealth on just terms (s.51(xxxi)), no increase, diminution or alteration of State limits without the consent of the State Parliament and the approval of a majority of State electors (s.123)*[13]

The SSC notes this and prefers a simple principle of equality with the existing States without qualification, reserving its view as to whether this is a full and final expression of what equality may be in the Statehood context.

Different expert views have been expressed of the constitutional need for the equal treatment of a new State in Australia, particularly as arising under section 51 of the Commonwealth Constitution, and whether equality can be lawfully avoided under the terms and conditions power in section 121.

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[9] s.128 would require a referendum putting a question to electors Australia wide. It is worth noting the vote of Territorians in such a referendum would not be counted in the second requirement for a majority of States to carry a question in a referendum.

[10] Select Committee of the Legislative Assembly on Constitutional Development, Information Paper No 1 Options for a Grant of Statehood, September 1987, 3. The view in this paper was endorsed in the Final Report of that Committee.

[11] Northern Territory Statehood Working Group, Final Report. Northern Territory Edition May 1996

[12] Loveday & McNab p8-9

[13] Paragraph 1.11

Position on Entry - When it comes to s.106[14], the SSC is examining the previous work of Northern Territory Legislative Assembly Committees and the 1998 Statehood Constitutional Convention.

The SSC takes the view the s.106 provision in the Constitution would require the Northern Territory to have ready, immediately prior to the admission of the new State, a home grown Northern Territory constitution which at least puts the Northern Territory in the same position as the other States of Australia upon entry to the Federation.

The SSC also takes the view the Commonwealth should have no role in preparing a proposed Northern Territory constitution provided such a constitution is consistent with the Commonwealth Constitution and the Australia Acts.

The SSC contends constitutional equality of a new State with existing States is a central issue and Statehood for Northern Territorians would be unacceptable and indeed meaningless should the Commonwealth determine admission of a less than equal State is the objective, nor should the Commonwealth reserve to itself any power to later amend the new constitution or to place any fetters on future State amendment of same.

Other Matters - Many people are asking about some of the issues that can only be resolved through either a negotiated terms and conditions process, or a decision by the Commonwealth to use other heads of power.

The *1996 Report* envisages a negotiated settlement on each matter, except possibly for industrial relations where the current system, (topical particularly in light of the Commonwealth's recent Work Choices reforms and current litigation in the High Court) could continue by way of a reference back to the Commonwealth.

It is now ten years since the Northern Territory and Commonwealth Governments received the *1996 Report*. While there are constitutional doubts as to whether the Commonwealth can continue to uphold its present controls in matters such as uranium mining, land rights and some national parks on and from a grant of Statehood, there is no doubt the Commonwealth will enjoy control of these so long as the Territory remains in its current position.

The content of the *1996 Report* provides a basis for consideration of how to re-commence discussion with the Commonwealth about these key issues. Despite interim changes to Commonwealth legislation impacting on the Territory under the Self Government arrangements, the *1996 Report* contains much factual information on issues that remain current.

The Commonwealth's positions on the constitutional issues mentioned in this part of the Background Brief remain unknown as does the process to advance them. Whilst this is the case, some of the education and information now being provided by the SSC is necessarily speculative[15]. The SSC feels it would be beneficial to publicise and raise awareness of the intentions of the Commonwealth as part of the SSC's broad education program.

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[14] *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*

[15] The *1996 Report* at page 86 notes – *Full consultation is not possible unless there are clear proposals for Statehood....the terms and conditions...have yet to be determined.*

2. FUTURE REPRESENTATION IN THE FEDERAL PARLIAMENT

(Paragraph 1.12 onwards of Background Paper)

As the Background Brief succinctly points out; *there are no guarantees of federal representation for the Northern Territory in the (Australian) Constitution.*

Representation levels have been an issue for Australians living in the Northern Territory since guaranteed levels of representation were lost on 1 January 1911 when South Australia officially surrendered the Northern Territory to the Commonwealth pursuant to s.111 of the Constitution.[16] The SSC has commenced a new survey in 2006 which may provide some more concrete indication of views of Territorians over the coming months on the issue of federal levels of representation.

In 1986 the then Territory Government determined conformity with the population quota for the House of Representatives and a phased increase in representation in the Senate based on election cycles was their preferred approach to terms and conditions of Statehood with regard to representation issues. The Chief Minister in 1986 stated: *no relationship between population size and senate representation will be accepted.*[17] Flexibility in the formula toward equality in Senate numbers was canvassed at different times, for example Chief Minister Perron in 1994 floated two possible methods to achieving senate equality one taking 12 years, the other 24 years[18].

The Quota - Territory representation is constantly raised by Territorians as an important issue and was outlined in some detail in a document published by the then Chief Minister in 1986 and again in the *1996 Report.* As at 31 May 2005, the Northern Territory had 111,527 voters for its two House of Representatives seats.

The Commonwealth Constitution outlines the formula for determining State representation entitlements.[19] The High Court has determined the Constitution does not guarantee an equal number of electors or people in each division.[20] However the quota in s.24 of the Commonwealth Constitution requires there to be an apportionment of the number of House of Representative seats in each state based on a population quota. It is uncertain if this apportionment system can be varied for a new state under the terms and conditions power.
It has been documented in previous papers examining Territory representation issues that the formula for calculating entitlement uses the jurisdiction's population, not the

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[16] ***111.*** *The Parliament of a State may surrender any part of the State to the Commonwealth; and upon such surrender, and the acceptance thereof by the Commonwealth, such part of the State shall become subject to the exclusive jurisdiction of the Commonwealth.*

[17] Ministerial Statement Page 5

[18] Agenda Paper for 1994 Leaders (Premiers) Conference, Provided to the Statehood Steering Committee by the Department of the Chief Minister.

[19] S.24 - 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 senators. The number of members chosen in the several States shall be in proportion to the respective members 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 senators:

ii.) The number of members to be chosen in each State shall be determined by dividing the number of 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.

[20] Attorney-General (Cth); Ex Rel. McKinlay v. The Commonwealth; South Australia v. The Commonwealth ; Lawlor v. The Commonwealth [1975] HCA 53; (1975) 135 CLR 1 (1 December 1975)

number of enrolled voters. The Northern Territory has more non-voters than the ACT for instance.

Relatively recently the Commonwealth Parliament passed the *Commonwealth Electoral Amendment (Representation in the House of Representatives) Act 2004* which provides for the Northern Territory to retain its second seat even though, on the 2003 calculation of population, it was slightly below the relevant quota.

The ability of the Commonwealth to pass legislation to permit, restrict, or even abolish levels of representation for the Territories is the current reality. Political 'interference' with the system of representation has been a catchcry for Statehood since the Territory obtained its first limited Commonwealth representation in 1922. It is only as a State that the quota system could be protected as set out in the Commonwealth enabling legislation so that it cannot thereafter be unilaterally varied.

Similarly the agreement on Senate representation should be incorporated into the terms and conditions process.

Specifics of the words in s.121 and Levels of Representation - As the HRSC is informed, the Constitution sets minimum levels of representation for 'original' States, whereas s.121 provides representation will be a part of the consideration of terms and conditions.

There are some constitutional doubts as to whether the s.121 method can be used to impose a different constitutional relationship with the Commonwealth on the new State as compared with existing States.[21] That is not to say the Commonwealth could not rely upon other constitutional powers.

Just because s.121 mentions the Commonwealth has the power to determine the representation for a new State, it does not mean it must do so in a punitive manner. Professor Colin Howard makes an interesting argument that the founding fathers contemplated a time when a suitably stable and mature polity could join the Federation and that to bring in a lesser entity would undermine the Federation..[22]

The SSC submits the issue of representation must be resolved at a Government to Government level prior to any question being put to the people of the Northern Territory as to whether they want Statehood. When Territorians are able to make an informed decision on what Statehood means a referendum will be meaningful.

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. When the Commonwealth is serious about a model for Northern Territory Statehood it is likely that Territorians, who have hitherto shown little interest[23], will be energised.

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[21] The discussion also applies to whether the new State could be given a status 'superior' to existing states on some fronts. See Colin Howard *Statehood On Conditions* Chapter 2 in Australia's Seventh State Peter Loveday and Peter McNab (eds) NT Law Society/ANU 1988

[22] He goes so far as to say *I would urge as a matter of policy that S.121 of the Constitution be treated as if the reference to Federal representation were not there* Op Cit p 26-27

[23] The SSC harks back to the words of then NT Supreme Court Judge Michael Maurice from 1988 when he wrote - *the new drive for statehood has so far failed to galvanise the community as the politicians no doubt hoped it would. The rational arguments are there but something is missing, a factor 'X'* See Loveday & McNabb Op Cit p xxii

3. FUTURE STATUS OF COMMONWEALTH LEGISLATIVE REGIMES CURRENTLY APPLYING TO THE NT

(Paragraph 1.15 onwards of Background Brief)

Many of the current legislative controls the Commonwealth holds over the Northern Territory are by virtue of the s.122 Territories power. This situation would have to change upon a grant of Statehood, acknowledging the Commonwealth retains a range of constitutional powers over the States.

The *1996 Report* outlines at Schedule 1[24] a list of 28 Commonwealth acts which apply specifically to the Northern Territory or which have an extended application to the Northern Territory including the obvious such as the *Northern Territory (Self Government) Act 1978* and Regulations.

It is understood a variety of other minor amendments to other acts would be required. It is submitted that since Commonwealth legislation will require repeal or amendment upon Northern Territory Statehood, the Commonwealth should take into account any Northern Territory views in this regard.

[24] Final Report page 31 or page 34 in some bound editions

4. FUTURE OWNERSHIP AND CONTROL OF LAND CURRENTLY OWNED AND CONTROLLED BY THE COMMONWEALTH

(Paragraph 1.17 onwards of Background Brief)

The HRSC is advised by the Background Brief that the Northern Territory Government in its 1989 submission to the Commonwealth on the further transfer of power to the Northern Territory took the view that all land held by the Commonwealth in the Northern Territory should be transferred to the Northern Territory Government at no cost with the Commonwealth only retaining land as agreed between the parties where it was required for Commonwealth purposes[25].

In the existing States, the Commonwealth does not own or hold large parcels of land for no specific purpose and the former Northern Territory Government's position would appear reasonable.

The SSC submits the Territory and Commonwealth Governments should negotiate an in-principle agreement on future ownership of Commonwealth land in the Northern Territory now, well in advance of anticipated Statehood.

[25] Background Brief refers to Page 67 of the *1996 Report*.

5. FUTURE OWNERSHIP AND CONTROL OF URANIUM RESOURCES AND REGULATION OF URANIUM MINING

(Paragraph 1.18 onwards of Background Brief)

The Background Brief prepared for the HRSC, cites the examples of the mining of uranium or other prescribed substances within the meaning of the *Atomic Energy Act 1953* and regulations and or rights in respect of Aboriginal land under the *Aboriginal Land Rights (Northern Territory) Act 1976* [26] as expressly reserved powers still held by the Commonwealth.

The *Northern Territory (Self-Government) Regulations 1978* at Regulation 4 spells out the matters in respect of which Ministers of the Territory have executive authority under section 35 of the *Northern Territory (Self-Government) Act 1978.* The list in the *Regulations* and the reservation of all other powers to the Commonwealth illustrates the limitations of the current self government model, they expressly exclude uranium mining from present Territory executive authority.

During 1987 the Northern Territory Government published an options paper that amongst other things considered the issue of the control of uranium resources in the Northern Territory.[28] That paper expressed - *in relation to resources the basic position of the Northern Territory Government is that upon Statehood, all resources in the new State, other than those held by the Commonwealth for genuinely federal type purposes, should be owned and controlled by the new State.*[29]

Who owns uranium determines who mines it. Given the SSC's overriding principle of eventual equality, the SSC contends the Northern Territory as a State must own and manage its own mineral resources including uranium.

Future Administration of Uranium and Minerals, National Parks and Aboriginal Land - Minerals as they occur in the two Commonwealth controlled national parks and minerals as they occur on Aboriginal land are also matters to be resolved in the context of Northern Territory Statehood. Because the currently known uranium ore bodies in the Northern Territory are on Aboriginal land, there is a direct link between the ownership of the land, the royalties, the decision making to mine and the terms and conditions of Statehood.

The future administration of the Alligator Rivers Region, (ARR) now primarily under Commonwealth administration is an integral part of that consideration.

So long as day to day administration and environmental control over uranium mines in the Northern Territory falls under the Territory Government and the final power to mine or not is reserved to the Commonwealth, the existing split administrative and control arrangements over the uranium industry in the Northern Territory is often confusing. The SSC submits this confusion is bad for business, prosperity and potential growth.

As an example; the Territory administration, controls the prosecuting authority[30] 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

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[26] Sub Clauses 2(a) and 2(b) of *The Regulations.*

[28] *Towards Statehood – Minerals and Energy Resources Upon Statehood* April 1987

[29] Ibid page 2

[30] The prosecution of Energy Resources Australia (operators of Ranger) for breaches of the Northern Territory's *Mining Management Act* was undertaken by the Northern Territory's Department of Business, Industry and Resource Development

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.

The Territory provides approvals for mineral exploration, yet the present Government has a stance against further uranium mining. It is no wonder there was such intense media scrutiny of the uranium mining issue in August 2005 when Commonwealth Minister Mr Ian McFarlane and Territory Minister Mr Kon Vatskalis had a public disagreement about control over uranium mining in the Northern Territory.

Confusion over Administrative Arrangements - For several days during August, it was unclear from the media reporting who understood what about responsibility for uranium mining.[31]

There is also potentially some confusion and blurring of the issues[32] of the proposed placement of a radioactive waste facility in the Territory and the control of uranium mining in the Northern Territory.

An exchange between a journalist and a member of the House of Representatives when discussing uranium mining on the Territory demonstrates this when the reporter stated *...the Labor government, the Labor Territory Government is fighting bitterly over the waste dump issue but appears to have rolled over on whether it has the power or not to approve new uranium mines, which the Federal Resources Minister has said well the Territory's open for business.*[33]

The reporter appeared to feel the Northern Territory Government could somehow choose to control uranium mining, whereas it is not within the Territory's legislative capacity and can only occur with Commonwealth assent.

There is a clear challenge for the SSC to try to get the facts out. So long as confusion remains in the public debate on uranium mining, then Statehood remains a confusing issue as well.

The SSC urges the Commonwealth to engage in discussions with the Territory Government on the future ownership and control of uranium as part of the terms and conditions of Statehood and make clear in advance the Commonwealth's intentions with regard to future ownership of this resource.

Royalties - At the same time, the SSC notes it would be desirable for the Commonwealth to state its position on the future payment of royalty equivalencies for minerals mined on Aboriginal land.

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[31] Commonwealth Minster McFarlane met Territory Minster Vatskalis on 4 August 2005. Media reporting that day and on following days was unclear on the roles of the two jurisdictions and who controls and who regulates uranium mining in the Northern Territory. It would appear the Territory's role as a regulator has been confused by some commentators with the role of being the approval source for new mines. See ABC Stateline Report on Friday August 5 2005.

[32] SSC Member Ms Kezia Purick in her capacity as CEO of the NT Minerals Council discussed the blurring these two issues in a radio interview with Richard Margetson on ABC Radio Darwin (8DDD) on 4 August 2005

[33] 8DDD Morning Program 8.30am Friday 26th August 2005 Julia Christensen interviewing Peter Garrett

Previous Territory Governments took the view that since the Commonwealth entered into the agreements under Commonwealth legislation with no input from the Northern Territory administration, the liability should remain with the Commonwealth upon Statehood.[34] The Commonwealth may have a different view.

Royalty payments for resources mined pursuant to mining titles, granted by a new State Government after a grant of Statehood, is another matter to consider in this context and will be a matter determined in conjunction with determining the future administration of the *Aboriginal Land Rights (Northern Territory) Act*.[35]

The royalty issue also has a connection with financial arrangements as discussed below.

[34] Options Paper April 1987 Pages 9-10

[35] The *1996 Report* notes at page 47 *The question of ownership and control of uranium...is unable to be divorced from the wider issues of the ALRA and its possible patriation; national parks; environmental concerns and Aboriginal concerns generally*

6. FUTURE MANAGEMENT OF RADIOACTIVE WASTE

(Paragraph 1.25 onwards of Background Brief)

The Commonwealth's proposal to site a radioactive waste facility in the Northern Territory has caused considerable debate within the Territory. Some Territorians have approached the SSC asserting that if the Northern Territory were a State it would not be faced with the prospect of hosting a Commonwealth Radioactive Waste Facility.

There is no doubt the Commonwealth has the existing ability to site a facility upon Territory land as its control over Territory land is almost unfettered, however the SSC understands the Commonwealth would have the capacity to house waste generated by the ANSTO[36] on any of its land in any Australian jurisdiction under the relevant ANSTO legislation.

Therefore the question is asked, is the proposed radioactive waste facility a Statehood issue?

The SSC has developed and published a Fact Sheet on this issue.[37]

It is the aim of the SSC to provide material in as factual a manner as possible. It is clear however, that the radioactive waste issue is going to become more heated over time. Comments by the then Minister for Science Hon. Dr Brendan Nelson to the effect that the facility would be sited 'in the middle of nowhere' have been unhelpful, the constant repetition of these comments in Northern Territory and national media serves to reinforce the divisive nature of this issue.[38]

Current reports[39] that the Northern Land Council (NLC) is engaging with traditional owners to negotiate a site at Muckaty Station[40] with the Commonwealth will serve to increase the Territory focus on this issue.

Debate is likely to be intense as this site borders the Central Land Council (CLC) controlled land area under the *Aboriginal Land Rights Act* and the CLC has been a vocal opponent of the proposed waste facility. The current process also sidelines the Northern Territory Government with the NLC taking a role as a broker in the agreement process under the recent Commonwealth legislation[41].

The current level of Territory representation in the Commonwealth houses of parliament demonstrates to Territorians their lack of democratic negotiating power particularly in light of the decision by the Commonwealth not to pursue siting of the facility in South Australia after a Federal Court challenge in 2004.

Whilst the Commonwealth's Act allows the Northern Territory Government as well as a land council to nominate potential sites under the Act for the location of a waste management facility, it is unfortunate the Commonwealth sees fit to immediately take away any slight empowerment of the Territory under this provision (s.3A) by in section 3C(2) making it clear; *the (Commonwealth) Minister does not have a duty to consider a nomination.*

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[36] Australian Nuclear Science Technology Organisation

[37] See Fact Sheet 22 in the *Report on Activities* at Annexure 2 or on our website www.statehood.nt.gov.au

[38] Re- broadcast on AM Program ABC Radio 28 April 2006.

[39] May 2006

[40] First known by the SSC to be reported on ABC Radio Julia Christensen program Friday 28 April 2006

[41] *Commonwealth Radioactive Waste Management Act 2005*

Whether Territorians find the proposal to site a radioactive waste facility within the Northern Territory objectionable or not is a matter for individual decision. The letters pages of the *Northern Territory News* have carried letters both in support and in opposition to the proposal. However, the enabling legislation reminds Australians residing within the Northern Territory that the Commonwealth will not hesitate to use its capacity to treat the Territory in a different manner to the States when it comes to making what appear to be electorally unpopular decisions. In doing so, the Commonwealth reminds Territorians they have a lesser voice and a politically inferior status to other Australians[42].

Rightly or wrongly, as an 'emerging issue', radioactive waste is likely to be linked to Statehood.

Whether the Commonwealth were to propose the Northern Territory's acceptance of a radioactive waste facility is a term or condition of Statehood may only be symbolic if the Commonwealth has the legal capacity to site a facility in a State jurisdiction already. This is one of those instances where the Commonwealth may not seek to rely on its s.121 powers to ensure its policy objectives are fulfilled notwithstanding Northern Territory Statehood.

Rather than undertake an in depth analysis here of the siting of a radioactive waste facility as a term or condition of Statehood, the SSC will await the outcome of any discussions between the Territory and the Commonwealth and a future public declaration of what terms and conditions the Commonwealth seeks to impose on Territory Statehood.

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[42] The Commonwealth Parliamentary Library's Bills Digest 28 October 2005 No 59 provides an analysis of the Bill (as introduced) including the comment at page 2 about the purpose of the Bill being to "Strengthen the Commonwealth's legal ability to develop and operate the proposed Commonwealth radioactive waste management facility in the Northern Territory...by...overriding or restricting...laws...extinguishment of rights and interests related to land..."

[45] Background Brief at page 10 cites *Towards Statehood – National Parks Upon Statehood* September 1987 and the previously cited *1996 Report*.

7. FUTURE OWNERSHIP AND MANAGEMENT OF COMMONWEALTH NATIONAL PARKS AND COMMONWEALTH MARINE PROTECTED AREAS

(Paragraph 1.29 onwards of Background Brief)

Kakadu and Uluru-Kata Tjuta National Parks - Whilst the Northern Territory Government controls and operates ninety national parks, the Commonwealth controls and maintains two of the most famous and iconic national parks in the Northern Territory. Outside of Jervis Bay, these are the only national parks within the knowledge of the SSC, under the direct administration of the Commonwealth on the Australian mainland.

Leasing agreements are currently in place between traditional owners and the Commonwealth to allow the land in question at Kakadu and Uluru to be operated as National Parks. The transfer of the lease agreements and ongoing maintenance is a matter for discussion in the context of Northern Territory Statehood.

It is apparent the Commonwealth could enact laws for the conservation and protection of much of the natural environment and Aboriginal heritage in existing natural parks supported by various heads of Commonwealth power, particularly ss.51(i), 51(xx), 51(xxvi) and 51(xxix) of the Constitution., but it seems this would probably not go so far as ongoing management of national parks in a future State without using the terms and conditions power.

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.

The Background Brief notes former Northern Territory Government positions on national parks as outlined in the relevant papers.[45] In keeping with the general principle of equality, the SSC agrees with the previously stated position of Statehood leading to the Northern Territory having equal status with the other States. This does not mean the Northern Territory may not via a negotiated process agree to the administration of these two national parks by an agreement with the Commonwealth. Any decision should be by proper mutual agreement.

The 1987 Northern Territory Options Paper on National Parks[46] outlines administrative arrangements that remain remarkably current. This submission does not seek to update that document and work may need to be undertaken by the SSC or the relevant Government agencies to provide further information to decision makers as required.

Ashmore Reef National Nature Reserve and Cartier Islands Marine Reserve - The Ashmore and Cartier Islands are Commonwealth territory separate to the Northern Territory and have been since self government in 1978. The Northern Territory has since then been vocal about the 'loss' of these islands.

As the Background Brief notes, predecessors to the current HRSC recommended 15 years ago the islands be incorporated into the Northern Territory. The fact the Commonwealth responded by stating it would consider the recommendation in the context of Northern Territory Statehood may indicate the Commonwealth has in the past been unwilling to show its hand on a range of issues.

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[46] Ibid

The SSC takes the view there is no need for the Commonwealth to wait. There is nothing to prevent the Commonwealth coming to a conclusion on this issue in consultation with the Northern Territory and making a public decision to either incorporate the islands into the Northern Territory now or to the new State, if and when Statehood occurs, or to retain them as Commonwealth territory into the future.

8. ABORIGINAL LAND RIGHTS

(Paragraph 1.38 onwards of Background Brief)

There has been a long history of discussion about which jurisdiction should exercise legislative power over Aboriginal land currently administered under the *Aboriginal Land Rights (Northern Territory) Act* (ALRA).

During the 1980s the then Northern Territory Government published an options paper entitled *Towards Statehood: Land Matters upon Statehood*[47] which reflected their policy of patriation of the ALRA upon Statehood. The options paper outlined three ways of patriating the ALRA.

The first was to provide the ALRA becomes a law of the new State upon Statehood, the second was to repeal the ALRA in the Commonwealth Parliament and to enact a revised ALRA in the Northern Territory Assembly with transitional provisions as required and the third was to allow for continued Commonwealth administration for a specified period of time to enable the Territory Assembly to pass its own laws and then move the administration of Aboriginal land in the Territory to the Territory Government.[48]

The previous Sessional Committee of the Territory Assembly published a discussion paper examining Aboriginal land issues amongst others in 1993.[49] The Sessional Committee took the view: *that no lasting constitutional settlement can occur in the Territory without some appropriate recognition of the importance of land to Aboriginal people in the Territory as the indigenous inhabitants.*[50] Clearly things have moved on in the past 14 years, with the commencement of the *Native Title Act* which has a national application since that time and the Commonwealth's recent introduction of amendments to the ALRA delegating powers to the Northern Territory being just one other example.

After dismissing the notion all Aboriginal land should be absorbed into ordinary freehold title, the Sessional Committee examined patriating the ALRA.[51] The Sessional Committee took the view that patriation of the ALRA should not occur absent adequate constitutional guarantees sufficient to protect Aboriginal interests. However, the Sessional Committee was adamant that subject to such guarantees, the Commonwealth should treat the Northern Territory on an equal basis with the existing States, so that once power was transferred, the new State constitutional provisions would apply and the Territory Parliament could legitimately alter the ALRA subject to the accepted constitutional requirements.

It is not the intention of the SSC in this submission to canvass in detail the options considered by the previous Sessional Committee. A volume of materials examining constitutional entrenchment of the ALRA and innovative legislative processes such as organic laws are canvassed in the Sessional Committee's publications (available to the HRSC upon request if not already held). The SSC will be considering these internal constitutional issues in more detail at a later time. It is however worth noting the Sessional Committee's overarching intention the ALRA be administered in some form by a future State rather than remain with the Commonwealth[52].

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[47] Northern Territory Government, November 1986

[48] Ibid p 6-7

[49] Legislative Assembly of the Northern Territory Sessional Committee on Constitutional Development Discussion Paper No 6 *Aboriginal Rights and Issues – Options for Entrenchment* July 1993

[50] Ibid p 12

[51] Ibid p 13

[52] Ibid P 14 paragraph (n)

The *1996 Report* examined the need for more education and information for Aboriginal Territorians about these issues thus: *ATSIC advise that there needs to be an appropriate education campaign for indigenous residents to explain basic concepts, the implications of NT Statehood and possible patriation of the Aboriginal Land Rights (Northern Territory) Act 1976. Some work has already been done towards this end. The NT accepts the need for an education process and, in cooperation with Aboriginal interests, is preparing a strategy to implement such a program*[53].

The position of the Territory Government in 1996 according to this Report was to take part in an inclusive and consultative process. The SSC takes the view the subsequent 1998 Constitutional Convention process was unfortunately deficient in implementing that prior intention.

The intentions of the current Northern Territory Government on indigenous participation in the Statehood process have been expressed in the reference provided to the LCAC on 18 June 2003 where the current Chief Minister stated: *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.*[54]

The SSC therefore has the role of engaging Territorians about the future of the ALRA. Our program includes education and discussion across the Territory to explain how things work now and how they may work upon Statehood.

The SSC's job is somewhat challenging in light of the history of relations on land rights between the land councils and Territory governments past and present.

The enormous range of views by stakeholders, the abolition of ATSIC, and the uncertain future of the existing land councils are all factors. Issues raised by the Reeves Review of the ALRA[55] and the matters set out by the land councils in the Kalkaringi and Batchelor Statements should also not be underestimated.

Aboriginal organisations in the Northern Territory, particularly the land councils consulted to date, have indicated to the SSC the 1998 *Indigenous Constitutional Strategy* Document[56] arising from the Aboriginal Constitutional Conventions at Kalkaringi and Batchelor is very much a living document.

The *Constitutional Strategy* specifies the need for a 'framework agreement' as a prerequisite to further constitutional advancement.

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[53] *1996 Report* page 41

[54] Terms of Reference Northern Territory Statehood Steering Committee 17 August 2004 paragraph (d) page i

[55] *Building on Land Rights for the Next Generation – The Review of the Aboriginal Land Rights (Northern Territory) Act 1976* Second Edition Report John Reeves QC Commonwealth of Australia 1998

[56] Indigenous Constitutional Strategy Northern Territory, Incorporating: The Kalkaringi Statement; Constitutional Convention of the Combined Aboriginal Nations of Central Australia, Kalkaringi 17-20 August 1998 and Resolutions of the Northern Territory Aboriginal Nations on Standards for Constitutional Development Northern Territory Indigenous Constitutional Convention, Batchelor College 30 November – 4 December 1998. Published 1999 by ATSIC, the Central Land Council and the Northern Land Council.

This issue was given some brief consideration by the Standing Committee in its 1999 Report[57] into the failed 1998 referendum. The *1999 Report* recommended that an attempt should seriously be made in this direction. Many of the issues raised in the Indigenous Constitutional Strategy document are not technically relevant to constitutional development for the Northern Territory; however the land councils have recently indicated they consider them to be a prerequisite to Statehood.

Whilst it appears the land councils are willing to revisit the requirements stated in that document as a prerequisite to Statehood,[58] the statements contained therein appear to remain their starting position.

When it comes to the ALRA, the *Indigenous Constitutional Strategy* states: *That the Aboriginal Land Rights Northern Territory Act 1976 must remain Commonwealth legislation administered by the Commonwealth.*[59]

The SSC has not as yet formally sought the views of the current Territory Government as to whether they feel the ALRA must be patriated to the Territory upon Statehood. As part of our discussions and education program we are informing people how the system works now and we clearly state that whether the ALRA will come under the administration of the Territory upon Statehood is not yet settled.

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.

The SSC suggests the HRSC take note of the *1996 Report* where it is advanced: *Patriation of the ALRA would require consultation and negotiations between the Commonwealth and the Northern Territory Government and indigenous people to identify fundamental provisions which they consider require protection and the extent and nature of any constitutional protection.*[60]

The SSC sees its role in the context of the ALRA as an agent for discussion and consultation. Detailed negotiation should be undertaken at a Government to Government level involving the relevant interest groups either after the SSC education and consultation process has concluded or at the same time. It is recommended the HRSC advise the Commonwealth of this proposed approach and seek the Commonwealth's intentions on engaging with the Territory Government in the near future to determine whether patriation of the ALRA upon Statehood is the Commonwealth's intention.

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[57] Legislative Assembly Standing Committee on Legal and Constitutional Affairs, *Report into Appropriate Measures to Facilitate Statehood* April 1999

[58] The SSC has met the Northern Land Council and the Central Land Council on sperate occasions to commence discussions on the content of the *Indigenous Constitutional Strategy* document and to seek any update on the position of the land councils given eight years have elapsed since the councils considered the issue of Statehood in detail.

[59] Page 8

[60] Page 45

9. FUTURE CONTROL OF INDUSTRIAL RELATIONS

(Paragraph 1.41 onwards of Background Brief)

The Northern Territory has joined other jurisdictions challenging the Commonwealth's use of the Corporations Power under the Australian Constitution to implement the Commonwealth's Work Choices reforms.

The Northern Territory is subject to the Commonwealth's industrial relations system. Notwithstanding Regulation 4 of the *Northern Territory Self Government Regulations* which states the Northern Territory has competence under s.35 of the *Self Government Act* to have executive authority over "Labour relations (including training and apprenticeship and workers' compensation and compulsory insurance or indemnity therefor)" s.53 of the principle Act, specifies the superior application of the *Workplace Relations Act 1996* (as amended by Work Choices reforms in 2005)

The SSC will be monitoring the progress of this case. From the Commonwealth's current approach to these jurisdictional issues it would appear unlikely the Commonwealth would entertain the Northern Territory assuming its own industrial relations regime upon Statehood. While it is not the role of the SSC to pre-empt terms and conditions policy-making or discussions between the Northern Territory and the Commonwealth, it would also be naïve to ignore the current litigation.

The SSC feels the future of industrial relations in the Northern Territory as a new State should be a matter of Government to Government negotiations with a view to putting the new State in the same position as existing States, including a possible reference of power back to the Commonwealth.

10. FUTURE FINANCIAL AND ECONOMIC RELATIONS WITH THE COMMONWEALTH

(Paragraph 1.44 onwards of Background Brief)

As noted in the 1996 Report: *Changes to financial arrangements in respect of uranium mining, national parks, the operation of the Aboriginal Land Rights (Northern Territory) Act 1976 and the status of the Ashmore and Cartier Islands on Statehood may have economic implications for the Northern Territory and impact on the Northern Territory Government's revenue capacity and expenditure requirements. However, to the extent that these are reflected in the HFE (horizontal fiscal equalisation) process, it is expected that there would be little overall impact on the financial position of the Territory arising out of Statehood.*[63]

The Statehood Steering Committee has published Fact Sheet 6: *What is the Impact of Statehood on Financial Relations with the Commonwealth?*[64] Designed to educate Territorians and others about the current financial arrangements and why Statehood should have no impact upon the existing process.

The SSC notes the Background Brief mentions *Changes to current financial arrangements could be required upon Statehood.*[65] The SSC seeks some clarification of that statement.

Does it refer to the current arrangements for royalty payments, the ownership and control of minerals (particularly uranium) and administration of the ALRA or is it referring to some change to the core relationships under the current arrangements where the Northern Territory has been treated as a State for all intents and purposes since 1988 with regard to allocation of Commonwealth collected monies?

The SSC notes the view of the *1996 Report* which states: *A grant of Statehood for the Northern Territory would not have any implications for these general arrangements which give effect to policy objectives determined from a national perspective.*[66] and assumes the situation remains the same today. If that is not the case the SSC submits the Commonwealth should advise the Territory Government to that effect.

If there is no significant change in the current HFE process, then the net impact of Statehood upon Territory finances should be slight.

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[63] Paragraph 17 Page iv

[64] Available at www.statehood.nt.gov.au under 'publications'

[65] Page 13

[66] Page 32