From Go To Woe

The Northern Territory's Failed First Statehood Bid


Ted Dunstan
FROM GO TO WOE: THE NORTHERN TERRITORY’S FAILED FIRST STATEHOOD BID

Submitted by
Edwin Frederick Dunstan,
Bachelor of Laws (LLB) (Adel. 1973),
Bachelor of Arts, (BA) (NTU 1998),
Bachelor of Arts, Honours, (BA Hons.) (NTU 1999)

A thesis submitted in partial fulfillment of
The requirements for the degree of
Doctor of Philosophy
Charles Darwin University

March 2007
I hereby declare that the work herein, now submitted as a thesis for the degree of Doctor of Philosophy of the Charles Darwin University, is the result of my own investigations, and all references to ideas and work of other researchers have been specifically acknowledged. I hereby certify that the work embodied in this thesis has not already been accepted in substance for any degree, and is not being currently submitted in candidature for any other degree.

Signed________________________________________

Ted Dunstan

Dated ________________________
ACKNOWLEDGEMENTS

Figure ii Candidate, Ted Dunstan

My first acknowledgement is to the CDU itself. It is an institution I love and one I have defended publicly on numerous occasions. I trust that it will find its place in the educative life of the nation and be recognised as such. For my own part, I do that now. I owe much to my supervisor Professor Ned Aughterson, for his superb efforts to improve my thesis, and my profound thanks go to him. Ned stepped into the breach when it looked like no-one else could do so. And to Peter McNab and to Jim Jose go my thanks for advice in the shaping of the thesis structure. Peter McNab figures in this thesis independently, for his role in the statehood bid against it. Dr Bill Tyler provided valuable assistance with the intricacies of tying themes interrelationally through a matrix tool, but which was ultimately omitted from the final version.

Professor David Carment has been a welcoming and encouraging figure around CDU ever since I started a BA there in 1995. It was David's teaching which brought me to the realisation that I could go on to higher learning beyond law if I had something to say in the manner required. His gentle but positive influence is acknowledged. I am grateful to David also for the time he has spent to polish my scholarship. And to Professor Alan Powell goes my appreciation for interesting me in Northern Territory history. Much of Chapter 2 is derived as a consequence of Alan Powell's writing.

Dr Lyn Riddett, although she is no longer a lecturer at the then NTU, has been my good friend, and mentor. To her, I owe much, and I wish students at now CDU could again experience Lyn's insights in the humanities fields she knows so well. But from Canberra, her light still shines brightly for me. I am also indebted to our mutual friend Dr Jan Richardson, who assisted me with some tricky problems associated with writing Abstracts. They are not just any summary. Jan's attention to detail in just this one document to cover a 100,000-word dissertation, is remarkable.
Librarians usually get mentions in acknowledgements and they deserve to do so. The librarians who have helped me at CDU are no exception. They have been wonderful to me, some I know by their first names, but others seem to be part of my scholastic life now, like Cathy, Bev, Peter, Jenny and Bernadette. I simply would not have been able to research without their help. Likewise at The Northern Territory State Library, where so much help was afforded to me, particularly by Iris.

I thank Steve Hatton, Maggie Hickey, John Bailey, Earl and Wendy James, Colin McDonald QC, and Grant Tambling, for their generous time for interviews and submissions.

I would also like to thank my carers, some of whom have helped me get through my studies, including Cecilia, by collating materials, filing, retrieving documents, moving equipment, starting-up and shutting-down computers, putting paper and cartridges in the printer, retrieving research materials from the filing cabinet, punching holes in pages, sorting into folders and acting as secretaries; plus enabling me to get the job done, by attending to my disability needs.

I wish to acknowledge my family in Adelaide, and my former first wife of 28 years, Betty, who initially insisted that as I had cerebral matter between my ears going to waste, I should put it to better use and study! She sacrificed much for my first efforts- matriculation by correspondence, and my first degree, the LLB at Adelaide University. She started me off in study and sustained me. At the end, Ms Jo Joly rescued the formatting from deeply-ingrained corruption. Lastly, I thank my wonderful wife, Vicenta, a teacher herself, who encouraged and helped me to complete this work when I wanted to let it go, then helped me to review it and check it in revision. Through Vicky, I learned to love my work again, as I love her. *Maraming Salamat Po*, sweetheart.
# TABLE OF CONTENTS

## PRELIMINARY
- Title Page, pursuant to Rule 4.1(a) i
- Candidate's Declaration, pursuant to Rule 4.11(d) ii
- Acknowledgements iii
- Table of Contents, maps, diagrams, pursuant to Rule 4.1(b) v
- Abstract (Aims, scope and conclusions), pursuant to Rule 4.11(c) xiii
- Abbreviations xiv

## TABLE OF FIGURES and PHOTOGRAPHS
- FIGURE 1 Cover page design and illustration by Ted Dunstan (i)
- FIGURE 2 Image of candidate from newspaper clipping (ii)

## PHOTOS
- Members of the Sessional Committee 129

## MAPS
- Map of the Northern Territory, courtesy of HEMA Maps xv

## THESIS

### INTRODUCTION

1. The thesis problem 1
2. Scope 3
3. Method 5
4. Structure 6
4.1. Part One 6
4.2. Part Two 7
4.3. Part Three 9
5. Literature review 11
5.1. Leading-edge experts 15

## PART 1

### SETTING FOR THE SEVENTH STATE

## CHAPTER 1

### THE CONTEXT: FEDERATION AND CONSTITUTIONALISM

1. Introduction 19
1.1 Creation of states in the Australian federal system 19
1.2. The beginnings of Federation 19
1.2.1 Synopsis of embryonic nationhood 20
1.2.2. Colonial constitutional conventions 21
1.2.3. Colonial transition: South Australia as an example 22
1.3. The constitutional framework 24
1.3.1. Significance of the Australian Constitution 25
1.3.2. Do British precedents and practices still apply? 27
1.3.3. The United States federal system of constitutional change 29
1.3.4. Rules of the game: Constitutions and Constitutionalism 31
1.3.5. Law in books v Law in action 34
1.3.6. Volatility of the Commonwealth and States in the Federation 35
1.4. Seeking ways to establish a Northern Territory state 40
1.5. Conclusion 44

CHAPTER 2
NORTHERN TERRITORY CONSTITUTIONAL DEVELOPMENT HISTORY
2. Introduction 45
2.1 From 1817 To 1911 46
2.2 From 1911 To 1947 51
2.3 From 1947 To 1977 54
2.4 From 1977 To 1998 65
2.5 Conclusion 70
# CHAPTER 3

**THE STATEHOOD MOVEMENT: CULTURE OF PASSION AND CONFLICT**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.</td>
<td>Introduction</td>
<td>72</td>
</tr>
<tr>
<td>3.1</td>
<td>Why invent a statehood culture?</td>
<td>75</td>
</tr>
<tr>
<td>3.2</td>
<td>Behind and beyond the struggle for self-goverment</td>
<td>76</td>
</tr>
<tr>
<td>3.2.1</td>
<td>Enter, the CLP</td>
<td>77</td>
</tr>
<tr>
<td>3.2.2</td>
<td>The frustration of Majority party leader, Letts</td>
<td>78</td>
</tr>
<tr>
<td>3.2.3</td>
<td>The Whitlam Cabinet's <em>thumbs-down</em> to self-government</td>
<td>79</td>
</tr>
<tr>
<td>3.2.4</td>
<td>Fraser: Not only self-government but statehood</td>
<td>79</td>
</tr>
<tr>
<td>3.2.5</td>
<td>Interdepartmental Committee (IDC) checks self-government</td>
<td>81</td>
</tr>
<tr>
<td>3.2.6</td>
<td>Disenchantment of Letts</td>
<td>83</td>
</tr>
<tr>
<td>3.2.7</td>
<td>Everingham steps-up</td>
<td>86</td>
</tr>
<tr>
<td>3.2.8</td>
<td>Designation of Chief Minister appears</td>
<td>87</td>
</tr>
<tr>
<td>3.2.9</td>
<td>Statehood bid gains traction through adversity</td>
<td>89</td>
</tr>
<tr>
<td>3.3</td>
<td>The states-men: Stone and Hatton</td>
<td>94</td>
</tr>
<tr>
<td>3.3.1</td>
<td>Shane Stone: Visionary leader or self-styled innovator?</td>
<td>94</td>
</tr>
<tr>
<td>3.3.2</td>
<td>Stone and his leadership</td>
<td>96</td>
</tr>
<tr>
<td>3.3.3</td>
<td>Standing Committee Report</td>
<td>98</td>
</tr>
<tr>
<td>3.3.4</td>
<td>A <em>Top End</em> terror</td>
<td>100</td>
</tr>
<tr>
<td>3.3.5</td>
<td>The contrary case</td>
<td>101</td>
</tr>
<tr>
<td>3.3.6</td>
<td>Steve Hatton: The Godfather, or Pretender?</td>
<td>103</td>
</tr>
<tr>
<td>3.3.7</td>
<td>Breach of twelve years of promises</td>
<td>105</td>
</tr>
<tr>
<td>3.3.8</td>
<td>Staying alive: Starved of Education funding</td>
<td>106</td>
</tr>
<tr>
<td>3.4</td>
<td>The untrusting stakeholders: Aboriginal people and Labor</td>
<td>108</td>
</tr>
<tr>
<td>3.4.1</td>
<td>Separatism in constitutionalism misconstrued</td>
<td>110</td>
</tr>
</tbody>
</table>
3.4.2. Aboriginal people: Suspecting and marginalised 112
3.4.3. The Kalkaringi Constitutional Convention 115
3.4 4. The Batchelor Constitutional Convention 117
3.4.5. The Labor Party 118
3.5. Conclusion 121

PART 2
THE HOME-GROWN STATEHOOD PROCESS

CHAPTER 4
BEHIND THE SCENES: THE CONSTITUTIONAL COMMITTEES...

4. Introduction 123
4.1. The Joint Working Group 124
4.2. Conferences and working committees 127
4.2.1 First Constitutional/Statehood Conference 127
4.2.2 Constitutional Centenary Foundation 128
4.2.3 Second Constitutional/Statehood Conference 128
4.2.4 Third Constitutional/Statehood Conference 129
4.2.5. The real start: The Select Committee 130
4.2.6 The Sessional Committee: Rights 135
4.2.7. Rights in Commonwealth legislation 146
4.2.8. Rights in the Draft Northern Territory Constitution 146
4.2.9. Alternative ways of dealing with Rights 147
CHAPTER 5
DECONSTRUCTING THE BRIGHTER SHADOW:

THE CONSTITUTIONAL CONVENTION

5. Introduction 155

5.1. The print media's forebodings of Stone's Convention 156

5.1.1. The Northern Territory News own agenda items 159

5.2. Constitutional Convention announcement 160

5.3. Convention composition: delegates selection under fire 167

5.4. Labor's reaction to Stone's convention set-up 172

5.5. The Constitutional Convention's work 175

5.5.1. Changes embodied in Resolutions 175

5.6. Contradiction of principle 183

5.7. Conclusion 184

CHAPTER 6
ILL MET BY REFERENDUM

6. Introduction. 185

6.1. About the referendum 186

6.2. Heatley's last word on the referendum 191

6.3. The community and public sector (CPS) union 197
6.4. Referendum analysis and figures

6.4.1. Electoral results

6.4.2. Conclusion

PART 3
AUTHORITIES EVERYWHERE

CHAPTER 7
CRITICS, POST-MORTEMS AND INTROSPECTION

7. Introduction

7.1. The persistent cost question

7.1.1. More financial implications of statehood

7.2. Letters patent

7.3. The Standing committee's market survey

7.3.1. Lacking an Education focus

7.4. Earl James

7.5. The paradigm planning flaw

7.6. Colin McDonald, QC

7.7. Overseas experience: valuable guidance missing

7.7.1. Comparative Constitution-making: Papua New Guinea

7.7.2. States of success, Hawaii and Alaska

7.8. Conclusion
# CHAPTER 8

## THE FEDERAL CONNECTION AND ITS IMPACT

8. Introduction 244

8.1. State rights or a moral question recalled? 244

8.1.1. Impact of the euthanasia legislation on statehood 246

8.1.2. Power of the Commonwealth to overturn Territory Acts 247


8.1.4. Did the impact on Aboriginal people affect statehood 248

8.1.5. An issue not to be forgotten, but secondary 250

8.2. Why enter a flawed federation? 251

8.2.1. Difficulties of obtaining federal agreement 252

8.2.2. Commonwealth position on statehood 253

8.2.3. Comparative journey around federal systems 257

8.2.4. Fiscal Federalism 259

8.3. Interview with former Senator Grant Tambling 265

8.4. Conclusion 268

End text

## CONCLUSIONS 269

## BIBLIOGRAPHY 303

## APPENDICES 324
APPENDIX 1  Evolution of Constitutionalism  325
APPENDIX 2  List of Delegates to the Constitutional Convention  327
APPENDIX 3  Addendum to Draft Constitution: A Bill of Rights?  329
APPENDIX 4  Final Draft Constitution (Sessional Committee)  342
APPENDIX 5  Polling Returns  364
APPENDIX 6  The states-men, Hatton and Stone  369
APPENDIX 7  Interview with Labor Leader, Mrs Maggie Hickey  387
APPENDIX 8  Overseas: States of success  407
A8.1.  Alaska  409
A8.2.1.  Hawaii  421
APPENDIX 9  Interview with Grant Tambling  437
ABSTRACT

Aims
Overall, the thesis aims to provide a contribution to knowledge in the quest for statehood of the Northern Territory. This study has three principal aims. First and foremost is the aim of explaining how this attempt failed to move the Northern Territory further along the path of becoming the seventh state in the Australian federation. Second, is to situate the Northern Territory experience within the wider context of constitutionalism, creating states in pre-existing federal structures, the notions, theories, values and literature. The third aim is to provide a historical and cultural context, and includes personal insights derived from relevant associations.

Scope
The scope is limited by the federation and by chapter subject relevance, documenting and analysing the key themes and processes of the Northern Territory’s constitutional development towards statehood; the culture, roles, work and interests of key participants. It includes the contours of debates, and involves analysis of the relevant literature, sifting the archival, parliamentary, media, and other primary and secondary sources. Original sources from oral history and shorter interviews with key individuals are included in appendices for text analyses.

The Conclusions
The evidence suggests many reasons and causes affecting failure, including:
1. The culture of the statehood movement: its rise and fall. 2. A diminution and loss of constitutionalism removing the underpinning of unimpeachable sovereignty. Its genesis included changes to an informed paradigm of democratic method. The process adopted under the Constitutional committees was ostensibly on track, but came under the Legislative Assembly’s control, inserting an extra paradigm stage, enabling direct management by the CLP government. 3 The contradiction of separately redrawing a well-drafted constitution resulting in the changed minimalist Revised Draft Constitution, without Rights. It was rejected mainly by Aboriginal people, and by opponents of undemocratic process. 4. Corollary effects of all the above: (a) A stage-managed Constitutional Convention and delegate selection process, exacerbating distrust of political direction. (b) Absence of an adequately-funded education campaign, instead, substituting a last-minute propaganda assault. (c) Ignoring fears of the Indigenous population, and a disproportional inclusion of them in the statehood process, entrenching suspicion. (d) The single, untimely and presumptuous referendum question. (e) Fears of euthanasia returning with statehood. And (f), objections to joining a flawed federation.
ABBREVIATIONS

ATSIC  Aboriginal and Torres Straight IslandersCommission
Amended Draft Constitution  Draft Constitution put forward for Referendum
CLC  Central Land Council
CM  Chief Minister
COAG  Council of Australian Governments
CGC  Commonwealth Grants Commission
CPD Commonwealth Parliamentary Debates
Commonwealth  Commonwealth federal government administration
Draft Constitution  Final Draft Constitution of Sessional Committee
Federal  Federal government; federal system
HFE Horizontal Financial Equalisation. CGC division of finance between states by 'Relativities"

Ibid…The same reference cited above; in the same place
Infra…before the last reference.
L.A. Legislative Assembly  Parliament of the Northern Territory
MP MLA  Member of Legislative Assembly in the Northern Territory; MHR (House of Representatives), Senator (Senate)
NLC  Northern Land Council
NTEC  Northern Territory Electoral Commission
NT Northern Territory
NTG  Northern Territory Government
NTPR…Northern Territory Parliamentary Reports (Hansard)
NTN, NT News  The Northern Territory News
Op Cit., Opus Citati…the place in the reference cited above. Loc. Cit., (Locus Citati) not used
P.M Prime Minister
Referendum Northern Territory referendum held on 3 October 1998
Relativities Formula of 'loading' factors used by CGC to balance states’ financial equality
Supra the place which follows after the last reference
Territorian a resident of the Northern Territory
Territory Northern Territory, The Territory, NT
UNDHR United Nations Declaration of Human Rights
VFI Vertical Fiscal Imbalance. Budget Distribution of funding between Commonwealth and states (which includes the Northern Territory since 1988)
Map of the Northern Territory

Map courtesy of HEMA Maps
INTRODUCTION

1. The thesis problem

The following words introduce the short academic dissertation, *Constitutionalism and Its Alternatives*. The author is arguing for alternatives to the concept of constitutionalism:

Constitutions are not alone in their capacity to order political and economic affairs. A hyper-constitutionalist such as Viktor Vanberg might accept the existence of alternative sources of order, yet still argue for the primacy of constitutional analysis and design on the grounds that, among these alternatives, constitutions are the only ones on which we have any purchase. That is, we can within limits design and modify them, whereas the alternatives are recalcitrant...These alternatives point to a discursive democracy that in key ways eludes constitutions and constitutionalism.

That sentiment contains the dilemma which already confronts *avant garde* critics, and mainstream academia alike, and would doubtless have been shared by a prominent contemporaneous protagonist of federal statehood, George Washington, who helped found the American dream, an American federation, on the highest moral basis man could devise. But his answer was that the United States should be underpinned by modern federal constitutionalism. He had this to say: ‘Let us raise a standard to which the wise and honest can repair’.

Washington was not only referring to the desirability of adopting a supreme and substantive means of chartering social organisation through constitutional government, but lobbying for the best federal constitution-making which could be produced through a written constitution. It might be contrasted to the Constitution of the United Kingdom which is contained in various documents and practices as canons of its constitutionality. This aspiration to a paramount standard is surely universal in its desirability, scope, utility and authority, and resounds just as loudly in the Northern Territory as it does in the federal states of Australia, indeed from those

---


United States, which took the federal constitution-making-process to new heights and horizons.

Washington’s dictum however, begs the question: what is the highest standard of constitution-making? Is it what strong leaders say should be the standard, as set in *locus* by the populace approving the end product? A presumption is universally made that constitution-making is synonymous with state creation, not, as has been averred above by Dryzec, that a state can be governed or ordered without constitutionalism. The constitution is apt in its place for ordering society through the creation of a state. It is true a state can be created without a constitution, but it is always only a matter of time before that charter document and the processes for its creation and function are set-in motion. Moreover the search for a paradigm equating to the syllogism of the ideal formula is ultimately conducive to the objective. As a result of that rationalism, a four-part process can be described as desirable for the creation of the Northern Territory as a federal state under section 121 of the Australian Constitution. That is not to say it is a necessary minimum, or a paradigm without which the state would be invalid. That clearly is not the case. It is simply a starting point for appointing a benchmark, which can be changed. The four presently adjudged suitable processes are: 1) a constitutional convention, 2) a constitution, 3) acceptance of the arrangements by the people through a referendum, or by an entity representing the people; for example, a federal parliament pursuant to enabling power, giving legitimacy to the state. And 4) the federal host on behalf of its constituent parts must agree and give legal effect to the family addition. Far more is needed, and it may seem trite to state that it all depends on circumstances and context. But that is precisely what creation of a federal state depends upon. The bid of the Northern Territory in 1998 contained the first three said elements, and it still failed. Why? A superseded *Abstract* of this thesis gave the reason for this inquiry:

This study examines the failed first statehood bid of the Northern Territory in 1998 as a focal point of the problems in creating states in the Australian federal system of government. The reasons for that failure have been subject to select professional inquiry and much public speculation, reflecting popular anecdotal opinion, and blame; but more needs to be known about the entire cumulative process before proper conclusions can be drawn as to the macro causes of its failure.

---

4 Is there a formula for creating a constitution, particularly as in a federation, which should be adhered to as surely as adhering to the recipe for making a Waldorf Salad?

5 It is just that, as like the apples, celery, walnuts, and mayonnaise of the Waldorf salad is a recognisable and workable recipe, which is adjudged just right for gastronomically-agreeable consumption.
A major problem in this thesis, is precisely that set-out in the above description of it. And it must be prefaced with the statement that one would have to be isolated completely from the popular mantra about who was to blame for its failure, and what faults existed including the hegemony of the then ruling Country Liberal Party (CLP) over Northern Territory affairs. The failure has been subjected to official inquiries, which in large part did levy blame. In my view, this outcome, perhaps gratuitously satisfying to many, is limited and inadequate. The pursuit of blame does not advance the underlying causes or the concept of statehood for the Northern Territory one whit.

2. Scope

A preliminary and fundamental question is posed of where this study sits in scholastic discipline, because there are different fields of rules and theorems. This study however discloses difficulties identifying where it exists. Does it come entirely within the realm of political science? The answer is clearly no, although it covers that area within the definition of political science, and certainly there is political history and political sociology, under the general heading of "Government." So that description taken alone is inadequate and unsafe, because the inquiry not only discloses sociological sciences, but there is a sizeable component of legal studies, particularly of constitutional law (including Australian constitutional law) involved.

There are examples of different disciplines in each of the chapters. For instance, the first chapter discloses elements of constitutional law in discussing the federal limitations, and constitutional history when noting the formation of the federation. In Chapter 2, the Northern Territory’s constitutional development concerns itself with spatial geo-political history. Political sociology emerges in Chapter 3 in many non-individual aspects of cultural movement. The history differs from the account of Chapter 2, mainly in describing a socio-political movement. The work becomes biographical however, when focusing on individuals such as Letts and Stone. Legal argument occurs sparsely throughout chapters, but it can be seen in greater concentration in Chapter 8. In this sense, Constitutional law engages different legal principles again, such as precedent, and changes to the federal compact through

---

6 For readers who are so isolated, the then Chief Minister of the Northern Territory, Shane Stone, is the person referred to; the politicians are those of the parliamentary wing of the CLP, the ruling Country Liberal Party which to that stage in 1998, had been in power continuously for over 26 years. Stone has accepted blame. But as stated above, this quest looks for a kaleidoscope of reasons why the statehood bid failed, and sees little gain simply repeating the said ‘mantra’ of pointing the finger at Stone.
the exercise of constitutional powers (for example, s109, s92, s51). Then there is autobiographical material concerning my own outlook due to involvement. There are regular interchanges between these ‘streams’, with attempts made to keep a smooth flow from jarring, which can occur, like being in an automobile, going from one road surface to another. The multi-disciplined approach was necessarily limited, but applied unapologetically for coverage and effect. It was pulled-up short when the argument threatened to enter the realm of psychology in the question of persuasion dynamics, and I am not qualified to formally venture thereto, as much as I would like to do that. The exercise of logic however, is everywhere, and I have not hesitated to use argument to emphasise points of subjective deduction. At this point, I need to explain a possible misleading matter. I have pointed to numerous reasons for failure besides Stone’s culpability. I did not set-out to excuse Shane Stone as a political exercise; indeed there is little excuse in the area of blame. I was also at odds with him (for failing), but the evidence and conclusions led me away to secondary reasons, which Stone could and did invoke because the grounds existed. Even so, the multi-disciplinary approach should be relatively seamless to readers, although distinctions must be apparent. The object is to strive for even surfaces throughout.

To contain the study in a workable frame-work, the focus is limited to emphasise the principal objective, namely, the aim of explaining how this attempt failed to move the Northern territory further along the path of becoming the seventh state in the federation of Australia. Readers will note this question arises time and again in differing settings, as much as a beacon for relevance as to test the propositions put forth. This requires an appreciation of constitutional development history and the stresses and conflicts in building-up a statehood culture. The next aim, to situate the Northern Territory experience within the wider context of creating or changing constitutional institutions within pre-existing federal structures, the notions, theories, and literature, introduces the first few chapters. The thesis aims to provide an original contribution to knowledge of an under-examined episode in the quest for statehood in the Northern Territory. To this end, investigations are made in documenting and analysing the key themes and processes of the bid, the roles and interests of the key participants, (for example, political parties and players, Aboriginal and special interest groups, scholars and academic commentators, media, legal authority, ethnic and other groups, and interested individuals). This also includes the contours of the various debates. But it also involves an analysis of the relevant literature, establishing and sifting the archival, parliamentary, media, and other relevant primary sources setting the Northern Territory experience within the
context of learned opinion. Some Oral history and shorter interviews with key individuals, are placed in appendices to provide original source material, the salient features extracted to text. Personal involvement gave the candidate insights, colouring these factors, but the scope here is necessarily limited to the 1998 bid.

3. Method

Generally, the method employed here relates criteria from an arrangement of: 1) fact stated; 2) interpretation of evidence and data; 3) comparisons and contrasts with other like data; 4) authority or source of proposition; 5) propositional and pleading argument; 6) summary and conclusion. Analysis is made by predominantly deductive processes, (or inductive processes as appropriate) on the basis of cognitive reasoning, logic and knowledge from evidence or data (where the latter exists). Further, the 'who, what, how, where and when' of such content is tested for relevance. Moreover, the direction is intended to be clear so the material provides the reader with a cogent, ordered, flowing and detailed dissertation.

As stated, it is a fact that I have some personal knowledge, of the Country Liberal Party (CLP), and knowledge of some contemporaneous attitudes involved. Where appropriate, that experience is indicated, but kept to a minimum, mainly in footnotes, although some material deserves text.

It ought to be noted that various models of political theory on organisation and structure, particularly those models in comparative political science, are also appropriate for grounding the study in a “theory of government.” This includes concepts of constitution-making and statehood. There is however, a 'golden thread' running through the whole of the work, which allows the hybrid approach to the evidence and data analysed as presented through the various chapters. This is the wider concept of constitutional development through constitutionalism.8

Descriptive material is couched in argument as much as possible, but simplicity of language is also adopted where possible for ease of reading. In this case, Part Two, 8

---

7 It is not only that the elements of specific theories (such as the 'Elite', 'Corporatist', 'Pluralist' theories, or other forms) of government organisation theories can be adopted and tacked together to form a mixed-theoretical base. It is more the inter-relationship of chapter topic denominators by which the entire thesis can be underpinned, and drawn together, so that it results in a logical work.

8 Constitutionalism is described in the Introduction and in Chapter 1 It is a formula without which states have lesser authoritative underpinning, and as a central feature requires the local circumstances, consent and involvement of all people in its system to provide unimpeachable sovereignty. The equitable principle of what ought to be done, shall be done. Professor Edward McWhinney is a chief exponent of the principle.
the ‘home-grown’ processes is associated with former Chief Minister, Shane Stone’s manner of handling of the attempt. Yet, ‘home-grown’ is also the essence of the environmental factors and experience necessary (including cultural morés) described by David Carment. Edward McWhinney, whose scholarship is featured (and questioned) throughout this thesis, supports a local environment immersed in constitutionalism.

Generally however, argument follows the elementary ‘who, how, what, where, and when' basic factors, tested for relevance, and allowing ‘why' to surface of its own accord. There is some symbolism, metaphor, imagery, and allegory in expression, to create a particular effect, or to reinforce a theme.

4. Structure

The multi-layered scope affects the structure of the work. The thesis is set-out in three parts of eight chapters. The rationale of the following parts represents those divisions to ensure the agreement and relevance at all times of the thesis structure and content with the aims specified in the Abstract. As such, it is used as a tool of construction, and the content generally used is to introduce the design of each of the chapters. Taking each chapter in turn, I explain the connection of, within, and between chapters in a synchronicity of relationships to the essential purpose. The factors described therein are explained to avoid any confusion or misunderstanding concerning the placement of certain chapters.

4.1. Part One

Overall, the structure of the first Part in three chapters creates a federal nest into which the ‘statehood egg’ should be hatched. Chapter 1 outlines the theory of the federal structure into which a new state should fit. The transformation to the Australian federation of late Nineteenth Century colonial Australia is fundamental to understanding the difficulties facing the admission of a new state entering that same federation a century later. The irreconcilability and distinction of contemporaneous methods of new state creation is highlighted in Chapter 1; with an example of what occurred in one colony (South Australia) leading up to federation.

The design and construction of the federation and its consequential rules is followed by an account of the history of the Northern Territory’s constitutional development in Chapter 2. It is not a social or general history, but decades of constitutional history of the area. Professor Alan Powell’s work, Far Country, is the lynch-pin to this
chapter, particularly in its early phases. Nothing said here overcomes the import and scope of Powell’s reach of Northern Territory history, and the sequential constitutional development history required few supplementary sources.

Chapter 3 provides a snapshot of the necessity to engender a statehood culture. It was built-up, and was brought down, because the phenomenon is manifested in a historical movement, constituting a series of actions. And the extent of the reaction to them determines whether the objective is achieved. The bid failed and that indicates the dynamic of forces countering statehood enculturation. Overlaying the topic is an explanation that statehood culture is an invented phenomenon. It includes an account of the struggles and frustration felt during and after the high-water mark of self-government. The chapter seeks a better understanding of the opinions of stakeholder groups and individuals whose suspicion of Stone in particular, the government in general, and the meaning of statehood to themselves overall, contributed to the failure of the bid. The failure to assuage the indignation of crucial portions of the polity who were omitted from engaging in the process spilled-over to create pressure groups against Stone’s version of statehood. Not only that, but many people, particularly the Aboriginal population, did not understand how statehood would affect them or even what it did. The chapter looks at the effects of statehood enculturation of the Northern Territory’s Aborigines, and the responses. The terminology and meanings must be distinguished from Indigenous culture per se. The Labor Party also formed the second of the two major stakeholders studied, who were the two greatest antagonists of the CLP claims. The Labor mindset is best obtained from former leader Mrs Maggie Hickey’s interviews, and in her response to Stone’s announcement of the Constitutional Convention. The question needing answer is: did the Labor party influence people against statehood, even when claiming to support it? Chapter 3 acknowledges and reflects the importance of the culture of statehood as a factor in tipping the scales of success or failure one way or the other. Enculturation as a movement resides in the hearts and minds and beliefs of the people of the Northern Territory- and beyond.

4.2. Part Two

Part Two deals with the home-grown process, the mechanics of statehood creation. This Part of three chapters, gets down to ‘tin tacks’ of the ‘home-grown effort’, and details the salient features which constituted real processes leading to the failure. The constitutional committees played such an important role, toiling away in the background setting-up the criteria which the Constitutional Convention should have
considered and worked upon. In many ways the antinomies of choices available were narrowed by the tactician, Stone. There is a realisation that the (model) Final Draft Constitution is being set-up to be rewritten as a separate entity. The delegates also had a superb Bill of Rights to attach, had they in their wisdom done so. This is not like a screen-play in which sensation and drama is concocted, but it could be, much in the mode of *The Dismissal* in 1975.

Chapter 4 focuses on the committees charged with carrying-out the ‘foot-work’ to investigate and put together the technical data and formulae for mounting the attempt. It is crucial to note that, judging by other criteria, each of the committees in turn put positive steps and measures in place, only to have them snatched away again. The major emphasis in this chapter is the Committee's last-minute submission of a document which could have been used to construct a ‘Bill of Rights’. The failure to adopt this was a fundamental error of omission which led to widespread withdrawal of support, in my submission. The Committee's explanation here of the nature of such Rights is masterly. Regrettably, the Committee's work was rendered largely redundant, but after the referendum it was renamed, reconstituted and put to work to discover the causes of the failure. Every voter seemed to know the cause, but as the new Standing Committee, it was assigned the task to report on ways statehood could be resuscitated for the future. It also surveyed causes for failure. A point to justify placing it here is that the first two committees preceded the Constitutional Convention.

In Chapter 5, the highly criticised Constitutional Convention process is surveyed, and a massive contradiction in principle is pointed-out. The Convention attracted the condemnation of all sections of the polity. Chief Minister Shane Stone ignored the recommendations of the Sessional Committee to have three quarters of the delegates elected to the Constitutional Convention. That percentage was made up of appointed delegates. This is seen by many as placing most of the delegates in Stone's camp, but that is a myth. There was a small, highly self-motivated CLP group. The damage had been long ago inflicted when terms of reference were issued, focussed and determined. The fatal flaw is in the interpretation of the instructions for referral to the Legislative Assembly of the report from the Sessional Committee. It had to be tabled that is clear. But what happened next was the crucial part. By a misinterpretation of process the Final Draft Report was ignored, permitting a re-ordering by the CLP, in which the draft's fundamentals were radically changed in the Revised Draft, and that was the model said to be accepted by parliament. The
CLP government wanted a minimalist draft constitution with no entrenchment of Rights, and relied on a few hand-picked delegates to obtain it and obtain the vote for it. It was deconstructed.

The placement of the referendum Chapter 6 after Chapter 5 is for logical sequence, and it constitutes the third part of the paradigm which was ostensibly earmarked for democratic creation of the federal state.

Chapter 6 describes aspects of the referendum which affected the bid. The outcome was central of course. Heatley’s important observations are considered here. Despite everything, the referendum might have got through. But the presumptuous wording of the referendum question constituted a massive obstacle for voters, who were already put-off by the other factors. Another less important point was the timing of the referendum, to be held on the same day as the federal referendum on the Australian republic, which also failed. The outcome is analysed by the consultancy market survey. The veracity of the findings are checked, but downgraded. Blame is easy to lay. Information seen as propaganda, not education is another matter.

4.3. Part Three.

The two final chapters of Part Three covers a wide field. It is the ‘wash-up’, with authorities everywhere pronouncing, impacting upon, or having a nexus to the bid. Chapter 7 reviews the whole of a statehood creation process through the eyes of authorities, and it ranges from informed views, to talk of the cost. The government version of the financial cost of statehood is a counter-balance. There are many criticisms from a wide field of sources, and they have their say in chapter 7. I am one of them, but my views changed only when the bid failed, and my search began for underlying causes. One such reason for failure is critical: ‘the paradigm shift’, it allowed the government to control deconstruction of a model constitution, exclude Rights, and limit the prescriptive protections, to get its way by minimalism, thereby causing a loss of support. One of the more important critics of a lack of democratic method is Colin McDonald, QC. His views could have influenced the bid through the dissident group which opposed it. Not all criticisms can be studied for relevance as to failure, but some local commentators emerge, like Earl and Wendy James. Yet the rush to blame, which is of peripheral thesis concern, is overshadowed by flaws in process, seen in reflection in Chapter 7 and in the course of the dissertation.

Chapter 8 is about the crucial central federal authority, the Australian parliament, which as seen in the first section demonstrated its constitutional hegemony over the
Northern Territory involving a sensitive issue, euthanasia, which captured the attention of this nation some 2-3 years before the referendum. Canberra's power to disallow validly enacted Territory legislation was tested. Euthanasia raised passions for and against 'intentional killing' of the terminally ill. Did it impact on statehood? That possibility is examined through prisms of state rights and Indigenous people. Its importance requires a placement and this is deemed by me an appropriate place. The chapter describes the Senate’s role and what others said of the nexus between the rights of the Territory and the statehood bid. The question here is: did the overturning of legislation linger as a reason for people voting for or against statehood 2 years later? It cannot be dismissed as a reason for failure. The Indigenous population feared it, but should they have feared statehood as a consequence?

Also included in Chapter 8, the last, is an odd study, in the sense it is about something that never happened. This is the terminus, Canberra, locus of the federal parliament and much of the federal bureaucracy. The thesis would be incomplete without this chapter because the federal scene did play an important part in the constitutional development leading to the statehood attempt. But what about the undoing of the bid? The question of whether Territorians wanted to join this federation is discussed, as there was an option: stay as a territory. The question centres around fiscal statehood, the finances. This bothered many people. It was said to be a flawed federal entity. Would Territorians want to join that? The statehood bid took place in the context of the Australian federal system; and there are other versions working elsewhere. Relevant European federal systems are surveyed and comparisons made for an argument whether Territorians might prefer the status quo rather than join a federation which needs fixing. Was that relevant to the bid’s failure? Another factor which might have impinged directly on statehood was the holding of the Commonwealth's republic referendum and federal election for the Territory Seat, on the same day as the Territory referendum. Paradoxically, there is some evidence of this correlation.

Further, as dialectical guidance, lessons from overseas were available. Did the lack of learning these lessons have an impact on the failure? The experiences of Hawaii and Alaska (set-out in Appendix 8) and their respective statehood processes resulted in their achieving statehood, although in different ways, by utilising modified paradigms of process. These lessons should have been observed more closely. There are lessons here for the future too. One of these is Hawaii’s example of
utilising the device of a citizens statehood group to inject the perceptions of democratic process. And this was an element that was lacking in the Northern Territory. There are other examples of the pursuit of statehood; the comparison with Nunavut; and by contrast, India, and Nigeria. See more detail in Appendix 8.

The siting of the chapter at the end, is a reminder of the central and all-powerful role exercised by Canberra. Remarks from an interview with a knowledgeable, long-term former Northern Territory Senator, Grant Tambling (in Appendix 9), illustrates Canberra’s role and attitude towards statehood. Many people believe Canberra’s role is really the crucial part. We simply don’t know yet to what extent.

This structure is designed to range through the statehood effort, relating to the Abstract objectives, from go to woe.

5. Literature review

There is a relative dearth of book titles and learned dissertations on state creation in the Australian federation, which probably explains the reason that the bulk of literature is found in the experience of actual statehood creation processes. There are no texts based on state creation in Australia, because there has been no subsequent state creation since federation. The Northern Territory bid was unprecedented. Works on federal state creation are available, particularly the American federal constitutional experience; but in many ways, many of the materials perused for relevance seemed to be headed in directions other than that which I sought. Works on constitutionalism are more plentiful, and by relational transference to a developing political science, the concept of constitutionalism is based upon the need for a basic charter of rules. This means crafting a constitution, requiring as a minimum involvement, sovereignty by universal consent of all those involved, upon which to anchor the state in undeniable authority. It must be noted however, that this is far from satisfactory for many who pontificate upon the merits of such methods, and the alternatives. As noted by Professor John Dryzek’s remarks at the beginning, the philosophy and structuralism of organizing the foundations of a state is still open. Many of the pragmatic opportunities are closed however, precisely because of the localised nature of constitutionalism, especially in a federation like Australia’s.

For this reason, the detail of the Northern Territory’s failed first bid itself takes up much of the literature of statehood in that exercise.

The official effort was based in fact on little prior literature, or scholastic dissertation, with the exception of Nicholson.\(^{10}\) Literary guidance was available, and the wisdom from those works are scattered throughout this work, mainly in Chapters 1, 4, and 7. To situate this study within the literature in the field is an exercise requiring judgments as diverse as the scope of the topic. The feature which tends to over-ride the relevance of more universal literature, are the records of the Northern Territory’s statehood experience. Much of this is in the plethora of documentation of the Constitutional and Legal Affairs Committee.\(^{11}\) This material is available on the Northern Territory Government websites. So far as it relates to the statehood processes, *prima facie*, it is a comprehensive account of the bid, and demonstrates the extent to which inquiries and consultation was made. Of particular note here is the Final Draft Constitution Report. It is a central reference point. But in this study it is *only* a reference point, not necessarily accepted as critically explanatory of processes used. Further reference will be made to it later.

Arguably the major source of information and data in the literature resided in the academia of Charles Darwin University. Because of his vast contribution to chronicling the Territory’s political history, one writer Dr Alistair Heatley must be distinguished. One perusal of the bibliography discloses his immense contribution. It was in the chronicles of Northern Territory politics that Heatley’s legacy will be remembered most. His articles in journals are a reflection of the history of the political life of the Northern Territory itself, and of course there are many of them. Then there is his seminal book on the political party, *The Territory Party: the Northern Territory Country Liberal Party, 1974-1998*, which held power for 26 years.

Journals have been extraordinarily productive. These include the (Australian) *Institute of Public Affairs Review*.\(^{12}\) And the *Northern Territory Administrative Chronicles*. A rich source of reference, as stated, includes Alistair Heatley’s many

---

\(^{10}\) Adjunct Professor Graham Nicholson, senior constitutional adviser to the Northern Territory government, seconded to the constitutional committees.

\(^{11}\) This Parliamentary Constitutional Committee has undergone several name changes, the first of which was the Select Committee on Constitutional and legal Affairs, and the last one was the Standing Committee on Constitutional Development.

journal accounts. One of Heatley’s references includes “Labor's Love Lost: An Appraisal of the Labor Administration of the Northern Territory, 1972-5’, 1977”, in *North Australian Research Bulletin*. Another is his assessment (co-authored by Peter McNab) of the failed statehood referendum, “The Northern Territory Statehood Referendum, 1998”, which is in *Public Law Review, 1999*. Then his analysis of the statehood bid *ex-post facto*, “The Rise and Fall of Statehood for the Northern Territory”, in Xavier Pons (Ed.) *Departures: How Australia Reinvents Itself*. It is an important reference on the outcome, some of which I contest (in Chapter 6). Other important examples of his works are “Almost Australians”, which sets-out the grounds for the attempt. David Carment’s “Unfurling the flag: History: History, Historians, Identity and Politics in Australia and the Northern Territory” in the excellent annual series *Journal of Northern Territory History* is a concise rendition of cultural factors essential for statehood to take-on. The Occasional paper, “The Tuxworth Government: A Political History”, University College of the Northern Territory, Faculty of Arts, is another of David Carment’s commentaries. A most important periodical publication in relation to statehood is *The Australian Journal of Political Science*, wherein important historical accounts are published dealing specifically with the Northern Territory. Another periodical rich in Territory political and cultural history cited herein, is Carment’s, in *The Australian Journal of Politics and History*. Such journals are canvassed extensively on the general question of creating a new state in the Australian federation.

A local input to the work of the statehood effort, which also canvassed external information, is the work of Graham Nicholson, formerly Adjunct Professor at the then Northern Territory University. As the senior adviser to the Northern Territory government on constitutional matters, Nicholson was present during the lead-up to and during the vital Constitutional Convention, researching and documenting the process. He was author of the options in the proposed ‘Bill of Rights’. I review this sensitive area. The ‘Rights’ were not accepted either by the Legislative Assembly, or by the Constitutional Convention. Another necessary block of local content which is reviewed includes the Proceedings of the Northern Territory Constitutional

15 Adjunct Professor Graham Nicholson’s “The adaptability of federal constitutional structures, with particular reference to the Australian federal system in constitutional transition”, held at NTU, SC 351.092 NICH Djorra Djaggaran.]
The paper-work involved is daunting, even for the Northern Territory, and my assessments of submissions were hampered somewhat by papers with different reference-data appearing. Consequently discarded for thesis inclusion, the submissions of delegates reflected some of the views held, but mostly led nowhere.

A frequent source of constitutional news, comment, and opinion resided in the many issues of *The Northern Territory News*. Its Sunday cousin *The Sunday Territorian*, is where former Majority Party leader, Goff Letts, relates his self-government woes and provides his direct commentary on the period. In such respect, the summary of content leaves room for later discursive exposition. Television also plays its role here, particularly the Australian Broadcasting Corporation (ABC) current affairs programs, one of which I acknowledge, *Lateline*. Its statehood coverage was penetrating in “Game Plan: What went wrong?”

Major literary contributions in fact came from the experience of federal statehood creation of Hawaii and Alaska, but, regrettably, only of distant relevance. Nonetheless the experiences of statehood creation are derived from 3 publications. The first is Professor Norman Meller’s 1971 work, *With an Understanding Heart: Constitution Making in Hawaii*, published by the University of Hawaii, and the National Municipal League, Convention Series. Then, Alaska’s experience by R.A. Frederick’s 1985 Monograph, *Alaska’s Quest for Statehood 1867-1959*, was published by the Anchorage Silver Anniversary Task Force, Anchorage, and described the struggle there. Likewise Victor Fischer’s 1975, *Alaska’s Constitutional Convention*, described how that Constitutional Convention wrote its constitution in session, an excellent example to follow. It was published, again, by the National Municipal League, State Constitution Convention Studies Number 9, University of Alaska Press, Fairbanks.

In comparative terms, the constitutional effort of the Northern Territory did note the experience, or some of it, of Alaska, of Hawaii, but little if any of the Nunavut (Inuit) Province in Canada, because it is mainly a comparison, and holds very little of direct

---


17 *The Northern Territory News* is a source of current and political affairs expression for me, through its letters forum.

relevance. The American federation also has vast experience of state creation, and an overview is taken of selections of its literature, to assess its instructive utility. In the end, the overall source data of overseas states is contained in Appendix 8.

The question of Indigenous or native peoples, just like the Northern Territory's own Indigenous peoples, had a large bearing on proceedings. This is seen from the perspective of the Aboriginal Constitutional Conferences herein and the commentaries of Susan Prichard and Garth Nettheim.

5.1. Leading-edge experts

I cannot stress enough the chronology of detail in journals, which are cited regularly, namely; the Australian Journal of Political Science, the Australian Journal of Politics and History and the Journal of Northern Territory History. Mentioned heretofore in relation to specific titles and topics, they really are essential reading for aficionados of Northern Territory political affairs. They are the core of statehood reading, and their authors are the leading-edge experts. There is no precise formula for creating states, no exact precedent, no easy solutions. But there is one authority whose works cover the international scene of creating states. He is Canadian Professor Edward McWhinney. But his dicta, prima facie appears to be in conflict with equally cogent observations he makes in perhaps the most relevant of his works on creating constitutions, Constitution making: Principles, Process, Practice. There is a plethora of principles, guidelines and examples which McWhinney expostulates in his text. His ranging around comparative constitutionalism in the many aspects of state creation canvassed discloses different paradigms and models of procedure. The latter is unique to each cited case, whilst the former is universally essential. The theme-anchor of each is sovereignty by universal consent of the people of the state.

Australia's Brian Galligan, and the reformist views he propounds, set out in numerous texts, feature in this thesis. His book Australian State Politics, continues the advanced thinking of the time in which critical analyses of federalism sees it as a flawed system. Yet such arguments illuminate the nature of the present system just as well, providing much-needed logic to the areas under investigation, particularly of

---

federal inter-action between the Commonwealth and the states. Without mentioning the Northern Territory by name, Galligan's works provide much insight of the system within which the statehood context exists, and that is a present reality-check.

Coming closer to home, two works are instructive to gauge the background of the Territory's constitutional development. First, there is little peer to Alan Powell's *Far Country*. Reading that book is obligatory instruction for anyone studying Northern Territory history. There are so many episodes of interest in this work that one could be excused for believing that it is about the country as a whole in which a plethora of dramatic moments occurred. Powell is like a movie director, never letting the reader escape for a moment before the next gripping saga of the Territory's history is upon us. And one important aspect of this work is that it places in context the Indigenous history of life in this area of the world, in antiquity, so that it measures with the tenuous European experience. This book is a great inspiration to me.  

The second work is also obligatory reading for reference on the Northern Territory's statehood bid. Many, if not most articles on the creation of Australia's seventh state are collated in this one publication entitled *Australia's Seventh State*, edited by Peter Loveday and Peter McNab, the latter co-editor, was then a senior lecturer in Law at the former NTU. This book contains a distillation of the concepts, including legal dissertations, constitutional expositions, essays and opinions by persons interested and learned in the topic, many of whose contributors are well published in the area. It is disturbing to find that much of the learning contained in the pages of that book may have escaped critical attention and application during the process of the statehood bid. There are many eminent authors in *The Seventh State* as mentioned earlier. None however, come close to the authority of Dean Jaensch on statehood, indeed political life in the Northern Territory, as seen from afar. Jaensch usually takes a generalised view as an observer, and these observations may well be deemed as canons in such respect. Every word of Jaensch's on the Northern Territory drips with authority and probity. But with great respect however, Jaensch's view, particularly through the self-government phase, is sometimes dilatory, almost cliché ridden, and to my mind is a trifle too 'standoffish'. Of course the Territory's constitutional development is sluggish and plagued with setbacks, and neglect. This caused me to mount a search for other textual references, variety and specificity.

---

20 It is the most referred-to Northern Territory history text in my library.
This example may highlight a problem experienced, not with his grasp of political life and behaviour, which would require great courage to challenge, but with the dour manner of its presentation. For days I struggled with Jaensch’s text, not because of complexity, but because his prose and argument is redolent of other commentators citations, in summary form. It is doubtless good research style, but in Jaensch’s case, his critical mind and his direct commentary based on his prodigious knowledge of Territory political life, is more interesting. That is a problem for me, more than Jaensch. Nonetheless, all the essential features of Territory political life are encapsulated by Dean Jaensch, no less than in his contribution to The Seventh State. If one wants snapshots of the political life of the Territory, then the numerous works on the topic by this South Australian academic cannot be bypassed. On the other hand, there is certainly no other living authority on the Northern Territory with such a wealth of political knowledge of it analysed as political science.

Regrettably, the greatest chronicler of Northern Territory politics, Alistair Heatley, is no longer performing that role, but he does so posthumously in this thesis. With a strong, singular sense of scepticism, Heatley knew the details. And his book, The Territory Party: the Northern Territory Country Liberal Party, 1974-1998, demonstrates as much of the background to the statehood events as it does the signalling well in advance of the decline of that party in government. And that was written before, but happened after statehood failed. One must read Heatley with one eye on the facts, which he rarely deserted, and the other in-between the lines. This is what is so interesting about his enormous contribution (particularly in latter times).

Government publications also proved a strong reference point of this study, particularly of the committees at work on statehood, and The Australian Constitution itself. A rich source of literary information generally was obtained from the Web. This is an extremely innovative and rewarding tool for researchers, but the limitations are also extraordinary. Many interesting subjects and articles have no authorship noted, little attribution, or are poorly referenced.

Finally, my interviews with Mrs Hickey, Steve Hatton and Grant Tambling provided rich original source material, and the written responses of Colin McDonald, QC, and Earl and Wendy James provided invaluable materials as reference resources.

22 And in relation to my situation for many months of the study, the availability of the Web and a laptop computer, made it easier to continue the research.
PART ONE

SETTING FOR THE SEVENTH STATE
CHAPTER 1

THE CONTEXT:
FEDERATION AND CONSTITUTIONALISM

1. Introduction

The context is the predominant characteristic of the setting, which gives validity, life and form to the creation of any new state in the Australian federation. And just as surely, applies whether such attempts fail or are successful. The legitimacy of assumptions on which a new state is based is so crucial to an understanding of the exercise that truly charting such setting becomes of itself a secondary aim of this study.23 Accordingly, this chapter sets out to project, describe and demonstrate the relevance of the surrounding environment and underpinning concepts. There is also a "golden thread" which binds the entirety of the exercise. This is the concept, still understood as underlying context, of 'constitutionalism'. It assumes that in the general context in which the following thesis chapters lie, the principle and universal means of establishing legitimacy in creating a state in the federal system (indeed any democratic system) is by adopting principles and procedures which underpin the legitimacy of statehood. This occurs not only through instruments and processes of crafting a constitution, the state's principal guiding charter,24 but also through observing fundamental rules relating to the sovereignty obtained in this principle.25

1.1. Creation of states in the Australian federal system

In the ensuing chapters, controlling factors of the Northern Territory's constitutional development, statehood creation and its failure can be read against these bases as background. The ideas and themes involved are precursory to that which follows.

1.2. The beginnings of Federation

The first part of the context returns to contemporaneous times of Federation to

23 See the Abstract of this dissertation for the summary of its aims, which requires strict relevance of treatment to subject matter. In this chapter however, the context is drawn from a variety of themes which may seem separate from each other.

24 Although not a federal system in the manner of the USA and Australian federal systems, the UK Constitution for instance, is found in a variety of instruments and institutions, and thus the expression of this principle to take that into account. In a federal system only one charter document forms the Constitution, unless otherwise stated.

25 Note, the principal means, but not the only means. As noted in the thesis Introduction, constitutionalism is not the only guiding principle underlying the basis of states. There are alternatives to constitutionalism. See Bryzec, above.
illustrate the exigencies of that process and the manner in which Australian states came about. It reveals the problems, failures and repeated attempts towards their statehood experienced by the colonies and their desire to create a new federation, the same one to which the Northern Territory government formally aspired in 1998. The Northern Territory is a latecomer, but the ‘ground-rules’ to which it must adhere, were nineteenth century conceptions. The earlier statehood efforts by the existing six states hold very disparate lessons. But new and altered states were contemplated and provided for in the Australian Constitution by the Founding Fathers. The futurism envisaged by these men through the legal framework they fashioned, drafted and created, was an exercise in ‘blind man's bluff’ for they could not predict future events, but only provide in general terms for possible contingencies, all contingencies. Did they get it right? In hindsight, they did very well, although they missed some future eventualities, unthinkable at the time. Their charter still copes in the twenty-first century, notwithstanding problems unsolved and matters not contemplated. Their personalities and the conflicts involved also shaped the federal compact, and the intense inter-colonial rivalries which obliged the colonies to explore common ties and obligations of protection in the first place. But the complexity of the efforts and difficulties faced in reaching consensus and agreement is more pertinent here. The number of constitutional conferences and conventions that were held must give heart to disappointed statehood acolytes of the Territory. A précis of the major events follows, which places the larger picture in a brief contextual framework.

1.2.1 Synopsis of embryonic nationhood

In 1863 the first Inter-Colonial conference, in Melbourne, provided discussion on issues such as uniform tariffs, trade and customs duties. At another Inter-Colonial conference in Melbourne in 1867 Henry Parkes, Premier of New South Wales, wanted "... these colonies ... (to) be united by some federal bond of connection". Again in 1889, in Tenterfield, New South Wales, Parkes called for a National Convention to discuss federation and urged that there be a constitutional convention

26 These "lessons" are discussed later, inter alia, in the Constitutional Framework.
27 Australian Constitution, Part V, Chapter VI, New States (ss121-124), provides for Commonwealth Parliament Legislation of (constitutional) law in respect of territories, and for the government of territories.
28 Regionalism and Republicanism.
29 That is not to say there are no deficiencies. Federalism's faults are manifold and discussed in Chapter 8.
30 There were numerous conflicts of personalities, and struggles for dominance. Parke, and Deakin were amongst the more combative and assertive, although other leaders strove for their interests. There are numerous historical accounts, including the Commonwealth parliamentary web site, but the South Australian government website also contains pertinent summaries of main events, and of and about the progenitors of federation.
to establish a Commonwealth or federal parliament and government. But Parkes’ assertions followed over 20 years of public discussion of the notion that federation was desirable. In 1871 the Australian Natives Association (ANA) had been established and was a strong advocate of Federation and a united Commonwealth. Between 1893 and 1897 popular movements such as the ANA, the Border Leagues and the Federation Leagues did much to popularise the support for Federation. A People’s Convention was held in Bathurst in 1896, which attracted approximately 220 delegates and guests from all the colonies of Australia. The purpose of the convention was to provide a forum where ordinary citizens could discuss the ideas and principles on which to form an Australian union. The Constitution Bill of 1891 was worked-through clause by clause and some of the ideas were later incorporated in the Federal Constitution Bill.

South Australia held its referendum at the same time as a general election on 29 April 1899, the first of the colonies to do so. South Australia had shown a positive example which the other colonies, beginning with New South Wales on 20 June, were to follow.

1.2.2. Colonial constitutional conventions

At the Australasian Federation Conference held in Melbourne from 6 to 14 February 1890, leading politicians from the six Australian colonies and New Zealand affirmed the desirability of “an early union under the Crown” and committed themselves to persuading their governments to send delegates to a convention which would “consider and report” on a scheme for a federal constitution. Accordingly, the members of the National Australasian Convention of 1891, which met in Sydney from 2 March to 9 April, did not debate whether the colonies should federate but how. They contemplated future states by adding Part V, for new states without knowing the Northern Territory would rely on s121 in that Part. When the

34 The significance of such Constitutional Conference has been lost, and it demonstrates the progressive vision held and manifested in the nineteenth Century. This should be borne in mind at a future Northern Territory bid. It was not contemplated in the 1998 effort.
36 The result was a near doubling of the ‘YES’ vote (65,990) and a slight reduction of the ‘NO’ vote (17,053) producing a margin in favour of almost four to one.
38 The same approach was taken by the members of both the Northern Territory Constitutional Select and Sessional Committees. See Chapter 4 herein.
Australasian Federal Convention met, in three sessions, in Adelaide, Sydney, and Melbourne in 1897 and early 1898, the delegates modified the draft produced in 1891.\textsuperscript{39} The Australian Constitution resulted from all these efforts.\textsuperscript{40} The Northern Territory has had one such effort, and no prior experience. It therefore acted in the context of 'isolated' inexperience.

1.2.3 Colonial transition: South Australia as an example

By becoming states, did the former colonies offer any lessons for the Northern Territory's statehood push? Federation saw the colonies become states, but prior to these events, and during the beginnings of the colonial settlement, the respective forms of governance were also being established, and this early stage also forms a backdrop to an eventual residual gap in colonial rule of the area of the Northern Territory. It would be an incomplete context to omit reference to the formation and development of the other colonies which led to their statehood.

Australia's colonies had a progressive and uneven history of establishment, beginning with Captain Arthur Phillip's Commission to launch the settlement of NSW in 1787, and in 1788 he took possession of the mostly unexplored continent (Australia) in the name of the British Sovereign. The settlement of Botany Bay was quickly moved to Port Jackson and granted colonial status in 1823, in the name of New South Wales. Meantime in 1803, Van Diemen's Land was settled and separated from NSW. Moreton Bay was made a colony in 1859 when it was separated from New South Wales. It is little known that although the colonies had been granted established Constitutions by Imperial enactment shortly after their settlement, most had limited, dependent legislatures.\textsuperscript{41}

A typical example of constitutional development in the Australian colonies in transition to self-governing colonial status, a necessary precondition to the

\textsuperscript{39} The debates of the Australasian Federal Convention of 1897/8 were held in three sessions: First session, Adelaide, 22 March-23 April 1897. Second session, Sydney, 2-24 September 1897. Third session, Melbourne, 22 January-17 March 1898.

\textsuperscript{40} The Australian Constitution was contained in the Commonwealth of Australia Constitution Bill, which was endorsed by the voters of each Australian colony at referendums in 1898, 1899 and 1900, passed by the British Parliament, and given Royal Assent on 9 July 1901. Senate Website, http://www.aph.gov.au/senate/pubs/records.htmSenate Publications.

\textsuperscript{41} NSW 1823, Victoria 1850 when the Port Philip District was separated from NSW and became a colony, Tasmania 1828, SA 1834, WA 1829. By imperial enactment the colonies were empowered to have constitutions by 1850. And all colonies had responsible government by 1856 (Van Diemens Land 1854, NSW, Vic., 1855, SA 1856), except Queensland (1859). But it was not until after the great Constitutional Conventions of the 1890's that each colony held constitutional conventions- New South Wales (failed) in 1898, and Victoria (1898), South Australia, Queensland, (1899) and Western Australia (1900) [after the proclamation of the Commonwealth]. NSW held a Special Premiers Conference in 1899 in which amendments were passed in the Draft Constitution. A similar event occurred in Victoria. The Imperial enactment, The Australian Constitution Act, 1900 was passed in 1900, and in 1901, the colonies became states.
establishment of a federation is that of South Australia. This colony, which attained responsible government in 1857, was innovative in the Australian colonial scene, and its Constitution and subsequent legislation contained innovative initiatives. All of the new measures would be taken for granted these days, but in the mid-nineteenth century there was pressure to break completely with the feudal past, and embrace the industrial age.

Relevant to South Australia’s case were external, development factors, to be contemplated. Equation with external factors, such as (the contemporaneously unknown) United Nations declarations in a contemporary statehood creation setting, could be just as challenging under the newer authority, the Australian Constitution. The United Kingdom’s great Reform Act of 1832, and subsequent reforms in the United Kingdom had long set the scene for further changes from the ‘mother country’, which were virtually revolutionary for the day. Nearly all adult males were thereafter granted the vote. Proscriptions were removed against Catholics, Jews, and non-conformist Protestants from seeking and obtaining public office; and other disabilities were removed. The aristocracy was not present in the colony, and therefore privilege to that group was hardly present, although there were (or soon became) wealthy land owners and entrepreneurs. This phenomena is part of Australian history. In New South Wales and Victoria this new rich class were termed the ‘squatocracy’. In South Australia it was more like a localised wealth class obtained by more conventional acquisitions of land and favour than ‘squatting’.

In South Australia, the Legislative Council was at first appointed by the Governor, then as a partly elected Upper House, and partly nominated. In the preparation for self-government a representative House of Assembly was promised from the start. It was founded on the idea of greater democracies, more freedom to buy land. Official levies made upon settlers to fund the Church of England were abolished, together with restrictions against nonconformist Protestants, the Lutheran refugees from Germany’s Prussia, Silesia and Bavaria, who settled in the Barossa Valley and

47 Land was sold to settlers, under the Wakefield Scheme, first at 12 shillings an acre, and then at 20 shillings an acre, to be sold by the statutory Corporation, the South Australian Company. South Australian Government Website,Op.Cit.,
the Adelaide Hills. The freedom to practice one's religion, greater opportunities for 'respectable', hard-working paupers, no convicts, the availability of land, and improving electoral conditions, including the world-first enfranchisement of women in the 1890s, all contributed to South Australia's constitutional development.

Although it is not intended to review the constitutional development of the other colonies becoming states. Their own histories are different from South Australia's experience, and yet there were commonalities. All colonies sought greater freedom from restrictions, particularly those which would prevent entrepreneurial ventures by persons of modest means for wealth-producing activities. South Australia dared to be bold, to go further than orthodoxy required. It was a lesson from another century of possibilities in the two centuries ahead. Also, with the abolition of 'sweat-shops' and child labour (as a result of later UK Reform legislation) civil rights were improved. The Rule of Law was established in each of the Australian colonies at a very early stage. Another common feature was the desire to be self-governed without interference from the 'mother country', in which they were subject to Imperial Acts of Paramount Force. The British government technically could legislate for the states until 1986, when a formal stop was made. It is interesting to note that there were contemporaneous colonial "republicans" then abroad in nineteenth century colonial Australia. It can be seen in this brief example that there was agitation and movement for greater freedoms and innovation; and the instruction is clear: new constitutions do allow an excellent opportunity for introducing progressive measures required by the people of the jurisdiction. But the caveats exist too. Other, more constitutional restrictions abound in today's Australian federation, which did not exist as an entity in the nineteenth-century.

1.3. The constitutional framework

The Australian federation created its own new 'state', the Commonwealth, and its

48 I am a descendent (distaff side) of one such German Lutheran immigrant, 1841, Johan Lauterbach from Friestadt, 130 km north of Munich, Bavaria. Brought to SA by Captain Hahn for the South Australian Company under the Wakefield Scheme. His son, my grandfather, Gottfried, Woodside merchant, held interests in Hills dairy factories; which became AMSCOL(ice-cream). Butler, R., Goodness and Gold at Woodside, (1985), Centenary Committee, St Mark's Church, Woodside, 71, 78, 88.


51 The Imperial Statute of Westminster of 1931 sought to declare a limitation on the legislation of Westminster Parliament in respect of “colonial possessions” to legislate without being bound by Imperial UK enactments of ‘paramount’ force. But Privy Council Appeals were still available, and technically no bar to UK Acts applied to states.

52 Source material obtained from SA government official web-site: Op.Cit. Ibid.

53 This point is made also in this chapter concerning the United States Federal system of constitutional change.
parliament, judiciary and executive under the Crown, although the federation itself is the creation of the relationships between a central government and six state governments, and its charter is the Australian Constitution.\footnote{In this sense the Northern Territory is part of the Commonwealth entity. The constitutional framework encompassing these views are briefly reviewed here, as they are quite clearly and comprehensively canvassed in many and various works, including \textit{Australia's Seventh State}, North Australia Research Unit, Australian National University and the Law Society of the Northern Territory, Darwin, 1986, 1-62. This work is the source of much collected opinion, and a small window of the Northern Territory's history of constitutional development.} Again, this Constitution is an Act of the Imperial British Parliament at Westminster.\footnote{\textit{The Australian Constitution Act}, 1900 (UK).} The relevance of both the creation of the six state governments from colonial status and the creation of the federation juxtaposing a specific order of federal arrangements, has implications for the creation of any proposed new states, for the following reasons: \footnote{The averments which follow are extracted and distilled from the constitutional descriptions contained in several chapters in Loveday, P, and P. McNab, (Eds), (1988), \textit{Australia's Seventh State}, Op.Cit.} \footnote{Loveday, P, and P. McNab, (Eds), (1988), \textit{Australia's Seventh State}, Op.Cit.}

1.3.1. \textbf{Significance of the Australian Constitution}

- The Australian Constitution alone contains the prescription for the creation of new states.\footnote{Ibid.}

- There has been no seventh or further states created through this process, unlike the experiences of the United States which added to its numbers from inception, presently at 50. There is only the single, failed first attempt of the Northern Territory to be “state number seven”. As a result of that experience, the process is likely to be changed in any further attempts, but perhaps without variation from s121 auspices.\footnote{\textit{Australia Act} 1986 (Cwth); \textit{Australia Act} 1986 (UK).}

- There is no present appropriate precedent or formula, and no power in the United Kingdom Parliament, for creating any future Australian state.\footnote{Frederick, R, \textit{Alaska's Quest for Statehood}, 1867-1959, 1985, Anchorage Silver Anniversary Task Force, Anchorage, 22,23.} Therefore the creation of any state is bound to be an Australian one. Yet there is no state constitution model which can be easily adopted, given that some of the states, if not all, embodied language and concepts applicable to the 19th-century prescripts (although these archaic articles have been replaced over the years). This contrasts with the Alaskan experience, which adopted and adapted the Tennessee model of state creation, later called the \textit{Alaska-Tennessee} model.\footnote{Ibid.}
Due to the federal nature of the states, even though the states have residual and concurrent powers with the Commonwealth government as determined by the Australian Constitution, it is an axiomatic requirement that certain common principles be adhered to. Any new state (and I am talking about the proposed new state of the Northern Territory as the case-study) needs to be compatible with the arrangements in all respects affecting the other states. There is a form of uniformity required, even though many of the constitutional provisions may be unique and *homespun*. There is still a sameness required with existing states, for horizontal compatibility and treatment, and for vertical relational dealings to and from the Commonwealth.61

Any future state is subject to the Australian Constitution. The creation of a state is therefore subject to the power of the Commonwealth parliament, which must approve its creation, content and form. There are additional state creation powers (referendum), but the method adopted by all parties to date in the one bid is the *acceptance* of at least the proposed new state of the Northern Territory under section 121 of the Australian Constitution;

Section 109 of the Australian Constitution (in summary) provides that where the Commonwealth and any state legislates on the same topic within the constitutional grant of powers, the Commonwealth law will prevail to the extent of any inconsistency. This “covering-the-field” test provision takes care of the impasse which might arise between Commonwealth and states in favour of the Commonwealth law in question. But it also resolves any inconsistencies between the states' own differing constitutional language, not as between them, (as the states naturally regard their own charters as sacrosanct) but because any unequal treatment as a result of this dichotomy might be contrary to the federal compact. And as a consequence, the Australian Constitution provides the s109 method for breaking any such perceived deadlock. It is apparent of course, that the Commonwealth power will be superior in such respects. Any new state will be subject to the same provisions of the Australian constitution, and it is this instrument, plus the powers it confers upon the Crown in right of the Commonwealth parliament, which has such a bearing upon the permissible nature of any new state.

61 The commonalities are contained in numerous powers of the Australian Constitution—see ss 51, 92, 116.
• The Commonwealth parliament may admit a state on such terms and conditions as the Commonwealth sees fit, (see s121). There is the potential for the Commonwealth parliament to retain or reserve powers which constitute much of the argument for becoming a state in the first place - namely that the Commonwealth parliament can override the new state’s legislation, as it has done to the Northern Territory’s Euthanasia legislation (Rights of the Terminally Ill Act). That does not mean the federal parliament will so act, but it can. The moral imperative is clear: the new state draft Constitution must be acceptable, or at least not offensive, to the major political parties of the Commonwealth parliament, particularly in the Senate, where the passage is most vulnerable.

For the above reasons, and in this federal context, the Final Draft Constitution of the Northern Territory as an aspiring new state is not unfettered as to what constitutional language, form or content it may contain or adopt. The Revised Draft Constitution presented for adoption by the Northern Territory’s unicameral Legislative Assembly, was minimalist in its content. Certain provisions therein, (more precisely, the content not included or changed) became controversial areas of discontent, and may well have been amongst major reasons for rejection of the referendum.

1.3.2. Do British precedents and practices still apply?

Why not adopt methods used for creating states based on British colonial precedents? In the nineteenth century exercises of creating states from colonies in Australia, British principles were used. Other emerging nation-states also utilised such principles in the creation of new state entities. These included: India, Pakistan, Nigeria, Malaysia, Kenya and other former British colonies and possessions. No less important are French examples of democratic modelling, and the precise German experience of state creation. Japan borrowed and adapted British constitutional pieces. There were numerous hybrid experiences of writing new constitutions, particularly after the second world war when a spate of independence movements emerged as separate and independent identities from former colonial powers.

62 This question is considered in chapter 8.
63 This contention is developed in chapters 4, 5 and 6.
64 This includes the celebrated French Treatise, The Rights of Man (1791-1792), by Thomas Paine; Rendered into HTML on 9 April 1998, by Steve Thomas for The University of Adelaide Library Electronic Texts Collection, University of Adelaide, Adelaide.
Despite many novel attempts to capture the political, social and economic imperatives and prevailing atmosphere uniquely applicable to each new nation, constitutional craftsmen still reverted to basic principles when they could. There have been, and still are, many tautologous constitutional instruments, and some outstanding contradictory constitutions which embodied extraordinary sophistry.

In fact, in the Final Draft Constitution prepared by the Sessional Committee British constitutional conventions were observed, more as a conservative mode of drafting for safety purposes, using language similar to other states. That may have been expected as tried and tested tradition. But why cannot the Northern Territory be transformed into a state similar to the methods used by the other states? The answer is simply that times have changed and Australia is no longer ‘the child’ of Great Britain: it determines its own destiny and Australians will determine the destiny of the Northern Territory. But it may well be asked whether the formation of the original states from their colonial status have any lessons to impart to the statehood process. The answer seems to be both yes and no. Each state creation contained homogeneity of local circumstances, and yet there was a uniformity in which a federal compact could exist. But as for a state of the Northern Territory being spawned by the same ‘mother country’, the answer is that it does not apply.

Are innovative options limited for the Northern Territory? The answer is affirmative. Although the existing states were formed at different times in the Federation, and their constitutions contain vastly different terms and conditions from the other, the major difference from the post-federation situation is that in each case the primary constitutional status was accorded from the parliament at Westminster. That is not to say that the various colonial administrations and indeed each political polity did not have a hand in the new constitutions: quite clearly they did. And there were many local struggles to achieve various provisions, processes and measures in the states charters, with political reputations rising through the cacophony of assertions, claim and counter-claim, some of them to go on to further eminence with the creation of the Federation. But on the other hand, there were other overseas


67 The discussion on language and constitutional tools employed by the Select Committee, carried over by the Sessional committee in certain respects, appears in Chapter 4 herein.

68 Distinguish the federal context, where Australia followed the US model, minus such a separation of Executive from the Legislative. In such case, the Westminster system of “Responsible” government was used. See next section.
constitutional variations which were available to states in respect of their powers.

1.3.3. The United States federal system of constitutional change

The federal constitutional system includes principles derived from the United States, and there are similarities in the two systems. Has the American experience features which should be borne in mind when addressing the creation of an Australian state? The question is relevant where there are opportunities to write into constitutions, even a federal system requiring unity of powers inter partes, different ways and means to achieve constitutional effects, such as changing constitutions. This should be borne in mind when reading the Northern Territory's own attempt to write such charter. Some United States systems were considered. But the point to be made is that the opportunity exists. But why should Australia study an American system? The answer is indubitably to seek the best system for domestic circumstances. In the eighteenth-century, the United States of America led the modern application of democratic principles of asserting state sovereignty derived from the sovereign authority of consent from the people. They did so in the spatial and geo-demographic locus under consideration. George Washington aimed at such a statehood construction. His republican wuritenshauung constituted a contemporaneous variation of the nature of state creation without much departure from the notions then underpinning the creation of a federal system. It is this example which attracted the Founding Fathers of the Australian federation, but with the retention of the Westminster system of responsible government. The Westminster system has seen a revival in popularity in certain quarters of the United States political polity, due to problems with presidential powers (and behaviour of Presidents) in contra-distinction to Congressional powers and functions. Nonetheless, the United States provides a powerful set of guidelines and precedents with which to appreciate the antinomies of powers and functions in the organic balances as between the central government of the Union and the states.

Edward McWhinney draws upon these precedents in providing a set of guidelines which should not be ignored by participants in the statehood process. In the United States, it is not an infrequent event for changes in state constitutions to occur.

---

69 The creation of new Americans states is dealt with in Appendix 8 herein, discussed in Chapter 8. The current context is about what possibilities exist for inclusion in constitutional structures, particularly in respect of changes to state constitutions.

70 This means Popular Initiatives, which includes Citizen Initiated Referenda, but was rejected. See below.

71 See Washington's view in the thesis Introduction.
The Revised Draft Constitution of the Northern Territory prescribed the manner of its own change not dissimilar to many of the states of the American Union. The general model of the US rules and protocols, with the exception of the popular initiative, are also roughly similar to that which is required for a constitutional change to occur in Australia to be valid in democratic principle. They are described by Katherine Mauk. A brief survey of methodology of constitutional change in Mauk’s work illustrates the point: The states of the Union have adopted three primary methods, in one combination or another for amendment. Such methods include (1) the Constitutional Convention, (2) the legislative initiative, and (3) the popular initiative. Not all states use any one or all these three methods.

It can be seen that the methods used stem from a single process in three different ways, whereas the context outlined in this thesis observes a serial process; that is committee preparation, constitutional convention, referendum, and federal admission. This does not pre-suppose that these steps are not present in the US, but it does highlight two extra modalities of amending state constitutions. Amendment itself is the big difference of course, whereas in the present case the topic is state creation. But it does throw up the question whether the legislature (of the Northern Territory) could amend its Constitution with suitable “organic” enabling clauses included in it. The same question arises in respect of popular initiative. Dealing with the first aspect, there are two main issues which affect this question. The first premise of Mauk is a legal question. It is submitted that, in many ways, the unsuccessful first bid was a de facto direction of the parliament, as formerly dominated by the CLP majority of 19-6 of its 25 member strength, and Shane Stone's dominance of the CLP parliamentary wing. Legally there seems to be no impediment in a prima facie sense, as the Australian Constitution in its “territories” Part V (Ss 121-124) is silent on that specific point, whilst the clear language indicates the role of territories being admitted. There is opinion available which argues strongly that admittance implies that the bulk of the work necessary for doing so can be, indeed must be, carried out within that territory jurisdiction, but exactly by

---

73 Mauk's chapter: “State constitutions and case law (California, USA)” Op.Cit. Ibid.
whom is left open. It would be a foolish researcher who made such an assertion of its technical legality, without making extraordinary qualification. In fact the question is so hypothetical that it should be left in ‘limbo’ with only the preliminary observation noted. That is because of the second qualification, the constitutionality of the legislature acting arbitrarily, unilaterally, which takes-up much counter-argument.

The third method is for popular initiative to be utilised for amendment of state constitutions. In the United States, this has been utilised on numerous occasions, being closely allied with Citizen Initiated Referenda (CIR) and Citizen Initiated Recall. It is worth noting that the Northern Territory Sessional committee considered a draft constitutional clause dealing with Citizen Initiated Referenda. It was rejected, because the American, more particularly, Californian experience, indicates that it is used as much by professional lobby groups to highlight vested interests as by citizens aggrieved, and it was considered unsafe for this purpose.

Having said that, there is no prohibition in the Australian Constitution concerning citizens initiating an ‘admission process’. But, by the same force, there is no specific mention of the process. There seems to be little discussion in the theory on the point, but it seems safe to say that the Founding Fathers of the Australian Constitution and the contemporary present-day federal parliament would be delighted to see such involvement. It is however, simply not formalised.

### 1.3.4. Rules of the game: Constitutions and Constitutionalism

Constitutionalism is authoritatively asserted as the predominant universal canon sought for underpinning the supreme rules and legitimacy of a society through statehood. And in no less a way, the constitution is an appropriate mode specifying the manner in which states may be created or altered. But it is not a formula which can be taken from anywhere and applied. The precise manner in which this is done is determined by the specific system involved. The constitutional status of the Northern Territory is governed by the system which applies under the

---


76 See Hatton’s Oral History interview with me, in Appendix 7, and discussed in Chapter 3, 'StatesMen', *Infra.*

77 Constitutionalism is explained by Edward McWhinney later in this chapter.
Enacted under the Australian Constitution, *The Northern Territory (Self-Government) Act, 1978* is the ordinary legislation of the Commonwealth made under Part V providing such law, the nearest instrument the Northern Territory has to a constitution. This ordinary Act is in no way entrenched, and any legislation enacted by the Northern Territory government under it is constitutionally subordinate legislation. The laws of the Northern Territory are thus subject to disallowance by the Northern Territory Administrator, who is subject to the directions of the Governor-General, who in turn acts on the advice of Commonwealth government ministers. It is also subject to overturning by the Commonwealth parliament itself. The Northern Territory exists at the behest of the Commonwealth parliament, and can only change in status subject to the extent of power granted to the Commonwealth by the Australian Constitution. It is thus dependent thereto. Nonetheless, these same Australian Constitution *placita* provide for the territories themselves to prepare the way for statehood; to do all such things as necessary to be admitted to the Australian federation as such. This may include the drafting of a state Constitution, and, with Commonwealth consent, conducting a referendum of the Territory electorate. Specifically, in relation to the Northern Territory, if such referendum passes it must then negotiate with the Commonwealth over the arrangements for entering the federation, and being admitted as a state. It is a subservient position because only the Commonwealth has the power to decide. Finally, the Commonwealth parliament must pass an Act giving effect to statehood.

In the context of the Northern Territory's failed first bid to become a state, it is important to recognise the distinction between a legislative enactment which might be of itself lawful, a law positively enacted in accord with such an instrument ostensibly permitting it, and a law which is subsequently made unlawful and thus unconstitutional. The Euthanasia issue is a good example.

---

78 Australian Constitution, Part V, Chapter VI, New States (ss121-124), provides for Commonwealth Parliament Legislation of (constitutional) law in respect of territories, and for the government of territories.

79 This subordinate condition does not apply to states in the Australian federation, as they do not come under Part V.

80 There is an instance of this vulnerability in a Northern Territory law properly enacted *The Rights of the Terminally Ill Act*, was so disallowed by the Commonwealth parliament. This, the so-called *euthanasia* law, was over-turned in the Senate in 1996 on a free “conscience” vote.

81 Should the Commonwealth parliament determine, under Part V, it could repeal the *Self Government Act*, abolish the Territory government, and administer the Northern Territory itself or through an authority. Unlikely as it is, such local fears exist.

82 Australian Constitution, Part V, Chapter VI, New States (ss121-124).

83 Australian Constitution, Part V, Chapter VI, New States (ss121-124), *ibid*.

84 This is all sanctioned under s121. There are constitutional options for creating states. See later discussion.
McWhinney wrote:

While the best models are drawn from one's own society and its past successes and mistakes, there is by now a certain common pool of comparative constitutional experience, of institutions and processes, and also, to some extent, fundamental philosophical principles which are subsumed today under the rubric of Constitutionalism.85

The statement covers both principles encompassing local culture and experience, and the value of working in conjunction with precedent now established, which McWhinney embraces in constitutionalism. He explains the pre-conditions:

The questions to be asked and answered are of the nature of when and why one should venture on acts of constitution making. To whom should one entrust the tasks of producing the fundamental political compromises that are a condition precedent to wise constitution making. What balances one should make between general political talents and specialist legal expertise in the actual drafting of a constitutional charter. And, finally, what one should put in the charter when one is ready to draft. This last question is of course, the most difficult one.86

The rhetorical questions, however, point-up the dichotomy which faced the Northern Territory in 1998. There was, to a point, elements of both features present, but with a new regime of constitutional development played according to the ideas of Stone. McWhinney refers to the broad, amorphous experience of the local community, in its myriad of fabrics and textures. What happened in the Northern Territory was that 'home-grown' experience of the people was subsumed for a 'home-grown style'. And constitutionalism and the validity which underpins it was reduced as a result.87

To understand this further, we must consider the roots of American constitutionalism.88 The opportunity occurred when the US Supreme Court departed from its previous laissez-faire approach, to give substance to the spirit of constitutional meaning. This concept of Implied Conditions underpins the essence of English constitutional principles of the Rule of Law.89 The essential distinction turned

87 In the simplest of terms, an individual exercised an individual's view instead of an individual reflecting his/her community's make-up! That has overtones of 'elitism'. See Glossary of terms.
88 The interpretation was adapted from Blackstone's Commentaries on the interpretation of Coke's principles of common-law, which the American Supreme Court used in its approach to its constitutional role from the so-called "Court Revolution" of 1937.
89 The “Rule of Law” was first described by A.V. Dicey Law of the Constitution, 1885. (Albert Venn Dicey, (1835-1922); and again developed by Montesquieu.
on what is called the “law in action” (or living law) and “law in books”.90

1.3.5. Law in books v Law in action

There is much theory in the concepts but essentially the latter can be demonstrated by the total impracticality of the 18th Amendment, which was breached from the moment it was promulgated. It dealt with prohibition of alcohol in the United States following the First World War until the measure was ruled unconstitutional. Theoretically, the law was perfectly enacted, particularly as an amendment to the United States Constitution, but it impinged against fundamental freedoms. Another example from an even earlier period in the same genre are the provisions of the Thirteenth, Fourteenth, and Fifteenth amendments of the US Constitution dealing with racial equality. These canons of human rights were accepted as a constitutional “living law” imperative, yet they were roundly ignored by several of the states; and some states blatantly contradicted them.91 Between these two parallels lay the keys to the development of constitutionalism.

Returning now to the Northern Territory example, it is possible to draw a conclusion that the process and method used by the government of the Northern Territory to produce a result by holding a Constitutional Convention was an exercise of “law in books”. But it mainly consisted of government-selected delegates, and a flawed referendum for the Northern Territory to be admitted to the Federation, having complied with the Australian Constitution provisions (section 121). The people did in the Northern Territory what the Supreme Court did in America. Using the same reasoning, the earlier American constitutional decisions drew the line around the generality of constitutional provisions, yet found the constitutionalism wanting in both cases. In the case of racial equality, the law only caught up with the Thirteenth, Fourteenth and Fifteenth Amendments in the 1960s, to give specificity to the generality thereto, which had been contradicted by state statutes.92 And in the case of Prohibition, the constitutionalism of the matter concerned rights of liberty and freedom which were fundamental concepts, rooted in seventeenth-century English common-law development dynamics, still well and truly observable today.

92 The state statutes were mainly regarding segregation—but with extension to electoral systems and franchise.
Had the Northern Territory Constitutional Convention “question” of 1998, been litigated on an appeal to the High Court of Australia, and argued as a contravention of constitutional process, as a fundamental breach of Constitutionalism, may well have been found invalid by the High Court of Australia. This is supported by an opinion propounded by High Court Judge, Gibbs, J., which is set-out in Chapter 7 herein. The distinction between “law in books” and “law in action” would doubtless have been made, with precedent which would have been of universal utility.

The fact that the modern United States Supreme Court in its constitutional role nowadays considers case-by-case issues that come before it, does not detract one whit from the doctrine of constitutionalism as a protective mechanism of the fundamental features implied in the United States Constitution. (This includes the Bill of Rights). The High Court of Australia, of course, is not bound by American precedent, and there is no doubt that Australian experience, history and its own precedent doctrine of Starre Decisis would have overriding force in deciding such a matter. But there is little distinction (if any) between meanings of constitutionalism in both US and Australian federal systems of government.

Australia's constitutional history reflects the role of the High Court's constitutional interpretations having such extraordinary effect on the polity, Judicial intervention has occurred from the early twentieth century. The Boilermaker's case ended a period where the High Court refused to read implications into legislative enactments preserved as a separation of powers; the post World War II income tax cases giving power to the Commonwealth to levy income tax. There are many other landmark cases which have had an extraordinary constitutional effect outside the confines of strict constitutional interpretation. The corollary relevance of this fundamentalism should not be lost on the constitution-makers of the Northern Territory, though it seems it was in 1998. All constitutional method and process, though encompassing local content, experience and circumstances, cannot be exercised in a cavalier manner, or at the whim of the presiding authority, regardless of perceptions of popular sanction, favourable opinion, or self-aggrandisement.

1.3.6. The Volatility of the Commonwealth and the States in the Federation.

The nature of the Australian federal system also needs to be understood when

---

93 Doctrine of Starre Decisis, (L) Doctrine of Judicial Precedent.
examining the ways in which a new state can be created within such Federation. This is so because planners and proponents need to be cognisant of arguments they may use or which may be used against their mission on how statehood would impact or be different from the status quo. To do that, as a precursor to the consideration of creating states in the federation is an accompanying need to assess the volatility of the federation, and how it impacts on its state members. There is a considerable body of literature on this point. It could also incidentally give rise to arguments for advocates of ‘No way’, to stay out of statehood. And numerous constitutional writers have argued that the Federation itself is flawed. This aspect, and how it would impact on a new state, is discussed in Chapter 8. There are also changes which might blow in directions unexpected by the ‘Founding Fathers’. A particular lecture, by Alistair Heatley at then Northern Territory University, is pertinent in point, and the following generalised nature of one aspect of the genre, the republic in the Federation is taken from notes from that lecture during the 1996 Politics course run by him. The relevance here to this chapter is in the pre-emption by the Sessional Committee framers of the Northern Territory Final Draft Constitution to incorporate aspects within that draft instrument to accommodate the changes which would occur if and when the republic came about. It is submitted that it was a reasonable risk to take, but the decision caused an unexpected follow-on and rewriting (in that respect) by the Constitutional Convention. The point to be made in context is that the framers were caught on ‘the horns of a dilemma’: to include republican-type provisions, or leave them out. The provisions were included as options. It is understandable that they did so, deciding that they had little option but to anticipate the event, notwithstanding that it did not in fact materialise. So, the Territory statehood bid proceeded, constitutionally linked

and in tandem with the federal referendum on the republic, which was rejected.

But there is also an argument that it (the republic option) need not have been so included. Political scientists have long expressed concerns with the federal system, according to Heatley. Such relationships are described by a number of writers, including Brian Galligan. Professor Galligan argues that there is already a republic style of government existing, which is manifested by parliamentary representatives in both Houses through the universal adult franchise, while the states (and territories) are also so elected. Furthermore the third tier of government includes elected local governments. Arguments for overt republican-style government, according to Galligan, are based upon a supposed outmoded constitutional sovereignty, which should be replaced with an elected head of state, or popular sovereignty. Galligan argues that the premise is misconstrued. The arguments for a republic are already satisfied in that there is no real parliamentary sovereignty in any event, as the true sovereignty lies with the people through their voting franchise, and this provides the republican basis of government. If this is so, Galligan is looking at separate constitutional elements, a pragmatism to adjudge that a republican concept already operates within the federal system. He takes a broad interpretation. It is a moot point generally, but at the same time, the Northern Territory was considering its position relating to statehood. Most commentators, and the Northern Territory government were aware of a probability of Australia becoming a republic in tandem with it becoming a state. The corollary of this context is that this republic inclusion was reflected in the Final Draft Constitution where the position of the Premier in relation to the Governor (replacing the Administrator) was to be changed. But the Constitutional Convention wanted power to move from the Premier directly through the Governor under the new constitution. This is one change not recommended by the Sessional Committee's Final Draft Constitution, but by the

99 As an example, the states are affected by relationships with the Commonwealth government, and by the High Court of Australia. These effects determine the nature of the federal system and how it changes. Galligan includes implied changes ie republicanism already exists. This argument suits antistatehood sentiment, that statehood is already implied.

100 See Galligan, Brian. (1995) A Federal Republic: Australia's constitutional system of government, Cambridge and New York: Cambridge University Press. Professor Galligan is head of the Political Science department at Melbourne University, and is widely published in that field.


103 Another of Galligan's articles appeared in the Australian Journal of Political Science, in a special edition on Federalism, with an accompanying article also by Sharman. The themes included the changing intellectual forums of political interpretation of federalism. In other literature on the point, the Centre for Constitutional Studies at the University of Melbourne issued an "Intergovernmental News", clearly dealing with federal problems. Cheryl Saunders, another writer in this area, contributed federal-related observations of the Northern Territory administration.

104 See Heatley's comments in Chapter 6.
Constitutional Convention Revised Draft Constitution in March 1998. As the republic referendum itself failed, much of that topic (and more) which was contained in the Revised Draft Constitution of the Northern Territory would then need reconsideration. Whether that was to be done by executive decision or by parliamentary procedure, or by another method (a plebiscite may well have been appropriate) is hypothetical, but something would have had to be done. No backup plan, or alternative wording, not even a debate on the matter was contemplated. There must have been much faith in the republic coming about, but it was at best a foolhardy process, leaving no room for failure, nothing to replace the charter already selected. It was all or nothing!

This is now a moot point, but it does disclose a problem with second-guessing events, admittedly linked, in another sphere. The fact that it is the Commonwealth has immediate and binding effect, not only on the Northern Territory state, as it would have been had the referendum succeeded, but the other states as well.

The republic issue illustrates one of the various dynamics constantly at work in the federal system and has potential bearing upon the states, and of course the would-be state of the Northern Territory. To understand the broad context of this system, a further appreciation of determinant factors is desirable. The Australian Constitution contains powers which regulate and impinge upon federal relationships to a great degree. The Australian Constitution's primary role in formulating the basic skeleton of federalism is still wide enough for an imposed extraordinary spatial movement. And this is achieved by the ancillary instrument of the Australian Constitution, the High Court of Australia. Its role must be mentioned in conjunction with the federal system. It is the mechanism for changing the constitutional position (by interpretation) of a litigated topic in a (non-referendum) radical manner. Such is the effect of the High Court, and it only needs a brief reference to the tax cases of 1942, and 1957, (Income Tax Act), to illustrate the

---

105 See the excerpted draft Constitution in Appendix 4 herein, “Executive Power”.
106 Herman Bakvis "Intra-state Federalism" (cf Inter-state), gives a Canadian concept dealing with executive federalism, that is, the states role within the federal government. Article in: Australian Journal of Political Science, Volume. 29, 2.
107 The Australian Constitution regulates these relationships to a great degree. The main examples are, briefly: section 51-which allocates exclusive and shared powers. There are numerous other important powers of the Constitution which give form to the federal compact. Section 109 for instance, which provides a resolution for disputes between the Commonwealth and states over the extent of federal power—and of course the inter-relationships. And section 128, which deals with referendum powers to change the Constitution. Section 92, which is used in relation to interstate commerce, is a powerful Commonwealth tool, as is Section 51, clause xxiv—the External Affairs power.
dramatic changes which the High Court has wrought upon the federal system. Sir Anthony Mason, former Chief Justice of the High Court was a strong advocate for the proposition that the Constitution was to be interpreted so that the Commonwealth had power to interfere in the federal system, and that the only restraints were political. This has not been the view of all members of the High Court, but it does indicate to some degree that federalism is also caught up with the decisions of the High Court through the opinion of its members. And the results have to this day constituted an ever-increased centralisation of power. This does not augur well for the states, and any new state will share the fate of the others.

It is not a good argument to simply say that becoming a full member of the Australian Federation is an advantage. Nonetheless, it is better than the subservient condition of the territories in certain respects. It is hoped, but not at all certain, that the change to statehood, and being placed in the same position as the other states in the Australian federal system, would eliminate the problem of being second-class or subordinate in the federation. Moreover it would give the citizens of the Northern Territory the same rights as exist in other states. There are other reasons given for seeking statehood, not the least being that it would accord the status upon the Northern Territory and its people of maturity and of being an equal partner in the federation; a symbol of a true coming of age. It is notable that financial disadvantage is not near the top of the list of reasons for being a state.

So it can be seen that when the state of the Northern Territory enters the Australian Federation as a full state, and not a quasi state, it is likely to continue (like the other states) under the hegemony of the Commonwealth. The federal system in such respect is therefore seen to be not static, but in a constant state of flux. Tensions are continually formed between the states themselves and the Commonwealth. Statehood operates in this environment, as does the current territory status. But there is a further complication. At the moment, the Northern Territory is “protected”...

---

110 Such cases interpreted the power of the Commonwealth to levy taxation to the exclusion of the states under s109 and other placita, such as to bring about a seachange of financial hegemony in revenue to the Commonwealth over the states.

111 Dunstan, T, Lecture notes, October, 1996, Ibid.

112 At the meeting of Police Ministers in Darwin, in November 2002, the Territories were required by the other states and the Commonwealth to fall into line with legislation accepted by a majority of states on DNA standards. The Australian Capital Territory in particular complained bitterly about being put in its place by the other states. ABC Online News, “Politics”, November 4, 5, 2002.

113 For instance, The Commonwealth government cannot abolish or constitutionally alter a state in any way; but it can interfere with the laws, even the existence and capability of a territory. The former hegemony is more likely than the latter.

114 This is so because the Northern Territory is already treated on the same financial basis as other states. This is discussed further in chapters with a nexus to the topic, particularly Chapter 7.
to some extent by its territory status. Successive governments of larger, more populous states like New South Wales have complained about the favourable treatment handed out to other states, and particularly to the territories through the “relativities” worked out by the Commonwealth Grants Commission, and not on a per capita basis. But it does not seem to matter which colour government is in power, it is a common complaint with the larger states. In the 1950s, Sir Henry Bolte, then Premier of Victoria, threatened to make Victoria a “claimant” state, bewailing its parlous financial treatment at the hands of other states. Conversely, all the states and territories watch each other, particularly New South Wales, to see that their own allocation is not changed to reflect a distribution to any other states on a per capita basis. It is clear that states with the most population, New South Wales, Victoria and Queensland in that order would benefit over the others if it was so.

The “relativities” mentioned, as determined by a horizontal financial equalisation (HFE) remains the bulwark of the states and territories against intrusion by others in the compact. Meanwhile, the Commonwealth engages its Vertical Fiscal Imbalance (VFI). It works through its power of allocation and distribution by budgetary means, and at the Premiers Conferences and the Loan Councils, much to the outrage and consternation of the states Premiers. Much of this posturing is doubtless stage-craft for consumption back home. This then becomes a question of political economy in the federal system. Some observers, certainly the politicians involved, believe this is the most important area of federal inter-action.\(^{115}\) And if there is any political leader who has not complained that his or her state (or territory) was being disadvantaged under the federal system, it would be unusual and out of character. Nonetheless, at the very minimum, such federal arrangements do work: no states have seriously indicated that they wish to pull out of the federal system (an indissoluble federation, according to the Constitution preamble).\(^{116}\)

**Seeking ways to establish a Northern Territory state.**

Finally, how is the creation of a new state in a federal system like Australia accomplished? Is there a form of precedent which might aid in creating a modern state? This section sets-out the context in which a state of the Northern Territory

---


116 There have been threats by states to secede, mainly Western Australia in 1933, and Queensland, but no real will to secede.
might have been (and most likely will be) created. The language should actually turn from "created" to "be admitted".

In 1986, it was the speech of the Administrator of the Northern Territory, Commodore Eric Johnston, opening of the third session of the Legislative Assembly, which proclaimed the legal basis on which the announcement to seek statehood was predicated. He said:

Constitutional and political equality, long denied to Territorians and long sought-after, is the key-stone and the prime objective of my Government’s policy…my words then are worth repeating: "Statehood is essential if we are to take our place as equal Australians; statehood alone will ensure that we have the same rights, privileges, responsibilities…the same degree of self-determination (as) other Australians".117

On 18 August 1995 the Governor-General of Australia, Bill Hayden, opened the new Northern Territory parliament house. Earlier he told about 600 official guests that it was time for the Territory to be granted statehood. "Let us consign to the dust bin of history the archaic situation where people of one sixth of the continent are governed on a basis different to the rest". One guest, the then Premier of Western Australia, Richard Court, supported the Chief Minister. "Most people, think of the NT as a state already – on the map it looks like a state, it acts like a state, so why not complete the process".118

The question does arise as to just how the creation of an Australian federal state might be accomplished. Most constitutional experts and legal commentators have no doubt. Section 121 of the Australian Constitution provides that a territory may be admitted as a state. States may also be created by the Commonwealth and by referendum (section 128). But it is by “admission” that the Northern Territory was to become the state of the Northern Territory. There are numerous authoritative essays and opinions to this effect, one of the best being that of Mr Graham Nicholson, constitutional adviser to the Northern Territory government.119

In April, 1995, Paul Keating, the then Prime Minister, considered a request to the Council of Australian Governments (COAG) by the Northern Territory Legislative

117 Ministerial Statement by the Chief Minister, 28 August 1987, Statehood For The Northern Territory, “Preface”.
Assembly to establish a joint Northern Territory/Commonwealth Working Group to investigate and report on the implications for a grant of statehood for the Northern Territory. The Commonwealth did so without any commitment to the outcome of the interest as expressed by the Northern Territory. In the event, it was the incoming Howard federal government which committed itself to statehood. The arrangement was that the Commonwealth would facilitate its grant in accordance with a pre-arranged timetable in a cooperative federal partnership. John Howard, the Prime Minister, gave his personal support to the then Northern Territory Chief Minister, Shane Stone, on certain terms and conditions for “admission” of a new state under s 121 of the Constitution. It is worth noting the words of the section, to wit:

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.120

Presently, the Northern Territory is subject to a near plenary power of the Commonwealth under s122 of the Australian Constitution. The report of the Working Group discusses the constitutional, legal and policy matters, which are expected to arise under a grant of statehood. These issues are identified as options, and it is important to note that no mention is made of the specific benefits, which are likely to inure under statehood, but that certain legal and constitutional matters should be considered. They included four items as follows: 1) the mechanisms for achieving statehood within the Australian Federation, that is, changing from s122 status to s121 admission or creation; 2) the numbers of representation in each of the House of Representatives and in the Senate. 3) Terms and conditions for statehood; and 4) an appropriate mechanism for resolving constitutional, legal and other problems.

The Joint Working Group report also noted that a new state could be formed under s128, the Referendum section of the Australian Constitution. This option remains open, but admission pursuant to s121 is the preferred option. Finally, in Part 1V dealing with New States, s124 enables, inter alia, the alteration of state boundaries.

On the assumption that the state would be “admitted” under s121, the Joint Working Group specified three methods by which statehood could be obtained under this section. The first method involves a process of widespread community consultation

120 The Australian Constitution, S121.
in the Northern Territory, resulting in the adoption of a Territory constitution, followed by an Act of the Commonwealth parliament passed at the request of the Northern Territory and on terms and conditions agreed between the two Governments. The second option is to seek an Act of the Commonwealth parliament under section 121 passed at the request of the Northern Territory Legislature without any community consultation. And the third approach might be achieved simply by an Act of the Commonwealth parliament under section 121 of the Constitution, made at the Commonwealth’s own initiative, with no other action by the Northern Territory (a true ‘minimalist’ approach). Obviously the latter two options were received less favourably than community consultation, under s121. It may-well be argued by some sceptics that the second option actually applied; that there was minimal community consultation anyway. The referendum might, however, be said to have made up for deficiencies, but a counter-argument is that it failed because the community were not ad idem with the process, and that such consultation was inadequate.

Another consideration of the Joint Working Group was to consider the discretionary power in the Commonwealth under s121 in respect of a new state to determine “the extent of representation in either House of the Parliament on terms and conditions it thinks fit”. This is not the place to argue the merits of each of the possibilities, and the precise setting has not been determined as a fixed position. Options were listed. Option 1 was to retain the existing representation, although it is clear that Option 2 would put the Northern Territory on the same footing with the existing states in the Senate. This is an optimum position and the Northern Territory government has reserved its position on the point. Again Option 3(a), would require equality in due course, but not formulated on a pro rata population. The ratio of Senators to Representatives is relevant through the nexus provisions of s124; but again, this is not the place for discussion. The Joint Working Group, however, were conscious of the constitutional provisions which throw-up the various implications which formed part of the report, one implication of which queried whether the nexus applies to a new state.\textsuperscript{121} The question of ‘admission’ under s 121 of the Australian Constitution, as contrasted to creation by the Commonwealth parliament, also under s 121, is more fully considered in this dissertation. There seems little doubt however, that the

course chosen is for ‘admission’ of the Northern Territory as a state.122

1.4. Conclusion

The above factors are to the forefront in the Australian federation statehood context. Thus, any statehood bid of the Northern Territory incurs limiting factors of the federation, through the Australian Constitution, the Commonwealth parliament, the federal government, indeed the states of the federation itself. The question of constitutionalism and the consequences of its application, (admittedly, not easily understood) is central here. Not only can it be described as lacking in a variety of ways, but also subject to High Court consideration if not contemplated similar to that of America’s experience of law in books versus law in action (Thirteenth, Fourteenth, Fifteenth and Eighteenth Amendments).

The next chapter, the history of the Northern Territory’s constitutional development, has a natural culminating terminus in the achievement of that process. But the progression of its context lies in its sequentially progressive development. And it is to an over-view of the constitutional history of the Northern Territory this Part now moves.

__________________________

122 Loveday, P, and P. McNab, (Eds), Australia's Seventh State, 1988, North Australia Research Unit, Australian National University and the Law Society of the Northern Territory, Darwin. It is appreciated that the title of the thesis talks about “creating a state”, whilst the actual method is “by admission” as contrasted with “by creation”. This is of course, using the technical sense only. States are still created entities.
CHAPTER 2

NORTHERN TERRITORY CONSTITUTIONAL
DEVELOPMENT HISTORY:
SETBACKS AND SLOW PROGRESS

2. Introduction

No account of the constitutional condition of the Northern Territory encompassing its failed first statehood bid would be complete without an understanding of its constitutional development through its sequential history. It is a fascinating one. The area known as the Northern Territory has undergone a tenuous, and frustratingly slow history of constitutional change. Its Indigenous peoples have been obliged to forbear the Eurocentric phases of its development.

It could be argued that the Territory's path towards a status, inconceivable at the time, of statehood in an Australian federation of states and a Commonwealth, commenced at the beginning of the nineteenth century with voyages of survey touching the north coast.123 The advancement of time nevertheless demonstrated diverse characteristics, which swung between poles of repeated catastrophe and disaster. There has even been official abandonment contemplated. Mostly it has been a history of stagnation, and of claustrophobic bureaucracy. But there has also been a history of perseverance, courage and, at last, a dynamic growth, earning the twenty-first century description of its economy as being a 'pocket dynamo'.124 Always, its harshness of climate, remoteness and isolation is a testing companion. Despite its sluggish growth, from its European “discovery” and tenuous occupation, including the first northern settlements, to the Commonwealth taking over the geographical northern territory from South Australia, events of a type of constitutional development have yet occurred.125 The Northern Territory remained a part of the Colony of New South Wales (except for that period in 1846 when it became part of the Colony of North Australia).126 The Commonwealth administered the Northern Territory from 1911 until Self-Government in 1978. And it has been

123 Ibid.
shown in Chapter One how the Commonwealth still has control of the Northern Territory through its constitutional powers over territories. In other ways, there has been a very rich social history, extraordinarily eventful, although much of it tragic.\textsuperscript{127} That detailed historic account is not part of this paper, yet it is of course an integral part of the Territory story. Nor is this history intended to ignore Aboriginal occupation, and custodial land ownership, by omitting even a truncated description of that history, although it has an integral role in statehood anyway. The following account highlights the settings of history which form a political and constitutional backdrop to the failed first Northern Territory statehood bid.

2.1. FROM 1817 TO 1911

In 1817, Lieutenant Philip Parker King, Norfolk Island-born son of the third Governor of Australia, Philip Gidley King, received instructions from 3rd Earl Bathurst, Secretary of State for Colonies and War. Issued through Governor Lachlan Macquarie, these orders were: to carry-on Flinders’ abandoned survey of the largely unknown coasts of North Australia. Sailing in the cutter \textit{Mermaid}, King and a hardy crew withstood hazards of sea and hostile natives to carry out the work of survey and exploration over an area largely uncharted. It was, to that stage, unclaimed and mostly unexplored territory, thought to be at risk from invasion by the Dutch from Batavia, from the French, even the Americans.\textsuperscript{128} King's two voyages to the northern coastline resulted in the expedition to that area by Captain, later, Commodore Gordon Bremer, to first explore and establish a settlement at a feature later called Port Essington, on the Cobourg Peninsula, the northernmost part of the mainland. But this area was abandoned because water could not be found, and Bremer repaired to a place he named Fort Dundas, on the strait separating Bathurst and Melville Islands of the Tiwi group. And in 1824, the British returned to the area on a further voyage, and established a settlement, Fort Wellington, to the east of Fort Dundas, on the Cobourg Peninsula. They claimed the coast in the name of the Crown.\textsuperscript{129} These voyages were in fact an extension of British claims of sovereignty.

\textsuperscript{127} Tragic, like the hybrid steamship \textit{Gothenburg}, the supply ship to and from Port Darwin, which foundered in a storm on a reef near Bowen, Queensland in 1875, with 115 people drowned, accounting for many of Palmerston’s small population. See Wilson, H.J., “The Loss of RMSS Gothenburg”, in \textit{Journal of Northern Territory History}, Darwin, Historical Society of the Northern Territory, 1992, Issue No.3.


over and beyond the area of survey, and ultimately to the whole of the continent. In 1788, that part of Australia East of the 135° longitude East was proclaimed as British, through the Colony of New South Wales. By Letters Patent of 1825, the boundaries of the Colony of New South Wales were extended to 129° of longitude East. And to cover the legitimacy of King’s survey of the Tiwi Islands, 129 of longitude East was declared by Letters Patent of 1863 to be the western boundary of the colony. It was set to the west of Bathurst Island, the westernmost of the two Tiwi Islands (Bathurst Island and Melville island), and crossed the continental coast close to the estuary of the Victoria River. It continued the line forming the western boundary of South Australia from the Great Australian Bight, to the Joseph Bonaparte Gulf of the Timor Sea. That line of longitude remains as the western boundary of the Northern Territory.\textsuperscript{130} The northern boundary resolved itself by coastline, including the Tiwi Islands.\textsuperscript{131} The eastern boundary was set in 1860 when Governor Bowen of Queensland requested that Queensland’s western border be moved from 141° East longitude to 138° East longitude.\textsuperscript{132} The Duke of Newcastle granted the request. The southern boundary was formed when South Australia returned its northern territory to the Commonwealth in 1911. Within the parameters of these boundaries, the familiar shape of the Northern Territory took form within its vast area of 1,420,968 km², (523,620 square miles).

Following the abandonment of the earlier settlements of Fort Dundas, Fort Wellington, and the later settlement, Victoria at Port Essington (1839-41),\textsuperscript{133} activity in the region by European exploration ceased for some time. The Royal Geographic Society’s North Australia Expedition in 1855-56 followed-on. Interest was again aroused by descriptions of vast areas of potential pastoral lands unoccupied (by Europeans). There were other exploratory historic treks and expeditions, including, BH Babbage’s expedition of 1857, and John MacDouall Stuart’s first expedition from south to north through the Centre. A succession of proposals followed increased interest as a result of such journeys of exploration and discovery. Interest centred mainly on pastoral potential. Reports reached southern centres, and in particular Governors’ Sir Richard MacDonnell and Sir Dominick Daly of South Australia

\textsuperscript{130} Powell, A.W, \textit{Far Country, A Short History of the Northern Territory}, 1993, Ibid.
\textsuperscript{132} Ibid.
lobbied the Colonial Office. Following these and earlier explorations, the "Northern Territory of South Australia" was created by the Colonial Office through Letters Patent, in 1863, in the form of a Commission, pursuant to the powers conferred on it by Lord Stanley's Act, 3 and 6 Vict. c 76.51, 'The Australian Constitutions Act, 1861' and by 24 and 25 Vict. c 44.2.\(^{134}\) It was a prolix legal process and required incorporation in Statutory Rules and Orders and Statutory Instruments Revised to December 31\(^{st}\) 1948. No wonder there was subsequent controversy in relation to the legal standing concerning the revocation of such Letters Patent when the Northern Territory was transferred to the Commonwealth.\(^{135}\) These Letters Patent, were a source of continuous concern. Borrow contends that the contemporary Dispatches, whilst having no legal effect, show that the Letters Patent were issued as a result of representations that there was some possibility that the area might become an extra-military Alsatia.\(^{136}\) The Northern Territory was annexed to South Australia by Prerogative act of the Crown in 1863, and it was ceded to the Commonwealth by South Australian statute and accepted by the Commonwealth by Commonwealth statute in 1907, those statutes being made under s 111 of the Australian Constitution. Until the High Court decided *Paterson v O'Brien*, there was some doubt as to whether the cession was valid, because it had not been ratified by South Australian electors as s123 of the Constitution might be thought to require when (as here) the cession altered the boundaries of the ceding state.\(^{137}\) However the High Court held unanimously that s123 does not apply to territories under s111.

Notwithstanding all the legal and historic conjecture, a year after the said Letters Patent were issued, most government administration was conducted by and through a "Government Resident" following settlement, through the undertaking of South Australia's responsibility for its Northern Territory. There was much activity in Adelaide, particularly by the enterprising Henry Ayers, and other wealthy settlers. At the 'Top End', Finnis' disastrous insistence of siting a capital at Escape Cliffs near the mouth of the Adelaide River, and his subsequent recall to face an inquiry, almost caused loss of interest by the pastoralist/investor politicians of Adelaide. But pessimism was replaced by optimism after Manton had recommended a new outpost on a peninsula of the pristine harbour named by its discoverer, John Lort

\(^{135}\) Ibid, 7.
\(^{136}\) My understanding of the term Extramilitary Alsatia is that of a type of military buffer zone, not necessarily occupied, or even legally defined as to governance by the Crown, but nonetheless an exclusion zone to foreign powers.
\(^{137}\) *Paterson v O'Brien* (1978) 138 CLR, 276.
Stokes, Port Darwin. A town, Palmerston, was then established in 1869 by surveyor George Goyder, but disaster struck later that year, when *The North Australia Company* shareholders (in England and Australia) demanded their money back, forcing *under* the land speculation company. Dr Millner took-over, and waited with the entire population of about 44 for something to happen.\(^{138}\) But Palmerston soon became a busy sea port when the Overland Telegraph, and cable-laying reached its peak; and especially when the belated gold rushes occurred in the 1870s. Another railway line, this time built with imported Chinese coolie labour, began to wend its way south from Port Darwin. It continued to the gold-fields of Pine Creek; and was later extended, ending 500 kilometres from the sea at Birdum, 27 kilometres from Larrimah. It was an inglorious halt to a grand plan of a north-south Continental railway, a dream now only realised a century later. But in the course of, and after the ‘gold rushes’, the European population became alarmed that the Chinese now largely outnumbered the Europeans in the north of Australia. The ‘white Australia’ sentiment rose to a high level, particularly in the ‘South’! A solution for better governance had to be found.\(^{139}\)

In 1874, a local government was established. In 1888 South Australia’s *Northern Territory Representation Act* constituted the Northern Territory as a single electoral district, sending two Members to Adelaide’s House of Assembly and provided representation in the Upper House. Nonetheless, events moved-on, encouraged in the Northern Territory itself by the advent of the great Overland Telegraph project, which paved the way for further opening up of vast tracts of land. After much debate about its merits, the railway continued northwards into the Northern Territory. By 1890, full adult franchise was given for residents of the Northern Territory (including Aborigines), and of the two Members elected to the South Australian Parliament in the South Australian House of Assembly seat of Gray, one was Vaiben I. Solomon. Solomon later became a Premier of South Australia, and it is his name after whom the new post-2000 northernmost Northern Territory House of Representatives seat is named.\(^{140}\)

\(^{138}\) Read against Alan Powell’s *Far Country: A Short History of the Northern Territory*, 1993...Op.Cit., this present chapter contains a pale, incomplete, skeletal account, compared to a constant historical procession of events, but note the chapter title: “Constitutional Development History”.

\(^{139}\) For an account of the Pine Creek railway, and this whole expansionist period, see Powell, A.W, 1994, *Far Country*, Op.Cit., 59-78.

By the date of Federation, 1 January 1901, citizens of the Northern Territory (which was still part of South Australia) enjoyed the same rights and privileges as all other Australians, and gained representation in both houses of the federal parliament. But there were concerns by the southern (eastern and western) colonists, who were not unaware that the map of South Australia (which now included its Northern Territory) stretched in an unbroken swathe of land from the Southern Ocean to the Arafura Sea. In an atmosphere of protectionism by each colony, it was concluded that South Australia should not continue to be "trustee" of that Northern Territory, as it might change in status to the detriment of other colonies. This was just one of many concerns about the Northern Territory. It was a 'problem-child' even then. The Letters Patent was the source of the problem. No power was conferred whereby the South Australian legislature could make rules for the peace, order, and good government of the Northern Territory. Borrow contends that despite some mention in Dispatches, management of the "Waste Lands of the Crown", which description subsumes such areas under the appropriate Acts, no power was given to the South Australian government for governing it. Nor was it granted in any Civil List, and it would have been outside powers (ultra vires) for the South Australian government to legislate in areas outside its jurisdictional limits. Borrow concludes that the Northern Territory was therefore established and governed by the Letters Patent, which remain as the Constitution of the Northern Territory. It is a bold statement.

In 1902, negotiations began to transfer the Northern Territory to the Commonwealth. The legal authority for doing this was The Commonwealth Constitution Act, which made provision for the surrender to the Commonwealth of any Territory of any state. It took some time to do it, but by 1907, the Northern Territory Surrender Act was passed by the South Australian Parliament. And after further consideration, in 1910, the Commonwealth Parliament, pursuant to its powers under section 122 of the Constitution, passed the Northern Territory (Administration) Act, providing for the government of the Territory through an Administrator appointed by the Governor–General.¹⁴¹ It was at this stage, the Northern Territory lost its representation in the federal or any parliament, a major paradox. Up to this stage, Territorians were "well accustomed to the exercise of political rights before the Commonwealth took control of the area in 1911", according to Heatley and Powell.¹⁴² The two elected Members

for South Australia's House of Assembly formed part of an Upper House electorate. A federal franchise was added, by virtue of the South Australian electorates.

But on and from the 1 January, 1911, ten years after federation, the citizens of the Northern Territory suddenly ceased to have a right to vote, and there was no Member of parliament. It lost all the protection of the Australian Constitution. The states had protection against the Commonwealth imposing its legislation upon them in an unconstitutional manner, but not so for the Northern Territory. It had become entirely dependent upon the Commonwealth. And by virtue of the virtually new constitutional system, it was subject to orders and rule of the prevailing government in power. It suffered detriment: the Commonwealth could acquire Northern Territory land without compensation being paid. The Commonwealth was not obliged and did not give equal treatment to Territorians in respect of taxation, trade and legal status of residents. Residents might be singled-out for discriminatory treatment.\textsuperscript{143} Thenceforth it was a matter of winning-back lost rights and benefits...and more.

2.2. FROM 1911 TO 1947

The Northern Territory parliament’s Constitutional and Legal Affairs Standing Committee report lamented the Northern Territory's history, particularly from 1911:

The Northern Territory's history since that time is punctuated with demands and protests to recover our democratic rights; it is a history of Territorians railing against dictatorial authority, official disinterest and government from afar. Much of the character and attitudes of Territorians as we know them today have risen from this 88 year struggle.\textsuperscript{144}

A government appointed administrator ruled on behalf of Canberra, and control of the Territory's affairs was vested in the contemporaneous Minister for External Affairs. Heatley and Powell comment that "the people of the area could not even be sure that they were still considered to inhabit part of Australia. The stage was set for a long struggle to reclaim the lost rights and to extend them into statehood".\textsuperscript{145} The reaction in the Territory was almost predictable, given the strife with meat-workers, which was inflamed by a militant union presence. So disruptive was the Darwin industrial front, that in 1919, the Administrator was replaced by direct control of the

---

\textsuperscript{143} Legislative Assembly of the Northern Territory, Standing Committee on Constitutional and Legal Affairs, \textit{Report into appropriate measures to facilitate Statehood}, April 1999, Govt. Printer, Darwin, 11.

\textsuperscript{144} Legislative Assembly of the Northern Territory, Standing Committee on Constitutional and Legal Affairs, \textit{Report into appropriate measures to facilitate Statehood}, April 1999, Govt. Printer, Darwin, 11, \textit{Ibid}.

responsible Federal Government minister, through a government-nominated Advisory Council.\textsuperscript{146} As an accommodation to rising sentiment, in the same year the \textit{Northern Territory Representation Act} was passed, providing for a single representative in the federal parliament, but without voting powers. In 1922 the Hughes Nationalist government allowed a non-voting Member in the House of Representatives, and S.M. Bruce continued that from 1926 in similar vein. It was 1926 before attention was again turned to the Territory, when the federal parliament established a \textit{North Australia Commission} to administer the Territory. An interesting experiment occurred here: the \textit{North Australia Act} provided for two regions: North Australia and Central Australia. And each had its own government \textit{Resident}. Canberra’s control was still strong under this ruse, and as remote as ever. In 1926, under pressure from the Member, the Australian Labor Party’s H.G.Nelson, (and other back-benchers) the Scullin Labor government proposed to set-up an Ordinance-making Legislative Council, but Labor’s strength in the Territory scared-off the Nationalists, who had a majority in the Senate, and the idea was dropped.\textsuperscript{147}

There were moves to create an elected Legislative Council for the Territory in 1930, but this embryonic attempt at fresh representation was defeated in the Senate. The experiment of dividing the Territory in half failed. In some form of a conciliatory move in 1931, the Territory was re-constituted from the two parts as a single entity, the ubiquitous \textit{Advisory Council} was to be abolished and an Administrator appointed. Finally, in 1936, after a 17-year period without any vote in the House of Representatives, the Territory Member was given the right to vote, but only in relation to matters relating to ordinances affecting the Territory. The federal parliament still would not loosen its direct grip on the Territory.\textsuperscript{148}

World War II embroiled the north of Australia and its largest town, Darwin in hostilities. Darwin was bombed by the Japanese from 19 February, 1942 throughout the war. The Japanese bombing raids on Darwin and Broome from 1942 onwards for the next few years, alerted strategic thinkers to the scenarios of vulnerability. It almost certainly obliged re-thinking the strategic situation, but bureaucracy was in control in Canberra and its overwhelming priority was elsewhere. After hostilities

\textsuperscript{146} This was a result of the so-called “Darwin Rebellion”, see Heatley A.J. and A.W.Powell, “Lessons from the North…” (1978) Op.Cit.
began on the mainland following the first air raids, the seat of administration was prudently removed to Alice Springs. The Northern Territory became a vast armed camp, mainly up and down the transport corridor, a giant north-south ‘umbilical cord’ called ‘The Track’, the Stuart Highway. The Territory’s vast potential was seen by many thousands of servicemen; and after the war, the remaining non-Indigenous inhabitants, some of them ex-servicemen and women, took-up holdings in the Territory, mainly in grazing and pastoral interests. Territorians, new and old, had to settle for the region being controlled by a remote bureaucracy, from Canberra.

There were increasing calls for constitutional development. And there was some momentum established. By 1946, there was strong agitation for constitutional development led by the Northern Territory Development League in central Australia. But the conservative-minded members of this group were joined by unlikely allies in the North, the Labor Party, and the unions based in Darwin.

The next phase of constitutional development from 1947 began a period of even greater exasperation for the citizens of the Northern Territory. Looking back to the period, from reversion to the Commonwealth in 1911 onwards to 1947, it can be seen that there was an ennui, a period of extraordinary inactivity and disinterest. Paradoxically, many regard this period as the “true” Territory, a time in which it slept in the sun and torpor, awoken only by war. And it is difficult, when observing and noting newsreels of wartime Darwin and later, to comprehend that the central powers in Canberra could ignore northern development from strategic considerations alone. Perhaps the strategic position was not so critical anyway. Indonesia was struggling to become a republic after 1945, intrinsically engaged inwards with the faltering Dutch presence and competing nationalist forces. In addition, the Indonesian communist PKI, led by Musso, engaged in civil war with forces of the emerging charismatic nationalist leader Soekarno. Both sides were disliked by conservative and democratic socialist supporters alike in the West. Meanwhile proponents for independence throughout the region were struggling to establish a presence in the emergent nations of north, south and southeast Asia. Japan of course was no longer a threat. It might be thought that it took the Vietnam War to break the culture-myth of invincibility of government truths. The Northern Territory Government Standing Committee report lists only four items of historic interest between 1911 and 1947, one of which is the Darwin Rebellion in 1918.\textsuperscript{149} It

\textsuperscript{149} Legislative Assembly of the Northern Territory, Standing Committee on Constitutional and Legal Affairs, Report into appropriate measures to facilitate Statehood, April 1999, Govt. Printer, Darwin, Op.Cit., 12-13.
was not the strategic factor which caused the stirring of the citizenry for better representation, it was their pioneering efforts, which are today immortalised and venerated. Depictions of early Territory life can be seen in the Northern Territory museum exhibitions, and at the Northern Territory State Library. There, one can observe grainy pictorial scenes of women in hot, bulky clothing; ‘jackeroos’ on horses swirling in the dust, Aboriginals in various states of clothing and condition, hunters and crocodiles, and old automobiles (then relatively modern) ‘tin-lizzy’ Overlander ‘utes’, all struggling to survive the harsh conditions of the Northern Territory, which rarely lets-up. The technology of ‘4-wheel drive’ on formed roads in modern times belies the exertion of such hardy contemporaneous inhabitants to stay *in situ*. Many did not stay, surrendering to the dictates of the environment, but they held-on despite Canberra’s neglect. 1947 at least brought some developments.

### 2.3. FROM 1947 TO 1977

By 1947, pressure for greater self-representation resulted in yet another compromise. Under Prime Minister Chifley, a Northern Territory Legislative Council was established, with powers to make ordinances for the “peace, order and good government of the Territory”. It comprised of seven government officials and six elected members, and the Administrator presided. Nelson Lemmon, federal Minister for Works and Housing, was in charge of the enabling Bill and introduced it with the prophetic caution that ultimate control of the Territory would remain with the Federal Government, so long as the Territory was “not self-supporting, financially, and the greater part of its expenditure on its development must be provided by the Commonwealth”. In December of that year, the first elections were held, the electorate comprising 4,443 electors on the roll. No Aboriginals had a vote. The Northern Territory was headed locally by the Administrator, an appointed, non-elected official. And it was February, 1948, before the first sittings were held in Mitchell Street, Darwin, in a *Sidney Williams* hut, a small hangar-like structure, a leftover from the war. Subsequent sittings were held in the courthouse situated on the Esplanade.

From 1947 to 1974, the Legislative Council was regulated by the Commonwealth in

---

150 This description is based on my own observation of the social history of the period, (roughly 1911-1947) at the institutions mentioned, and much more. The points of contrast are marked.


the Territory. By the end of its life, still only 11 of 17 members were elected.\textsuperscript{153} From the start, the official members represented the bureaucratic administration, and they clashed with the entrepreneurial, private sector, mainly led by the cattle industry. And the latter, being small and virtually unorganised, was bound to lose to the powerful bureaucracy. Such tensions caused new calls for self-government.

In his article “A Slow Road to Statehood”,\textsuperscript{154} Jaensch reviews the difficult and halting progress towards statehood from the point of view of interests to defend.\textsuperscript{155} Heatley and Powell, provide a contrast with Jaensch’s view; but only in party political terms.\textsuperscript{156} These latter chronicles provide insights of local knowledge and allow observation of the changing stances of the major Territory parties, describing their relationship with federal counterparts; the short and long term goals; their in-and-out of government hesitation; and the ‘semantical sophistry’ which engulfed all players, with the topic of statehood still a vague end-target, but too far away. Jaensch, on the other hand, sees the various parties interested in statehood for the Northern Territory very much in terms of their self-interest. And that includes the Federal Government.\textsuperscript{157} Accordingly, the history of statehood as seen by him, is couched in terms of interests to seek or defend, which also includes the states. Jaensch does not restrict pressure to such interests, and extends it to the media, the electorate, the bureaucracies (all of them), political parties and specific interest groups such as business and particular industries. The ways in which these groups interact to create pressures on the type of statehood desired, Jaensch says, are surrounded by caveats because the issue of statehood encompasses all of the components noted above. This forms the background to Jaensch’s thesis which is that the road to statehood is not a simple question, with compelling, unarguable reasons, leading inexorably to a straightforward answer. He says: “of course those who do claim that the issue is a simple one, are themselves playing the political pressure-game”.\textsuperscript{158} Jaensch observes first that the removal of all representation for Territorians which

\begin{flushleft}
\textsuperscript{154} Jaensch, D “A Slow Road to Statehood”, in Loveday, P, and McNab, P, (Eds), \textit{Australia's Seventh State, and The Law Society of the Northern Territory and the North Australia Research Unit, the Australian National University, 1986, Op.Cit.}, 62.
\textsuperscript{155} Professor Jaensch noted the academic contribution of Alistair Heatley (1979), his own review (1979), Heatley again (1981), Donovan (1981) and Powell (1982).
\textsuperscript{156} Probably as instructive of the post-war years, certainly in the seminal years of 1974–1978.
\textsuperscript{158} Jaensch, D, “A Slow Road to Statehood”, in Loveday, P, and McNab, P, (Eds), \textit{Australia's Seventh State, Op.Cit.}, 64.
\end{flushleft}
occurred in 1911 when the Territory was transferred to the Commonwealth ended local participation; and policy-making and the style of administration was dictated as summed-up by the administering authority. This is contrasted with the 1922 position when the Northern Territory was accorded a federal member but with no voting rights. The non-Aboriginal population of the Northern Territory was at that time sparse, but the ‘seeds’ for resentment were ‘planted and growing’. Speaking rights (and voting rights limited to motions to disallow Territory Ordinances) were only allowed in 1936. It was only in 1968 that this position changed and the Northern Territory Representative was allowed full speaking and voting rights. But what happened in that time is not clearly specified by Jaensch's summary. It is important because precedent is important in politics, and resides in the detail.

When the Chifley Labor government was defeated by conservative forces, its plans for the Northern Territory lapsed. It was to become a familiar occurrence. One succeeding government after another scuttled the policies of the outgoing government. But after Chifley fell, the Lemmon line, was continued: that before the Northern Territory could be accorded greater autonomy, the aspiration must be matched by greater self-sufficiency. The advent of P.M.C. Hasluck, Minister for Territories, (1951-1963) at least provided firm guidance, albeit to give a sense of historical continuity. He declared in 1959 that the creation of a North Australian state was both government policy and his personal hope. But he advocated gradual evolution: “In our tradition, constitutional change is a thing of gradual development.” And such development seemed to come in single, annual, begrudging concessions. These measures are listed as Milestones, by the Northern Territory's Standing Committee history. Contemporaneously, Territorians attempting to move the process forward, faster, were frustrated. Some ‘meat’ must be placed on these historical ‘bones and scraps’. It is hard to find.

Paul Hasluck, a fine federal leader, enigmatic and genuine, was nonetheless autocratic, more so than his successors, and did affect the way of life, particularly amongst the Territory's Aboriginal population. That is another story. Few persons, other than historians, political scientists, and ‘old-time politicians’ remember the names after his, or what they did. Between 1947 and 1974, the Administrator and the

federal government, through the auspices of the contemporary Minister for External Affairs, effectively regulated the Northern Territory, even though there was the partly-elected Legislative Council. When Hasluck left in 1963, the Country Party in Canberra took over the Territories portfolio. C.E.Barnes (1963-67) was followed by P.J.Nixon to 1967, and R.J.Hunt until the end of 1972. Again, nothing changed during this period: the Lemmon position held firm. There would be slow change commensurate with the Territory paying its own way. The Legislative Council obstructed Canberra's administration at every turn, using the increased powers given to it after 1959, but Hasluck had set a precedent and simply over-ruled the Council.¹⁶² I wrote a letter published in the Northern Territory News 27 May, 2001 in response to Peter Forrest's article on Hasluck, excerpted as follows:

Hasluck's policy development was definite and distinct, and shaped NT life, particularly that affecting Aborigines. I personally think he was a disaster, for sparking the most profound consequences of the federal government's assimilation policy. But in other respects, he was an agent provocateur for change, and ironically it was the reaction to his rule, and it was rule, which changed the nature and extent of the contemporaneous political climate. It spurred greater attempts for better representation and independence from Canberra.¹⁶³

Elected members of the Legislative Council (in 1968) replaced non-official members (a third category of membership, and not the official members), giving them an 11-6 majority. The elected members complained that the successive ministers were pawns of their departments.¹⁶⁴ The departments had a vested interest in upholding federal power in the Territory. The government still continued its policy of small advances.¹⁶⁵ Local government was encouraged, however, and set up in Darwin in 1957 and Alice Springs in 1971. Statutory authorities were established as a result, leading to increased Territory participation in local affairs. After lengthy discussion with the Council, a ministerial statement was issued outlining plans for further constitutional change. As Heatley and Powell state: “They were limited and cautious, but a range of local government responsibilities, control of some forms of social

legislation, of housing, police, state-type taxation, and statutory authorities was to be passed over to the Legislative Council”.\textsuperscript{166} But the changes were never made, since Labor superseded the coalition in power a few weeks later.

Between 1956 and 1957, a Select Committee recommended constitutional changes, including increasing the numbers of elected Legislative Council members. It also recommended some Legislative Council control over finance and executive government. This was a radical move, because some functions were now contemplated, whereas before, there was little to do but debate local Ordinances. In 1958 the Territory Member in the House of Representatives was given the right to vote on matters directly concerning the Territory. It can be seen that this was a bit-by-bit extension of representation. It was nowhere near the expectations of Territory politicians. In April, all six elected members of the Legislative Council resigned in protest against "undue government delay in considering Select Committee recommendations" on constitutional reform.\textsuperscript{167} But in subsequent elections, all six members were returned, five of them unopposed. The Legislative Council was enlarged in 1959 to 17 members, 8 elected, 6 government officials, and 3 appointed non-government officials. The Administrator’s Council comprised the Administrator, 2 government officials and 3 others, including 2 elected members. The instrument creating this situation was the Northern Territory (Administration) Amendment Act 1910. But it still denied the Legislative Council power over financial or public service matters. By far the most powerful instrument of "peace, order, and good government" was still the bureaucracy of the federal parliament. But It was not all ‘gloom and doom’. In 1960, for the first time, a woman, Lyn Berlowitz, was elected to the Legislative Council as the Member for Fannie Bay. In 1962 the Legislative Council was given power to define its own privileges and committees. Also in 1962, Aboriginal people were given voting rights, but they were not obliged to enrol. The period was in conducted in accord with Australia’s Assimilation policies, which led to the so-called Stolen Generations. In August 1962, the Administrator was replaced as presiding officer of the Legislative Council by an elected member. It was another oddity of Territory life that a descendant of the Chinese workers who came to the Territory in the nineteenth-century, Harry Chan, was elected to this post.\textsuperscript{168}


\textsuperscript{168} Stone, S., The Path To Statehood, (brochure), 1998, Northern Territory government, Darwin, Ibid..
An interesting development occurred in 1962, which had its roots in these events. Behind the scenes there was abject frustration in the Legislative Council. Historian Peter Forrest describes the advent of an ancient form of constitutional protest, the Remonstrance, which was employed to gain publicity if not action by Canberra. Neil Hargrave, scholarly Alice Springs solicitor and elected member of the Territory's Legislative Council, felt that the pace of reform was too slow:

In a nutshell, the reformists wanted progress towards self-government, even eventual statehood. They wanted representative and responsible government, with a fully-elected legislature having real control over state-level functions in the Territory. They wanted freedom from arbitrary interference by the Territory’s minister and his department in Canberra. The Commonwealth Government said it agreed in principle, but that reform must await the Territory's economic and social progress.169

Forrest illustrates the nature of frustration at the response, or more particularly, lack of response, by Canberra:

Between Sept 1960 and April 1962, Mr Hargrave had moved no less than five motions in the Legislative Council, calling on Canberra to grant democratic reforms which people in other parts of Australia had taken for granted since before Federation. His colleagues, Dick Ward and Joe Fisher had moved four similar motions. There was a deafening silence from Canberra. The Legislative Council's hopes had been raised by reforms which Canberra had agreed to in 1959, after the elected members had resigned in a block as a spectacular protest gesture.170

It was only in 1968 that the federal position changed, and the Northern Territory Representative was allowed full speaking and voting rights. Territory MHR S.E (Sam) Calder was granted the full voting rights of members, which had been denied for 46 years. He was a member of the Country Party, (which held the Territory portfolio at the time), and a decorated war pilot, who was elected in 1966.171 The concession is contrasted with the 1922 position when the Northern Territory was accorded a federal member but no voting rights. The non-Aboriginal population of the Northern Territory was at that time sparse. Speaking rights (and voting rights limited only to motions to disallow Territory Ordinances) were allowed in 1936, 14 years of

171 Previous members had been Labor men (H. G. Nelson and his son J. (Jock) N. Nelson) and an Independent (A. M. Blain McAlister Blain complained that the rights granted were little better than those enjoyed by "the inhabitants of Siberian Russia or the inmates of a jail"). Heatley, A.J, and A. W. Powell, ‘Lessons from the North: The Northern Territory and Australian Politics”, Politics: Journal of the Australasian Political Studies Association, xiii (1), May, (1978), Op.Cit., 113- 114.
restriction. So the newest win was welcome. Peter Forrest describes how the Remonstrance came about:

By August 1962, Neil Hargrave was determined to do something spectacular about the situation, but what? Mr Hargrave acknowledges that the idea of following the 1641 Grand Remonstrance procedure had earlier been suggested by former Council clerk Derick Thompson. The drafting of the remonstrance was Mr Hargrave's work. He began with the statement: "Everyone has a right to government which conforms to the will of the people." He then listed eight grievances, and supported each one by example and argument.¹⁷²

The grievances Hargrave listed were that the political rights of Territorians were inferior to other Australian citizens; the Commonwealth had failed to develop the Territory; the Legislative Council had no say in government expenditure; the Council was not treated with respect and dignity; the Commonwealth had created a false impression that the Territory could not pay its way; the Commonwealth had failed to stimulate population increase; and Defence in the Territory had been neglected.

To some extent it can be seen that these same grievances existed in 1998. Forrest wrote that the debate raged for most of 23 August, 1962 before the proposal to adopt the Remonstrance and transmit it to Canberra was approved. The motion was strongly supported by elected members, but official members found themselves in difficulty. Some supported the spirit of the motion, but felt obliged to vote in support of the government which they represented in the Council. In the end, Council clerk, Fred Walker left on 25 August to carry copies of the Remonstrance to the Senate and House of Representatives. It was well-supported in the Territory. Forrest writes:

For the sake of history, it should be reported that the Remonstrance was signed by elected members Neil Hargrave, Fred Drysdale, Len Purkiss, Harold Brennan, Lyn Berlowitz, Bill Richardson, Dick Ward, and Bill Petrick. It was signed by all three appointed non-official members, Bern Kilgariff, Duncan Mathieson, and Joe Fisher. Reg Marsh signed it also - a courageous action by a senior public servant. Not long after, he was banished to Norfolk Island. The Menzies government was seriously embarrassed by the Remonstrance and desperately wished to avoid tabling the document for debate. This was achieved by the device of the ruling that the wording of the Remonstrance was not "respectful, decorous, or temperate."¹⁷³

But the view of the federal government was that the Territory could not be granted self-government until it was self-sufficient. The point had however, been scored:

Although the Remonstrance was never debated in the Commonwealth Parliament, Neil Hargrave and his supporters should have been well satisfied with their efforts, which attracted favourable publicity throughout Australia. The *Sydney Morning Herald* wrote in an editorial “The Commonwealth's declared policy... is to enable the NT to become self-governing in the shortest possible time. The Territorians have a legitimate complaint about the slow, Canberra-dictated pace of the movement towards that goal.”

More ‘crumbs were thrown’. Three non–official appointed Legislative Council members were replaced by elected members. And in 1965, The Legislative Council was granted the right to choose its own President from the elected members. It can be seen that the Federal Government did respond to dissatisfaction in the ‘North’, but the ‘North’ was given only ‘bits and pieces’ at a time, and it was (and still is) a matter of slow, begrudging winning of more rights. The Federal Government still reserved rights to overturn any Legislative Council ordinances. In 1959, Labor’s H.R (Jock) Nelson had demanded that the Administrator be removed from the Legislative Council and that there be equal numbers of nominated and official members. It was a limited goal, but did not escape the eye of a rising ALP leader, E.G. (Gough) Whitlam, who condemned it in 1962 as: "the least representative and most subordinate legislature in any British community." Whitlam had tried twice, in 1968 and 1970, to provide Senate representation for the Territory. And it was the Australian Labor Party which at that time gave, putatively, the greatest hope, (at least theoretically.) The Labor Party’s 1971 National Conference platform called for self-government through a fully elected Legislative Assembly. Labor's spokesman for the Territory, Dr R.A (Rex) Patterson, also attacked the Liberals’ Coalition, stating his own party's position in Opposition, that: the Legislative Council was "toothless and claw-less...devoid of any real constructive power", and he accused the Liberal-Country Party coalition government of trying to “hold-on to every bit of power it possesses over the Northern Territory”.

Patterson outlined Labor's policy (in Opposition) for a fully elected Legislative Council and the transfer of a number of Commonwealth powers, which amounted to Executive authority and the transfer (gradual) of state-like functions. These were positive Labor objectives.

In 1972, the Federal Government offered the legislative power of Executive control. There was hardly any difference with previous offers, because the Commonwealth

still retained its veto powers. But the power over finance was an advance. Unfortunately, the offer lapsed in the change to a new incoming Federal Labor Party government. So now, would all the promises of Opposition years be implemented?

The election of the Whitlam Labor Government in 1972 was met with expectation, but the ALP ‘dragged its feet’ for another two years before anything was done. Heatley and Powell reached back in time to describe the feeling:

The most innovative moves towards the Territory’s self-government had stemmed from, or been attempted by, previous Labor ministries and, from the late 1950s, Labor in Opposition had shown increasingly strong support for the constitutional ambition of Territory politicians.177

Jaensch points out the reasons:

One major problem was a disjunction within Labor platform and policy. It was apparently in favour of rapid constitutional development, and it had been very vocal in criticism of the inaction of the Liberal-Country Party Government. But it was also opposed to the creation of new States, and devolution to a quasi state of the Northern Territory was in conflict with the thrust of Whitlam’s new federalism policy. In the end, the Government fell back to that tried and tested method of resolving such problems - it established a parliamentary committee.178

The answer to the earlier question (and expectation) therefore was ‘no’. Labor had no intention of acting in government as it did in Opposition. Jaensch was cutting:

In 1973, a Joint Parliamentary Committee was established to review constitutional progress, and it suggested reform. The appointment of such committees is treated with derision by many commentators, as they note it is code for "nothing doing, and don’t want to do anything."179

Illustrating the sluggishness of such a committee is the almost farcical case that the committee established to report on constitutional development had not completed its task until after the formation of the new Legislative Assembly. But the real farce lay in the battles which issued between the personalities, either representing public sector bureaucracy or the politicians seeking self-government. The upshot was that the Joint Parliamentary Committee recommended self-government for the Northern Territory. The Legislative Council itself added the spur towards the more focused goal of self-government. It was the goal closest to the constitutional development aims of the time. It must be said that as a stage of constitutional development, self-

---

179 Jaensch, D, “A Slow Road to Statehood”, Loveday, P, and McNab, P, (Eds),Australia’s Seventh State, 1988, Ibid..
government was an important marker on its own. Doubtless many politicians desiring the independence they sought for the Northern Territory, would have been satisfied with the objective of self-government, without statehood, (but with a caveat on the limitation), so long as the functions of a state were transferred to the Northern Territory. Indeed, that was the main thrust by the leaders representing the Northern Territory’s interests at that time. (See Chapter 3).

In 1974, committee or no committee, there was activity. In August that year, the Northern Territory was granted two Senate seats. The Senate might be said to have still been a state’s house, because its hostility towards the Northern Territory gaining any further powers was obvious. The Territory was regarded with suspicion by the states, and the states twice unsuccessfully challenged the allocation of the seats in the High Court of Australia. Senate representation was not granted until 1975, despite the (unsuccessful) legal challenges rejected in November 1977 by the High Court, and again, from Western Australia, Queensland and private interests. The elected part of the Legislative Assembly was in minority and remained so until 1976 when 11 of the 17 members were elected. Complaints of Canberra-based bureaucratic insensitivity and ignorance of the Territory’s needs led to more agitation for a better deal. The changeover from the Legislative Council to the new Legislative Assembly by 1974 did nothing to diminish the impatience and desire of the politicians for greater self-government. Even a fully elected Legislative Assembly of 19 members did not assuage the “all or nothing” mood of the parliamentarians. There was still no responsible government at hand. The Legislative Assembly met for the first time in November 1974 reflecting the previous October elections, which, returned 17 Country Liberal Party members and 2 Independents. An Aborigine, Hyacinth Tungutalum, was elected to the Northern Territory parliament.

The very late report of the Joint Parliamentary Committee, according to Jaensch, was accepted with “qualified satisfaction” in the Territory, but it did not satisfy those who wished to see a rapid transformation to statehood. Jaensch says that it also did not nearly satisfy those who wanted to see a rapid patriation of functions in a state-like manner for the Legislative Assembly. There was little doubt that a power struggle had developed in the Territory between the persons who wished to see statehood, mainly in the form of state-like powers for Executive responsibility, which amounted to self-government, and those who wished to retain Territory status.

Jaensch describes it as being "between the federalist and centralised structure and authority in the period of transition to further autonomy." But there was also developing further an antipathy between the members of the committee representing the centralised Commonwealth bureaucracy, and the local leadership under, first of all, Dr Goff Letts, majority leader in the Legislative Assembly, and leader of the recently formed Country Liberal Party. Acrimony grew between the parties, and there were many bitter clashes. (See Chapter 3 for the pertinent detail).

The Whitlam government, despite its assurances of rapid implementation for self-government, did nothing to bring it on with any sense of priority. It may be that the government was concerned with radical advances in areas other than the Northern Territory, but the more likely explanation for the ennui at ministerial government level was the grip of the Commonwealth bureaucracy, upon which all depended. The Commonwealth public service was a powerful influence, and the dominant institution in the Northern Territory prior to self-government; and the members of its leadership, and some committee members, were a formidable force in a growing rift between the sides. It was a struggle between centralist control and local control. The bureaucracy could not adjust to a local mindset which was beset with such a degree of independence that it was thought to be unsafe, and would only cause the Federal Government, rather the federal bureaucracy, trouble and greater expense. It was like a ‘stern parent’ regarding an ‘under-age child’ leaving home with insufficient experience in preparation for outside life. Indeed the ‘child’ was rather all of those things. In the meantime, the Whitlam government was dismissed by the Governor-General, and in the ensuing elections of 1975, the Fraser government was elected. It immediately stated its intentions to continue the transfer of power and functions - those which had been under consideration and the subject of negotiation for over 10 years. The Territory’s Country Liberal Party reacted as if through a ‘burst of adrenaline’. Letts commented in late 1976:

…broken promises... shameful neglect ...the story of stop and go, hope and failure, of many personal and collective tragedies, and always in the background the factor of remote administration, remote control, and that Canberra knows best.

The time for drastic change was now irresistible.

2.4. FROM 1977 TO 1998

In the period 1974-1998, and particularly 1977, when the recognisable ‘sea change’ arrived, the pace of the statehood quest began to quicken, in a lesser guise. And several crucial events occurred, particularly in the latter stages of the period. By 1975, a Supplementary Report from a reconvened Joint Commonwealth Parliamentary Committee stated that despite the devastation caused by Cyclone Tracy (25 Dec, 1974) there should be no alteration to the original Joint Commonwealth Parliamentary Committee's recommendations, including the call for progressive transfer of functions towards self-government. Amendment of the Northern Territory (Administration) Act 1910 in 1976 established offices of Executive Members of the Legislative Assembly to perform executive functions in the administration of the Northern Territory, and exercise powers under laws of the Territory or in relation to departments of its Public Service as determined by the Administrator. The Administrator's Council was renamed the Executive Council. A revised, updated Northern Territory Public Service Ordinance was enacted and the Commonwealth Public Service Act amended to facilitate transfer of Commonwealth Public Servants to Northern Territory Public Service. The first real signs of concrete change occurred in 1977. The Federal Government announced a program to grant Northern Territory responsible self-government from 1 July 1978, with a view to eventual Statehood. The program provided for the establishment of a separate Government of the Northern Territory from 1 July 1978 with local Ministers, exercising executive control over and responsibility for its own finances. The Legislative Assembly general election of 1977 returned 12 CLP MLAs', 6 ALP (Australian Labor Party), and an Independent member. There was considerable excitement with the appointment of an Executive of 5 Executive Members and re-designation and re-determination of portfolios, responsibilities and departments.

By 1978 self-government was a reality. Further transfer of functions to the Executive and Public Service occurred. And the proof was the Commonwealth parliament passing the Northern Territory (Self-Government) Act 1978, establishing a body politic in the name of Northern Territory of Australia. The Act established the Government of the Northern Territory, with responsible Ministers having executive control over and responsibility for its own finances. The bulk of “state-type” functions were transferred to the new government. The last major functions, Health, Education and judicial functions were transferred to the Northern Territory in 1978-9.

In 1981 the first Legislative Assembly elections were held since Self-Government.
The elections returned 11 CLP members, 7 ALP members and 1 Independent. But functions kept on coming-in. Transfer of civil aviation and of state-style functions in major Aboriginal communities. Marine navigation within Northern Territory waters, and Archives came-over. The Northern Territory Legislative Assembly elections were held again in 1983, with an additional 6 electorates. This time the elections returned 19 CLP members and 6 ALP members. Then at the beginning of 1985, the statehood campaign was launched by the Northern Territory Government. In 1988/89 the Northern Territory underwent a transition to state-like funding by being included in the pool of general revenue assistance by the Commonwealth to the states. That move also included the Northern Territory as a full member of the Loan Council (which was established under the Financial Agreement of 1927 between the Commonwealth and the states). Further, it became a party to that Financial Agreement. The annual Premiers’ Conference determines the distribution of general revenue assistance pool based on the formula adopted by the Commonwealth Grants Commission. The funds are allocated by general financial grants and specific purpose payments (tied funds), according to the equation of the Horizontal Financial Equalisation (HFE) as between the states and territories. The relativity of disabilities and additional costs for the provision of goods and services is determined in such manner, with a loading in various aspects for the Northern Territory. The Northern Territory government claims the inequities in the cost of infrastructure costs and in the delivery of services in remote areas and communities. The Vertical Fiscal Imbalance (VFI) on the other hand determines the split-up of revenue between the Commonwealth and the states. The financial details involve top-line talks.

This one factor, paradoxically, took-away much of the force of argument for the full move to statehood. Any clarion cries for statehood are somewhat muted as a result; and persons who would otherwise passionately demand statehood, as if it carried with it an inalienable right of independence associated with a greater deficit of fiscal and financial mendicancy for not being a state, does not exist. Other, more sanguine arguments must be used to the greatest effect, and the ‘sting’ has gone out of the argument, as irrespective of its status as a state or territory, the self-governing Northern Territory will be treated the same as the other states.\textsuperscript{184}

Another aspect of the Northern Territory’s history in respect of statehood is constituted in the powers patriated to the Northern Territory at self-government. It

could be stated more accurately as powers that are not yet acceded or patriated to the Northern Territory, but accorded as full statehood powers to the states in the federation. These can be stated simply for the moment as:

- The powers of management and control in respect of two national parks.\(^{185}\)

- The powers in respect to minerals on Commonwealth land, specifically, prescribed substances’ (pursuant to the Atomic Energy Act 1953), one such being uranium mining.\(^{186}\)

- The powers in respect of Aboriginal land rights.

- A state-type industrial relations power.\(^{187}\)

These powers or their lack thereof, became a ‘catch-cry’ and ‘litmus test’ of a falling-short of full self-government, when as various other powers filtered down to the control of the Legislative Assembly, it became clear that these particular powers were not to be accorded to the Northern Territory. They formed the basis of negotiations and moves post-self-government to be patriated to Northern Territory control, without success. Upon a grant of statehood it is unknown if the operation of such powers would have an effect on the revenue base of the Northern Territory, although it cannot be predicted exactly what economic implications there may be.

The transfer to the Northern Territory of powers and functions under the Commonwealth’s Aboriginal Land Rights (Northern Territory) Act 1976, (ALRA) has been resisted fiercely by the Land Councils, fearing an adverse backlash at the hands of the conservative Country Liberal Party government. Likewise, the status of the Ashmore and Cartier Islands on the attaining of Northern Territory statehood is similarly placed in uncertainty, although it is unlikely to have a major impact on revenue capacity or expenditure, given the HFE operation taking such changes into consideration.

In relation to the large Aboriginal population of the Northern Territory, the text of the

\(^{185}\) Uluru-Kata Tjuta and Kakadu National Parks are situated in the Northern Territory on Aboriginal or Commonwealth Land. They were declared under the National Parks and Wildlife Conservation Act 1975 and are leased to the Director of National Parks and Wildlife and managed by the Australian Nature Conservation Agency (ANCA) in cooperation with Aboriginal people.

\(^{186}\) The Alligator Rivers Region (ARR) of the Northern Territory is the location of Nabarlek (now being decommissioned), Ranger uranium mine and the North Ranger/Jabiluka and Koongarra uranium ore bodies. These ore bodies are on Aboriginal land; there are no other proven ore bodies in the Northern Territory, except at McArthur River and Mt Todd.

\(^{187}\) The Commonwealth Acts dealing with industrial relations and trade practice arrangements have, when compared to their application in the States, extended operation in the Northern Territory. Subject to s51 XXXV, the Industrial relations powers could be patriated to the new state, referred back to the Commonwealth, or options exercised.
Joint Working Group’s Overview of the statehood papers, claimed as the Northern Territory's vital interest a truly remarkable scenario:

The Northern Territory is currently the only jurisdiction where constitutional development, involving Aboriginal people and specifically addressing Aboriginal issues, is being actively pursued. This is a crucial distinction from other new states. Consultation with Aboriginal communities to date has resulted in the production of discussion papers dealing with issues such as Aboriginal customary law, traditional rights to land, sacred sites, self-determination, and which canvass the constitutional protection of specific rights. Further consultation and appropriate education programs are proposed, together with the development of a comprehensive package of legislative and constitutional proposals for discussion. Participation by ATSIC, the Land Councils and community councils in further developing education and consultation strategies is considered important to ensure that the process is meaningful and constructive.188

Apart from the fact that no other new states are or were under consideration, it is patently obvious to any observer that the above principle constitutes a ‘motherhood statement’ of the type which should, in a perfect world, be incorporated as universal policy, and which ought to be carried-out as a matter of course. It is easier said as a Working Party than done as a state government. There is little doubt that the cynical and even the pragmatic mind would greet such well-intentioned proposals with derision, just as, it is hastened to add, it may disappoint Indigenous peoples. Regardless of any hypothesis of what people may or may not think, this aspect of the “Overview” was unfortunately a type of hyperbole, bound to be noted, and like many other such statements on statehood, lost for the want of putting such sentiments into practice. The statement which did make a difference was made on 28 August 1986, when The Hon. Steve Hatton, the Chief Minister at the time, told the Legislative Assembly: 189

A year ago in this Assembly, my predecessor, as Chief Minister formally announced the Northern Territory’s bid for equality within the Australian Commonwealth.190 The case then presented was undeniably strong and cogent. It was based on a number of premises. These were: the Territory’s legitimate claim to statehood as the ultimate constitutional objective; the unacceptable disadvantages of the current constitutional situation; the maturing on the financial arrangements struck at self-government in 1978 and the explicit policy of the Federal Government to

Overview, Ibid.
190 Hatton was referring to his predecessor, Chief Minister, Ian Tuxworth.
treat the Territory as a state from 1988.\textsuperscript{191}

With these words, the first real organisational attempt to attain that goal was launched. The Chief Minister added that development since 1986 had reinforced the validity of the case and strengthened the government's resolve to press ahead. It was the Administrator however, opening the third session of the Assembly, whose speech (written by the government) proclaimed the legal basis on which the announcement was predicated. He said:

Constitutional and political equality, long denied to Territorians and long sought-after, is the key-stone and the prime objective of my Government's policy…my words then are worth repeating: "Statehood is essential if we are to take our place as equal Australians; statehood alone will ensure that we have the same rights, privileges, responsibilities…the same degree of self-determination...(as) other Australians".\textsuperscript{192}

That resolve and those objectives remain the same, from the beginning, and throughout the history of the quest. Thousands of words have been employed to express the same sentiments, some with more elegance, but as a starting point for the substantive effort to follow, the above statements were like a 'starter's gun'.

The Chief Minister also complained that 1986 had not been:

…as some media commentators have suggested, a wasted and barren time. Particularly, since the CLP Statehood Conference in November, it has been used productively to set the necessary organisational infrastructure into place, to refine broad objectives and strategy and to produce detailed position papers. We are now confident that the case for statehood can be pursued vigorously, and with ultimate success.\textsuperscript{193}

The question which is posed by such a statement, which might reasonably lead one to conclude that statehood was well on the way, and in good hands, is: was it? The answer, in retrospect, is that it was not at all advanced. Granted, a start needs to be made somewhere, but in the light of later events there is little doubt that the Chief Minister was putting a very good 'spin' on the subject. Notably in this 1987 Ministerial Statement, the Chief Minister specifically referred to the need to obtain the support of the people as a first priority. He said:

That support is imperative if this bid for statehood is to be successful or


\textsuperscript{192} Ministerial Statement, \textit{Statehood For The Northern Territory}, Preface, \textit{Ibid.}

\textsuperscript{193} Ministerial Statement, Preface, \textit{Ibid.}.
even to be persevered with.\textsuperscript{194}

And then, there is this remarkable statement:

\begin{quote}
We recognise that support by Aboriginal Territorians is a \textbf{key} consideration and we will strive to overcome their concern.\textsuperscript{195}
\end{quote}

The word \textit{key} in bold is no mistake. The subsequent research shows that these two factors were of the utmost importance in the 1998 referendum failure. A contrast is immediately apparent between 1987 and 1998; and begs the question to discover what happened to these clearly identified objectives expressed in 1987. It is irresistible to ponder whether, if these principles had been followed and pursued with vigour, statehood would have occurred. Again, it must be remembered that the author of this Ministerial Statement was the Hon Steve Hatton, Chief Minister at the time. Instead, the organisational structure for the bid was announced. The overall administration of the statehood process was to be handled by the Office of Constitutional Development in the Department of the Chief Minister. There was a Statehood Executive Group to assist the Chief Minister, acting as the Minister of Constitutional Development. It would also provide necessary research and analysis and to support the Select Committee on Constitutional Development.

In 1998 it all came tumbling-down at the referendum. Constitutional development had reached a position it so often had found itself in before. Grenfell Price had lamented in 1930 that the disappointment that was the Northern Territory “was like a vast iceberg of failure, un-melted by the soft warm waters of neighbouring success”.\textsuperscript{196}

\section*{2.5. Conclusion}

The constitutional development of the Northern Territory is an unfinished saga. It began and proceeded with setback after setback and slow progress. Dozens of ‘movers’ can be lined-up: from the nineteenth century, throughout the twentieth century up to the twenty-first century. There is one observation which can be made, which runs throughout the whole of the period in issue. The Territory was developed on a two-fold basis. The first was to claim and defend its vast land against non-British interests, as Crown territory, through absent Imperial, then Colonial, decision-makers, who extended forms of governance to exhibit legality to their claims

(ignoring here any legitimate claims of Indigenous inhabitants). Second, the reason for so doing was its exploitation potential, but what type of potential? Military, pastoral, mineral, agricultural, trading, what sort of development was in mind? The answer seems to be, and it is as apparent now as it was in the nineteenth century, anything that can be got out of it. And apart from some notable persons, like George Goyder, Indigenous land ownership was treated as non-existent. The Mabo decision changed that, but statehood is still not seen as a friendly goal to Indigenous people. The reality is however, that the constitutional development of the Northern Territory is an uncompleted history so far as statehood is concerned; and when that landmark is reached there will be a completeness, an entirety, from which further forms of constitutional development can spring; but only for all its inhabitants. Constitutional development has come a long way, slowly. But even before 1998, before statehood could be created, there needed to be inculcated a feeling of history’s manifestation of what it means, in those who would be affected by the quest and those who would win or oppose it. In modern vernacular, it might be described as “how we are”. People do not automatically arrive at a particular position, in a specific place at a certain time. They are moved by the currents of history, and that means man-made. The motivating forces leading to the technical steps are every bit as important, because the progenitors of statehood must drive the quest for statehood forward, to imbue and invest the majority with a culture of statehood, or at least, approval. It is to this phenomenon this dissertation now turns.
CHAPTER 3
THE STATEHOOD MOVEMENT: CULTURE OF PASSION AND CONFLICT

3. Introduction

This is a difficult chapter, and a necessary one. It is included because of an acknowledgement that setting the scene for statehood requires more than a sequential historical progression of constitutional development, no matter how quintessential and relevant. There is a created enculturation explained here, which encompasses many aspects of the quest for statehood. Essentially it follows an axiom: for every action there is a reaction. Whichever side predominates, wins. An understanding of the basic premise is in some respects elusive, but in no way is it false. Why is a culture of statehood needed or present? Helen Irving’s To Constitute a Nation: A Cultural History of Australia’s Constitution, provides a close parallel in the formation of the federation, of what it is and why its culture is necessary:

Although other external factors, particularly economic and technological ones, may in the last instance drive history forward, at each moment, nevertheless, the people who live through it are also trying to make history, if only in their imaginations. Australians cannot understand what they are trying to do now unless they understand what was imagined in the creation of the institutions they wish to form.\197

The statehood culture which emerged involves many aspects of Northern Territory life: its movement, symbolic events, its groups, questions of identity, its sense of where and what people wanted to be for themselves (and others), their dreams, aspirations, impatience, frustrations and adverse circumstances, all encompassed within the singular, sought-after objective. David Carment commented on the nexus between history, identity and politics, and cited a key-note address of Shane Stone to illustrate this connection, which looms large in the concept:

"We knew", Shane Stone declared in 2000 when discussing the CLP’s long period of power in the Northern Territory, "who we were. We knew what we stood for... We were completely unambiguous about our belief

in the Territory... the Territory flag became our standard... There is always a tomorrow in politics in what goes around comes around and certain as night follows day".\textsuperscript{198}

Carment comments that "Historians seeking to understand Australian and Northern Territory identity need to explain the origins and implications of such statements."\textsuperscript{199} With respect, it is not only historians who need to understand it; all involved should go beyond clichés. In pursuing the sense of what we are, from whence we have come, and where we want to go as a constitutional entity in so many different ways, some will (paradoxically) think of the \textit{antithesis} meaning of the words used above by Stone. His view was unambiguously shaped by the symbolism of Territory history:

Every time you look at that flag remember that first act of Self-Government, fought for and won against Labor as Paul Everingham unfurled that symbol of our future, the hopes and aspirations as Territorians, for on that day we came of age.\textsuperscript{200}

The flag was the Northern Territory flag. Carment noted writer Thomas Kennealy’s 1984 ‘take’ on it:

\begin{quote}
The Territorians see themselves as a nation. Not even in Texas is the regional flag flown so fervently, and the Northern Territory flag, with its black, it’s ochre, it’s Southern Cross, it’s Sturt’s Desert Rose, resembles more a national flag than the Commonwealth of Australia itself with its hybrid of Union Jack and Southern Cross. At question time Everingham and his ministers referred to "Southerners" -and other Australians apart from themselves as if they were members of a separate Federation.\textsuperscript{201}
\end{quote}

That is a good illustration of the statehood culture thriving. But there are two sides to it and one feature tends to dominate the concept more than others. It lies in the counter-forces, the conflicts and struggles against that which is built-up in such movement. In this case, those forces combined to overwhelm and destroy the ethos of statehood, which then failed to reach its conclusion.

That is why its “culture” is included in this thesis, to determine its role in statehood’s failure. How do Territorians see themselves in this phenomenon? Some may see the statehood quest in purely political terms, others might view it as a progressive fulfillment after a ‘coming of age’ (self-government). The statehood bid was more

\textsuperscript{199} Ibid.
\textsuperscript{201} Carment, D, 2002, \textit{Ibid}. 

than a historical event, although its dynamic lies in its history. It was a plethora of mindsets, of beliefs, of dreams, frustrations, of fears, of historical symbolism, a sense of destiny, or dread of it, and it came together in a fashion which was for many an anti-climax, that statehood is a natural destination beyond the terminus of self-government, or, for its opponents, an imminent threat.

This chapter sets out to canvass pertinent events, the participants, the stakeholders, their views and the moves for and against a statehood mindset. Thus, the statehood culture is demonstrated in several ways here, most of it in an antithetical mode and manner. Then the self-government period and beyond observes the passions of the participants. The states-men, the leaders who spawned and fostered the culture carried it forward. Next, major stakeholders, the Territory’s Indigenous people and the Labor party, demonstrate the conflict in the cultural movement.

Once self-government was achieved, for those who felt it was a major staging-post on the way to full equality with other Australians, the journey became a passion believed in; or for those who held other values, a nightmare to be avoided. The CLP championed the former belief, whilst the Aboriginal people of the Northern Territory feared that their tenuous hold over sacred values, particularly the land, may well be loosened further, even lost. The gap between majority, non-Indigenous Territorians, and Indigenous people was exacerbated by the cultural traditions held by each. “The CLP ideology, since the party's inception in 1974, has been very much influenced by developmentalism”, according to a study by Kristy Stinson. 202 Stinson notes Heatley’s observation that this may be because of the poor state of the Northern Territory economy in the 1970's. At that time the Northern Territory did not have infrastructure necessary for intensive development. She adopts Heatley's explanation that “…the CLP is a progressive party, with its philosophy based on economic development.” 203 This, said Heatley, “…can be seen for instance in the attempts of the CLP government to expand trade links and further economic growth by opening up the region to Asia.” 204

The vast empty spaces of land was open to exploit for development. The Aboriginal people on the other hand, wanted land returned: they belonged to it as a sacred


203 Ibid.

204 Ibid.
trust and as a cultural reality. However troublesome the whole topic became, it was also a characteristic of Northern Territory sentiment, a sense of inevitability, a right, which (was) built to a crescendo in the context of moving towards statehood. In such sense it was an invention. A tradition is begun by someone doing something which is repeated *ad infinitum*. The reason for building it up, rather than as an evolutionary phenomenon, is important because it also had a bearing on the failure of the bid. Its main spring-board was the achievement of self-government.

The struggle for self-government has been mentioned and an account of salient events is included here to illustrate its impact. The ‘movers and shakers’, the statesmen were important factors in the process, and the focus is on Shane Stone and Steve Hatton. The Aboriginal community expressed opposition, and set out their conditions for a state. They held their own Constitutional Conventions following the Territory government's Constitutional Convention, the most important gatherings being at Kalkaringi, and at Batchelor. The Labor Party, on the other hand, found itself in a quandary in its parliamentary role, supporting statehood but rejecting the way Shane Stone was running it. It was worse for Labor Leader, Maggie Hickey, who was caught in a contradiction: siding with Aboriginal objections whilst supporting statehood. Not all aspects of this phenomenon can or should appear here, but as stated at the beginning, the essence of this cultural identity movement is elusive. It may apply to individuals in different ways covered only by the merest generalisation, or not at all. The politics of statehood however, cannot be ignored, as the players and the history of this specific period embraced (or repulsed) those who were subject to the process. It extended beyond the Northern Territory, reaching to Canberra, involving its bureaucracy, which in many ways was the old foe, as well as the hub of Federation, the ‘holy grail’ of the believers. The paradox thereby seen, is also the irony of the statehood culture, because the environment is not complete without its motivational factor without which all other aspects are mere mechanics.

3.1. Why invent a statehood culture?

Readers may (rightly) query why such enculturation as occurred is an ‘invention’. To understand that, the concept of ‘inventing tradition’ was examined by David Carment, citing the observations of Eric Hobsbawm and Terence Ranger, who described it in a different sense:205

Hobsbawm argues that “invented tradition” is taken to mean a set of practices normally governed by overtly or tacitly accepted rules and of a ritual or symbolic nature, which seek to inculcate certain values and norms of behaviour by repetition, which automatically implies continuity with the past. “Invented tradition”, he continues “is essentially a process of formalisation and ritualised notions, characterised by reference to the past, if only by imposing repetition”. Of particular significance is his claim that invented traditions are highly relevant to the idea of the “nation" and its associated phenomena: nationalism, the nation-state, national symbols and national histories.206

Carment made the observation that “... there are many more similarities between the present administration (Clare Martin’s ALP) and its CLP predecessors than either side cares to admit. Martin and her colleagues remain strongly committed to the promotion of rapid economic growth and the achievement of statehood. A former postgraduate history student, the Chief Minister shares Paul Everingham’s and Shane Stone’s enthusiasm for the past and their recognition of its place in identity building.”207

It is a very short jump from traditions applying to nationhood to that of a nascent state. And traditions often interchange with cultural factors. Repetition of all the factors argued for (and against) the emerging entity engender a dynamic shaping as it moves towards its climax. Perhaps one of the more pertinent factors missing in terms of motivation was the granting of financial parity with states. If this had not happened, the “tradition” of subjection and constitutional subservience to the Commonwealth would doubtless have raised a louder voice of protest like in Alaska. Without this motivating factor being available, progenitors of statehood reverted to the less compelling “battle-cry” of ‘second-class citizenship’ and all it entailed. That then was inculcated in the culture of a statehood movement which took-over from the exhausted workers who had achieved self-government. Why was this so?

3.2. Behind and beyond the struggle for self-government

The reasons for incorporating an account of the struggle or self-government as part of the culture of statehood forms a specific stage of the history of constitutional development of the Northern Territory. First, it is part of the aims herein in explaining the derivative roots of statehood. Second, it is significant because the target set was

moved backwards from statehood when the detailed actions and efforts of transference frustrated Territory leaders. They agonised whether they really had such powers and functions at all, because the bureaucratic process was so slow and niggardly. Self-government itself, even when politically granted, did not come easy; in fact it was dragged over, function by function, power-by-power, being shaped and formed over years. And then it pulled-up short. There was a private-sector galvanising of politically-oriented forces, mostly conservative, now in sufficient numbers to organise a new political party. Starting from (then) Country Party affiliations in the 'red centre' of Central Australia, it quickly spread northwards to Darwin. The arrival of the newcomer is relevant here. It changed everything.

3.2.1. Enter, the CLP

In 1974, the new Country Liberal Party (CLP) entered the Northern Territory political arena and stood, as a political party, in the elections for the Legislative Assembly. It won, and won well. It prepared itself for the future. But it was still not alone in decision-making: there was still the Executive Committee of the Administrator's Council, with nominated members from the Commonwealth Public Service seconded from the Department of the Northern Territory (DNT). And during the period leading up to and beyond self-government, there were multiple bureaucratic edifices, which were formidable obstacles and difficulties facing the newly-hatched party, which in its parliamentary guise was termed the "Majority Party" (MP). The problems facing the elected MLAs' included:

- Executive Members, as defined in the *Northern Territory (Administration) Act, 1910*, to the Executive Council;
- The Interdepartmental Committee (IDC);
- Executive Committee of the Administrator's Council (ECAC);
- Department of Northern Territory in Darwin (DNT);
- Consultative Committee (CC);
- Northern Territory Constitutional Development Committee (NTDC);
- Restrictions in the new Legislative Assembly.

To know just what these fledgling politicians faced from this phalanx of federal instrumentalities, it is necessary to be acquainted with the relevant history of the CLP, to understand better the passions engendered by the desire to 'have a say in our own affairs', through the events leading up to and beyond the founding of the CLP in July 1974. There is no better person to describe these events than the leader of the Majority Party in the Legislative Council, Dr Goff Letts himself:
The CLP formed in mid 74 by amalgamation of Country Party and Liberal political interests, became the majority party in the October 1974 elections to the new Legislative Assembly with 49% of the vote gained, winning 17 seats (the other 2 were retained by Sitting Independents). The issue: the performance of the Whitlam government. The CLP actually went to the election over the federal government. However, the future role of the new Assembly remained the salient constitutional issue and point of political conflict between Darwin and Canberra for the last year of the Whitlam Labor government. It was still unresolved when Prime Minister Gough Whitlam was dismissed in November 1975.  

The question was, would the incoming Fraser Government be more forthcoming than outgoing Labor in Canberra, given the strong Commonwealth bureaucracy with its stranglehold over Territory administration? Issues became localised. Much preparatory work, indeed learning to govern was needed. Nothing was given easily.

3.2.2. Frustration of Majority leader, Letts

The newly elected and CLP dominated Legislative Assembly was convened for the first time in mid November 1974. At that meeting the Majority Leader (Goff Letts) announced his fellow Executive Members; of that group of 7, 5 were given the more senior positions on the Administrator’s Council. They faced being made ‘toothless’ legislators, with a startling limitation on their powers and functions. Styled the Majority Party it opposed the suggestion that the Governor General (in Council) be given an over-riding power to make regulations in the event that the Assembly failed to pass acceptable legislation relating to functions remaining within the executive responsibility of the Commonwealth. The members of the CLP were infuriated by such patronization, the latest in a series of frustrations, over which they had formed to overcome such frustrations. They sought constitutional advances, which despite acrimonious exchanges between the Labor government in Canberra and the CLP in Darwin, was still a bipartisan objective in the Territory.

The ALP had been present in the Northern Territory long before the CLP arrived. And it shared grievances with the conservative newcomer; but that was the extent of it being ad idem, with the CLP in political terms. It was however, common practice for individuals from both sides of politics to fraternize from time to time. The Majority Party members, led by Letts, held talks, negotiated, consulted, pleaded, railed and wheeled. But they were virtually obliged to take instructions from the bureaucrats.

The legislators wanted more legislative freedoms. The bureaucracy still held the keys. A federal public servant, Colin Stephens played a pivotal role as Chairman of the Interdepartmental Committee on Constitutional Development (IDC). He was also the Consultative Committee administrative officer and a Department of Northern Territory (DNT) officer. The Majority Party could see only one solution: get self-government. In the humidity of a Sidney Williams war-time hut, the Legislative Assembly sweated over this problem, and decided firmly that self-government was the way to go.209

3.2.3. The Whitlam Cabinet’s Thumbs Down to self-government

Going back in time a little, the Whitlam government sorely tested the Majority Party, and depressed Letts, who was ‘burning-out’ quickly. Minister Rex Paterson took proposals for greater independence back to the Labor government in Canberra. The Cabinet considered Paterson's submission in early September and threw it out. In recounting Paterson's description of the meeting, Stephens commented:

The item came up on the agenda and Gough (Whitlam) asked, “Well, does anyone support this?” Patterson looked around the table and there was no comment. He looked at Gough and asked, “What do I tell them?” Fred Daly leaned across and said, “You know what to tell them, Rex.” That was it!! The sum total of the consideration of the self-government submission. They were just not going to wear anything, any self-government for the Northern Territory for whatever reason.210

The events of November 1975 played-out with the dismissal of Whitlam’s government, but the small ‘band of brothers’ in the Northern Territory were interested just as much in whether the incoming government under Malcolm Fraser would commit to self-government. The election campaign following Whitlam’s political demise answered that question, but opened a new ‘can of worms’.

3.2.4. Fraser: Not only Self-Government, but Statehood!

The Northern Territory came close to being made a state at the time. It is not widely known that Prime Minister Malcolm Fraser actually offered statehood to the Northern Territory when in 1976 he visited Darwin for a meeting at the (Old) Town Hall.211

211 Cl 32. Ibid.
The question of statehood itself was actually a surprise to many when it was broached by Fraser in his election speech of 1975, naming 1980, 5 years, as the target date for statehood.\textsuperscript{212} It was also a surprise to Territory leaders (even an irritation) when Fraser repeated the offer when he visited Darwin later.\textsuperscript{213} The Fraser government guaranteed statehood in July 1977 to take place by July 1979. When Fraser visited the Northern Territory and attended the boisterous meeting in the Darwin Civic Centre on 18 November, he said: “You're going to get statehood...within five years. That's what we're going to campaign on.” Letts responded “I said, 'Oh yes. Well, hang on, just a minute. Statehood \textit{beaut}, but five years! Let's not put a fixed time on it that we may not be able to achieve or may not even want. (statehood) is \textit{beaut} as an objective but don't give us that \textit{bloody} five year line, because I think we want to test this out on the people of the NT...”\textsuperscript{214}

Alistair Heatley comments “…many observers disputed that provenance.” His commitment to ‘statehood within five years’ came as a bombshell to almost all present… Heatley says that observers preferred to believe that it was a spur of the moment decision made on the plane to Darwin. Less charitably, that version was embellished by reference “to the influence of a surfeit of Scotch whisky.”\textsuperscript{215} However in Goff Letts’ view, Fraser had worked on it for some time. The Majority Party members were nervous that they might not be up to the onerous preparatory requirements of overseeing the birth of a state in such a time-line; but it was probably just as onerous bringing-in the powers and functions attaching to self-government. Issues in the following election were different, however. They included the Majority Party’s performance, and urban concentrations of public servants. The results could not be seen as a clear endorsement of the CLP’s constitutional development policy. “Fraser's promise of statehood in 5 years was never taken seriously by the Majority Party in the Assembly...”\textsuperscript{216} The less definitive time-line was pressed consistently by CLP and coalition spokesmen throughout the remainder of the election campaign. Stephens (Consultative Committee administrative officer, and DNT) recollects that:

\begin{flushleft}
\textsuperscript{212} Stone, S, \textit{The Path To Statehood}, (brochure), 1998, Northern Territory government.
\textsuperscript{213} See Appendix 6, Hatton's description of this event.
\textsuperscript{216} Ibid.
\end{flushleft}
The general view, if not in the DNT but certainly within the Canberra bureaucracy, was that (Fraser’s) announcement was intended to mean self-government in five years and probably only limited to self-government by then.217

Stephens may not have been constitutionally aware that Fraser could also have been advised that he could utilise the power of Part V (territories) of the Australian Constitution to create the state by declaring it to be so by statute; and it is clear that Fraser had no idea of what he would be opening-up if he did that.

The Territory Labor party declared its hand on statehood in the campaign for the 1977 Northern Territory elections under the campaign slogan “First Things First -- Statehood Later.” Labor ran on the basis of the Territory incurring crushing financial responsibility if statehood was granted, and it completely placed the CLP on the back-foot. Details of the CLP’s 1974 committee submissions showed that even the CLP considered statehood as a medium-term proposition: the immediate target being self-government. As a consequence of the Labor campaign and in view of the CLP’s own submissions, the Fraser government moved no further than self-government. It was just as well that the idea slipped away.

3.2.5 Interdepartmental Committee (IDC) checks Self-Government

On 21 September 1976, by decision no.1541, Federal Cabinet endorsed the transfer and establishment of an Interdepartmental Committee (IDC) It comprised DNT, Prime Minister and Cabinet, Attorney-General’s, Public Service Board and the Treasury, to consider all aspects of further constitutional development. Furthermore, in line with s118(b) of the JCNT reports, it was agreed that the DNT should be responsible for coordinating all Commonwealth undertakings of a state-like nature in the Territory. Letts welcomed the latter move because he saw it as “an essential precondition for an orderly transition to self-government and... a clear indication that the proliferation and fragmentation of largely autonomous federal government agencies in the Northern Territory over recent years would now end.”218 Those decisions were announced publicly in statements by Letts and Minister for the Northern Territory, Evan Adermann, on 24 September 1976. There was one additional Cabinet proposal, agreed in principle between them, that all state-type functions devolved on the Legislative Assembly in the next three to four years, be

deemed *inappropriate*, as it could prejudice acceptance of the first transfer. A large number of functions were listed to be transferred on January 1, 1977. Self-government was on the way at last, but there was still trepidation at the responsibilities coming north. In fact they were quite contradictory: they wanted all functions transferred as a matter of urgency, but not all at once!

After convincing Adermann of the political efficacy of retaining seven members in the Majority Party executive, but faced with the decision to appoint only five Executive Members, as defined in the *Northern Territory (Administration) Act, 1910*, to the new Executive Council, Letts opted to use the title *Cabinet Member* for all.\textsuperscript{219}

In his speech to the Legislative Assembly, Adermann openly reaffirmed the September 1976 decision of the Commonwealth to transfer all state-type functions within the next three or four years. The Commonwealth wished to impose charges and taxes which were opposed at first by Tambling, the Treasurer, until significant constitutional progress had taken place... However, faced with accumulating losses, the Majority Party had agreed in mid-1976 to steep rises in utility charges (electricity, water, sewerage). The IDC on Northern Territory Constitutional Development consulted all major departments and reported in mid 1977. The first report concerned the question of statehood, to demonstrate problems of transition to statehood. No recommendations were made, as the Committee saw statehood as a matter to which it should turn its attention once the Northern Territory had been settled into self-government. In addition it conceded the possibility of the Territory “having achieved such a measure of self-government, it would not then need to proceed to statehood.” The bureaucracy could not be said to have decided this on its own, as the IDC comprised a kaleidoscope of views. The IDC recommended the formal creation by 1 July 1978 of government having control over and responsibility for its own finances. It would be granted autonomy to conduct its own affairs “subject to the general oversight of the Commonwealth, but without direction from it other than in exceptional circumstances.” More powers and functions began devolving in another transition from The Commonwealth to the Northern Territory jurisdiction in the 1977 second-stage. The creation of a Health Commission (and Electricity authority, NTEC) was current CLP policy. The transfer would occur on 1 July, 1979.

After the refusal of the Majority Party to accept transfer of public utilities in

\begin{footnotes}
\end{footnotes}
December 1976 (exacerbated by power breakdowns in late 1976); and on the recommendations of a (McKay) enquiry, the date was accepted by Cabinet as vindicating its earlier stand. On 21 May 1977, a national referendum allowing Territorians to participate in future national referenda was passed. It omitted to highlight the fact that it was counted in the general category, so that the states still needed the majority of voters in 4 of 6 states to carry amendments, instead of 4 of 7 states, one of the better arguments for making constitutional changes a little easier to pass. The new government’s first year was a grave disappointment to Letts and the CLP in respect of constitutional development. It was frustrating to Letts because every step took twice as long as he felt it should. The Consultative Council was only a ‘talkfest’ and had no effective role in policy formulation.

3.2.6. Disenchantment of Letts

The disenchantment of Goff Letts was profound. Looking back to the 1976 -7 period Letts commented:

I was going through a period of progressive disenchantment with politics, from the point of view of party loyalty. I felt we had done all through the years we could on behalf of Sam (Calder) and the bloody federal arm. We’d done more than anybody could ever have expected on the local level with our group to get ourselves the foremost position in the Legislative Assembly. We’d done all those things; in return we had suffered a series of setbacks, frustrations, lack of cooperation and understanding about the Territory situation. Really, my disenchantment had reached such a point by the 1977 election that probably it would be fair to say that my heart wasn’t really in it.

The Aboriginal Land Rights (Northern Territory) Act 1976 was passed by the Commonwealth in December. The Majority Party thought it was flawed and highly unsuitable (for their purposes), although better than none.

Letts considered that the views of Territorians both Aboriginal and non-Aboriginal were hardly ever heeded. The Land Councils and the Labor Party considered the Majority Party to be an influential opponent of Aboriginal interests. The Majority Party was obliged to enact ‘shadow’ contents legislation. The ‘taste was sour’.

221 Ibid.
The Second Fox (Justice Fox, Chairman of the Ranger Uranium Environment Inquiry) report on mining uranium meant that its retention by the Commonwealth was contrary to the Majority Party aspirations and expectation that the people and legislature of the Northern Territory, its authorities and government institutions should be involved to the maximum degree in implementing uranium policy. The Fox Commission requiring Letts as a witness was demeaning to him. Uranium was treated separately from constitutional development. Tambling commented:

.....the Fox report is basically silent on the issue of statehood and its implications...the impact of [the uranium policy] will have a marked effect on any future developments that must take place in the Northern Territory. Many of the recommendations of the Fox Commission are rather awesome in that they seem to treat the constitutional matter as a constant problem and a major difficulty.223

The August 1977 election was as close as Labor got to toppling the CLP government until 2001. Up to then, there was no effective Labor opposition to the Majority Party.224 Local opposition came mainly from Trade Unions and pressure groups. The cost of statehood and a referendum to test it were election issues. Even groups which generally supported the CLP, like the Chamber of Commerce, the Chamber of Mines, and Chamber of Industries and the Northern Territory News, questioned the alleged cost factors. Letts was more concerned about getting responsible self-government right than moving too quick to statehood; but he emphasized that statehood was the Majority Party’s and the Federal Government’s main objective. Labor was given a fillip by getting members into the Legislative Assembly. At its Northern Regional meeting in mid-December, decisions were taken on its Platform, and tactics developed to confront Letts and the CLP. Future ALP leader Jon Isaacs, Secretary of the Miscellaneous Workers Union, developed a strategy to use statehood as an issue. Labor denounced the CLP statehood concept as a sham. Isaacs argued: “Now that they (the CLP) have the statehood argument and concept with them, we must ensure that the statehood that they talk about is equivalent to statehood as we know it.” That meant that Labor could ignore protests from the CLP that they were not advocating statehood and Labor could concentrate on costs and problems associated with it. But Labor did advocate greater regional autonomy. The Labor platform was rewritten to read:

223 Op.Cit.,70-71
224 Federal criticism came from Labor’s Senator Ted Robertson and Senator Keeffe (shadow Minister for Northern Affairs) 

Ibid.
1. In seeking greater self-government a Labor majority in the...Assembly would seek to gain control over matters of local significance without interference from the Federal government.

2. The Labor party rejects statehood as a concept for the Northern Territory for the time being. The ALP supports the holding of a referendum in the event of a Federal Government attempting to thrust statehood upon the Northern Territory.225

Throughout the election campaign, Labor, buoyed by interstate supporters, criticised statehood, saying that the Fraser Government could escape the financial responsibilities to develop the Territory; that the CLP was rushing the Territory, against the wishes of the people, into statehood and bankruptcy. State-type charges would rapidly increase. Letts was caught out by Isaacs, enabling Labor to score. As a result the CLP was obliged to go on the defensive against Labor’s allegations and justify its own handling of the issue. Letts had to emphatically deny the CLP would drag the Territory to statehood against the wishes of the electorate and suggested the possibility of a referendum before that step was taken. He was not able to stave-off Labor’s charges. The fears of Goff Letts and his colleagues had come to pass. The CLP had ‘shot itself in the foot’ and Letts and his colleagues had to tread carefully about statehood throughout the remainder of the election campaign.226 The election issues, however, were different: the Majority Party’s performance was central; and its fate was largely held by numbers of public servants who were critical of the CLP. The results could not be seen as a clear endorsement of the CLP’s constitutional development policy, whether it was statehood or self-government. The election outcome did assure a good CLP majority. In the new Assembly there would be 12 CLP MP’s, 6 ALP, and 1 Independent. On the other hand the leadership of the CLP was depleted, with 5 of 6 losses being Cabinet Ministers. Tambling, Andrew and Ryan were beaten in Darwin and Pollock and Letts himself, in the rural area. In return, Ron Withnall was also beaten by the CLP. The ‘old brigade’ were out, and a new Majority Party team came-in. Letts was defeated, not because of statehood, but because his Labor opponent emphasised the impact of the CLP’s treatment of the land rights issue winning-over Aboriginal constituents in his bush electorate. Letts was a broken man by the time of his defeat. He had fought hard for progress, but his fiery temperament was not suited to political life. There is an oddity here. The call


was for greater self-government, yet when statehood was mentioned the local politicians suddenly got ‘cold feet’, realising the job was much bigger than they thought they could handle. It wasn’t only Letts’ fear either.

3.2.7. Everingham steps up

From Alice Springs, a young lawyer, Paul Everingham, stepped up to the CLP leadership. And he was in no mood to play ‘footsie’ with any federal government. There were still many issues on self-government to accomplish, and he had been a tough negotiator in the sorties to Canberra. Of Letts’ Cabinet, only Marshall Perron and Ian Tuxworth survived the August 1977 election. They were joined in Paul Everingham’s new Executive by Jim Robertson and Roger Steele. Two Senators had been granted to the Northern Territory and the ACT. The 1973 legislation had survived legal challenge from the non-Labor states in 1975. They had argued that Senators could only represent states. Territory Senators were to be thus elected at each House of Representatives election. They were accorded equality of status in all other ways. Senator Reg Withers (nick-named ‘the toe-cutter’), the Coalition leader in the Senate, suggested the Northern Territory should have 5 members in the House of Representatives once its population reached that of Tasmania, and 4 to 6 Senators.227 Constitutional development was, if anything, going to increase in intensity and speed if Everingham had anything to do with it. His press statements and Legislative Assembly speeches indicated his intention of trying to persuade the Commonwealth to accelerate the transfer timetable. At the same time “... he rejected any program which imposed too high a price for constitutional advancement.”228 Although the creation of a Health and an Education Commission was party policy, Everingham refused to support the concept. He said:

I wasn't going to become Chief Minister and hand-over whatever control I might have (to Commissions). It doesn't matter whom you put on those statutory bodies. They can be your best friends but they soon turn into crazy megalomaniacs and empire-builders. The most logical, sensible or rational businessmen, when put on a statutory authority, seem to become putty in the hands of the bureaucrats who work for it and start running along its boundary fence like a dog.229

Altogether, for the formative years of self-government, the program anticipated a low tax regime for the Territory, but the Majority Party was confident that it was consistent with the tax-capacity of the region, and represented a 'reasonable' revenue effort. Everingham commented that self-government would cost Territorians “one can of beer per week”. Labor denied the CLP’s contention that the election result represented a mandate on self-government. It could cite its gains in seats and votes as support. It called for a referendum on the question. A petition with 3000 signatures was collected and Labor leader Jon Isaacs convened a number of protest meetings throughout the Territory. Labor pointed to the inappropriateness of the Northern Territory being placed into federal “financial modes”; the disadvantaged bargaining position of Territory negotiators, the role of the Commonwealth Grants Commission, the uncertainties relating to loan-raising, the deficiencies in the self-government legislation, the alleged public service personnel transfers. Costs became the leading issue. The Opposition never offered an alternative system: they didn’t need to do so, the allegations were strong enough to create doubts. Relationships between the CLP and Labor deteriorated further, particularly between Everingham and Isaacs who became bitter rivals in the constitutional conflict. But Everingham had the edge.

As to statehood, Perron and Everingham strongly denied that it was an immediate objective. Perron noted in June that “Personally I sometimes wonder whether the Northern Territory will ever get statehood. If it does, I can see it being ten years or more away.” Everingham was less than optimistic; he saw statehood as not occurring for “twenty-five or fifty years”. In his view: “When statehood comes, if it ever does, it will be by the will of the people as far as I am concerned.”

This was prophetic thinking: and it may yet prove to be spot-on.

3.2.8. Designation of Chief Minister appears

In March 1987, new designations for the self-government period were made. For the first time the designation of Chief Minister appeared, and Everingham became the Northern Territory’s first Chief Minister and Attorney-General; Marshall Perron, Treasurer, and Minister for Lands and Housing, Tuxworth, Minister for Mines and Energy and Health; Robertson, Minister for Community Development and

230 Ibid.
231 Ibid.
Education, and Steele, Minister for Industries and Development, and Transport and Works. Inter-party rivalry over self-government and statehood questions rapidly faded as Labor's criticisms was eroded by the Commonwealth's generous budgetary treatment of the Territory and the general opinion that the early additional costs were not onerous. The outcome of the 1980 Assembly elections, in which Everingham and the CLP were comfortably returned to office reflected in part the electorate's judgment that self-government, at least in its early phase, had been a clear success.

Of the major responsibilities retained by the Commonwealth, only industrial relations remained uncontroversial. Neither the Territory government nor the various local industry groups wished to alter the prevailing system of federal awards and arbitration. The other three, however, uranium mining, Aboriginal land rights and national parks, were continuing irritants in what was otherwise, in inter-governmental terms, a reasonably amicable relationship between Canberra and Darwin.

Notwithstanding Everingham's reluctant acceptance of the Commonwealth retaining control over uranium mining, commentators say he never comprehended the logic of the decision. The Commonwealth possessed sufficient constitutional powers to police the industry without resorting to direct ownership of the resource. This was inconsistent with the policy of devolution. The Territory government's claim for local ownership and control was based on more than constitutional development, namely on developmental and financial factors. It could not foresee that one of its prime, denied objectives, the utilisation of the abundant uranium resource as fully and as quickly as possible would fall away like its international market until it ceased being an issue. (Uranium has had a comeback in 2006). There were potential financial benefits, in terms of increased royalties and that factor became more important after the passage of the Royalty legislation (an 18% profit-based regime) in 1982. But 18% of nothing is still nothing!

Everingham visited Hawaii and Alaska in mid 1982 to investigate the statehood experience there. On his return, he reaffirmed his view that the Territory should not be hustled into statehood and that the key to future constitutional development was the determination of secure financial arrangements. It is submitted that his view had more to do with American federal support in Alaska which support he saw was not given in the Territory. He would have to wait until 1988 to see that. Also appreciated by Everingham was the need to include a Bill of Rights to be incorporated into a new
state constitution. In my opinion, this was probably his greatest contribution to a statehood argument, but it slipped away.

In the 1983 federal election campaigning, the Labor candidate for the House of Representatives, John Reeves, advocated that in order for the 1988 statehood option be kept alive, a national referendum be held to clarify the constitutional position of the Territory. Moreover he stressed the need for a later Territory referendum to be held, to ascertain Territorians' desire for statehood. In response, Everingham savaged the national referendum idea as antagonistic to Territory aspirations. And in such case, he probably spoke for many Territorians.232

At the official level in the Northern Territory, some work was undertaken on statehood issues. Beginning in 1979, a collection of relevant comparative constitutional documents and literature was progressively compiled. A study of Territory legislation, with the objective of facilitating a smooth transition to statehood, was initiated. In 1981 and in connection with the Premier's Conference reference, a Department of Law study team compiled a short paper on salient statehood considerations. At the same time, Senior Legal Officer, Graham Nicholson, prepared a detailed and voluminous analysis. Territory lands and resources must be transferred, according to Everingham; also there should be amendments to the Northern Territory (Self-Government) Act. Some changes were made but they did not address Everingham’s salient objections, particularly the retention in the legislation of the determination of the qualifications of the electors (to cut-out the distortion of the many transient voters); also candidates, borrowing restrictions, and “just terms” limitation. Under the latter section, the Territory was constrained, unlike the States, to acquire property on just terms. At the very least he argued it “should be confined to real property.”233

3.2.9. Statehood bid gains traction through adversity

Regrettably, the truth is that enculturation of a statehood mindset, building-up an agenda, mainly involved negative factors: fears, anticipation and experience of nebulous and deprecatory conditions. Even provocation became a factor. This mode of culture growth applied to the forces for and against constitutional development to

statehood. What is even more astounding is that the champion of Northern Territory self-government, Paul Everingham, although most proficient in ‘Canberra-bashing’, saw more advantage in recovering the missing powers and functions from the self-government suite encompassed in the Memorandum of Understanding. He saw statehood as a long-term goal. Of particular concern was the national economic downturn of 1978, ’81-2, which Heatley says Gerritsen identified as late-coming to the Northern Territory. There were national cutbacks, but the Territory was severely hit. Everingham was enraged by federal government cutbacks, which he saw as an attack on self-government itself.

Some of Collins Federal party colleagues did not share his views. On 21 April the Minister for Finance, Senator Peter Walsh, made a scathing attack on the Territory which had, he argued, produced the most ‘bloated and feather-bedded’ public service in the country. He also gave further details of new superannuation arrangements which his government wished to impose upon the Territory. Carment points out federal Labor government’s attitude to the Northern Territory:

There were cut-backs of its superannuation contribution of employers’ responsibilities to employees. The Territory was about to change over to its own scheme. Senator Walsh announced that the arrangements would be varied significantly. This meant a major financial blow to the Territory. It would involve the Territory government paying the employers’ contributions to Territory public servants’ superannuation schemes, the whole cost of which the Commonwealth had previously provided.

Self-government had already been implemented, but there was more bad news. On 14 May the Commonwealth Treasurer, Paul Keating, announced funding cuts which would cost the Territory more than $80 million. The biggest reduction was in the Commonwealth electricity subsidy, almost halved. The NTEC (electricity) subsidy of $78 million in 1985-86 was cut to $38 million and was fixed for the following four years at $40 million. After then, it would cease permanently. Moreover, there was an increase in the price of fuel by 4 cents a litre. Further measures followed. The federal government announced the cancellation of the Alice Springs-Darwin railway; and on 11 November, 1983, it announced that Kakadu National Park was to be


235 Op.Cit., 140

236 Ibid.

237 Ibid.

extended into Phase 2, which meant cessation of mining in the rich mineral precinct; and that Jabiluka and Koongarra leases would be included in the Phase 2 area. Additionally, Kakadu would be handed to the traditional owners on a leaseback management system. To Everingham, it was an “attack on the very foundation of self-government” and "another kick in the teeth."\(^{239}\) His reaction was to call an election, which he won handsomely, but it did not curb strictures upon the Territory.

In October, 1984, Everingham left Northern Territory politics for an electoral 'assault' on the federal sphere, and was elected as Northern Territory MHR. His successor, Ian Tuxworth immediately faced an intransigent Federal Government. Very soon there was acrimony existing between the two governments once more. Tuxworth and members of his government were incensed with Canberra’s treatment. He recited:

>...objectionable aspects of Commonwealth policy: the granting of a "national treasure" to a minority group; the failure to provide Territory title to the park; the empire building of the ANPWS; the inappropriateness of the park management structures; and the potentially reduced role for the Conservation Commission (Territory).\(^{240}\)

Of greater surprise, however, is the statehood vision of Ian Tuxworth, through his indignation at the series of perceived rebuffs by the federal government, and a tightening on Territory finances. Such provocation was exacerbated by federal Finance Minister, Senator Peter Walsh, who commented that the Northern part of Australia should be depopulated, because it was costing the Australian taxpayer too much.\(^{241}\) Tuxworth decided that statehood was the only way to go to escape from these barbs, so easily made against the Territory. Despite the inability of the CLP to settle its policy on statehood, Tuxworth did announce the Territory's statehood claim formally in the Assembly on 20 August. But Heatley claims that Tuxworth launched the statehood policy as a defensive measure, rather than a long-term philosophical and political-economy objective.\(^{242}\) It is most likely that the culture of statehood rose significantly at that stage, because of the emotionally-charged sentiment that the set-backs and rebuffs engendered. And Hatton had yet to officially launch statehood. It can be seen that statehood was not a 'given' policy in the Territory.

\(^{239}\) Op.Cit., 148  
\(^{240}\) Op.Cit., 149.  
\(^{241}\) Op.Cit., 159  
\(^{242}\) Op.Cit., 162
Differences of opinion in the CLP over statehood emerged in early August, 1982, at the Party's Annual Conference at Katherine. A position should have been established, but a dispute erupted between Everingham and Tuxworth. Although both agreed the new state would have constitutional parity in respect of powers and functions, their position on Senate representation was at odds. Everingham wanted immediate Senate equality. Tuxworth wanted a phased, negotiated increase of representation. They also disagreed on a draft constitution, and putting it to a Northern Territory referendum. The Conference deferred the issue as party policy to a special meeting in Darwin. Bob Collins of the ALP, having taken over from Isaacs, happily joined in the apparent chaos. Except on the question of a referendum, he backed Everingham's position.243

The CLP’s Jim Robertson sought appointment as Special Minister without Portfolio. The idea was for him to Chair the select committee and to develop and organise the Territory's case for statehood locally and interstate. The Select committee would have 3 members from each Party. Tuxworth’s position, strengthened by John Howard, advocated a negotiated approach. But behind the public disputation, moves were being made within the CLP to draft a compromise.244 To an outsider that might appear as backing both positions. The Northern Territory News said:

> Not only has the CLP failed to heal the rift, it has left a time-bomb ticking on the statehood issue. Although Tuxworth may have secured support from his party on the broad objective, disunity on the central issue of representation remained. That question has never been resolved from that meeting!"245

Indeed, it is a question that would engender controversy to this day. The national recession slowed growth everywhere in 1983; but by 1985, there emerged a fully-articulated claim for full statehood. On 30 May 1985, at the Premiers’ Conference, the federal Treasurer announced that the Northern Territory would be treated for funding purposes as a state. The problem was that the Federal Government continued to treat the Northern Territory as of old, particularly in financial terms. At that Premiers’ Conference, Tuxworth was informed that the Commonwealth

243 Op.Cit., 164
244 Carment, D, “The Tuxworth Government: A Political History”, Occasional paper series, Number one, 12, 1987, University College of the Northern Territory, Faculty of Arts, Darwin.
government had slashed $12.6 million from the Territory’s 1984-85 budget allocation and had rejected a request for a further $15 million in 1985-1986. The Prime Minister, Bob Hawke, also told Tuxworth that the Commonwealth would treat the Territory as a state for funding purposes only from 1988, but the Territory would not be patriated specified functions. Tuxworth declared after the meeting that the cuts amounted to an unprecedented breach of the Memorandum of Understanding reached between the Commonwealth and the Territory in 1978.246 He and his advisers quickly concluded that the events of the Premiers’ Conference left them with little alternative other than to take the Territory along the constitutional road to statehood.247 Carment’s background underlines the above-mentioned episodes:

In mid-March 1985 the Territory Treasury became aware of Commonwealth government plans to cut funds for the Territory in the 1985-1986 financial year. The Territory’s Under-Treasurer, Dr Richard Madden, was concerned about the extent of possible cuts which might result in the abolition of a range of financial assistance schemes.248 Labor leader Bob Collins himself had stated in November 1985 that statehood would be Labor policy at the next election. (Everingham played down that putative bipartisan stance and pointed to the incongruity existing between the two Labor entities).249 The irony is that Everingham was distancing himself from it. Tuxworth had an ally in the Leader of the Opposition, Bob Collins. Carment explains:

The seriousness of the position became especially plain when on 4 April the Leader of the Territory’s Labor Opposition, Bob Collins, called on the government to join him in a united approach to the Commonwealth on sustained funding levels for the Territory. Collins said he was preparing a briefing for the Commonwealth aimed at keeping funding cuts for the Territory to a minimum in the forthcoming Federal budget.250 Tuxworth made a formal announcement that the only answer was to move for statehood. The atmosphere of frustration and aggravation coloured the culture of change to a statehood mindset. But Tuxworth himself fell from Cabinet favour, and

---

246 Carment, D, “The Tuxworth Government: A Political History”, Occasional paper series, Number one, 1987, University College of the Northern Territory, Faculty of Arts, Darwin, Ibid.
on 14 May, Hatton took-over.\textsuperscript{251} Hatton was in turn supplanted by Marshall Perron who retired in favour of Shane Stone as Chief Minister. Stone was one of the two statesmen in the context of their respective roles, responsible for building-up such a cultural phenomenon in the Northern Territory to its apex. (Given that Prime Ministers, and many other persons played important roles.) The two leaders are former Chief Minister of the Northern Territory, Stone, and the former Chief Minister of the Northern Territory, Steve Hatton. And I now examine their contributions, and how they brought the statehood culture ‘to the boil’, and also saw it reach a nadir of cultural rejection when it failed.

3.3.0 The states-men: Stone and Hatton

It is arguable that in the whole of the Northern Territory's statehood effort leading up to 1998's referendum and beyond, there was one name which stood out more than any other, that of Shane Stone. Post-referendum blame heaped on him might have been otherwise but for his failure to get statehood over the referendum line. It is arguable that had he done so, he would have been a hero to many of the same people who pilloried him after the event. But for others, statehood would have been a sham, lacking democratic process because of Stone. Stone was the Chief Minister of the Northern Territory from 1995 to 1999, when he resigned as Chief Minister. This was as a direct result of his personal handling of the statehood question after 1996, and its subsequent disaster.

3.3.1. Shane Stone: Visionary leader or self-styled innovator?

Many things have been said of Stone: that he ruled his government with an iron hand, and that he created a climate of fear not only in government circles, but also in the wider business community, which was dependent on government patronage (referred to as ‘the silver circle’). It is clear that he did things his own way. He revelled in his claim that he had a ‘hands on’ approach to government, and in the way in which he handled issues.

I know Shane Stone, well enough to write of him, particularly contemporaneously. He could be arrogant, autocratic, and innovative, and he was ‘head-and-shoulders’ over anyone-else in terms of leadership brilliance. Yet it was this quality that brought

\textsuperscript{251} Readers can read this little-known (or remembered) account of Tuxworth’s rise and fall, in David Carment’s history of it, cited above.
him down. He was not afraid of change or of controversy. That description also fits some of the greatest leaders in history: Napoleon, Bismarck, Wellington and many more outstanding leaders, including Australians Sir Robert Menzies, Sir Henry Bolte, Sir Thomas Playford, Sir John Monash and Sir Robert Askin of New South Wales. Doubtless this list could continue. Moreover, Stone possesses a lively intellect and he can dominate a meeting with ease. His personality is forceful and his speech is purposeful. He was master of situations, with a grasp of detail and context so that he could lecture to a group on a subject of his choice, and portray a credible expertise in the topic. He possessed extraordinary confidence in his own capacity to exercise leadership and to give orders, which he did. Yet he is not tall or of imposing stature, in fact he was in some ways boyish, and chubby in appearance. No-one mistook his emphatic form of diction and elocution for anyone else. His ever-present mobile phone sent instructions and other communications to startled recipients throughout his jurisdiction, a form of ‘remote control’. His ‘minders’, like Peter Murphy, were top-class ‘prophets of spin’, and he reigned supreme. A finger beckoning a minister in parliament obtained instant movement! There were many who were deferential.

The Northern Territory daily newspaper, *The Northern Territory News*, was under no illusion about Shane Stone’s imprint on statehood when it summed-up the prospects of the Constitutional Convention in its Editorial of 3 March 1998, under the heading: “The Mark of Stone”:

> In much the same way as the Chief Minister runs his government, the upcoming statehood convention has the mark of Shane Stone all over it. The Statehood Convention, which is supposed to encompass a broad church of representative Territorians, will meet on March 25 to plot a course for statehood… Given that Mr Stone has handpicked the organizations from which each delegate or elected representative will be

---

3.3.2. Stone and his leadership

In this case, political leadership and the statehood process are necessarily coaxial. But it is the quality and nature of the conjunction which is vital, and not easy to define. It is also timely to understand the closeness which Stone came to becoming the hero and visionary leader. The closeness of the vote stands between him as victor and vanquished. He was nonetheless roundly condemned despite the closeness in the result. Yet the referendum failed, and this is a popular conclusion. There seems to be no question but that his over-riding consideration was to secure statehood, if he had to "drag it over the line 'kicking and screaming'. The means by which he attempted to do this deserves closer examination and the following chapter-headings all describe intrinsic parts of that process, and in doing so, demonstrate Stone's 'hand in the pie'. Before that, however, is further evidence of his leadership influence. He told an interviewer: "I have coped the criticism on the chin, I will take the responsibility for not selling it properly, I will eat humble pie" Selling statehood involves education, and funding for that was not forthcoming from Stone's government. I distinguish propaganda here. That was plentiful. Upon the referendum result becoming clear, commentators near and far set their sights on Stone. This comment is typical: "He has been criticised for not allowing delegates to the statehood convention, which came up with the draft state constitution, to be

253. To underscore this point is a passage from my statehood Seminar presentation at the Northern Territory Supreme Court Jury Muster Room in April 2001: "Whilst it is necessary to have strong leadership, it is the people who must and will decide the processes. There are (a variety of leadership) themes. Adolf Hitler for instance, in Mein Kampf asserted that "the leader of genius must have the ability to make different opponents appear as if they belonged to one category". That is the crude extreme view of course, but Machiavelli might not entirely disagree. On the other hand Max du Pree in Leadership is an Art held that "The first responsibility of a leader is to define reality. The last is to say thank you. In between, the leader is a servant". But I think Warren Bennis got closer to the bone when he said "Good leaders make people feel that they're at the very heart of things, not at the periphery. Everyone feels that he or she makes a difference to the success of the organisation. When that happens, people feel centred and that gives their work meaning." Of course the issue of creating statehood is not just one of leadership and democracy. But leadership is easier to explain. I do not think I would be out of order in saying that it is a popular conception, I think misconception, that the three main causes given by many people for the first statehood bid failing were: Shane Stone, Shane Stone and Shane Stone. To be more cynical might query "whose dust, whose sweat and whose blood?" But one thing is certain, he was central to the statehood bid and if it had passed, doubtless his place in history as the person who brought it about by his own dominant will would have been assured. Let us not forget that statehood failed by a narrow margin. If a few hundred more people had voted 'Yes', the referendum would have passed, and we might now have been living in a legal state."  


elected. Instead, he chose most of them himself. But on Monday he said that was only one of up to 30 reasons why people voted against statehood. His cutting-out of Hatton as a delegate was in hindsight a churlish act, one which brought this comment from The Northern Territory News:

But the convention suffered its biggest setback when the allegedly democratic processes within the CLP parliamentary wing conspired to dump the former chairman of the Constitutional Development Sessional Committee, Steve Hatton, as one of two CLP representatives. More than anyone else in the CLP, Mr Hatton will be remembered for his role in helping draft an NT Constitution. He is also probably the only member of the Government who can work constructively with the Land Council leadership. By ignoring Mr Hatton’s important role, the government will find it increasingly difficult to attract broad Aboriginal support for an NT Constitution.

It is also difficult not to think he was being sarcastic to a reporter when he remarked:

Voters were also afraid of ‘lifestyle’ changes’ such as losing the traditional fire cracker night, which celebrated territory self-government and of having federally-imposed speed limits on open highways.

As for letting Stone rule the CLP parliamentary wing, dominance is not unknown with strong leaders. But there were other ministers, and though they were cowed and fearful for their positions, they also may be accused of being weak, puppet-like ‘rubber-stamps’. They tolerated Stone's behaviour and over-lordship without question; all but one of course, and he, Hatton, was accused by them as not being a “team player”.

This anecdote emphasises their complicity and subservience to Stone's will. He paid the price; they did not. Ministers have a duty to safeguard good government, although this is a question which needs to be examined further. In any event the Standing Committee did not consider this aspect, and under the chairmanship of Hatton, were content to confirm Stone’s culpability, which has not been doubted in that respect.

256 Ibid.
258 Ibid.
259 …which were “not worth dying for”, were the words used to me by a respected minister in Stone’s Cabinet.
260 This is precisely the description of Hatton given by another minister in a conversation with me. It was typical thinking, the government acting like a rugby team.
3.3.3. Standing Committee Report

In relation to the Standing Committee’s report, I stopped short of including an examination in depth of its findings, particularly of the market survey that it authorised. I conducted a study on it, but the sample response is too low (125 respondents) to draw cogent conclusions, particularly as much of the subject matter focussed on blame for its failure. It is simply noted that the Standing Committee reported on statehood failing. It also is noted that in the polling, 35.7% of the 112 unsolicited comments to a question on the respondent’s reaction to the outcome of the referendum made the point that “people were rejecting the party, not statehood.”

This consultation response was backed-up by the said ‘Market Equity Report’ market research. But only so far as Stone was a significant factor, note, it must be stressed, not the major factor. The major difficulty with blaming Stone as a primary cause is that it was not given as such in the market survey: the primary cause was given as “lack of information.” Most respondents cited lack of information in first place (19.8%), with (don’t like) Stone following in third place. (10.6%), yet the Committee highlighted political fault, and Stone’s role.

Whilst this section deals with the assessment of Stone’s role in promoting statehood culture, as found by the Committee, it is apt here to consider a few contextual aspects of its judgment, and it becomes clearer that there is more of interest in the findings. Population, or its lack thereof, was given as a cause of voting ‘No’ in Reason 6 (for failure). The committee compared the populations of other Australian colonies and Alaska at the time of statehood, all much less than the Northern Territory's 180,000, and correctly, in my submission, it came to the conclusion that it is not logical to claim population or its lack as a major ground for rejection. The committee, again correctly, in my submission, stated that context is important, yet people still contend that the Northern Territory’s population is small in comparison to other States of Australia, even Tasmania. The context is, however, different from every other contemporaneous nineteenth century state applicant/entrant, and though it may be difficult to identify, it must somehow collectively occur to the constituency:

261 Table 18, Market Equity report.
262 Standing Committee on Legal & Constitutional Affairs, Report into appropriate measures to facilitate Statehood From Table 16, Market Equity report.
Of the six main reasons for the No vote, the last one is interesting, if only because it is contrasted with the population of the colonies when statehood was granted to them. Western Australia had less than 50,000 people; Tasmania was about the same. It might well be that people use the comparison between the Northern Territory’s population and the other states at the time of the referendum. But this does not hold-up, because Alaska’s population in the 1950’s was less than 50,000. At the time of the Northern Territory referendum, the Northern Territory’s population was *circa* 180,000. It is apparent that any education campaign must show the figures of other territories and colonies at the time of their creation as states, and point-out that population is relative to other criteria when assessing the worth and value of the Northern Territory entering the Federation.263

The Standing Committee findings are not challenged, in that the materials and sentiment before it could well support the conclusions that were drawn. There are however, puzzling aspects in comments made. At any given time such comments could be extracted from (letters to) newspapers on given issues. Several examples only are published in the report, not several thousand. It is not difficult to think of the proverb: ‘one swallow does not a summer make’. The small sample does not add veracity. Stone and his role in building a statehood culture is the subject here, and many people blamed him for running statehood his way. But the Standing Committee also mentioned the issue of financial doubts. In such circumstances, what could be the context that rated it so highly with the Committee? It didn’t rate at all in the market survey. Without evidence, the general conjectural claim that somehow financial cost is involved with the Northern Territory becoming a state because it is ‘subsidised’, is as good as any other reason, and it is just as erroneous. (See Chapter 7 discussion) Many people still believe that the Northern Territory would be worse off financially by becoming a state as it is ‘territory’-small. This is a fundamental and widespread error, which beckons for education on the matter. But the nexus between population and finance is equally misunderstood, and perhaps the ignorance of facts, and the way information was spread, perhaps too-much, or too detailed, led people jumping to their own conclusions, bypassing facts. The correlation of fewer taxpayers equals less income *per capita*, is just wrong. This imputation is made an issue by the Standing Committee, if in fact it was an issue at all with voters. So, blaming Stone and lack of population in the same

report in such a way, must be qualified.\textsuperscript{264}

The Standing Committee identified a number of causes for failure. And it was unequivocal about the primary reason: an appalling or lack of appropriate education. But it also brought-out Stone’s role as predominant. Of course he was, but the myriad of enabling causes lay elsewhere. The Standing Committee opted for populism in its emphasis, although most faults were certainly mentioned.

3.3.4. A Top-End terror

A latter day assessment of Stone was made by \textit{The Australian} under the heading of “A Top-End terror's colourful rise”. The national newspaper referred to a leaked memo, but in doing so, reviewed Stone's career as a biography. The following excerpts from the article contains descriptions of his days of power:

Stone has provided his critics with plenty of ammunition to fire at him, writes Matt Price. There has been plenty of fodder for critics determined to stereotype the 50-year-old Liberal as a red-necked loudmouth from the Top End. Stone once infamously referred to an Aboriginal leader as a “whingeing, whining, carping black” and as NT chief minister introduced the Territory's widely criticised mandatory sentencing laws. Yet Stone also in the early 1980s went to establish a legal practice in Alice Springs. It was around this time that the young lawyer with political ambitions struck up a friendship with John Howard, who apparently knew Stone's parents, decriminalised marijuana, named Gough Whitlam as his political idol and genuinely championed close links with Asia to the extent that Territory ministers were ordered to learn Indonesian.\textsuperscript{265}

This article omits any mention of the battle of statehood and hardly provides any more information. And what it certainly did not report, was the spectre I personally witnessed: Stone sitting on the back-bench in the Assembly after being deposed as Chief Minister, as humiliated as a person who once enjoyed such power can be. He endured much enmity and ‘pay back’ by his former underlings, the same MLA’s who previously moved quickly to him when he beckoned with a finger. The Opposition certainly kept its distance. In some ways his presence in the Chamber was an unnerving and unsettling experience, and many were relieved when he did go. This paragraph may have been a footnote or omitted altogether but for the imagery it portrays of Stone's personality and character. He could have resigned immediately as most deposed chiefs do, but chose to stay until it was opportune for him to go -

\textsuperscript{264} \textit{Ibid}.

and when the CLP was in a better position to retain the seat he vacated. When he complained about a lack of humour from both sides, it was most likely because no one regarded his presence as a laughing matter. Many commentators wanted to lambaste Stone from a safe-distance. The episodes demonstrating his force of personality and character are included here as testimony of Stone’s ability to ‘ramp-up’ the culture of statehood, for and against, but elevating it in the course.

In another media assessment of the failed statehood referendum, but for current purpose an example of Stone’s single-mindedness, seen as necessary to sustain the sentiment of statehood, the following interview confirms his approach. ABC Television's *Lateline* ran its story “Game Plan”, interviewing participants in statehood. Reporter Murray McLaughlin, had Stone firmly in his sights, thus:266

*Murray McLaughlin:* In the tradition of 20 years unbroken rule of the Northern Territory by the Country Liberal Party, this man is used to getting what he wants. A former small town solicitor, Shane Stone last year stared down a barrage of criticism when he became a Queen's Counsel...Now he wants promotion from Chief Minister to Premier, for Territorians to be spared the sort of humiliation they endured last year, when federal parliament intervened to overturn their euthanasia law...*Shane Stone, NT Chief Minister:* The excuse for such intervention is immaterial, because that is all it is, an excuse. An excuse for the ill-informed, such as southern politicians who describe us as a tin pot little hamlet, an outrageously arrogant insult to all Territorians.267

### 3.3.5. The contrary case

Much of the criticism levelled at Stone in his handling of Statehood is given force simply by the fact that it failed. Argument has been adduced to support the reasons put forward for that failure in the various ways specified, but no one has put forward the case that Stone had committed any offence by doing what he had done, or that he had breached the Australian Constitution by taking Statehood into his own hands and running it. Nor is there any suggestion that Shane Stone is in any way legally culpable for his actions, indeed it would be surprising if he were. No one has taken legal proceedings or action against him or his colleagues; no actionable civil wrong has been taken, or even suggested. There are persons in the community capable of

---

266 *ABC Television, Lateline,* “Game Plans”, reporter Murray McLaughlin, 15 October 1998. All references to this title had to be changed from the story introduction by Maxine McKew, which befits the story better, to “Game Plan. What went wrong?” The story was introduced by McKew as: “What went wrong?...Grand Plans ... That's our story tonight”. It is at odds with the formal heading. I feel obliged however, to cite the proper, official title which clearly appears over the story “Game Plan” as the heading, even though it is only partly apt.

mounting such challenges. In fact the undoubted greatest criticism and fault is that he failed to obtain statehood after people put their trust in his leadership. Understandable anger, rage, frustration and bitter disappointment throws-up emotionally-charged allegations. To be sure, the CLP membership harboured most of these emotions, and Stone paid the price in the Territory parliament by being obliged to hand-over the reins of government to new incumbent Denis Burke, and he went to the backbenches until he retired, thus causing a by-election in the seat of Port Darwin in 2000. But he still retained the confidence of his federal counterparts, sufficient for them (in the Liberal Party of Australia) to elect him unopposed to the presidency of the Liberal Party in 1999. One federal government minister John Minchin described him as "the best Liberal President we have had." Prime Minister John Howard also expressed his confidence in Stone; the two leaders share a close rapport, which included the Statehood days.

There is the acquiescence too of the Northern Territory Ministry to the steps taken by Stone, which differentiated his style from that of Hatton's Sessional Committee. Such acquiescence could be interpreted as an endorsement of Stone's course. Cabinet ministers are presumed to be free to give their opinions in Cabinet, (albeit, to maintain Cabinet solidarity, when not in session), and from what evidence there is, namely that of Hatton, they said nothing, did not speak on the matter either in Cabinet or in the Legislative Assembly in criticism of Stone. They neither criticized, nor approved, there was just silence. Can it be said as proof that silence indicates approval, or even that it does not indicate approval? The question is subjective to individual views, together with other facts. This concern with blame obfuscates the statehood culture which Stone fostered, raised, and ran. It was opposed no less passionately, and the debate that ensued raised the culture of statehood high.

Finally, I refer to the role afforded Stone by the interpretation of the Select Committee, and carried forward by its successor, as to the Legislative Assembly's role. That addition to the state creation paradigm allowed the Legislature dominated by Stone to exercise a far greater role than the formula intended, and it was in effect an interception. And its genesis occurred at least 6 years before Stone took-over the reins of the portfolio and 12 years before the referendum. It was an opening which played right into the CLP hands. No-one thought it was a mistake at any stage: it was never challenged. The processes that were used would be of academic value.

and debate only, and the purists would have been alone in theoretical objections, except for hypothetical legal challenges as to constitutional validity. But there would still have been an enormous part of the Northern Territory polity which believed that there was, or would have been as is called in Australia, a ‘Clayton's state’, a 'state' when you don't really have a state! The arguments remain on both sides, but reside in recess in the post-statehood bid, until the next time.

Shane Stone thus can be said to have been a strong leader and personality, and led the last build-up of the statehood movement. He was fiercely protective and a fighter for the Territory, but power acquired arrogance which required that statehood be cast in his own dimensions. Yes, he was misguided and has accepted the responsibility for statehood failing, but he should not 'hang' alone. There were a number of factors involved in statehood failing. It is notable that Stone has not accused others as he could do, nor has he made any effort to explain. But the reasons for failure went beyond his manipulation of them. It is unlikely he would have stopped there. He was a self-styled innovator, but not quite a visionary leader, because his enculturation of statehood failed in the end.

3.3.6. Steve Hatton: the Godfather or Pretender?

Steve Hatton was committed to statehood early in his parliamentary career, but it was by accident that he came to hold the statehood chairman’s position. Another Territory MLA, Jim Robertson held the portfolio as Special Minister of state. Hatton told me how it happened:

We had started the campaign within the CLP for Statehood in 1985, under Ian Tuxworth. We actually held a statehood convention at the old Darwin hotel convention centre. And we launched the campaign for statehood. Shortly after that they put together a constitutional session… what was then called the Sessional Committee on constitutional development. Jim Robertson was made chairman of it, to work towards statehood. And Jim sadly resigned from politics in February - March 1986. He resigned from Territory politics in February -- March 86. In 85-86, that's when he had that role of pushing the cause. And he would have continued in the role had he stayed in politics. I was absolutely committed to it (statehood); I had been before my election. That and economic development were the two driving issues in Territory politics. After that I got involved with the committee, a couple of months later. I became Chief Minister, and I took over as chairman of that

269 The term was derived from a television advertisement which depicted a new type of beer which was non-alcoholic. The brew was not a marketing success, but its name has taken on a wider connotation.

270 I wrote to Shane Stone, seeking an oral history interview, but received no reply.
Hatton emerges from the exercise as one of the few persons who can point to his successes for guiding statehood in a direction which met the approval of many commentators, except for his parliamentary colleagues, and certainly not Stone. As reported by Heatley, even his political opponents were fulsome in praise. Former Labor Premier of Victoria, Mrs Joan Kirner was one. The Chief Minister was the formal recipient of the ‘kudos’, but there was little doubt as to the real recipients of acknowledgement: it was the Sessional Committee, and it was chaired by Hatton:

The Territory government’s push for Statehood received a big boost when on 30 June its efforts to recognise Aborigines in a new constitution were praised by the Centenary of Federation Advisory Committee. The committee chairperson, Joan Kirner congratulated the Chief Minister on the work of the Legislative Assembly’s Sessional Committee on Constitutional Development. Perron had told the committee that the Territory government wanted Statehood by the year 2001 and the Sessional Committee was looking closely at how Aboriginal law, language and culture could be reviewed, how sacred sites could be protected and whether the constitution could protect land granted under the *Aboriginal Land Rights (Northern Territory) Act 1976*.272

In these items, it is submitted, lay the crux of Aboriginal concerns. And the Sessional Committee was addressing them. It is tantalising to speculate that had the Committee’s recommendations on these matters been accepted when presented to the Legislative Assembly, in the Final Draft Constitution (along with the last-minute submission of the draft Bill of Rights), that the objections from this Indigenous side might well have dissipated. But the CLP, through Stone, had other views and considered it too much a concession to allow almost a separate regime to exist against the Rule of Law. One third of the Territory’s population was to be treated differently to the other two thirds, and the CLP considered that discriminatory, or in the emerging description of the day, ‘reverse discrimination’.

There is no doubt in the mind of Hatton where blame lay for the failure of the first bid: Shane Stone:

> I think there was feeling in the community about that, it's fairly clear the comments that have been coming in particularly since that time; the very strong view in the minds of the community.

---


(Murray McLaughlin, reporter): *That the Chief Minister had hi-jacked the process?*

Steve Hatton: Yes, one of the campaign slogans at the time was, we want statehood, not *Stonehood.*

### 3.3.7. Breach of twelve years of promises

Readers are invited to read my interview with Hatton in Appendix 6 for a first-hand account of his experience in the statehood exercise. Hatton's evidence in this interview provides clues, and direct evidence of what happened at vital points. One such point is described by him:

If they had picked up our report in '95; picked it up and torn it to pieces and done something with it...we had five years to work-through the making of a constitution; to negotiate with the Commonwealth a whole array of things; we could quite comfortably have achieved the 2001 deadline. It was eighteen months too late when we tabled it. It was looked at in the light of the disastrous process of the statehood convention. You have got to remember that what happened in '98 was a breach of twelve years of promises we had made to Territorians; that the politicians would hand-over to the people. We'd do the 'homework', and then it would go to the people. That was always the understanding with the people of the Territory. And that's what we didn't do.

Hatton maintained that: “We should have had an elected Convention. We should have had a public education campaign leading-up to that convention, so that people became more aware of the issues when they were voting for candidates.” This was a reference to the cultural build-up overseas, in Hawaii, with essential pre-conditions for their Constitutional Convention, following the major Constitutional Conference:

There’s a book, if you read the tabling statement I made, called "*With An Understanding Heart*", which is the history of constitution-making in the movement to statehood group in Hawaii. There's an awful lot of important reading in there. And how they went about it. And you can see when you read that why it worked. And you know that's a very similar process to Alaska. Alaska had tried the other way of going straight to the federal parliament (Congress) negotiating a statehood in advance, and (that) failed previously. And Hawaii had tried that and had failed previously. So only the propaganda force of a popularly mandated constitution…eventually gave them the weapons that led to them getting statehood. As did fifteen of the prior States that came into existence.

---


Staying alive: Starved of education funding

Education was central to Hatton’s idea of how to proceed. In the next few paragraphs reside a plethora of issues, some of which go to the heart of a change of role to concentrate on producing the constitution. From the appendix interview:

I approached Marshall (Perron) and requested that I be allowed to continue as chairman of the Select Committee on Constitutional Development, and he agreed that I did it, but only on condition [that] I didn’t talk about statehood, and only talked about constitutional matters. So: the Select Committee on statehood issues to keep it surviving, I wasn't allowed to talk about statehood, only to talk about the constitution. And we worked really hard on that. He just thought the timing was wrong and I don't think he had a commitment to it, I just take his political judgment on it. I wouldn't have done it; even now I wouldn't have done it, but that's the way it was. I was going to take whatever avenue it took to keep it alive.

It was apparent that Statehood was almost dead, starved of funds. Hatton describes the work necessary to keep it alive:

We actually did a lot of work from May 88 through to 91, to the point where we had done other work and researched enough. We'd been around 60 or 70 communities in the Northern Territory taking evidence and recording it in this document, the material we had. We knew what the issues were that needed to be addressed, and we were in the process of finalising the public education campaign, the public awareness campaign on constitutional matters. We were aiming at the 91-92 budget, to get the budget to do it. (We were then spending a quarter of a million dollars a year on the Select Committee, then there was the Sessional Committee, now there is the Standing committee). As it has turned out, in the seed-cuts in 1991 we both had our budget halved down to $125,000 and no money provided for public education.276

What happened then?

It stopped the public process completely. We didn't even have a travel vote. We couldn't even go out and talk to the people, except to a Rotary Club meeting. And make speeches in places like that, because we had no money to do it. So we went into a research mode, and produced some, I think, very important discussion papers, option papers and recommendations. It wasn't until the C.L.P. in Central Council in Tennant Creek, I think it was in 94, when one of the branches, from Jabiru, asked what's going on with statehood, because I'd been talking and keeping it alive, trying to pretend the government had not dropped the issue cold. I got up and gave a 20-minute burst on where we were

at and what we were going to do. And the whole Party were really keen to push ahead with it at Central Council. I think Marshall realised that the timing was right. His attitude shifted…

Lack of Education funding was a serious blow to lifting the cultural understanding of statehood. But Hatton’s role and stance is seemingly vindicated by the people at the referendum. It is ironical, however, that the major problem of misinterpretation, or sense of what process was required, (in producing materials for a draft constitution), was performed on Hatton’s Select Committee, and which subsequently proved so disastrous. Hatton’s group had to move-on, to concentrate on the draft constitution.

Under Hatton’s chairmanship, consequent to a misreading of instructions, or (giving him the benefit of doubt of misconstruing the paradigm of process), a muddling of cause and consequence by instruction writers, the Select Committee considered its duty to be to deliver a definitive model draft constitution, and everyone went along with it. The task was changed to provide a model draft, to be sure, but the Sessional Committee did such a good job with the offering that when Stone urged (instructed) the Constitutional Convention to alter it, there could only be a deconstruction of it. That is explained in chapter 5. Can Hatton and his committee be blamed for producing extremely good work? I think not, based on his testimony above. He described to me the saga of the draft final constitution report tabled in the Assembly. The final draft constitution was central, but the report was extensive, containing over a million words, one of the greatest wasted efforts ever:

I tabled that report in December 95, having tabled six months before that two drafts of what we were proposing as a draft constitution. And getting no feedback used to drive me absolutely batty. We finally tabled that in late 95. The Select Committee report to Parliament -- 1.4 million words or whatever it was, which was a composite of every word we had ever put together. That's where the Select Committee report ended up in Parliament. But Parliament noted it with minimal comment.

That was the turning-point. Statehood was ineluctably tainted from that point-on, albeit the seeds of failure were planted when statehood commenced. (See Chapter 4). In the event, Hatton’s committee did a superb job, and there was little need for the Constitutional Convention to do much but “tinker around the edges”, and include Rights. The culture Hatton sought to implant was of inclusion, of concession; and from his party’s point of view, appeasement. Whenever the first statehood bid is

277 Ibid.
mentioned, Steve Hatton’s name comes to mind, and he can hold his head high, so far as even-handed treatment goes.

The untrusting stakeholders: Aboriginal people and Labor

The salient feature here is that there was a schism in the making of a more cohesive culture of statehood, followed by opposing entities that emerged to dampen the statehood culture, not necessarily undeserved.\(^{279}\) This requires a clear view of the nature and extent of the inter-relationship between statehood enculturation, and their particular cultures per se.\(^{280}\) Stakeholders were obliged to define their cultural approach to statehood. Theoretically, every man, woman and child in the Northern Territory are stakeholders in the statehood process.\(^{281}\) And within all groups, further stake-holding divisions occur according to numerous factors such as political and philosophical beliefs, industrial divisions, wealth, class: the list goes on.

That does not mean however, that there cannot be found areas of a meeting of minds and a sharing of beliefs. Only a few groupings however, are extraordinarily influential in determining whether there will be a state or not. One of these includes the aspirations of non-Indigenous people, comprising two thirds of the Northern Territory population. The mainstream non-Indigenous group ostensibly had their approach defined in the Constitutional Convention of March-April 1998 (however allegedly skewed as described herein). In addition, my subjective source material emanates from the actions of the CLP, and reactions to it. It was the ruling political party at statehood and before. One might think that these two groups may well be termed major stakeholders.\(^{282}\) They are, however, constant reference-points, so the emphasis can be placed elsewhere. In population terms they are not alone as major stakeholders, because the other one-third, Indigenous peoples, also have claims as

\(^{279}\) I devised a simple test to define “stakeholder”, as meaning a group or individual whose role and participation is of such importance without which statehood would either not succeed or be diminished significantly as a result of the lack of, or by, counter-action in such participation. A list of groups, interests, bodies and organisations required compilation of numerous categories. The elimination of all but the top two or these provided the groups treated here.

\(^{280}\) Left out is Australia’s Defence Force in the North (ADFIN), a force of at least 5000 members plus their families. It is difficult to know definitely whether they could be counted as a single “stakeholder” group. It is decided to exclude them from this test on the basis that they vote as individuals and the organisations do not place political pressure (particularly in the matter of statehood) upon their members, or through the organisation itself. It is corporately neutral. They often do, however, exhibit a voting bias, but so do the Territory Police, amateur fishing enthusiasts, and trade unionists.

\(^{281}\) Direct democracy requires the vote of each person who holds the franchise, if only by virtue of age, and those who are not disqualified. But a constitutional convention, indeed other methods and components of state creation, such as by electoral college, national referendum, federal parliament, down to expert panels and committees, must be represented in some manner which gives expression to the democratic ideal.

\(^{282}\) The Government and the government political party are thus excluded, also excluded is Australia’s Defence Force in the North (ADFIN) See F/N 279 above.
a block without which statehood would be a false representation of its creation by such of its members. It is not difficult to determine the third most important stakeholder as a group, the Territory Opposition party, at that time the Australian Labor Party (ALP). Labor Party representatives provided valuable oral insights of contemporaneous attitudes within the host organisation. In examining each group, the objective is to determine to what extent they had a role in statehood failing. I look to see how statehood was handled, and what values were represented. Until the aggregate of the stakeholders, want a state, it will not be forthcoming.

Accordingly, the two groups chosen to represent major stakeholders in this paper are Aboriginal people, and the (Territory) Labor Party. An appropriate approach was sought and, in the case of Aboriginal people, it was not a hard decision. The Northern Land Council (NLC) and the Central Land Council (CLC) are strong groups in Northern Territory Indigenous organisation, but it was the statehood functions and Constitutional Conventions they ran which spoke loudest of the Indigenous statehood culture. (Former Chairman of the NLC Galarrwuy Yunupingu, played a major role in the northern organisation).283 Thus, distilling the work of those Conventions formed the approach taken. The Labor Party’s role is represented through my oral history interview with Maggie Hickey, (see Appendix 7) former Leader of the Opposition through the statehood process, leading-up to the referendum.284

Each group, Indigenous and non-Indigenous needed to define their cultural approach to statehood. The mainstream ostensibly did this in the Constitutional Convention of March-April 1998 (however skewed as described herein). A question, however, arises how Aboriginal people should be viewed in statehood terms. As a race, there is an argument raised that they must be considered differently, almost mirroring fears the CLP held. I think it is spurious, but it must be considered.

3.4.1. Separatism in constitutionalism misconstrued?

Shannan Murphy introduced a refinement of the principle of constitutionalism; that it is streamed according to the morés and traditions of particular classes of people; and he refers directly to Australia’s Indigenous people. Murphy cites Aboriginal

---

283 I regret that Mr Yunupingu did not reply to a letter seeking an interview. He is a most articulate leader.
284 The Hickey interview is verbatim, and very frank, as is Hatton's earlier interview. Mrs Hickey also spoke strongly for Labor in the Assembly. (Chapter 5). John Bailey also kindly gave me an interview, although the material is not used because it repeated much of Mrs Hickey’s views.
leader Mick Dodson, to illustrate his point:

Cultural recognition is the key to Indigenous policy. And the constitution is the obvious starting point for such recognition.\(^{285}\)

There certainly was a culture of oppression against Aboriginal peoples engendered upon that major stake-holding group. It has existed since the first Europeans ventured to Australia’s shores and seized the land, ruling by ‘conquest’. That was the law as taught in law schools up to 1973 at least, and I learned that principle, until I had to change my understanding after the *Mabo* case. Murphy contends that:

Indigenous ethno-politics also bring state sovereignty into question by undermining its premise – in Australia’s case, the myth of *terra nullius* – and by demanding recognition that Indigenous peoples share sovereignty with the Crown. Constitutionalism thus is often advocated as a method of working towards reconciliation with Indigenous peoples. \(^{286}\)

Murphy says that there are numerous examples of constitutionalism being used in this way overseas, including Nunavut, ‘home rule’ in Greenland, the modern day treaty process in Canada, and the constitutionalism of the Treaty of Waitangi in New Zealand. There is only a modicum of truth in his claim, so far as it relates to the Northern Territory, although I think it is more applicable to the *general* role constitutionalism plays anyhow; but in this case, the cultural ties connote both a statehood subject and the culture of Aboriginal peoples. Murphy argues that the:

…constitutional development process from 1985–1998 was not culturally appropriate for Indigenous peoples, as it failed to recognise Aboriginal and Torres Strait Islander Territorians as a distinct and special group with resultant rights, and because it did not address their concerns. The constitution that was ultimately put to the referendum was in essence a denial of the Aboriginal domain within the Territory. It also failed to meet any of Tully’s three criteria for culturally appropriate constitutionalism.\(^{287}\)

What are those grounds? Murphy answers:

Tully argues that social contract theory, the traditional foundation of Western understandings of the constitution, is inapplicable to plural societies because it is based on a supposed homogenous founding people who all consent to a governance structure. In Boucher and


\(^{287}\) Op.Cit., Ibid.
Kelly’s term, social contract theory is premised on ‘atomised individualism’ – free and equal subjects who agree to give up their sovereignty in return for the protection of the Sovereign. Atomised individuals, moreover, are ‘divorced from their ethnicity, gender or culture’. This position has a number of implications. Citizens in effect have no individual identity, but are conceived of as a singular founding people. The nation-state also assumes this singular identity. Rights are thus located in both the individual and the nation-state, but not in groups within states, such as Indigenous nations. Flowing from this individual conception of rights is the superficially appealing idea that each person within a political community should be treated uniformly, instead of equitably – a position that makes different treatment for different groups within a state problematic and counter-intuitive. Within the traditional Western social contract approach to constitutionalism this liberal emphasis on the individual leaves no room for pluralistic societies to reach an accommodation of their differences.  

With respect, I think that is putting too fine a point on it. And the premise is faulty. Look at the recognition accorded to the Scots, Welsh and (Northern) Irish of the United Kingdom, and there are other examples. Hatton devoted much time to the consultations with Indigenous communities, and Aboriginal interests were considered at every turn, up to the time of his loss of statehood management. The principle to be applied, I believe, means that all stakeholders in the sense described are required to consent to statehood as a whole, and if that involves them as a group or block, so be it, social contract style. That can be compartmented, certainly, by adding… “within the Rule of Law”, and other riders. The central point is for inclusion, That is, the group exists in a pragmatic way to be acknowledged and counted, not that the group has no identity.

To better understand the argument at all, we must look again to historical events. At a meeting in Melbourne on 25 November, 1994, the state premiers agreed to set up a committee to look at progress toward the Territory statehood. Chief Minister Marshall Perron claimed that this "promised to be the Territory’s biggest step forward yet in its push towards statehood." But he cautioned that the Commonwealth was the final arbiter on any statehood decision.  

Prime Minister Keating, however, was less than enthusiastic to provide his imprimatur for statehood. In a letter to the Chief Minister eleven days before the 1995 election, but not revealed until 25 June, he said that successive federal governments had decided that statehood would only be possible “…when there is clear evidence of

\[288\] Ibid.  
community consensus and support for the proposal. This consensus is not yet evident.” Keating also reminded Perron that the Federal Government had responsibilities for Aboriginals, the environment, uranium and industrial relations. "No developments have taken place serious enough to change the Commonwealth’s view that a further transfer of state powers would not be appropriate at this time”, the letter added. The message was clear: Keating meant: the treatment of the Northern Territory’s Aboriginals was the main obstacle.

3.4.2. Aboriginal people: suspicious and marginalised

As stated, the largest single interest group is the Indigenous people of the Northern Territory. It is not sufficient to place everyone of this general grouping into one category without qualification. Many would cogently argue, for instance, that there are urban Aborigines, well versed in non-Aboriginal ways, the groups who travel back and forth between traditional societal groups and so-called white lifestyles; and the traditional ‘blacks’ whose cultural and traditional mores and experiences are predominantly tribal. These distinctions are more appropriate to linguistic and behavioural patterns such as to allow researchers to distinguish such groups for purposes other than the present investigation.

The Northern Territory’s Indigenous people expressed their corporate opinions in their own Constitutional Conferences of Kalkaringi and Batchelor, and to some degree, through the Land Councils. They were the most predominant group to express deep suspicions, fears and rejection of the government-led statehood push. It can only be hypothesised, but the CLP wanted the Territory’s vast land resources opened-up for development, whilst the Indigenous community, owners of over half the Territory’s land mass, were as a block, less interested in non-Indigenous exploitation than asserting their sacred bond of kinship with their land. They also considered sharing in the benefits of their land’s bounty, with the financial capital provided by those who had it. In one word the main issue was ‘land’. In terms of a cultural shift, it is possible there could have been some movement from entrenched objection, but it is also possible that the Aboriginal owners could have “shut it down”.

They had no urgency to negotiate, no pressing need, whereas the non-Indigenous entrepreneurs had no such luxury. In the *interregnum*, it was the High Court of Australia which decided the compromise in the *Mabo, Wik* and subsequent cases.\(^{294}\) Aboriginal ownership of vacant Crown land became law, with qualifications over non-vacant Crown land, but including pastoral leases.\(^{295}\) Land was the lead-part of the chain of that causation.

Garth Nettheim states in a contemporaneous article that “…they (Aboriginal people) also have strong reasons to distrust the Country Liberal Party…The CLP has almost invariably, gone into election on the basis of populist antipathy to Aboriginal people and their interests.”\(^{296}\) There are people connected in some way with this group who believe statehood failed at this point, because of the negative view of the Territory’s Aboriginal people as a whole. It is dangerous to confirm such a wide-sweeping statement as Nettheim makes, unless there is something more concrete to substantiate it; but there were genuine concerns, and I set-out to survey them to gauge the nature and extent of Aboriginal statehood culture.

Aboriginal people have met to consider statehood on various occasions, since 1989 at least. They met in 1993 and held a Territory-wide Constitutional Convention in which they sought to secure their laws and rights, so as to protect them from changes in domestic law made at the whim of politicians.\(^{297}\) The themes were ‘fleshed-out’ in 1998. There were preliminary meetings in several Northern Land Council regions. The Constitutional Convention held in Darwin in March-April, had gone badly for Aboriginal people. They were deeply distressed by the manner of its conduct. They said it was inadequately publicised (perhaps they meant inadequately explained, although Hatton’s consultations went far in that direction), and that the delegates were in the main, hand-picked by the Northern Territory government.\(^{298}\)

---


295 The Mabo cases consisted in fact of six cases, but may be cited as: *Mabo and Others v Queensland, (No.2)*, 1992, 175 CLR, 1, F.C, 92/014. It was followed by the *Native Title Act 1993*. The Wik case, deciding pastoral lease status is in two cases, but is cited as *Wik Peoples v State of Queensland and Others* (B8 of 1996) (1996) 141 ALR 129. *Thayorre People v State of Queensland and Others* (B8 of 1996).


298 Pritchard, S, *Constitutional Developments in the Northern Territory: The Kalkaringi Convention*, Indigenous Law Bulletin, 4 (15) October, 1998, 12-15. As mentioned in this paper elsewhere, I was one such handpicked delegate. The views held at that time were well known to the Chief Minister. In fact I had written to Stone expanding on this viewpoint - which was minimalist. That opinion was reached by considering the fall-out in legal challenges by inclusiveness, and it was held that such a position would jeopardise the entire infancy of statehood, if not the Northern Territory concept itself. I have done a 180-degree turnaround on this point and now advocate a fully stated inclusiveness in the next Constitution, because it is pointless not to. The point of objection however, is still valid. The danger still exists.
Significantly, they felt there were inadequate levels of Indigenous representation. Only 9 Aboriginals were included in the 53 delegates. That is 17% of the total whereas the Northern Territory Indigenous population was even then over 25% of the total. Organisations representing the Territory's Indigenous people were highly critical of the outcome of the Constitutional Convention, although it must be said that their walk-out en-masse did not help to influence the result. That comment may be misleading, given the enormous influence asserted by the government side, led by Denis Burke, a future Chief Minister. As stated, the weak preamble of the Revised Draft Constitution was felt to be insulting, and diminished the historical status of Indigenous people. In particular, their 'prior occupation of the Territory' recital was totally inadequate.

Aboriginal customary law was also thought to be mostly dismissed, and it was noted that the Sessional Committee's draft codification had been severely tampered with. That draft was not entirely satisfactory to them, but much better than the revised draft version of the Constitutional Convention. The final straw was the fear that, to use the vernacular, they were being ‘shafted’ in relation to the draft provisions in the Constitution concerning a number of sticking points. The March Constitutional Convention confirmed their suspicions that the allegedly CLP-dominated convention wished to patriate the Commonwealth’s *Aboriginal Land Rights (Northern Territory) Act 1976* to the Legislative Assembly without enshrining it in the new Constitution. Further, the proposed preamble insufficiently acknowledged Aboriginal heritage and land ownership; there were problems with recognition of Aboriginal law, and no Bill of Rights was proposed (although it was offered). There were other problems, with Sacred Sites. It was quickly understood that without being enshrined in organic law, it meant that the *Land Rights Act* could be changed by the Northern Territory legislature when patriated to it from the Commonwealth. They believed that could only be to their disadvantage, in contrast to the Commonwealth jurisdiction, in which any rights they had then were preserved. Aboriginal members had walked-out of the Darwin Constitutional Convention (those who had not boycotted the Convention) before resolutions were formed, because it was obvious that the desired land rights provision was not to be organic, but subject to legislative amendment. Susan Pritchard asserts that such walk-out rendered the Constitutional Convention's resolutions of lesser or even without requisite authority.  

---

nothing turns on it here. So it awaits another occasion.

Pritchard repeats Nettheim's charge of inadequate levels of Indigenous representation; that the event (the March Constitutional Convention) itself was inadequately publicised, and that the delegates were hand-picked by the Chief Minister. Pritchard wrote that the Constitutional Convention used the Sessional Committee's draft as a basis for discussion; and adopted a series of resolutions and a Revised Draft Constitution. Aboriginal organisations in the Northern Territory were critical of that Constitutional Convention, and determined to hold their own constitutional conventions.

3.4.3. Kalkaringi Constitutional Convention

Dissatisfaction began to mount and coalesce. Aboriginal leaders and organisations decided to take matters concerning themselves into their own hands. Accordingly, from 17-20 August 1998, 800 people of the Combined Aboriginal Nations of Central Australia gathered at Kalkaringi. The meeting produced a statement and chose delegates to attend a full Territory Constitutional Conference at Batchelor, planned for the first week of October 1998, for a seminal Aboriginal Constitutional Convention. It is noted that this was several months after the Constitutional Convention in Darwin in March. But the Batchelor Constitutional Conference, as proposed, did not then take place, and was postponed because Prime Minister Howard called a federal election for 3 October 1998. This was certainly not the end of the matter, because the earlier Kalkaringi Constitutional Convention in fact set the tone for the postponed conference yet to be held at Batchelor. The opening statement of the Kalkaringi Convention is moving in the extreme for its eloquence and introduced a concept of existing nationhood:

The Aboriginal Nations of Central Australia are governed by our own constitutions (being our systems of Aboriginal law and Aboriginal structures of law and governance, which have been in place since time immemorial). Our constitutions must be recognised on a basis of equality, co-existence and mutual respect with any Constitution of the Northern Territory.

The Statement then declared “that we do not consent” to a state in the terms set-out in the draft constitution. The statement continued “…we will withhold our consent”

300 Ibid
until negotiations in good faith with the Northern Territory government have satisfied the requirement for a Constitution based upon equality, co-existence and mutual respect. That was an appropriate remark.

Then came what was interpreted by many as a ‘bombshell’, and was just as quickly dismissed as “racist hysteria” by others. The statement declared that the new constitution must recognise and protect Aboriginal peoples’ right to self-determination, and their inherent right to self-government. To this end there must be a Framework Agreement setting-out the basis of the respective governances, and the processes for recognising such. I was then a branch member of the CLP, and recall being shown a document which was discussed at a party meeting some time after the event, in which the words “self-determination” and “self-government”, were brought to attention. And that, it was asserted, indicated the desire for a separate state. This belief soon became, or already was, widespread. But Nettheim argues that such language was not a call for a separation from the Northern Territory, nor indeed from Australia. The plain meaning of words does not help his interpretation, but his understanding of what was meant probably clarifies at least one difficult point. The meaning of “self-determination” is quite clear: the process involves participation in the decision-making processes, having a say in what happens in matters appertaining to oneself or a specific group, and also involves consultation. But “self-government” cannot be dismissed in the same manner, and in a context wherein both expressions were used, ostensibly, to express different forms of power over Indigenous peoples; otherwise, why use it at all. “Self-determination” could have stood alone. “Self-government” is also mentioned by Susan Pritchard, a senior lecturer in law at the University of NSW, who assisted in drafting the Kalkaringi statement. And it is her comments in the context to self-government which causes a second-look at this expression. There is mention of many forms of self-government in developing countries, with examples in Africa. The homelands in South Africa for example, even before majority rule was obtained, contained several “self-governing” states (kingdoms and homelands). The Vatican is a prime European example. If this is what was contemplated, and Pritchard’s commentary recites other similar situations, the question of whether a

303 Pritchard, S, Ibid.
304 Vice-Chairman, CLP Sanderson Branch, which had at the time responsibility for three electorates: Karama, Sanderson and Wanguri.
306 Pritchard, S, Ibid.
separate state or series of “nation-states” was intended, might well give the wrong impression. There are a variety of self-governing states-types, from outright separation from the host country, for example, the Vatican, to states which are empowered by the host state to make their own laws, much like local government and community councils. But the question remains: how was it so intended? It might well be correctly presumed that the Indigenous people of Northern Territory would welcome as much independence and freedom as possible, and “as possible” would certainly mean subject to necessary assistance from the host state. It would if true, also complicate the statehood question. It is therefore not ludicrous to suggest that there was no basis for concern by the CLP or anyone else. These points are laboured somewhat because at this time, the divide widened between Indigenous and non-Indigenous groups in such respect, and almost certainly affected outcomes, mainly, if not all, on the non-Indigenous side, because of misunderstandings in the wording of the Statement and accompanying commentary. But it was hypothetical, a matter of interpretation, and even in the CLP, the issue calmed-down and was bypassed for others as ‘fighting points’, as the quest progressed.

As noted above, the Statement also required Framework Agreements to be negotiated between the government and Indigenous peoples to give specificity to their concerns and requirements, and that such agreements needed to be completed before statehood consent would be considered or given.\textsuperscript{307} It was obvious that such task was an urgent one for any government which took the Constitutional Conventions seriously, and well before any further bids were made. So, the Kalkaringi Constitutional Convention laid out ground-work, concerns and pre-conditions.

3.4.4. The Batchelor Constitutional Convention

Finally the Indigenous Constitutional Convention got underway at Batchelor from 30 November to 4 December 1998. The statehood referendum had by then failed. There was a flurry of moves to ‘discover’ what had gone wrong, and there were recriminations. But the Indigenous community simply proceeded with their previous plans. Over 120 delegates attended from major communities. There were representatives from ATSIC regional councils, and the land councils. But the earlier

\textsuperscript{307} At the time of writing, the new Labor government of the Northern Territory was undertaking such negotiation with such Framework Agreements in mind, (but not necessarily with statehood in mind), according to (former) Aboriginal Affairs Minister Hon. John Ah Kit on ABC Radio 12 March, 2002.
meetings meant far more in terms of considerations addressed. The Aboriginal voice as a Northern Territory entity, as a stakeholder in statehood, was exercised, and the news would only confirm the texture and scope of what had happened, that their block voting was vital and could not be ignored by a government, reeling from an unexpected blow. What about the timing of Aboriginal Constitutional Conventions? If they had been held before the Darwin Constitutional Convention, not after the event, maybe the CLP would have paused to accommodate proposed amendments.

3.4.5. The Labor Party

In general terms, the Labor party may well have had greater or lesser support from the Northern Territory electorate at different times, but has always been the major and alternate political party to power in the Northern Territory. There were a number of leaders of the Labor party involved with statehood, including Bob Collins, Terry Smith and Brian Ede, but the Labor leader most responsible for Labor’s input to the statehood process was Maggie Hickey. Mrs Hickey, a former librarian, held the Tennant Creek-based Legislative Assembly seat of Barkly. Maggie Hickey was Labor leader when the Darwin Constitutional Convention was held and at the time of the referendum. She was a member of the Sessional Committee, and she had vital leadership input, knowledge and insights to the internal workings and attitudes of the then Territory Opposition. She came to the leadership after the resignation of Brian Ede in 1996, prior to the Territory election, and she was succeeded by Clare Martin.308

One of the most salient points brought forth by my interview with Mrs Hickey is her assertion that Labor’s parliamentary wing supported statehood. It was not a unanimous view held by any means. And it was foolishness bordering on political suicide to support statehood amongst constituents, particularly Aborigines in the bush electorates. Her colleagues interstate did not approve either:

As to the question whether we would have promoted statehood after the 1997 elections or let it run its course. No we would have promoted statehood. Yet I must say that it required some effort and persuasion to convince my colleagues at the party conference prior to the ’97 elections,

308 I was fortunate to obtain an extensive taped interview with Mrs Hickey, and because the considered questions and answers from that interview. Because of its flow, it is placed in Appendix 7 in its entirety as a contemporaneous record of the Labor Party’s position on statehood attitudes as reflected by Mrs Hickey. Some topics in the interview properly belong in other chapters, but as a whole, this description of the statehood position described by Mrs Hickey should stand alone. It will be submitted as an Oral History to the State Archives office and the tapes and transcript papers will be offered to the Archives. They are held by the candidate.
that all states should be supportive of statehood, and probably the one
who was least supportive of that call was Carr. And I went to see him and
I talked to him about the problems of Aboriginal people.\textsuperscript{309}

Nor did she convince Kim Beazley (the new Labor leader) to support statehood:
Beazley was in power when I was leader. (\textit{power as in Leader of the
federal ALP}). It was a grudging acceptance at best. They also had little
faith in the local Labor Party’s ability ever to be in office. And they felt
what they were doing was granting gifts to the CLP. And look at who
would take the kudos attaching to statehood in the short term, and that
was the difficulty.\textsuperscript{310}

And in the end the local trade union movement voice, the Trades and Labour
Council (TLC) withdrew its approval. (See chapter 7).

Mrs Hickey indicates that one suggested tactic of Labor to assist the statehood
argument, was to audit the Northern Territory to gauge the value of the Self-
Government Act. She told me:

There were other priorities of course, but one of the things we thought we
could do, given the bid for statehood if we were to achieve government
and if our party was in government federally and that was to do an audit
on the Northern Territory, to see how valuable the Self Government Act
had been. Because what Stone subsequently wanted to do was really run
an agenda which gave us the Self Government Act as the mechanism for
a state. We didn’t think that was good enough. And what we wanted to
see was what benefits had accrued. Not just to the top end of the town
but to other people as well.\textsuperscript{311}

I thought this was a dangerous ploy for her, because it could emerge that either the
self-government legislation served adequately, or the audit could be ‘doctored’ by
the government in its terms of reference. It occurred to me that outright opposition to
statehood could be trumpeted on several independently grounds, thus ‘blind-siding’
her and other supporters. I believe such an audit, like a Royal Commission, requires
the likely outcome to be known in advance by the leader calling it, unless it has
neutral political effects; and Mrs Hickey could not know the likely outcome. This
episode is circumstantial, but it may be noted as having some cogency. The
problem was that Labor was caught in a dilemma. It was split between wanting
statehood and fearing its hi-jacking by the CLP government:

We did not make any statements in relation to statehood, because we

\textsuperscript{309} Interview with Maggie Hickey, Karama, Build-up, 2001. Tape side "B", in my possession.
\textsuperscript{310} \textit{Op.Cit.}
\textsuperscript{311} \textit{Op.Cit.}
had the fear that it had the potential to be hijacked by party interests. And also because we knew that, whether or not we agreed with the stance taken by the CLP. But statehood was one of those icons that we aspired to. We certainly did not want to be seen as negative in that regard. I was always involved with the committee and certainly my deputy John Bailey was always a strong advocate of statehood.\textsuperscript{312}

Mrs Hickey gave an oblique reason, an external argument, for her party wanting statehood:

My memory of the party’s attitude, official and unofficial, was that statehood is an important issue for the Northern Territory \textit{viz} its status to other states and the Commonwealth. And I don't think that condition changed; certainly there were other issues and other priorities. That was adopted by Ede, particularly Ede, perhaps more than Terry Smith, who was acutely aware of the problem that had to be overcome in regard to Aboriginal involvement. And he had an enduring interest in that.\textsuperscript{313}

I asked Mrs Hickey about the presentation of the Sessional Committee’s report (which included the Final Draft Constitution):

Well we were worried by just what the Chief Minister had in mind, and we knew that it was driven principally by him. Steve Hatton and indeed members of the committee had displayed good faith, and we had our hearts in the committee, and the matters had been resolved on a consensus basis. What had been presented to the House was the view of us all on the committee. And for all of that work to suddenly come to a halt and for the committee itself to be denied that dialogue was very, very concerning... we knew that Rick Gray and Graham Nicholson, the constitutional lawyer, had not been consulted, and we could see by that, that we knew, we were going to get something entirely different.\textsuperscript{314}

There is one further matter to be raised here in respect of Labor’s statehood stance and its relationship with the Indigenous people. In my submission, the implication could be made that Labor was perceived to support the Indigenous people in their problems with statehood. Mrs Hickey again:

The Land Councils wanted us to make very strong statements in their favour. And we had to say on many occasions, we're here for all Territorians and we can't accommodate you. But there was certainly a renewing of relationships.\textsuperscript{315}

Mrs Hickey, in her reply to Shane Stone announcing the Constitutional Convention,

\textsuperscript{312} Interview with Maggie Hickey, Karama, Build-up, 2001. Tape, end, side "A", and side "B", in my possession.
\textsuperscript{313} Op.Cit.
\textsuperscript{314} Op.Cit.
\textsuperscript{315} Interview with Maggie Hickey, Karama, Build-up, 2001. Tape, end, side "A", and side "B", in my possession. \textit{Op.Cit.}
gave arguably her most telling speech (See Chapter 5). It was a stinging vocal assault on Stone’s hegemony and dictation of what the Constitutional Convention should do. Mrs Hickey ‘flayed’ the CLP leader for his arrogance, but such were the times that her remarks passed without the notice deserved. She believed that the outcome was ‘cut and dried’, such was her frustration.

3.5. Conclusion

The enculturation of statehood encountered all of the above factors in the examples given. The conflicts and counter-action were extraordinary. The self-government proponents felt frustrated by the post self-government period; that only spurred the movement forward. Hatton’s role promoted statehood to new heights, and Stone sought to take it to a favourable conclusion, his way. The Indigenous people of the Northern Territory simply dismissed the main Constitutional Convention in Darwin as a ‘whitewash’, deciding to hold their own Constitutional Conventions. It must be said that Labor’s enculturation was contradictory. The party had long opposed statehood on financial grounds, starting with Isaacs. But they were caught in the CLP’s trap of either supporting it or risk being branded anti-Territorian. They tried to support statehood whilst opposing Stone; and the CLP made the most of that quandary. Mrs Hickey condemned Stone for his “double-speak”, but it is more the frustration at her parliamentary party being swept aside by the culture of a statehood surge created by the CLP. Meanwhile the Indigenous community remained true to its own timing, pace and requirements, not bothering to compromise. Were they planning separate states? It is unlikely, based on the evidence. They certainly require a future agreement with the Territory government as to their collective requirements for statehood.\footnote{Despite the extraordinary reactions to the way statehood was sought, the verdict must be that it was sufficiently tainted to fail, although the dynamic of the enculturation necessary to implement it was, at each point, ready to proceed to the next mechanical stages of process. The next Part describes those processes.}

\footnote{It is true that Labor’s Mrs Hickey might have been questioned closer, because some answers were patently in need of qualification, but because she was willing to participate, I decided not to examine other than to follow the set questions asked, to allow her to speak spontaneously as she wished. The outcome speaks for itself; the most important conclusion being her party’s ‘split-mindedness’, which to some extent justifies earlier CLP claims that Labor didn’t want statehood. Mrs Hickey certainly did want statehood. I am grateful to Mrs Hickey for being so gracious with her time and views, particularly as she knew on which ‘side of the fence’ I was.}
PART TWO

THE HOME-GROWN STATEHOOD PROCESS
CHAPTER 4

BEHIND THE SCENES:
THE CONSTITUTIONAL COMMITTEES

4. Introduction

This chapter deals with the work of the three successive committees of the Constitutional and Legal Affairs sub-committee of the Legislative Assembly, and of a fourth, when the so-called Joint Working Group is considered. Apart from the Joint Working Group (JWG), the committees were charged with carrying-out the foot-work to investigate and assemble the technical data and formulae for mounting the attempt on statehood. There were also several constitutional conferences.

Three nomenclature changes have been made: the Select Committee, Sessional Committee, and Standing Committee. The description of each committee in such terms denotes the time-frame and context in which each committee carried out its task. The committees included the first Territory homogenous committee, the Select Committee, which performed the initial tasks. In many respects it had the hardest job, because it had to assemble the initial constituent parts from scratch.

The second committee, the Sessional Committee, crafted a draft constitution. But it did much more. It produced numerous publications and developed the themes, including important proposed changes. It considered the contents of a hypothetical Bill of Rights, and gave reasons for its decisions, and presented it as a whole package. And it embraced Indigenous rights. It produced a model draft constitution, which, ironically, was an unfortunate mistake, because being a superb work, it could only be deconstructed if changed. Changes were urged upon it, then made.

These issues are canvassed here to demonstrate the consideration given for matters which subsequently "changed", and with deleterious change, much needed statehood support evaporated. It is crucial to note that each of the first two committees in turn put positive steps and measures in place, only to have them

317 Formed in 1995, its official title was: the Northern Territory Statehood Working Group.
318 The original Select committee comprised: Hon. S P Hatton, MLA. (Chairman); Mrs M.A. Hickey, MLA. (Deputy Chairman); Mr J. D Bailey, MLA; Mr M. J Rioli, MLA.; Mr T. D. Baldwin, MLA.; Mr P. A. Mitchell, MLA.; Committee Staff : Mr Rick Gray (Secretary); Mrs Yoga Harichandran (Administrative Assistant); Mr Graham Nicholson (Legal Adviser). It should be noted that the group photograph of the Sessional Committee shows the compositional change in the committee with the inclusion of Mr John Ah Kit, MLA and Doctor Peter Toyne, MLA., as replacements for Mrs M.A Hickey MLA. and Mr M. J. Rioli, MLA.
snatched away. After the referendum, the Sessional committee was renamed and reconstituted, and put to work again to discover the causes of the failure. Now called the Standing Committee, the ‘post-mortem’ of the failure was undertaken by this third committee entity of the generic parliamentary Legal and Constitutional Affairs sub-committee structure. Every voter seemed to know why (or at least, who, was responsible), but the new Standing Committee was also assigned the task to report on ways statehood could be resuscitated for the future. It might be seen as being ‘wise after the event’. Its future orientation was doubtless to ameliorate the ‘sins of the past’, although it was impossible to eradicate a search for faults in the process. Nevertheless there were energetic submissions made to the Committee in favour of statehood by other means.\footnote{319}{A point to justify siting discussion of the work of the committees here is that the work of the first two named Territory committees preceded the Convention, and only the parliamentary sessions filled the interregnum. However the fourth government committee, the JWG, is dealt with first. Because it started first; and nearly finished last}

4.1. The Joint Working Group

In recognition of the inevitable, necessary role the rest of the federation would play in any formative step in the formation of a new state, the Northern Territory Government made submissions to the Council of Australian Governments (COAG), and in April 1995, the Prime Minister and the Chief Minister of the Northern Territory agreed to establish a joint Commonwealth/Northern Territory working group. Its title was: the Northern Territory Statehood Working Group (JWG). It was to examine and report on the implications of a grant of statehood to the Northern Territory.\footnote{320}{Northern Territory Government Statehood Website, Legislative Assembly, Constitutional Development and Legal Affairs Committee, Events-22-Aug-2002, 6.3.6.}

The Commonwealth conceded a right to the Northern Territory to consult Commonwealth officers but without any Commonwealth commitment to outcomes. Under the chairmanship of the Secretary of the Commonwealth Department of Environment, Youth, Sport and Territories, the Working Group was set up with a number of sub-committees on specific subjects, and they began their work. Despite the reluctance of the Commonwealth and at least one of the states (New South Wales), the Northern Territory government at least obtained the notice of the other members of the federal compact and involved them in the statehood quest. The JWG, having started long after the commencement of the Select committee and its
successor, the Sessional Committee, in fact performed valuable work, particularly in the constitutional law area, and it noted the work of the two Territory committees.\footnote{321 The JWG examined the constitutional basis of state formation and settled upon s121 of the Australian Constitution as the effective authority for creation of the Northern Territory state. See the text discussion herein.}

A short rundown of the topics covered gives an indication of the work performed. In terms of Legal and Constitutional implications of a possible grant of statehood to the Northern Territory, the JWG considered the present constitutional status, the constitutional capacity to admit or establish the Territory as a new state, the constitutional processes for the creation of a new state and the relative merits, and the Constitutional legal processes to develop and give effect to a new constitution. The JWG also examined the constitutional and legal processes to develop and give effect to the Constitution. It then examined its Constitutional status, and considered the federal representation of a new state. For completeness, it considered means to clarify uncertainties, and to delineate other terms and conditions.

The JWG noted outstanding Executive Powers, and appointment of an Administrator/ Head of State. It finally looked at Reservations and Disallowance. This scrutiny would have been of interest to the Northern Territory Government.\footnote{322 Of particular interest would be whether the \textit{Aboriginal Land Rights Act (NT) 1976}, should be patriated or reserved.} It provided a schedule in support. It also considered the financial and economic implications of a grant of statehood to the Northern Territory, and in this category, it considered the current arrangements.\footnote{323 The Northern Territory was by then placed on the same financial basis as the states} Other significant factors considered in this category were: Uranium mining, National Parks, the \textit{Aboriginal Land Rights (Northern Territory) Act 1976}, and the Island territories of Ashmore and Cartier.

The Reserved powers refers to the powers and functions that were not patriated to the Northern Territory government on self-government. In examining the reserved powers in four parts, the JWG first examined the implications for the "Indigenous residents". The powers nominated included the \textit{Aboriginal Land Rights (Northern Territory) Act 1976}, Uranium mining, and Royalty equivalent payments for Uranium and other minerals, opportunities for recognition of Customary Law upon a grant of statehood, and other implications and/or opportunities for Indigenous residents upon statehood. The second part included implications for National Parks. The latter was another function not to be patriated on self-government. The most important of these parks at the time included Uluru-Kata Tjuta National Park and Kakadu National
Park. In the third part, the JWG considered implications for Uranium mining, mining on Commonwealth land, and control of "Prescribed Substances".\textsuperscript{324}

The process required an examination of the ownership and management of Uranium and "Prescribed Substances".\textsuperscript{325} In particular the JWG discussed the Ranger uranium mine, the Uranium deposits in the Alligator River Region, and the implications for statehood in relation to these minerals. The role of the Supervising Scientist was also considered. In the fourth part, the JWG considered implications for the last of the Reserved powers, the Industrial Relations function; and interestingly, trade and commerce, which of course is a more generic function.\textsuperscript{326}

Another consideration for the JWG was to consider the level of popular support for statehood in the Northern Territory. This exercise considered the extent of consultation and education to date, past results, assessing popular support, and options or assessing popular support. It concluded its report with appendices on the Northern Territory's own Sessional Committee, and terms of reference. Its second appendix listed the publications and promotional material of the Sessional Committee. In many ways, the JWG was a basic assessment tool as to whether statehood was viable in a federal context. Its setting, through the auspices of the Council of Australian Governments (COAG) was, in effect, a token gesture. In no way was any sanction given for a proactive and positive movement towards Territory statehood. The states were at best, luke-warm to the idea, and the Commonwealth was wary too.\textsuperscript{327}

Amongst the last actions of the substantive work of the JWG was the presentation of its Final Report to the Prime Minister and the Chief Minister in May, 1996, repeating the above mentioned topics. Nothing turned on these reports, which were unremarkable apart from its technical assessments. Meantime, in the Northern Territory itself, there was no hesitation, no doubts, and the Sessional Committee was well into considering all submissions and other responses to its work.

\textsuperscript{324} The \textit{Mabo} landmark case was yet to be heard, which would have changed many of these considerations.

\textsuperscript{325} Code for the by-products of the minerals and substances - "yellow-cake", radium etc.

\textsuperscript{326} The J W G covered a very broad area. This can be seen in its consideration of implications for the several other Commonwealth Territories upon statehood for the Northern Territory- in addition to – the Ashmore and Cartier Islands, the Cocos (Keeling), Christmas Island (I O T's), the Australian Capital Territory (ACT), Norfolk Island Territory, Jervis Bay Territory (J B T). The Report identifies and discusses the major constitutional and policy issues that would arise upon a grant of Statehood to the Northern Territory.

\textsuperscript{327} \textit{Op Cit}. Much of the J W G's work is by its nature educational, and it behoves any future education effort to encompass relevant parts of its considered subject matter. It would make an excellent post- doctoral study! But it could also be dated, particularly in relation to Mabo and Wik considerations of Native Title. The presence and purport of this report is drawn to the attention of such educational awareness groups such as the Northern Territorians for Statehood Association.
4.2. Conferences and working committees

The Legal and Constitutional Affairs function of the Northern Territory government, however, was the primary and predominant preparatory mechanism used to develop statehood. It was activated and exercised from the mid-1980s by a new committee, acting under the auspices of the Legal and Constitutional Affairs committee, which was formed for the specific purpose of facilitating the arrangements needed for the Northern Territory to become a state through its constitutional development. By resolution of the Northern Territory parliament, the Select Committee on Constitutional Development was created on 28 August, 1985. The composition, and name of the Committee has changed of course, since that time, but it has always been concerned with statehood and constitutional development.

Changes in terms of reference have varied only slightly. There were changes made in the original terms of reference when the Committee was reconstituted on 28 April 1987. The Legislative Assembly further resolved to amend the terms of reference on 30 November 1989, by changing the Committee's status to a Sessional Committee. It was again reconstituted on 4 December 1990, and again on 27 June 1994 without change to terms of reference. The current status is that of a Standing Committee.

In conjunction with the committees were a series of functions produced by interested groups (named below); and held at various times with the Territory's constitutional development in mind. There were three constitutional conferences.328

4.2.1. First Constitutional/Statehood Conference

In October 1986 the first Constitutional Conference was held in Darwin, called “Australia's Seventh State”, and some further educational consideration of statehood arose from it. The conference was sponsored by the Law Society of the Northern Territory and the North Australia Research Unit of the Australian National University (NARU). However the Commonwealth government expressed no interest in the event.

328 Distinguish from the Constitutional Convention.
4.2.2. Constitutional Centenary Foundation

There was some liaison with external groups too. In 1992, The Constitutional Centenary Committee’s met with members of the Sessional Committee in Melbourne, and continued to communicate with that organisation on national and Northern Territory constitutional issues, including statehood, until its demise in 1977. Nothing appears to have come from the association.

4.2.3. Second Constitutional/Statehood Conference

In 1992, the Sessional Committee organised and hosted in Darwin the second Constitutional Conference, entitled “Constitutional Change in the 1990’s”. It is said to have “revived and continued interest in the issue of statehood and Territory constitutional development generally.” The official history of the Standing Committee on the second conference claims that in 1992, the High Court made it clear in the Capital Duplicators case that constitutionally it was open for the Northern Territory to become a new state.329 The Sessional Committee continued with its Discussion Paper program and public submissions, although fewer public hearings were held after 1989. But in February 1995 the Sessional Committee issued its first Interim Report No.1. "A Northern Territory Constitutional Convention", recommending the holding of a Northern Territory Constitutional Convention, with a majority of elected members, to finalise the new Northern Territory Constitution, to be followed by a Territory referendum. This was an important decision.330 The Sessional Committee followed this up with the first drafts of the new Northern Territory Constitution. Submissions continued to be received by the Committee, including from the Northern Land Council (NLC) and the Central Land Council (CLC) in August 1995, indicating that they were now prepared to consider the proposal for a new Northern Territory Constitution subject to adequate protection of Aboriginal Rights and a comprehensive educational program.

Workshops were also commenced with regional councils of Aboriginal and Torres Strait Islander Commission (ATSIC), and further promotional work was carried out.

329 Capital Duplicators Pty Ltd v Australian Capital Territory (1992) 177 CLR 248 (application of Chapter IV to territories).
330 In this Paper, it gives rise to a momentous submission not because it followed the paradigm for statehood creation in a federation, but because of the excellence of the Committee's own work—see Chapter 5, The Convention.
4.2.4. Third Constitutional/Statehood Conference

A major role of the Sessional Committee was to promote constitutional awareness. In furtherance of this objective, one of its last major tasks in this area of that role was to organise and co-sponsor, with the (then) Northern Territory University, North Australia Research Unit (NARU) and the Constitutional Centenary Foundation (CCF) the third conference. The conference was held in Darwin, 4-6 September, 1997. It was a major constitutional conference involving eminent international, national and local speakers.331

With remarkable foresight, the Conference confronted and questioned the role of governments in the evolving process of constitutional development and considered the issue of citizens’ participation. The Conference in particular proved a focal point on issues that are pertinent to the Northern Territory's claim for admission into the Australian federation as Australia's seventh state. This was an amazing episode of acuity.332 One can only rue the fact this advice was ignored. Had the government, and the Sessio nal Committee itself heeded the messages of this conference, there could have been a different outcome.

Picture 2. Photograph of members of the Select Committee. Back row, from left to right, Mr Graham Nicholson, Mr Rick Gray (Secretary), Mrs Yoga Harichandran (Administrative Assistant), Mr Tim Baldwin, MLA, Mr Phil Mitchell, MLA. Front row, Mr John Ah Kit, MLA, Mr Steve Hatton (Chairman), MLA, Mr John Bailey, MLA, Dr Peter Toyne, MLA. Photo courtesy of the Northern Territory State Library.

331 It was called: Constitutional Foundations; Reconciling a Diversity of Interests in a New Northern Territory Constitution for the 21st Century.
4.2.5. The real start: the Select Committee

I have been pre-emptive in the above passages concerning the conferences. The real start came when on 28 August, 1985, the Select Committee on Constitutional Development was formed. It was essentially a ground-breaking mechanism; it cleared the way for the substantial work of the Sessional Committee, its successor. It was the start of ten years of work in constitutional development towards statehood. Yet its object was not simply to produce a “perambulate” discussion paper. It recommended numerous significant and substantial positions suggested for the composition, context and shape of a new constitutional entity, in other words, a constitution.

From the beginning, its chairman was Steve Hatton MLA. In this Committee-context resides much of the controversy which bedevilled the statehood attempt. It is not intended to analyse the entirety of the Select Committee’s work here, but there are a number of aspects which can be described as different, or controversial. It is difficult to say whether all such changes constituted individual grounds for rejection of the statehood effort. One was a technical ground of concern that the Chief Minister [Premier] was to have some increased powers over that of the Governor. The Commonwealth may well have demurred to the arrangement in losing a control-mechanism over the new state. That is not to say it was wrong in principle.

There are also other unique and interesting aspects which touch on the difficulties of the particular committee process which deserve attention. It is noticeable that the Select Committee wanted to start with a ‘blank sheet’, yet many lay persons might be forgiven for thinking that much, perhaps most, criteria considered, were simply a copy of that which existed in the Territory prior to statehood; for example the recommendation for a Unicameral instead of a Bicameral system, recognition of ‘some’ state local government powers, and similar financial arrangements as before.

---

333 The Joint Working Group correlation was of practical necessity largely ignored, its report not being available until 1996. However, the relevant, interested parties knew its purport and there were no blatant contradictions of substance.


335 It was hugely ironic and must have been a very great disappointment to him that he was not named as the government delegate at the constitutional convention at the end of the Sessional committee's main work.

336 Why should it be a concern to the Commonwealth? The answer seems clear tome that the Northern Territory is simply not trusted by some federal legislators as being sufficiently mature to run itself as an independent state sui juris, with full state powers, subject only to Commonwealth Constitutional powers and restrictions. This is the opinion of many people, including some Territorians, and is particularly evident in the actions of the Hon Kevin Andrews MHR.
Importantly, in my opinion, there was no direct mention of the Cabinet as an institution, nor any new departure from the Westminster system of responsible government, whereby the Executive is selected from the Members of Parliament. Many people may have thought that it was an opportunity to envisage new ideas of government, but the Select Committee had no intention of departing from established precedents of governance, (doubtless to assuage the suspicions of Canberra), thereby disappointing those who believed that new states presented opportunity for new ideas of governance. The reality is that only conservative, tried and tested options were considered sufficiently safe, and the Committee knew that. There was no sentiment for experiment or radical constitutional engineering, such as officially recognising Cabinet as a constitutional institution, since that would be tantamount to inviting condemnation from those political scientists, lawyers, editors, conservative politicians, and just about everyone else not liking change, or at least too much of it at once. (New precedents would need to be built-up). Notwithstanding these invisible limitation-walls, the Select Committee set out to test the boundaries.

The report of the Select Committee sets out the terms of reference for its purpose. These terms are important because they formed the basis of Committee investigations, determinations and recommendations, as skeletal materials for the Sessional Committee. They are considered for relevance. The Committee really did begin at the beginning. First, the need for a Constitution is discussed and the process of constitution-making is put forward. Also in the 'contents' section is listed the proposed form and composition of a new parliament in such a state as envisaged by this committee. Other matters considered by the Select Committee included the transitional provisions, the constitution of parliament, the number of legislative chambers, the qualifications of members, and the term of office. Under the electoral provisions, there was consideration of electorate tolerance, qualifications of voters, and voting and entrenchment. The Committee also listed the Executive, the Governor and the Crown, including the powers of the Governor, the Premier and other ministers, the Executive Council and Cabinet, financial matters, and the Judiciary. This was an impressive workload, and the task lay ahead of it.

338 It must be remembered that the Select Committee was not the first committee: the Joint Working Group was the first real attempt to discern what considerations and measures were necessary for statehood, although in a federal context.
In its summary of recommendations and endorsements, one of the first conclusions made by the Committee was that the *Northern Territory (Self-Government) Act 1978* could not serve as a new state constitution without substantial modification. To achieve constitutional equality with other states, a new state constitution was required. Every ‘local’ knew that. It was merely stating the obvious! But it was necessary to state the conclusion for completeness.

In relation to the legislature, the same rights, powers and privileges as in other states was recommended; that they should be as expansive as possible, subject only to the limitations flowing from the Australian Constitution, and the *Australia Acts*. Doubtless this was an unsubtle reference and sentiment directed to the vulnerability of Northern Territory legislation, which is subject to overturn by the Commonwealth. This ‘independence’ theme was continued in the Committee's formative work with reference to the relationship between the state and the Monarchy. It was suggested that: “...direct links must be established between the new state government and the Monarch, at least in relation to the appointment, and termination of appointment by the Monarch of the new state Governor.”

What was the object of this specification? The answer seems to be an attempt to circumvent any avoidable Commonwealth encroachment on the new state by virtue of its control over the Governor, which, unlike the other states, required a transitional status from Administrator, who acts on the advice of the Executive Council but who is in fact Canberra’s representative. It is obvious that the Committee was keen to close gaps, which may or may not exist on the transition to statehood. In the present states, the Premier’s may appoint or terminate the Governor’s commission through advice to the Constitutional Monarchy, but in the Territory's case that function is performed through the aegis of the Governor-General, who acts on the advice of the Minister responsible for territories. The Committee stated that: “...the existence of direct links with the Sovereign is part of a wider principle that the composition of a new state government from time to time is entirely a matter for the new state and its Citizens, and is not a matter in which the Commonwealth has any legitimate role to play.”

The Select Committee developed the Governor’s role by specifying that the Governor must act on the advice of state ministers (Chief Minister). The only exception would be where the Constitution stated otherwise, or clearly established

---

that the government was acting or is proposing to act unconstitutionally.\textsuperscript{342} This of course begs the question as to who “clearly establishes” that it is acting unconstitutionally. The Committee recommended that the Government be such adjudicator, due to an express power to uphold the Constitution. This at least would give to the Vice-Regal representative some ‘teeth’, not just appear as a ‘rubber stamp’ of the Premier. This is a fine balance, and the sentiment is worthy, if appearing somewhat vague. The Committee was eager to outlaw a Whitlam-type dismissal, by insisting that the Governor should have no power to dismiss ministers whilst the government enjoys parliament’s confidence.\textsuperscript{343} The Committee also recommended that the Governor may invite another Member to form a government where the Premier has resigned or vacated office; or to dissolve parliament if this cannot be done.\textsuperscript{344} This is also a significant function of the Governor, without departing from established practice.

The Committee also recommended that the Governor be required to provide written reasons to parliament for not acting on the advice of ministers. In accordance with these recommendations, that would mean in any manner which was unconstitutional, and in this respect the Governor decides the constitutionality.\textsuperscript{345}

In deciding who should be Premier, the Committee left it to the Governor. But the Governor acts on the advice of ministers, or on a Member who can command the confidence of Parliament (in other words, a majority). The Committee was careful to specify that no restriction on executive authority should be placed on either the new state ministers or the Governor. It appears at this stage the Committee was looking for possible legal ‘loop-holes’ to circumvent. Further, ministers should cease to be ministers if they cease to be a Member of Parliament. Although couched in \textit{ex-post facto} terms, or a condition subsequent, this differs from other jurisdictions, including the Commonwealth, where it is possible for a person to be a Minister without being a Member of Parliament for up to three months, but must be an MP to hold that office thereafter.\textsuperscript{346} This provision at least brings a legal fiction in line with practice. And speaking of legal fiction, the office of Cabinet for the new State government is left

\textsuperscript{342} Op. Cit., 38.9
\textsuperscript{344} Op. Cit., 39: 12.
\textsuperscript{345} Presumably, without further constitutional direction, the Governor would seek the advice of the Chief Justice (as did Governor-General Kerr, in the 1975 Whitlam government dismissal).
\textsuperscript{346} Australian Constitution, S64 "After the first general election no Minister of State shall hold office for a longer period than three months unless he is or becomes a Senator or a Member of the House of Representatives".
precisely as that, a fiction. Recommendation 51 states “The Select Committee sees no need to give express constitutional recognition to the institution of Cabinet…” Again, an opportunity was bypassed, the legal fiction of constitutional crafting is maintained, and the Convention of ignoring the practical legality of Cabinet, arguably the most important institution in government, is left intact. It is submitted that the greatest legal fiction and anachronism is the Executive Council. As the organ to deal with matters concerning the Crown, it is given full recognition in each of the Australian and states Constitutions. It was designed as a legal buffer, independent of the legislature, as an appropriate mechanism to deal with the Crown. In some countries such an entity may equate to a type of supreme decision-making body, a hybrid institution of Executive and Legislative powers and functions, to give further and ultimate legal sanction to constitutional requirements and legislative enactments. But in modern federal systems, such as the United States, such a mechanism would be regarded as unwieldy, an unnecessary ‘go-between’ body, with direct dealings preferred.

Even in the Westminster system, there seems to be no good reason for continuing this legal fiction, as the real function is exercised by the Executive through a Prime Minister, Premier, or Chief Minister of the federal entity respectively.

It is submitted that the real reasons for maintaining such anachronisms are twofold: first, to maintain parity (and peace) with the other federal members, so as not to appear to be "off-line" with them, and to demonstrate the stated objective of equality with the states. Secondly, it demonstrates a maturity as well as guile, because at some later stage all or some states might agitate in concert for constitutional changes, which could possibly include the abolition of legal fictions or codification of at least some Conventions. The Northern Territory could join-in without being singled-out as a 'maverick'. The conservative nature of constitutional development carries with it a maxim that, ‘if it works, there is no need to fix (or modernise) it’. The legal fictions are therefore unlikely to be done away with, until only stream-lining is

348 I thought long and hard before including this pleading statement. It is easy to criticise nineteenth century Constitutional provisions. But the reality is that most of them have stood the test of time, are futuristic, and constitute safeguards, which modernists would respectively like to abolish. Retention is even more relevant due to increased tensions, stresses and volatility of modern government. The test, it is submitted, should be: is change safe for logical reason, and, anachronism?
349 For constitutional lawyers, political scientists, historians and parliamentary draftsmen, possibly a number of MP’s, such practice is well understood in its context, but for the majority of lay-persons the mystery and nonsense of not recognising the Cabinet of Government creates a misunderstanding how government works in the Constitution - unless it is studied. It is a further convention of government, which, in my view, is an anachronism, illogical, and fails the above test. Contrast Reserve powers of the Crown. Should they be spelt out?
desired, the way in which constitutional protocols presently work. The point made here is that the Select Committee was not about to challenge orthodoxy. But in terms of constitutional development in the work it did, it made impressive strides, earning a parliamentary promotion to an up-graded entity of greater longevity and purpose.\textsuperscript{350}

4.2.6. The Sessional Committee: Rights!

The most important role of the Sessional Committee was to develop a draft Constitution, and it did this. The Final Draft Constitution in part is itself contained in Appendix 4.\textsuperscript{351} But by far the most interesting constitution-production work of the Committee, it is submitted, did not appear in the original Final Draft Constitution, but as a last-minute Addendum to the Sessional Committee’s final report; namely as a Bill of Rights, (or list of Rights.) All else of substantial importance revolves around, or impinges upon the many aspects which were thrown up by it. Although the reason for being a late-minute inclusion as an amendment to the Final Draft Constitution is not clear, and probably now has no significant historical consequence, the question of whether or not Rights should be entrenched in the new State Constitution is a matter of great interest. The question then becomes, ‘if so, which of them, and to what extent?’ The Sessional Committee certainly ensured that the subject would not go unnoticed in the body of their work, by introducing it thus:

"Last-minute amendments to draft Constitution" and "Addendum to the Final Draft Northern Territory Constitution". Its heading was: "Options for Dealing with Rights."\textsuperscript{352}

The production of a Final Draft Constitution was the desired outcome of the Sessional Committee’s work, and it actually produced a constitution which contained more than the CLP government was prepared to accept. Aboriginal Rights was amongst them, and this drew praise from observers such as the print media. This Addendum is reproduced in Appendix 3, almost in whole, because it is a virtual answer to questions seeking justification for the imposition of the new state. Moreover, it is a tour de force of the Commonwealth legislation which applies to the

\textsuperscript{350} This was of course upgrading, to a Sessional status, with connotations of regular and ongoing functions.

\textsuperscript{351} Legislative Assembly of the Northern Territory, Discussion Paper on a Proposed new State Constitution for the Northern Territory (July 1995 Second Edition).

Northern Territory and affects the question of statehood. Mr Graham Nicholson, the legal adviser to the Committee, demonstrates his great skills as a marshal of legal and constitutional implications upon which much of the Committee's work depended.\(^{353}\) It was doubtless intended at least as guidance for the Members of the Legislative Assembly, but in hindsight, it may have served better elsewhere.\(^{354}\)

When the Final Draft Constitution was finally ready for presentation to the Legislative Assembly, it was understated and offered in the following manner:

> The draft Constitution to which this Addendum is attached contains a limited number of specific proposals, which summarise the rights already contained in the draft Northern Territory Constitution, that are relevant to matters that could be included in a "Bill of Rights" (or similar document, however called) if one was to be inserted into that draft Constitution. The Committee has not, however, recommended the inclusion of a comprehensive set of "Rights" in that draft Northern Territory Constitution.\(^{355}\)

In this last sentence is contained the negative answer to the question of whether the Committee was prepared to recommend such a Bill of Rights for inclusion in the Constitution. But it was left to parliament to determine whether it should be included. Whether it was added at the last moment as the result of a division in the Committee itself is irrelevant.\(^{356}\) It was, in the event, a clever manner of putting forward a measure without actually recommending it. As to any remaining Rights-type matters not so included in the Final Draft Constitution, the Committee felt that it was sufficient to bring this subject to the attention of Honourable members of the Legislative Assembly and other readers, in the manner contained in the Addendum, listing the options. For this purpose, the Addendum needed to be read in conjunction with the Committee's Discussion Paper No. 8 entitled "A Northern Territory Bill of Rights" of March 1995.\(^{357}\)

In any event, in including the Addendum, the Committee provided an explanation:

\(^{353}\) I have a great personal respect for Graham and Terry Nicholson. Mr Nicholson personally relayed Delegate contributions and information to me at Royal Darwin Hospital during the Constitutional Convention. I am indebted to him. He is a kind and learned man. Adjunct Professor Nicholson's contribution should be given the recognition it deserves.

\(^{354}\) A "Bill of Rights" in the form presented, is perhaps too complex for legislators' use. In hindsight it would have been better to summarise the provisions, and for Mr Nicholson to be on hand to explain the ramifications and options. It was a masterly scholastic exercise, and the MLA's were in any event too compliant to the will of the Chief Minister to embrace it all.


\(^{356}\) The Committee actually stated that there was no unanimity of views in these matters (See below).

\(^{357}\) \textit{Op. Cit., Supra.}
The Committee notes that there are several alternate views as to how these remaining matters could be addressed. Traditionally, these matters have often been incorporated in constitutional provisions at the national level, setting out the rights in question. A second method can be through incorporation in ordinary national legislation rather than in legal provisions (constitutional or otherwise) at a State or Territory level. A third alternative is by ordinary State or Territory legislation. The options are listed more fully below. It does not necessarily follow that these matters must be dealt with in the State or territory constitutions or even in organic laws (if any) of a State or territory…The Sessional Committee does not have a unanimous view on whether all or any of these remaining matters should be included in the draft Northern Territory Constitution.358

I made an effort to canvas the background of the question of Rights. It is virtually impossible to paraphrase the detail without emasculating its effect, so the major aspects of the Addendum is reproduced in Appendix 3. The reader is urged to peruse the Appendix. Its length requires that it be so placed. Even so, commentary is made on salient aspects of the Addendum. The relevance of these provisions is to illustrate what types of guarantees were expected from statehood by major stakeholders, and which were not finally included. It is difficult not to connect the loss of Rights with a loss of support for statehood, even though the reasons given in the market survey indicated otherwise. Those reasons may have imputed the loss of Rights. People knew that many of the items expected were not to be forthcoming.

The purpose of the Addendum was to set out in summary form Rights mentioned in the Australian Constitution, the Rights already dealt with in national legislation and in international treaties and conventions to which Australia is a party. It reiterated those Rights already included in the Committee's Final Draft Northern Territory Constitution, and then listed the options for dealing with any remaining Rights. This approach reflects the fact that the Northern Territory is a part of the Australian constitutional system (even though not yet a state) and that it and its citizens have (or at least will have upon any grant of statehood), the benefit of certain guarantees in the Australian Constitution, as well as relevant protections provided by national legislation, by treaties and conventions (to the extent they are implemented in Australian law).359

358 Op. Cit, Supra. This is an extraordinary view of Options. It was more like a neutral view, but more "don't than "do".
The approach taken to these Rights is that duplication or variance with Commonwealth provisions would be counter-productive, and if such a position was found to be so, the Committee would bring it to notice, but make no recommendation. As a constitutional lawyer Nicholson knew, as well as anyone that certain topics can be legislated upon by both Commonwealth and the states as concurrent powers under S51 (e.g. Freedom of Information), and the Addendum drafting reflects 'knife-edge' balancing, to reflect the disparate views of Committee members. Even without express mention, are the politics which must be expected in such parliamentary committee, including strong opposing views.360

There is a direct challenge to creators and legislators of states constitutions to determine how wide-ranging considerations should be reflected in constitutions or ordinary legislation, always in relationship to the Commonwealth's own position thereto. That is why, of course, Nicholson used the Commonwealth powers in the Australian Constitution as a basis for a consideration of rights to include or exclude in the Final Draft Constitution. Moreover, in the federal context, it is the only way. It is not clear whether this was understood by those who considered the Addendum. It must be presumed that the members of the Sessional Committee understood.

Thus, international agreements, which the Federal Government has negotiated on any subject, have been interpreted by the High Court to empower the Commonwealth parliament to legislate and implement any such agreement in Australian law (Constitution, Part v, s51, Placitum xxix External Affairs power). It thus also over-rides state laws, which are inconsistent with the Commonwealth legislation. This is a constitutional limitation on states power, and therefore requires state laws to be both subservient and consistent. This position is made more acute with the federal application having no direct nexus to territories, (including the Northern Territory, under self- government), with the federal government, acting through the Commonwealth parliament, having an almost unlimited power over territories under section 122 of the Constitution.361 If it had a mind to, the

360 Tensions were strong and bitter between the Labor party and the CLP, and yet despite opposing views and distrust, a working relationship developed between the leading protagonists Hatton and Bailey, and others including Mrs Hickey.
361 Op Cit., Supra.
Commonwealth parliament could abolish the Northern Territory government by an ordinary Act of parliament.362

In ascertaining what Rights exist, the task was difficult. The Addendum describes Relevant Rights Provisions already in the Australian Constitution. The ‘Express’ Rights are of a limited nature in the Australian Constitution, as that Constitution does not contain a comprehensive "Bill of Rights". They include:

…no compulsory acquisition of property otherwise than on just terms;
Section 51(xxxi) of the Commonwealth Constitution prevents the passing of valid laws by the Commonwealth Parliament for the acquisition of property from any State or person unless the acquisition is on just terms.

The above only applies to a compulsory acquisition under Commonwealth law, not under State law, nor the law of a self-governing territory. The guarantee may not apply in territories at all. A similar statutory guarantee in section 50(1) of the Northern Territory (Self-Government) Act 1978, preventing the Legislative Assembly of the Northern Territory from legislating for the acquisition of property otherwise than on just terms, will presumably be absent if that Act is repealed and replaced by the draft Northern Territory Constitution.363 See however, the proposal in section 3.1(3) of the draft Northern Territory Constitution to incorporate a similar provision to that in section 50(1).

This latter qualification is a statement of reassurance, because many usually well-informed people, including pastoralists and graziers, suspect that statehood will not necessarily redress acquisitions of property on just terms. And some land holders believe that as a state, such compensation should apply as a constitutional guarantee. This particularly relates to acquisitions on behalf of the Indigenous owners, (or public works like the Alice Springs- Darwin railway) by the new state government.364

Other Rights discussed include trial by Jury, and freedom of movement, as follows:

362 This power was one of the factors, Hatton toldme, which induced him to become interested in constitutional development and agitate for a state. It is also a fact he used when explaining to former constituents the reasons why they should support statehood - that they could be deprived of such a right "at the stroke of a pen". He claims they were impressed! This was particularly evident following the Commonwealth parliament's over-turning of the Rights of the Terminally ill Act 1996.


364 As it happens, the railway land acquisition fear is baseless anyway, because it is built under joint Commonwealth and states jurisdiction with the Northern Territory, and in the latter case, the Self- Government Act provisions apply.
…trial by jury for indictable offences; Section 80 of the Commonwealth Constitution provides that the trial of indictable offences against a law of the Commonwealth shall be by jury in the state where the offence was committed. This does not apply to non-indictable offences, nor to any offences under state and self-governing territory law. The section may not operate in territories at all.\textsuperscript{365}

The remedy therefore is to entrench the Rights of trial by Jury in the new state Constitution for all indictable offences designated by ordinary state law. Or allow that the present Territory arrangements can be relied upon. The nature of criminal law needs careful attention because of the blurring and eventual elimination of the prior legal status of felonies and misdemeanors. Indictable offences continue. The Northern Territory Criminal Code reflects the changes.\textsuperscript{366}

The Addendum discusses further Rights. They include: …Absolute freedom of movement between states pursuant to section 92 of the Commonwealth Constitution. The section has no application to movement occurring within the state or territory, but it does prevent the Commonwealth from a state infringing the right of free movement between states except for instance, like quarantine laws of territories and states. Section 49 of the \textit{Northern Territory (Self - Government) Act 1978} contains a similar guarantee to section 92 of the Constitution, and is applicable between the Northern Territory and a state. Upon statehood, this provision will disappear when the Act is repealed. The Sessional committee agreed that section 92 would cover the gap if the Northern Territory became the state.\textsuperscript{367}

Section 116 of the Australian Constitution guarantees freedom of religion. It prevents the Commonwealth parliament from legislating to impose any religious restrictions or conditions, or to prevent the free exercise of any religious creed. But the section does not relate to the states, nor possibly, to territories. The Sessional Committee observed that the High Court interprets this section narrowly, but in practice a wide religious freedom applies in Australia. There is a draft proposal in section 8.1 (1) (c) of the Final Draft Constitution to prevent the unreasonable denial in the Northern Territory of the Right to “manifest a person's religion or belief in worship, ceremony, observance, or teaching”.\textsuperscript{368} Although it looks innocuous and has merit as a basic Right, private "religious" schools may have problems with this

\textsuperscript{365} \textit{Op.Cit., Supra.}
\textsuperscript{367} \textit{Op. Cit., Supra.}
\textsuperscript{368} \textit{Op. Cit., Supra.}
section, particularly relating to employment of teachers, or more importantly, refusing to engage staff on the basis of their religious incompatibility with the institution. It seems that this could also be done under the discrimination laws as well, but it is still a grey area.

Another Right is protection against disability discrimination based on state residence, pursuant to section 117 of the Constitution. The section applies to both Commonwealth and the states but it refers to discrimination between states and applies to state residence. It may not apply to the Northern Territory if it became a new state under the proposed draft constitution. Such disability must be distinguished from personal affliction-type disability. Discrimination is an area in which both the Commonwealth and the states legislate, and the Northern Territory has its own Anti-Discrimination Act. Without constitutional entrenchment, these Rights could be 'watered-down' by ordinary law. As the Commonwealth law applies to the state, the necessary change would be for a Commonwealth tribunal to be set-up. This is quite unsatisfactory.

The Committee noted democratic rights, which were described as designed to guarantee the democratic nature of the federal parliamentary system of government which may apply in the Territory. This is taken to mean the existence of both Houses of the parliament, each chamber directly elected; that the franchise be the universal one vote, one value. (Sections 7 and 24 guarantee this right); and voters being able to vote in each House (sections 8 and 30). There is a guarantee of a proportional number of electoral divisions in the House of Representatives in each state, based on a population quota (section 24). In the Commonwealth arena such electorates number between 60 thousand and 70 thousand voters. In the Northern Territory, the new state equivalent is more like 5000 voters. And the voters in state elections have a right to vote in the federal elections (section 41). The Committee noted that the High Court has given this Right a narrow interpretation. These guarantees form the basis of democratic representative government, but obviously apply at national level. There are no specific instructions to apply to the states or territories, but it may well be an implied system of constitutional rights. The Final Draft Northern Territory Constitution establishes the democratic representative nature of the new state parliament. This statement is bold, yet somewhat obscure. On this basis, many

---

369 Op Cit., Supra.
370 Op Cit, Supra.
lay-persons might consider their democratic values would still remain uncertain upon the grant of statehood, as lacking guarantees;\textsuperscript{371} and they would have every right to be concerned that their electoral franchise is far from secure. In a wider sense voters require that appropriate federal representation in the Federal parliament will be accorded to the Territory as a state. Even wider still, Territory electorates must be counted as a state-result in any national referendum. This measure makes it easier to obtain constitutional changes by referendum.

In the High Court of Australia, as the country's superior court, the doctrine of \textit{Starre Decisis} applies, so that its decisions bind all lower courts in turn (and are superior to the House of [law] Lords and the Privy Council).\textsuperscript{372} The doctrine as it applies to the Territory, allows recourse to decisions of numerous court systems, including that of the United States, as \textit{Obiter Dicta}, (non-binding parts of a court-case, which may then be adopted as part of the reasons for decision-\textit{Ratio Decidendi}.) In this sense the judicial function of the Northern Territory is specifically protected by judicial precedent as well as possible implied statutory guarantees (Sections 70, 71, 75).

There is a separation of powers adopted by the High Court requiring a constitutional division between federal judicial powers, and non-judicial powers, although, to date, this has not been extended to the states. And the Australian Constitution does not establish the independence of state and territory courts or the judiciary thereof.\textsuperscript{373} Accordingly, Part 6 of the Final Draft Northern Territory Constitution is designed to establish the independence of the Northern Territory judiciary. The \textit{Northern Territory Judiciary Act} has virtually the same effect, but it is a consequence of ordinary legislation.\textsuperscript{374} The supplement contends that a qualification to the doctrine of Separation of (judicial) Powers, similar to the above, is contained in section 6.3 of the Final Draft Northern Territory Constitution. It is noteworthy that such separation of powers must be distinguished from that normally applicable, that is, as between the Executive and Judiciary. The qualification may be made (although there is no discussion as such) because of the Territory's smallness in non-spatial terms, to

\textsuperscript{371} Guarantees presently do not exist in a Territory sense, certainly not under the\textit{Northern Territory Self Government Act.}
\textsuperscript{372} The \textit{Australia Acts} proscribed appeals to this formerly supreme body of binding English precedent.
\textsuperscript{373} This is obviously an observation by Nicholson, one of numerous constitutional offshoots of his learning, to the statehood committee, an advisory which required the element of independence of the said systems to be specified in a \textit{Final Draft Constitution}, if not entrenched.
\textsuperscript{374} Ordinary legislation of course can be repealed or amended likewise by ordinary legislation, unlike the Final Draft Constitution. The exception being: unless the federal parliament amends it, which it may well do. The point is an academic one.
give constitutional effect to non-traditional functions and powers, like Territory tribunals.\textsuperscript{375}

An important Right, which is accorded by the \textit{Commonwealth of Australia Constitution Act} is for the maintenance of the Australian federal system. It recites that the people of Australia "...have agreed to unite in one indissoluble Federal Commonwealth..." The Constitution then creates a federal system, comprising the Commonwealth and the states, original and new. The Sessional Committee seized upon the assurances in the \textit{Australia Act 1986}, which the Select committee had recommended, to institute direct access to the Crown, like other states. This was incorporated in the Final Draft Northern Territory Constitution.

Many Rights are accorded to the states by virtue of Section 51 of the Australian Constitution, which sets-out most delineated states powers. Although mainly of interest to constitutionalists, it is important that people with non-technical expertise understand how constitutional power is distributed in the federal system. Although it is not intended to canvass constitutional law in depth here, it must be mentioned that the Territory's situation as considered by the Sessional Committee, (Nicholson), required an appreciation of how s51 worked. Although the JWG considered such grounds, the specific line of inquiry needed an analysis of whether territories were included or excluded. It is clear from the Committee's work in this area that it erred on the side of caution in concluding that many areas not tested by the judicial system must be regarded in the 'unclear' category. An appreciation was then necessary to ascertain whether the Territory as a new state had the constitutional capacity to have the powers incorporated in its Constitution. As this present category of Rights falls in such an area of relevance, each topic must be examined on its merits in light of constitutionality.\textsuperscript{376}

Section 51 of the Constitution contains a federal division of legislative power between the Commonwealth Parliament and the state Parliament, with the residue of legislative power to the states. Where a Commonwealth law is within

\textsuperscript{375} Constitutional lawyers and senior counsel would salivate at the thought of non-judicial functions such as tribunals being placed under constitutional protection. But what logic supports such a concept? Tribunals must be malleable.

\textsuperscript{376} The decision to list such ‘Rights’ in chapter text, but referring to Appendix source material, is difficult, and readers may determine the wisdom of such listing otherwise. It was well-known ‘Rights’ were excluded, certainly a Bill of Rights, and it could be said the lack was a problem for voters, or groups. Thus, a listing by Nicholson, seems apt, as each “Right” is noted. Some not appropriate, or undesirable or unnecessary; others useful. The emphasis, as explained is justified in that it was a central feature, and might well have been the difference between statehood ‘getting over the line’ or failing.
constitutional power, it will prevail over an inconsistent state law to the extent of inconsistency (section 109), but otherwise state law prevails. State constitutions are protected (section 106). The consequences and implications of constitutional decisions interpreted by the High Court, through its case history, have affected the way in which the federal system operates. In particular, the interpretation of section 51 of the Constitution has eroded the power of the states in favour of the Commonwealth. In what ways could s51 cases affect the Territory constitution?

Section 51 (xxxix), the external affairs power, in particular, has been interpreted in such a way as to give the Commonwealth powers, and a capacity to legislate on a range of matters that were not considered as such in the early days of Federation. In many ways such interpreted Constitutional power not only enhanced the Commonwealth’s legislative power over its federal partners, but has brought the international community into the equation, and into the Federation.

Under statehood, the Northern Territory would be required to place itself in the same position as the other states, which, in turn, means having the same constitutional legislative capacity to act as a partner in the Federation. This is one reason that such Final Draft Constitution lacked the modernist perceptions, the visionary ideas available, precisely because the states also lacked them.

There was, however, a worse scenario facing the Committee. The Commonwealth, if so desired, could restrict the Northern Territory, even by altering and amending its Final Draft Constitution (and there are members of the federal parliament who have been shown ready to do this.) But the same power under section 121 could also be used to ‘advance’ the constitutional development of the Northern Territory, by requiring it to include in its Constitution any new Rights. It could upset the clear approach by the framers of the Final Draft Constitution. That power, in accepting a new state into the Federation, can also limit it. The more optimistic view is that the federal parliament would treat the newcomer fairly, with the only limitation being on representation in the federal parliament. The Sessional Committee commented:

The draft Northern Territory Constitution has been prepared on the basis that the Northern Territory will, either contemporaneously with the coming into effect of that new Constitution, or at some later point in time, be

377 Op Cit., Supra.
378 Authority for this statement begins with early High Court decisions, such as the Boilermakers case, the Engineers case, the Harvester case, the Income tax cases, and in latter years, the list grows. It is nowsettled Australian constitutional law.
granted statehood within the Australian federal system on the basis of that new Constitution. See in particular the last Preamble to that draft Northern Territory Constitution and the reference to the Commonwealth Constitution and the Australia Acts in section 2.2 (a) of that draft Constitution.379

There was an additional problem for the Sessional Committee. As the question of a Bill of Rights is an issue widely debated nationally, and as many moves have been made to include it as an amendment through a referendum to the Constitution, or simply codified by legislation, it was necessary to consider the consequences of such advent in the national context. And as an additional Addendum note states: “this would almost certainly have the effect of extending, limiting, or otherwise varying any Northern Territory constitutional rights provisions. Such a national Bill of Rights could be expected to directly impinge on the Northern Territory in some way.” One such way is derived from the federal implied constitutional protection, and the main Right here is in the Right to freedom of communication in political matters. In 1992, in the Australian Capital Duplicators (Television) case, the High Court determined that there was a greater constitutional freedom implied. 380 In this case there was a challenge to the validity of Commonwealth legislation seeking to restrict political election advertising in the lead up to Commonwealth, state and territory elections, with specified “free- time” to be given to political parties through the electronic media. The High Court reasoned that in a representative democracy such as Australia, the people must have a constitutional right to freedom of communication in political matters, otherwise it would not be possible for those democratic ideals, like freedom of speech, to be put into practice. To how many other circumstances could such implied guarantees relate? It could be a right to, say, welfare; a right to be pro-active in Indigenous affairs; a right for states to provide their own counter-terrorist organisations (closely resembling a defence function); or other rights yet to be defined, such as due process in the legal system, based on the separation of powers (as contemplated by A.V Dicey), or on “some doctrine of equality before or under the law.”381

379 Op Cit., Supra.
380 Capital Duplicators Pty Ltd v Australian Capital Territory (1992) 177 CLR, 248; (application of Chapter IV to territories), Op Cit., Infra.
381 Op Cit., Supra.
4.2.7. Rights in Commonwealth legislation

Other Rights which the Committee considered are those contained in relevant Commonwealth legislation. These laws contained human rights provisions, and have constitutionally entrenched force, which cannot be ordered by state or territories legislation. A list of these laws, include:

- *The Freedom of Information Act 1982,*
- *The Privacy Act 1988 and*

Also included are various Commonwealth Acts on Aboriginal Rights, including the *Aboriginal Land Rights (Northern Territory) Act 1976,* See Section 7.1 of the Final Draft Northern Territory Constitution, facilitating the patriation of the *Aboriginal Land Rights (Northern Territory) Act* to the Northern Territory as a Northern Territory law, subject to constitutional guarantees of Aboriginal title to land; the *Native Title Act 1993,* and the *Aboriginal & Torres Strait Islander Heritage Act 1984.* The *Human Rights (Sexual Conduct) Act 1994,*

Relevant treaties and conventions are listed in the Addendum, to which Australia is a party. The traditional legal rule inherited from England is that, generally speaking, international agreements creating international legal obligations on the part of nation-states that are parties to those agreements have no effect in their domestic law until implemented by domestic legislation. It is clear that the Commonwealth parliament has the necessary constitutional power to implement such agreements to which Australia is a party under the external affairs power. It has already so legislated to a limited extent. Reference should be made to Commonwealth Acts listed in Item 3 of the Addendum, as complementary to such federal laws.


The Sessional Committee's Final Draft Northern Territory Constitution contains provisions of relevance, intended to be entrenched in that Constitution and directly

---


383 External Affairs power, section 51(299) of the Australian Constitution.
enforceable in the courts by any person adversely affected. The relevant provisions specified in Division 1, Article 2.1.0 include:

- Elements of representative democracy.\(^{384}\)
- Any constitutionally implied rights, if they also already apply in the Northern Territory.\(^{385}\)
- Provisions as to the independence of the Northern Territory Supreme Court Judges.\(^{386}\)
- Aboriginal rights in respect of land.\(^{387}\)
- Rights in respect of language, social, cultural and religious matters.\(^{388}\)

In addition, the Committee agreed to provide in the Final Draft Northern Territory Constitution that the power of the Northern Territory parliament in relation to the making of laws does not extend to the making of laws with respect of the acquisition of property otherwise than on just terms.\(^{389}\)

### 4.2.9. Alternative Ways of Dealing with Rights

Remembering that Rights are constitutional ‘orphans’ if not protected, the Sessional Committee nonetheless presented this statehood concept to parliamentary recipients hostile to a full suite of Rights. The Sessional Committee, sensitive to the issue, pointed-out that there are other options that can be considered for dealing with residual Rights not already protected, other than entrenching them in a new Northern Territory Constitution in some form of an enforceable Bill of Rights. These measures include: (a) reliance on national constitutional or legislative provisions supplementing the common law only, rather than any additional Northern Territory

\(^{384}\) Also continued in Divisions 2 and 3, these include direct elections to the new Parliament, equality of Territory electorates, secret ballot, wide qualifications of electors and candidates, regular general elections, etc. These are to a large extent now covered by the Northern Territory (Self-Government) Act, 1978, but this Act is proposed for repeal. The Final Draft Constitution incorporates all of these.

\(^{385}\) See Item 2(ii) of the Addendum. They may, if the new Northern Territory Constitution is implemented, continue to apply in the Northern Territory and may even be enhanced by the provisions of that Constitution.

\(^{386}\) See section 6.2 of the Final Draft Northern Territory Constitution. These provisions are not already covered by the Australian Constitution or by other Commonwealth protections.

\(^{387}\) This means land under the Aboriginal Land Rights (Northern Territory) Act 1976 if it is patriated to the Northern Territory, Aboriginal sacred sites, Aboriginal self-determination, and recognition of Aboriginal customary law as a source of law in the Northern Territory. See sections 2.1.1, 7.1, 7.2, 7.3 and 11.2 of the Final Draft Northern Territory Constitution. All of these provisions have elements which would go beyond existing Commonwealth protections, including common law.

\(^{388}\) See Part 8 of the Final Draft Northern Territory Constitution which deals with these matters, and is applicable to all people in the Northern Territory.

legislation; (b) the incorporation of these additional Rights in ordinary Northern Territory legislation; (c) the incorporation of these additional Rights in the new category of organic laws; (d) reference to these additional Rights in an expanded Preamble to the new Northern Territory Constitution; (e) the incorporation of these Rights in the new Northern Territory Constitution, but not in a form that makes them directly enforceable; rather, in a form that is relevant to matters of statutory interpretation and public administration only; (f) some form of reference to these Rights for the purposes only of parliamentary scrutiny of new proposals for Northern Territory legislation, and/or for the purposes of investigation by the Northern Territory Ombudsman into complaints as to Northern Territory administrative actions.390

The Committee stated that if none of the above additional options are considered acceptable, there is always the remaining option of simply maintaining the present status quo. This requires reliance being placed on the existing protections mentioned above as well as on the common law and the capacity of the new Territory parliament to legislate in the future where there is a perceived need.391

Having canvassed the range of Rights, the main criticism I have of the Sessional Committee is that it finished its survey of the topic with, it is suggested, a demeaning, neutral statement:

The Sessional Committee makes no specific recommendation as to any of these options.392

On 26 November, 1996, the Sessional Committee report on a Final Draft Constitution, Foundations for a Common Future, was tabled in the Legislative Assembly. The Report recommended that a new Constitution be adopted for the Northern Territory to replace the Northern Territory (Self-Government) Act, to be prepared by Territorians, and set out the text of a draft new State Constitution prepared by the Committee. The Sessional Committee’s Report noted that strategies for the future included an on-going role for that Committee in over-sighting matters of constitutional process and in contributing to that process where appropriate, and the undertaking of a role in promoting the awareness of

392 Op. Cit., Supra. In my view, this was prima facie, leaving the readers to flounder, but could equally have been seen as being even-handed. I would have preferred a bold approach; which could still be ignored. As it happened, without such urging, it was completely ignored. A caveat to this observation is that Stone, a lawyer, would recognize any urged view at once anyway and consider it beyond the scope of the Committee’s brief.
constitutional issues to the Northern Territory and Australian populations. The Report also identified a preferred procedure for adopting a Northern Territory Constitution. This included referring the Committee’s Final Draft Constitution to a Northern Territory Constitutional Convention, with broad representation from across the Northern Territory community and comprising a majority of elected members, with the draft Constitution as adopted by that Convention to be subsequently submitted to a referendum of Northern Territory electors.393

Notwithstanding the later section on the Standing Committee's investigations in Chapter 7, relating to the bid's referendum failure, the summarised history of the Sessional Committee's work above resulted in a brief and poignant sentence which could almost be missed, crucial evidence marking a 'sea-change' in the whole process, and it is repeated: here:

The recommendations of the report were never formerly endorsed or rejected by the Legislative Assembly.394

Hatton had no hesitation in being far more direct in his interview with me. He indicates that a crucial stage of the process was missed. It was the moment where the statehood venture turned around in the Assembly, which is supported by others (Hickey, Bailey), more for what was not said and done than for any vigorous condemnation of the Sessional Committee's work. A silence in the Chamber sealed the fate of the Committee's main purpose in producing a draft Constitution.395 In that ennui, that silence, the major work of the Sessional Committee was rendered largely redundant.396

It is submitted that this event stands alone as a major contribution to the downfall of statehood. The possibility of including or excluding Rights in the State Constitution, was not debated in the Legislative Assembly; and as can be seen, other central Rights were taken-out.397 I submit also that the recommendation should have been

394 Legislative Assembly of the Northern Territory, Report into appropriate measures to facilitate statehood, Standing Committee on Legal & Constitutional Affairs, April 1999, 16.
396 The above broad canvas of the status of Rights, not only relevant to the Northern Territory, and to the new Final Draft Constitution, but as an instructive guide generally of Rights, is reproduced in part with all accreditation to the Northern Territory Legislative Assembly and the Constitutional Affairs Sessional Committee, under the guiding legal constitutional drafting hand of Graham Nicholson.
397 It is really an exercise which deserves individual and separate scholastic attention, but in this paper its significance is such that its content and reasoning forms the heart and soul of the Sessional Committee’s Final Draft Constitution.
stronger and more positive.\textsuperscript{398} The only major criticism which I have of the Sessional Committee is that it should have recommended the adoption of the report's supplementary Addendum to the Legislative Assembly. It is appreciated that politics or matters of circumspect judgment may have divided the Committee to pull back from making recommendations on this matter. But in this episode, the critical mass and moment was lost to prime vital levers, to 'go with the flow' of the Committee's work thenceforward, perhaps, even probably affecting the outcome.

The Sessional Committee performed many other important duties, including the publication of numerous papers and information documents. It carried out consultations and it worked extensively on producing the draft Constitution. Although details have been discussed here in relation to that draft constitution, apart from the Rights appearing in it another feature of that draft constitution which was "revised" by the Constitutional Convention, was the matter of the Preamble. It was of particular concern to Aboriginal Territorians. Criticisms were made of its revised weak preambular acknowledgement of prior occupation by Aboriginal people; its provision anticipating the codification of Aboriginal customary law and its elimination of some of the more inviting provisions contained in the Sessional Committee's draft. These included provisions conferring upon the \textit{Aboriginal Land Rights (Northern Territory) Act 1976} (Commonwealth), the status of organic law with particular amendment procedures, a constitutional regime for the protection of land rights and sacred sites, and an Act of Parliament to promote Aboriginal self-determination. And the Constitutional Convention also rejected the proposals that the Land Rights Act remain within the federal jurisdiction; the caveat on the application of the powers of Premier and Cabinet in order to temper executive power; mechanisms to ensure free and fair elections; and, of course, the inclusion of a Bill of Rights.\textsuperscript{399}

In assessing the Sessional Committee's effect upon the statehood bid, a train of events was set in motion, by virtue of the Final Draft Constitution not even being considered, debated, accepted or endorsed by the government. It was passed to the Constitutional Convention, (with instructions by Stone), where the Rights content of the draft Constitution was hardly considered with the same degree of expertise or

\textsuperscript{398} I say that with the hindsight of what I would agitate for today, not contemparaneously. Rights were anathema to CLP members at the time, because of the much stated dangers (repeated in this paper) of bringing statehood to a standstill through litigation.

understanding, despite the late inclusion of the explanatory Addendum. And as a result, the draft Constitution was severely emasculated. In such circumstance, the government had played a winning hand, as it had successfully passed-on the responsibility for dealing with the matter to the Constitutional Convention. In so-doing, the matter was relegated, ‘Pilate-like’, to the inexperienced and malleable Constitutional Convention delegates, with CLP delegates eager to lead the re-invention of a draft constitution to put to the people, as sanctioned (more aptly, urged) by the Chief Minister. The corollary of this calumny is the further action that such draft revised Constitution would be described as “accepted by Parliament” in the referendum question. The corollary aspect of these events follows-on as a consequence, and at the referendum, the voting public saw through the ruse.

4.3. The Standing Committee

As stated in the introduction to this chapter, the Standing Committee was formed following the failure of the referendum, ostensibly to inquire into the causes of its downfall and to determine ways to facilitate a future statehood bid. It performed both tasks with singular distinction. In this section, however, there will be particular concentration upon what it found as the causes of the failure. The Committee, it must be said, found no good reason to question the analysis of a market research survey taken, and good reason to fix a predominant cause of the defeat upon the head of the Chief Minister, Stone. The confusion in meaning is understandable. It is a fact of life that the persons who carry out infamous or outstanding acts attract far more public stigma or adulation (as the case may be) than any appreciation of the theatre of cause and circumstance within which they act. Readers will have noted the Standing Committee’s remarks in Chapter 3, and there is more analysis of the Standing Committee’s work in Chapter 7, as a Critic.

4.3.1. Standing Committee consultations

It has been stated before that the Standing Committee’s findings are not challenged, but the syntax of writing is open to speculation, and could be said to lend credence to bias. Thus, the polling revealed that for those who voted ‘No’, the reasons relating to the Chief Minister, and/or politicians generally, rated in the top six:400

400 Legislative Assembly of the Northern Territory, Report into appropriate measures to facilitate statehood, Standing Committee on Legal & Constitutional Affairs, April 1999. Op Cit.,Supra.
Only 10.6 percent however, gave Shane Stone as the reason they voted ‘No’. Another 10.2 percent stated that it was too political, the Chief Minister pushing it. Even with a further response of 9.2 percent, as to the arrogance of politicians being a reason for voting ‘No’, the combined total percentage of response in such Northern Territory Chief Minister/politicians category is just over 31 percent, not the major reasons given for voting against Statehood. The more credible explanations is in fact supplied by the Standing Committee report, as follows:

The primary reason given for the ‘No’ vote (56) or 19.8% was lack of information. There was in fact a great deal of information put out to the public, including a most comprehensive history and time-line booklets; but it is now certain that there were deficiencies in that such information as was made available to the public:

- Was too technical;
- Was too complex;
- Did not answer or assuage the worries and fears of people;
- Made available in an inappropriate mode - by post, when TV and more psychological penetrating methods could have been used;
- Produced in too short a time - frame window for proper digestion;
- Did not reach people who were most in need of such information.
- Received insufficient supporting education and backup;
- Suffered from a lack of a well-funded professional education campaign which would overcome the above shortcomings;

There may be a number of other reasons, why the information that was made available did not register with respondents.401

The standing Committee, with nothing to lose, was more forthcoming than its predecessor. It stated unequivocally “The conclusions are inescapable: a well funded education program is absolutely imperative, if another bid is to be made successfully.”402

The third, fourth and fifth reasons of the Standing Committee’s report are sufficiently similar to impute former Chief Minister Shane Stone’s role as a primary reason for those respondent’s rejection of statehood, but it must be reiterated that even

401 Legislative Assembly of the Northern Territory, Report into appropriate measures to facilitate statehood, Standing Committee on Legal & Constitutional Affairs, April 1999, Ibid.
402 Op Cit., Supra.
combined, they were not the major reason given for rejection, and it was a small sample. The accumulated numbers amount to 85 respondents, or 30% of respondents in the top five reasons for rejecting statehood. This is no major number, although singularly, they are each relatively telling. Reasons 3 and 4 do specifically mention Stone, (59) or 20.8%. This is an extraordinary criticism, but cannot be regarded as proof of a primary reason for voting ‘No’, so far as this evidence shows.

4.4. Conclusion

The committees worked in the background, but each had their strong and weak points. And in the case of the pioneering Select Committee, its strong points were also the making of a conundrum. The construction of a constitution and associated tasks proceeded as if the definitive model constitution was its objective, instead of the research, and collation of parts of it. And the Standing Committee is mentioned here out of sequence, because its predecessor, the Sessional Committee, contributed most to the concept of constitutionalism in heading towards statehood. The closer examination of the Standing Committee reveals, as has been found in Chapters 3 and 7 of this thesis, that ‘finger-pointing’ is easier to do, satiates emotive responses, but is insufficient as an answer when put to closer scrutiny: it does not assist in finding and marking the fundamental causes (causa causans) needed to redress wrongs. The Standing Committee report is instructive in itself for reasons besides the blame it placed on Stone for statehood failing. Read carefully, the Standing Committee identified a number of causes for failure. And it was unequivocal about the chief reason: an appalling lack of appropriate education. The Standing Committee opted for populism in its emphasis, although most faults were certainly mentioned. Accordingly, this chapter (4), largely treats the question of ‘Stonehood’, discussed in Chapter 3 and Chapter 7, as being ‘passe’, of little practical use, whilst acknowledging the allegation, placing it in the context to which it belongs.

Finally, the Sessional Committee’s progressive, even prophetic efforts, had to surmount unprecedented obstacles, which included preparation for a republic-based state or constitutional monarchy-based state. It issued plans for both. It also faced a hostile government, yet still provided and presented a Bill of Rights in an exercise of clever ‘brinkmanship’. In these chapters, together with Appendices 3 and 4, readers can observe what Rights were prepared, and what was not to be. And in extending itself, the Sessional committee ironically created a model constitution, which could only be deconstructed, not substantially ‘improved’, and that in itself was a problem.
which the Constitutional Convention would not, could not, or did not overcome. Most probably, few delegates, or anyone else, were aware of the hidden paradox caused by the Select Committee instructing itself. It was continued by its successor, the Sessional Committee as a quest for drafting a model constitution, thus contributing to the fate of statehood by pre-empting the Constitutional Convention’s role! That is not to say that it would not have failed had the correct paradigm been adopted, but the measures adopted let the government in more easily.
CHAPTER 5

CONSTITUTIONAL CONVENTION DECONSTRUCTING
THE BRIGHTER SHADOW

5. Introduction

The main Constitutional Convention of the Northern Territory, which commenced on March 25, 1998, was preceded by the processes necessary for its convocation, including calling of applications for delegates. I was amongst these applicants, and with tacit agreement, was accepted into a category of delegates which subsequently became one of the most contentious issues of the convention process. This was the category known as the Chief Minister's personal selection, which in turn carried with it the public stigma of such delegates being hand-picked, like me, because they were considered by many people as more likely to follow the government line. This meant that so far as its directed position was at variance with the position of any other person or body, mainly the Sessional Committee of Parliament, which had earlier presented a final draft constitution in its report to Parliament, this Convention was to draft a constitution ab initio. The fact that a precedent was available, a good one, meant little.

As an active member and office-holder in the ruling Country Liberal Party, I knew well the position of the Chief Minister, indeed, knew the thinking within the CLP. A firm view was held, not only of what was expected, but a conviction that the minimalist position was safer and more conducive to attainment of the goal sought, and that was the Northern Territory becoming a state. This meant that entrenched Rights could endanger not only the constitution, but statehood itself. And too many precise specifications, rather than general principles could have the same effect.403

In a more objective appraisal, the chapter deals with the several most important issues arising from the Constitutional Convention, including the choice of delegates, the alleged loading in favour of the CLP, and the departures from the Sessional

403 In this thesis, this chapter subject contains a major criticism by me, and so far as possible and where relevant, my remarks are injected into the text to provide texture, without claiming to be in anyway determinative, or authoritative. In general terms, it is dangerous to include subjective comment in a scholastic work, but it is submitted that it is relevant in this particular context because of my knowledge of the CLP, its mindset, its members, and the general intent. Indeed, as it transpired, this potential was largely negated so far as I was concerned (as I was the only delegate not to attend the Convention). Nonetheless a letter was drafted to the Chief Minister long before the event, seeking a place as a delegate, and offering a minimalist view as an intended approach. That view was pushed to the fore by active CLP members.
Committee's Final Draft constitution. This entailed a new set of resolutions, proposed by the government's representatives and accepted by the Caucus of the Convention.

As will be seen, there appears to be a conundrum present. I have not been able to establish that there was in fact a 'majority of government sympathisers', either selected or elected, and yet there was a shift to the government position through the resolutions proposed and adopted. The question arises as to how this occurred, and the explanations given imply the presence of psychological behavioural dynamics, which occur in the decision-making of some groups (See footnote 481 at page 180). The conclusions as to whether the actions of the Convention were central to the failure of statehood and if so which aspects, must therefore be treated with some circumspection. Certainly it was a 'botched' arrangement, but in ways different from the popular mantra. The one clear, unequivocal mistake was its appointment, not election. Outside this failure, there were other factors at play.

5.1. The print media's forebodings of Stone's convention

The signs of what was expected to come later in the month, were flagged by *The Northern Territory News* on 3 March, 1998 in its Editorial. The newspaper explained the method of 'hand-picking' delegates from 'friendly' groups, and commented that as a result, the outcome of the Convention was already predetermined. It said:

"Given that Mr Stone has hand-picked the organisations from which each delegate can be nominated, and the elected 'representative' will be drawn, the end result appears to be cut and dried."

The paper identified no majority of elected delegates as a major perception of bias. This allegation cannot be brushed aside, even with the most liberal interpretation. And it warned of the criticism being invited by such a course being taken, thus:

The government exposed its convention model to criticism by rejecting a bipartisan resolution of a parliamentary committee last year that three-quarters of all delegates be popularly elected. Under Mr Stone's convention model, our "hands-on" Chief Minister will have a final say over the 18 appointed delegates...The remaining 27 other so-called "elected" delegates, are members of each selected community group able to nominate and vote for the particular representative. Already, the convention has attracted strong opposition, most notably from segments...


The opposition of the above two groups was understandable. There were many Territory ‘associations’ of greater prominence not invited to nominate, but a number of groups felt slighted by their non-selection or representation. The paper wrote:

The NT Association is understandably upset by not being invited to nominate at least one representative. The whole question of Indigenous representation is one which has the most enduring bearing on the faults in the statehood process and by no means confined to the two named indigenous organizations below, as follows: The land councils, on the other hand, are upset in being asked to submit just two nominees, while the Aboriginal and Torres Strait Islander Commission will have four.\footnote{406 Editorial, \textit{The Northern Territory News}, 3 March, 1998, Op. Cit.}

This editorial, one of the most important on statehood, reflected many views and perceptions, (as the media inevitably portrays) canvassed a wide swathe of concerns. The question of Hatton’s treatment by the government also received criticism on his axing as a CLP representative. \textit{The Northern Territory News}:

But the convention suffered its biggest setback when the allegedly democratic processes within the CLP parliamentary wing conspired to dump the former chairman of the Constitutional Development Sessional Committee, Steve Hatton, as one of two CLP representatives. More than anyone else in the CLP, Mr Hatton will be remembered for his role in helping draft an NT Constitution. He is also probably the only member of the Government who can work constructively with the land councils' leadership. By ignoring Mr Hatton's important role, the government will find it increasingly difficult to attract broad Aboriginal support for an NT Constitution.\footnote{407 Ibid.}

The fact is, Shane Stone did not rely on the Indigenous vote, as his polls indicated strong urban support.\footnote{408 See Chapters 3 and 8 herein, where this question is also considered.} But in a subsequent sally into the statehood process, the \textit{Northern Territory News} concentrated on the Constitutional Convention itself. It was a gala occasion, as the Editorial reflected under an apt heading:\footnote{409 Editorial, \textit{The Northern Territory News}, 26 March, 1998.}

\textbf{STATEHOOD CHALLENGES}

The fate of Australia’s seventh state rests with the statehood Convention delegates who gather for the next two weeks to help finalise a Northern Territory Constitution. The 53 elected and appointed delegates have been assembled today to address whether the NT should become a state, and if so when. They also must decide on what Australia’s next
state should be called. But their most important task is to nominate their preferred constitutional model.\textsuperscript{410}

There must be an intercession in continuity of the Editorial here, because the words used, ‘preferred constitutional model’, are instructive. As will be seen in this chapter, the changes made were not so much based upon options, but constituted a virtual rewriting; that is, they were so different to the Sessional Committee’s Final Draft Constitution as to render the thrust of the Committee’s work of little consequence; one cannot state ‘null and void’, but the essential ideals were emasculated.\textsuperscript{411} The newspaper extended its Editorial to a discussion as to the nexus of Rights with the Constitutional Convention, because it, like most informed parties, knew and expected the centre-point of Rights to be Aboriginal Rights. Further, the editors fixed upon the peculiarly Territory–sensitive question, of Aboriginal Land Rights:

\textbf{ABORIGINAL RIGHTS}

While there will be divergence of views over the content of our draft constitution, the delegates must agree during the course of the next three weeks on a series of key issues. These include whether a Bill of Rights should be included in the Constitution, and how Aboriginal rights and aspirations can best be reflected in the document. Chief Minister’s Shane Stone, adamant about control of the \textit{Aboriginal Land Rights Act} being passed to the NT on statehood, remains firmly opposed to enshrining the Act in our Constitution. His position puts him at odds with at least a quarter of our population, and makes the task of convincing the Senate - which must approve the Constitution - more difficult.\textsuperscript{412}

The warning issued was real, but was played-down by the government. The paper warned that any constitution produced, ignoring such rights would shame the government, and invite universal embarrassment. Note the editorial date; there were options in the Committee draft; but by this time it was known by the editorial writers that the government had other plans.\textsuperscript{413} The argument moved-on:

Quite clearly, if we show the Senate that the broad church of Territorians supports the final Constitution, it must first be endorsed in a referendum of all NT voters. While such a vote would be difficult and expensive, it would be up to Parliament to sell the document to the people. The cost of a referendum is no reason not to have one. As the delegates gather to begin their historic deliberations at the very site where self-government was born, we wish them success with this great challenge.\textsuperscript{414}

\textsuperscript{410} \textit{Ibid.}
\textsuperscript{411} As will be seen later in this chapter.
\textsuperscript{412} \textit{Ibid.}
5.1.1. *The Northern Territory News’ own Agenda items*

The media, to its credit, had spoken-up for a significant proportion of the Territory’s population. But the Northern Territory’s only and arguably most influential media had not finished the topic. *The Northern Territory News*, continued its statehood pronouncements shortly *after* the Convention started, with several suggested agenda items of note, which were not considered either by the Constitutional Committee or the Convention itself to be sufficiently appropriate for entrenching in the Constitution. Nonetheless, the subjects represented at the time some glaring deficiencies in the Rights of citizens, and the newspaper considered, in particular, *Freedom of Information* (FOI) as a worthy inclusion, as follows:415

**LOBBY FOR INFORMATION**

The statehood Convention delegates should seriously consider embodying the right of *Freedom of Information* (FOI) in an NT Constitution. The main reason for doing so is simple: there still remains the illogical argument the way we in the Territory should continue to be denied such a fundamental right.416

There followed a vociferous haranguing of the CLP.417 The editorial writer played straight into the hands of Stone by lambasting the CLP so, creating an ‘us v them’, scenario; and continued by announcing that Labor’s Maggie Hickey and Deputy John Bailey would lobby delegates for inclusion of FOI; that Stone had nothing to fear by including FOI. Stone doubtless felt he had nothing to fear by sticking to (his) general principles. The editor knew that anyway, and concluded that whilst the CLP government remained, basic Rights would be denied. The editorial adopted another approach to explain a problem concerning the Public Service. It claimed:

> It also creates an unhealthy mindset within the Public Service that its actions should also be beyond public scrutiny. For the large bulk of the Public Service, its mainly administrative functions are of little interest to outsiders.418

---

417 For example: “And while not exactly providing a reason why, the CLP Ministry has pointed to operational flaws yesterday on FOI laws elsewhere as its only real bone of contention. The reality is that the CLP Ministry has grown too comfortable with virtually no scrutiny outside the meagre opportunity which exists within parliament house. Here in the NT, an element of unfortunate secrecy surrounds all facets of government administration - and we're just talking about the Cabinet minutes.” Then came: (Sub-heading) CONSPIRACY (read: “there is a conspiracy”). “While there's little evidence that the CLP government has something to hide, its opposition to FOI legislation provides ‘ammunition’ to the conspiracy theorists who suggest it has plenty (to hide)!” *Ibid.*
418 The incoming Labor government has introduced the *Information Act, 2003*. Whether it is *open* or *just* is another matter. Significantly, it is not called a “Freedom of Information Act”.
The editorial concluded:

But as the statehood Convention goes about its historic task, it should consider existing law which provides basic administrative justice in the Territory. By ensuring that FOI is enshrined in a Constitution, the Legislative Assembly will have little choice but to introduce a law, which is both responsible and just. It will also assist the Opposition and the media to do their jobs properly. Outside Cabinet, there remains very few Territorians who oppose FOI. This being the case, the convention should move to have it introduced.

These editorials have been reproduced here extensively, because they were circa 1998 the considered responses of the media analysis of constitutional convention dangers, requirements and essential inclusions, which were at the time already in danger of being excluded. The editorials thus set the scene for the further examination of the Convention’s work, despite obvious self-interest. The Convention itself was shaped by its announcement. The shaper was Chief Minister, Shane Stone. The question nevertheless hung: just how much influence did the newspaper editorials hold; who reads them, and how many votes are won or lost as a result?

5.2. Constitutional Convention announcement

One would have to read the full text of Stone's address, when he rose in the Legislative Assembly on 4 December, 1997, to gauge the extent of control the Chief Minister held over the Constitutional Convention. Its essence however, is cited here. Government supporters were buoyed, if a little apprehensive of the specification with which they were now presented. The worst fears of the 'pundits' were confirmed:

Mr STONE (Chief Minister): Madam Speaker, it is with great pleasure that I rise today to announce an event that will be of great significance in the history of the Northern Territory. I refer to the establishment of a constitutional convention. It is an event that heralds the beginning of the formal processes leading to the culmination of our vision for the Northern Territory to take its rightful place as a state in the Australian federation. This process follows over 20 years of hard work, dedication and determination by many Territorians to secure a future in which Territorians may determine their own destiny and manage their own affairs, as do other Australian citizens.

419 Stone and the CLP hierarchy would doubtless have found merit in the statement, as did I.
There surely are few words more fitting for introducing processes towards statehood. But one must read the following lines carefully, because the Chief Minister did not say “you already have a precedent draft constitution to consider”, or words to that effect. He affected a statesman-like eloquence, and continued:

The government proposes the establishment of a constitutional convention as the next step in the important process of developing a constitution for the Northern Territory - a constitution prepared by Territorians for Territorians. The function of the proposed convention is to consider and report to the parliament on the form of a constitution for a new state for the Northern Territory. In carrying out this function, the convention will be able to have regard to extensive research and papers already prepared, other international developments, expert advice and the views of all Territorians.422

The rhetoric seemed right and an observer may well have been forgiven for missing a vital clue in the second paragraph of Stone's speech. For he was responding in effect to the events of the previous year in which the Sessional Committee had already Tabled its Report, including its version of a Final Draft Constitution for such a Constitutional Convention to consider. That was not to be. In stating that Territorians would create the Constitution at such Convention, there is now a belief that the government itself representing Territorians would present its own propositions as the Revised Draft Constitution. To be fair, it must be said that Stone did refer to "extensive research and papers already prepared ...." However, the enormous work of the Sessional Committee’s draft constitution was ‘damned by faint praise’, and in any event, the government had no intention of allowing its own ideas to be ignored. It was preparing for a Constitutional Convention which would reflect those ideas. This was another blow to hopes of putting forward the draft Constitution as set for consideration by the Sessional Committee. In retrospect it can be said at this stage that further consolidation of the government’s position was to follow.423

423 When expressions of interest were called for membership of the Constitutional Convention, I wrote to Stone offering to serve on the Convention as a Government-appointed delegate. The view then held by me was that the Revised Draft Constitution should be minimalist - to be inclusive of all Rights would endanger not only the Constitution, but statehood itself, by risking extraordinary, protracted and obstructive litigation. It was a view I believed to be shared widely in the CLP, in which I was an active member at the time. I still hold that such danger exists, but in reconsidering, I have since embraced the concept of inclusiveness, particularly of Indigenous Rights and other Rights, as the only way statehood will occur and as a matter of natural justice, with other corrections, towards constitutionalism. I do not believe it is near-ready (in 2006), for future action without a massive Education campaign.
It is submitted that there were three main issues which arose during the Convention. The first was the manner and selection of the delegates. Second were the limitations set by the Chief Minister upon the convention and virtual ignoring of the Committee's Final Draft Constitution for that of the CLP's version. And the third issue is how the Convention was handled (the word 'manipulated' is almost, but not quite apt), and as a result, what new or amended measures were reflected in the resolutions put forward. This latter manoeuvre, engineered by government forces, was like a military diversion. Although it involved as much or more complexity than that, it worked. The irony is that how it worked did not attract controversy as did the first two points, but it was, in my opinion, decisive for the achievement of Stone's objectives.  

The first issue above arose during the Chief Minister's keynote speech outlining his view of how the Convention should operate. He nominated the classes of persons who would be delegates, and in effect these classes became the government's 'proportional' version of the stakeholders in the process, as follows:

I come first to the framework of a constitutional convention. The convention will meet to consider and report to the parliament on two important statehood issues. These are the form of a constitution for a state of the Northern Territory and the name of a new state of the Northern Territory. The convention will comprise a total of 45 delegates of whom 27 will be elected by a broad range of community groups and organisations. A further 18 delegates will be either appointed or ex officio delegates. In considering the form of a constitution, the convention must have regard to the following:

Stone read-out the general criteria; the numbers from organisations (he had selected) and the officials. Then he turned to the procedures to be adopted for
obtaining delegates. In this way, names could be sifted and approved, by himself. First he said advertisements would be placed to seek delegates.\(^4^{27}\)

The procedures for the conduct of the business of the convention will be prepared in advance of the convention by the chairman for approval by the government.\(^4^{28}\)

The Chief Minister left nothing out: the Convention would not be able to make and approve its own rules. They had to be approved by him. Stone relied on what he may have regarded as a ‘tame’ Chairman; and to some extent the evidence shows that the former Administrator and Chief Justice of the Northern Territory Supreme Court, Constitutional Convention co-Chairman, Austin Asche did, on first sight, at least support the government’s approval of delegates. But subsequently, I read it much differently. Asche remarked:\(^4^{29}\)

There was, understandably, some criticism both inside and outside the Convention at the method of selection of delegates, and the argument was forcefully put that a direct-election process should have been employed. It is not for me, as Chairman, to take any side in this argument, but I feel bound to observe, and I think it is only fair to the delegates that I make this observation, that a very broad representation of interests and opinions throughout the Territory was achieved, and, in my view, the delegates themselves constantly and effectively demonstrated the same deep appreciation and knowledge of the Territory that would be expected of delegates selected in any other manner.\(^4^{30}\)

Nothing was said overtly by Asche about the process parameters here laid down by Stone, and it might be inferred the Chairman regarded the rules as laid-down prior to the convention, valid and satisfactory. If the question had caused the Chairman concern, doubtless he would have raised those concerns with Stone. The distinction

---

\(^4^{27}\) Advertisements will be placed, seeking expressions of interest. Delegates, other than members of the Legislative Assembly or employees of the Northern Territory government, will receive sitting fees. Reasonable travel expenses and allowances shall be paid where necessary, subject to the prior approval of the Department of the Chief Minister. [Northern Territory Parliamentary Debates, Ministerial Statement: Constitutional Development; Shane Stone (Chief Minister), Thurs, 4 December, 1997, Eighth Assembly First Session, 1 December, 1997, Parliamentary Record No:2, Op.Cit., 441-437.]


\(^4^{29}\) Ibid. My emphasis in Italics.

\(^4^{30}\) Ibid. My emphasis in Italics.
between Stone laying down the rules and the Convention making its own rules, was not raised by the chairman. Stone continued laying-out the rules:

In preparing the procedures, the chairman will have regard to the following: there will be no quorum requirements for the convention; resolutions of the convention will be determined by consensus or, failing that, by a simple majority of those present and voting; and the chairman shall have a deliberative vote and, where required, a casting vote.\textsuperscript{431}

Stone lowered the intensity of his Convention-shaping edicts with obtuse detail:

I draw to the attention of honourable members the inclusion of 2 people specifically to represent youth in the Territory. The constitution that we will prepare is a document for the youth of today and for the Territorians of the future. It should be noted also that there is capacity for the nomination or appointment of other delegates to the convention, representing particular interest groups. The Territory government has a view as to which other groups should be represented, but constructive suggestions by the Opposition, in regard to finalising the membership of the convention either in the course of this debate or later, will be welcomed. I also invite the opposition to enter into dialogue in relation to the issue of the method of election of convention members by the nominated bodies.\textsuperscript{432}

On the face of it, this last statement by Stone appears reasonable. Nonetheless, a closer inspection discloses that it is a diversionary tactic, and requires parameters laid out by the Chief Minister. The distinction, which the Labor Party would have preferred, is that the rules in all respects might have been worked out either by negotiation with Labor or in conjunction with it, perhaps through a joint committee. In any event, the Chief Minister simply did what any government has a right to do, and that is to exercise governance. But stone ‘rammed’ the message home:

In outlining the detail of the convention, I stated that there were some matters to which the convention must have regard in carrying out its functions. The first of these is the requirement for simplicity and plain language. A constitution, when adopted, will be the foundation document for the new state. It must set out clearly the roles and responsibilities of the institutions of government of the new state, and the rights and responsibilities of its citizens in terms that can be understood by the average Territorian. By this, I mean that it will be a fundamental requirement that the constitution for a new state of the Northern Territory will be accessible in every sense of the word to the citizens to whom it applies. In outlining the detail of the convention, I stated that there were some matters to which the convention must have regard.\textsuperscript{433}

\textsuperscript{431} Ibid.
\textsuperscript{432} Ibid.
Beyond anything previously stated, the mandatory nature of the above and below is self-explanatory, and should constitute solid evidence of the Convention edict pronounced by Stone. The Chief Minister came then to a major issue. This was the matter of just how much Rights would be entrenched in the constitution.\textsuperscript{434} The government side delegates well-noted this point. In his speech, Stone said:

The second matter that I would like to touch on is the requirement that the constitution should seek to entrench only those rights which are universal. The government is resolute in its view that it is entirely inappropriate, as we approach the cusp of the 21st century, to be framing an enduring constitutional instrument for a new state which either allocates or denies rights on the basis of gender, race, religion or ethnic origin. This government will not entertain the entrenchment of any rights which are at the expense of, or which exclude, any group of Territorians.\textsuperscript{435}

Was this a not-so-veiled inference that a comprehensive Bill of Rights would not be entertained? I submit that it is the definitive pronouncement, long expected. Stone continued:

I stated also that the report of the convention will be made to the Legislative Assembly through the Speaker. It will be the parliament of the Northern Territory that will consider the report of the convention. We, collectively, are the democratically-elected representatives of the people. It is the members of this Chamber who face the electorate and, therefore, are attuned and responsive to its requirements. In the event that this parliament proposes, by resolution, any amendments to the proposed constitution, the issue will be well publicised, the matter debated at length, the decision-makers accountable and the reasons clear. I do not intend to dwell at length on this aspect. The strength of our democratic system is that it is within the power of the people to determine at regular intervals who they wish to have as their representatives. They are the final judges. In this matter, they should have the final say. As I indicated earlier, however, the parliament will need to satisfy itself in a satisfactory way that the constitution has the support of the people.\textsuperscript{436}

This last paragraph, and the next, as heard by any lay person in the gallery, or indeed simply reading \textit{Hansard}, could hardly be described as partisan. The content appears entirely reasonable, balanced and unbiased. There is little greater eloquence of expression of democratic sentiment than those expressed by Stone as above. But there is also subtle sophistry in these two paragraphs to indicate a government, through its Chief Minister, bent on either manipulating or dictating the

\textsuperscript{434} I have already stated that it was then considered a statehood-saving measure to take a minimalist approach, and the Chief Minister had no hesitation in setting the limitations on the question of Rights.

\textsuperscript{435} Opposing forces, groups and individuals might not agree, indeed did not agree which groups lose-out? \textit{Ibid.}

\textsuperscript{436} \textit{Ibid.}
Constitutional Convention to his/their own view. The conciliatory tone, however, at
the ministerial statement's beginning and end is understandably at odds with the
Constitutional Convention parameters. In some respects this fundamentally
important ministerial statement, contains beguiling inconsistencies. Observe Stone's
offer to sit down with the Leader of the Opposition, in a spirit of cooperation:

Finally, I hope we will have a constructive and useful debate today. I am
genuine and sincere when I say that I am interested in the views of the
Opposition and I believe that my bona fides are demonstrated by the fact
that we concede to the Opposition the right to appoint 1 of 2 deputy
chairmen. I am prepared to sit down with the Leader of the Opposition to
work through a process that will ensure that we have genuine consultation and meaningful discussion on the way people are selected
to be part of the convention. I look forward to hearing the contributions of
members. This is an historic day which will very much shape the way in
which matters unfold in the time ahead. Madam Speaker, I move that the
Assembly take note of the statement.\footnote{Ibid.}

But that was far from the end of the matter. The Chief Minister did not leave his
address to the Legislative Assembly to flounder, without further mandate. There was
no doubting his resolve when he sought to entrench the instructions in his address
to Convention Chairman, Austin Asche, as follows:

In carrying out its task, the convention may have regard to such relevant
reports, papers, documents and other material as it sees fit, including the
Final Draft Constitution prepared by the Northern Territory Legislative
Assembly Sessional Committee on Constitutional Development. However
this document is not exclusive and has no primacy in that it has never
been endorsed by the Legislative Assembly. Delegates may, and indeed,
are entitled to consider other models.\footnote{Northern Territory Parliamentary Debates, Report of the Statehood Convention, Volume. 1, Northern Territory
added credibility to the claim that the Sessional Committee’s work was not to be adopted but to be deconstructed.
Addressed to Asche, it is likely to be construed widely, but it was what Stone desired, what the CLP acolytes needed as
authority to act as they intended to do, and evidence of the Chief Minister’s intent. In doing so, Stone acted in
accordance with what he perceived the party required of him.}

It will be noted in this last instruction, that Stone was careful to ensure that the
Sessional Committee report, which included the Final Draft Constitution it tabled,
need not be (and in fact was not going to be) the Final Draft Constitution. The crux
of Stone’s philosophical objection to it is clear by his declaration that it “has no
primacy”, and has “never been endorsed by the Legislative Assembly”, read, the
CLP in government. In no way, however, am I suggesting that Stone was ingenuine
or deceitful. He wended his way through a sophistry of necessity to meet the
requirements of protocol, whilst prescribing the CLP philosophical course. The further instruction concerning Rights could also be read as a caveat not to ‘play around’ with Rights outside those existing rights; in other words, leave Rights alone! This was the intention not only of the government, but of many supporters. The former Speaker of the Legislative Assembly, the Hon. Terry McCarthy, echoed the fears of and about the Sessional Committee's inclusive Final Draft Constitution:

I have a real concern about constitutions that are prescriptive - that is, constitutions that try to describe every possible thing that could happen and attempt to have an answer for it. I do not believe a constitution ought to do that. A good constitution should provide the broad outlines of what is required in terms of the Rights and responsibilities of the citizens, but it ought not attempt to prescribe every possible aspect of life. I believe the final constitution needs to be guided. … I maintain that it should be guided and should not be framed entirely by popular demand. South Africa had come through a period during which its constitution had failed it, and failed it dismally. As a consequence, the people have developed a document now that prescribes every aspect of life. I believe the South African people will be in their constitutional court for years, trying to sort out the parameters of this constitution because it is too prescriptive. As I said, I understand the reason for that. However, we must not allow our constitution to be so prescriptive. If we do, we will be failing the people of the Northern Territory.

‘And so say all of us’, in the CLP mindset of the time. It was then, and is still a valid point, a dangerous gambit. But it is clear: no Rights, no statehood. And natural justice demands these protections in a territory/ state charter to allay genuine fears.

5.3. Convention composition: delegates selection under fire

The ABC’s Late-line TV current affairs program, Game Plan: What went wrong? was devoted to the failure of the statehood referendum on 15 October 1998. The story made its assumptions of what caused the referendum to fail, and that the 53 delegates to the Convention had been nominated at short notice. Former lecturer in constitutional law, author on statehood, and at the time a spokesperson for the protest group, Territorians for Democratic Statehood, Peter McNab, had this to say:

They virtually had no time whatsoever to familiarise themselves with the complexities of writing a constitution. It was a very difficult process and to have materials delivered a couple of days before, volumes and volumes

439 Former Speaker, Terry McCarthy spoke for many of us at the time, and added the experience of South Africa, the result of a fact-finding trip.
441 As stated earlier, a point I no longer hold as of greater value than inclusiveness, but with its dangers of failure no less intact.
of materials, for ordinary people who had no familiarity with the constitution that would be a very, very difficult task.\(^\text{442}\)

The proceedings of the constitutional convention did not go unchecked by individuals in the community either. A television advertisement appeared. The voice-over speaker said:

Territory politicians want us to agree to a constitution that doesn't guarantee freedom of speech and basic human rights and has no protection against government excesses. Make the politicians listen. Vote 'No'. It's a word they'd understand.\(^\text{443}\)

The advertisement was bankrolled by a retired Darwin businessman, John Hofmeyer whose address in the authorisation was given as Larrakeyah, the home suburb and part of the electorate of Shane Stone. When asked why he did it, as it was his first venture into politics, Hofmeyer replied:

I read through the *Hansard* records of the statehood convention. And could see undertones through the *Hansard* of conflict, of manipulation of processes, and it became very clear that there was an agenda being run here that wasn't being run for the people of the Northern Territory...There is no opposition to the government here, either from the printed media which seems to do editorials by ministerial press releases, the commercial television station enhances the view that all is well in paradise, the business community is in it for whatever it can get and rarely criticises government in this town.\(^\text{444}\)

The *Stateline* reporter added: “but the draft constitution which the government presented to voters was remarkable for more than just the omissions which John Hofmeyer lamented in his television campaign. Peter McNab, was quick to make an important legal point:"\(^\text{445}\)

This model made the Governor like a public servant who could be dismissed at will by the premier, with no mechanism for the Governor to have any redress, not even a hearing. Now this is unheard of in any constitutional instrument in Australia.\(^\text{446}\)

McLaughlin insisted that one of the most controversial aspects of the statehood bid was the manner in which the Constitutional Convention was handled by the


\(^{444}\) *Ibid.*


\(^{446}\) *Ibid.*
government; and specifically the selection of its delegates. Steve Hatton was asked after the statehood referendum: “To what extent was there a feeling that the Chief Minister had, to be crude about it, hijacked the process?” The former chief minister replied:

I think there was a feeling in the community about that, it's fairly clear the comments that have been coming in particularly since that time. The very strong view in the minds of the community, (that the Chief Minister had hijacked the process) Yes. One of the campaign slogans at the time was, that we want Statehood, not Stonehood.447

The reporter confidently averred that:

…there was no problem with the selection of the Chairman, Austin Asche. Asche was raised in the Northern Territory, had been an able Chief Justice and Administrator; and this was a popular choice and applauded on all sides. There were two Deputy Chair-persons. One Deputy Chairman, was nominated by the Leader of the Opposition. He is former Territory Labor leader, Bob Collins, also by then a retired Northern Territory Senator and a former Minister in the Hawke and Keating governments. The second Deputy Chair-person was Jim Robertson, a former CLP minister. It is significant also that Asche, Senator Collins and Robertson were appointed as delegates. Assisting the Convention as experts were the Northern Territory government's leading constitutional law adviser, Graham Nicholson,448 and Convention Executive Officer, Rick Gray.449 Reader in Politics at the then Northern Territory University, Dr Alistair Heatley, was a Specially Appointed Delegate.450

There is no question that Heatley, who was a well-known conservative in his political leaning, would have favoured the CLP position, indeed he did so on certain matters of principle, and in perusing his papers, cited in the next chapter, observers might draw the inference that he had no outstanding criticisms of it.

The narrative of the ABC Lateline current affairs program, What went Wrong? Game Plan, boldly announced that: “Stone chose to ignore the (Sessional) Committee's recommendation that delegates to the Convention be popularly elected.” Peter McNab agreed, and he had no hesitation about saying how he thought the Convention was set-up: “He, (Stone) took personal interest in the selection of the

447 Ibid.
448 Graham Nicholson is the author of a number of articles and works on constitutional law as it applies to constitutional development. He has since left the Northern Territory. See the Bibliography herein.
449 Rick Gray eventually returned to the public service. He has now left again.
450 Alistair Heatley, in almost certainly his last work published after his untimely death, in an article entitled “The Rise and Fall of Statehood” chronicles this event. It is cited in this work. It can be obtained from the Charles Darwin University library where copies are held. It is cited in Chapter6 herein.
delegates and they represented his government's philosophy."451 I believe in fact that McNab erred in making such a wide statement, even though he reflected public and media perception accurately.

McLaughlin gave Steve Hatton, the former Chief Minister, Chairman of the Select, Sessional, (and Standing) committees, the chance to respond, and, he said, Hatton also acknowledged the flaws in the Convention structure (graciously ignoring the fact [McLaughlin said] that he was omitted as the chief government delegate, in favour of Denis Burke):

I felt that it wasn't put together in a democratically appropriate manner, that basically there were no popularly elected members to the Convention. And that it lost its credibility because 90-odd percent of the northern population had no say in who should be on that Convention.452

McLaughlin continued:

In retrospect, this appears to be a carefully considered reaction, guarded yet allowing the criticisms which have credibility, and there is no question that it was democratically elected. How could it be, when the Aboriginal delegation and other delegates comprised only a small fraction of the total delegates, when in fact the Indigenous population was then closer to 28 percent of the Northern Territory population. The only question is to determine to what extent such denial of democratic process affected the statehood bid. In any event, it was most evident at the Convention, resulting in the Aboriginal delegation walkout.453

The question arises whether the controversy, apparent herein, over delegate selection was justified? To peruse the list of delegates gives little indication per se, but there is widespread suspicion that the Convention was ‘loaded’ in favour of the government or CLP. The evidence suggests that this allegation is not so strong as might be thought. It is important to distinguish this point from the manner in which delegates were drawn because the former point is quite a separate matter from the latter. In fact if there was no true dominance of sympathetic government-line delegates, it cannot be then said that the convention was ‘loaded’ in favour of the

452 Ibid.
453 Ibid.
government. The two points taken together would certainly be cause for stronger criticism and indicate an area for public resentment and rejection.\textsuperscript{454}

The names are now re-construed in my own knowledge of political affiliation or sentiment. This by no means constitutes an exhaustive list or even an accurate one, but it does indicate as much as anyone has any authority to speculate, such as the critics, and even the members of the Opposition, the likelihood of support for one side or another at the Convention at that time.\textsuperscript{455} It is simply not possible to conclude on a cursory count of known and assumed CLP supporters that in fact the Constitutional Convention was 'loaded' in the favour of the CLP.\textsuperscript{456} Twenty-one (21) possible CLP sympathizing delegates of 52 attending is not a majority.\textsuperscript{457}

Given that other members of the Convention may have favoured the government does not strengthen that argument. Furthermore, there was a sizeable Labor support block present as well, and there may well have been other delegates who did not favour the CLP position. The more likely explanation for the accusation (which is now elevated to folklore) is that it was simply the decision of the Chief Minister to nominate which groups and which individuals would form the Convention caucus, and to trust that his strategy, the tactics used, his lieutenants and the force

\textsuperscript{454} As I was undergoing major emergency surgery at the Royal Darwin Hospital on the hour and day the Convention opened, as aforesaid, it was much to my chagrin at the time; and much to my relief later. I can still throw some light on this particular aspect, but only to the extent that my knowledge of political affiliations allows; and even so, that does not indicate whether any such delegate would vote automatically for the government. The Opposition also named their 'suspects'. Nonetheless, such persons can generally be said to be sympathetic to their own affiliations, and would be expected to vote along government or non-government lines accordingly. In general terms too, representatives from business and industry also may well be more sympathetic to the conservative CLP view. On the other hand, representatives of the Indigenous community may be expected to hold a different view from the CLP, and so it transpired. A majority of the Aboriginal delegates walked out of the Constitutional Convention after a few days, when they could see the direction which the Convention was taking. The members of parliament followed their own party lines relentlessly. The total number of delegates was 53 in number. All delegates but one attended the Convention – me.

\textsuperscript{455} In general terms, subjective comment should be withheld from a scholastic work, and if mentioned at all, the circumstances should be pertinent and relevant, as in this particular context because of my knowledge of the CLP.

\textsuperscript{456} Likely specially appointed delegates to support the CLP were: Dr Alistair Heatley, whose conservative views and links with the CLP were widely known; Mr Julian Swinestead, a media man, who was an applicant for CLP preselection, although subsequently not pre-selected, resulting in a court action; Mr Michael Kilgariff, son of former Senator Bern Kilgariff, was the CLP candidate for Fannie Bay (unsuccessful); Mr (then) Nigel Scullion, is now the CLP Senator for the Northern Territory; Mr Ted Dunstan was vice-chairman of the CLP Sanderson branch; Ms June Tuzewski was a CLP member; The Hon. Jim Robertson, Convention Deputy Chairman was a former CLP Minister. (7) Elected delegates included representatives of industry, business, mining, Primary Industries, and ethnic community, which are all generally regarded and assumed to support Conservative politics in the Northern Territory - the CLP. Convention delegates in these categories included: Mr Bob Vander-Wal NT Small Business Association Delegate; Mr Chris Lugg MLA Legislative Assembly Delegate and former CLP Minister; Mr George Michael Roussos Ethnic Community Delegate; Mr Gino Antonino Ethnic Community Delegate; Mr Kerry Osborne Industry Organisations Delegate; Mr Kym Cook Tourism Delegate; Mr Laurence Ah Toy Primary Producer Organisations Delegate; Mr Peter Brown Industry Organisation Delegate; Mr Peter Carew Industry Organisation Delegate; Mr Rick Murray Tourism Delegate; Mr Samuel Urbano Marquez Ethnic Community Delegate; Ms Karen Smith Primary Producer Organisation Delegate; Ms Kezia Pariek Industry Organisation Delegate; The Hon. Denis Burke MLA Legislative Assembly Delegate; (14).

\textsuperscript{457} I did not vote in any of the deliberations, being in hospital the entire period. Graham Nicholson did visit me and obtained written statements on certain positions which were read out to the Convention. There is no question that these statements echoed the CLP line. But it was arrived at independently and was not the result of direct collusion. I was not the only one by any means who took a minimalist position. As it can be seen in the text, the Hon Terry McCarthy held a similar view.
of their ‘busyness’, intercession and determination in the work-groups would carry the day.

5.4. Labor’s reaction to Stone’s Convention set-up

The Opposition Labor Party's reaction to the Chief Minister’s ministerial statement was trenchant, vociferous, and well-prepared. Perhaps driven more by exclusion from the process (which really should not have surprised anyone external to the process), the Labor Party protest was a most indignant one, and based mainly around the joint parliamentary snub which Stone had handed-out by ignoring the Sessional Committee's report. The Leader of the Opposition, Mrs Maggie Hickey began her reply with an eloquent but blunt denouncement of the Chief Minister’s ministerial statement. She circumvented the apparent ‘olive-branch’ approach of the Chief Minister, and targeted directly towards the omission of the work of the Joint Parliamentary Committee:

Mrs Hickey (Opposition Leader): Madam Speaker, I wish that I could believe what the Chief Minister had to say in his final comments on this very important issue - an issue that affects all Territorians and will affect many Territorians for generations to come. However, sadly, we are witnessing today the destruction of 10 years of bipartisan work by the Constitutional Development Committee of this House.  

Mrs Hickey reminded the Legislative Assembly just how long the statehood process had been in train:

For 10 years, members of the Country Liberal Party and the Labor Party have worked constructively together to achieve a common goal - that is, statehood for the Northern Territory. For 10 years, the political differences that separate us from them have been put aside in the belief that what we have been doing has been for the long-term benefit of Territorians. Ten years of work, 10 years of good intentions, 10 years of consultation around the Territory have been blown away now by a Chief Minister who cares not whose rights he tramples on, what work he discards and what principles he smashes, provided he has his own way.  

And then she stated the real problem underlying the statehood bid, so far as the Labor party was concerned:

What he is proposing today is not a constitution written by the people, of the people, for the people. It is a constitution written under his direction. It is the Shane Stone constitution.

Mrs Hickey knew that the CLP had, in effect, run Statehood in a proprietary manner, and Stone’s announcement continued, indeed exacerbated this perception. She had no doubt that it was aimed at the public, and her next task was to debunk the claims of the CLP that the Labor Party was against Statehood. She knew also that this was a crucial point in the political debate about statehood, and she sought to set the record straight once and for all:

Let me make this absolutely clear. Territory Labor wants statehood. It wants it desperately. However, we are appalled by the way in which this Chief Minister is going about the process. We believe that what he is doing today, and what he intends to do, will not merely threaten but will destroy our chances of statehood. It will not enhance them in any way. We want a convention that is partly elected by the people of the Northern Territory, as stated, as wished for, by the Constitutional Development Committee. The Chief Minister wants to organise its membership in his own way. Territory Labor wants that convention to determine the constitution without preconditions. However, the Chief Minister wants to set boundaries and give the convention directives. We want a constitution that is put to and voted on by the people of the Northern Territory. The Chief Minister wants to rubber-stamp it through this House.

The Leader of the Opposition was on much stronger ground however, when she turned to "ownership" of the coming process being denied to the people of the Northern Territory. The distinction between the CLP running the statehood process and "ownership by the people" seems to have two different connotations:

I remind the Chief Minister of the words of the Administrator in this place, just one week and a half ago. He said: ‘If our constitution is to be truly ours and truly in touch with the people that it serves, then it should be understood and owned by the people’. ‘Owned by the people’ - the Administrator was exactly right. However, if the Chief Minister believes for one minute that the process that he has outlined today will provide Territorians with a constitution that they will own, then he is sadly mistaken. I do not think he is mistaken, however. I think he knows exactly what he is doing. He does his own work for his own political purposes.

And what exactly was that motive? Mrs Hickey had no doubt whatsoever that the Chief Minister had attempted to obfuscate his prescriptive remarks in rhetoric for political purposes, and she now sought to expose that ruse:

I have to ask myself why the Chief Minister has chosen to embark on this path. Why did he choose to be confrontational on this most important of
issues? He spoke of cooperation, of inclusion. He urged the Opposition to put forward suggestions. Nevertheless, he has decided already what is to be in this constitution, how the convention is to be formulated, what the vote will be in this House and what the outcome will be. The answer is very clear on this matter. He wants to make statehood a political issue. He wants to spend the next three years trying to paint his political opponents, both in this House and elsewhere in the community, as being anti-statehood. He wants to use the future of the Northern Territory as a political battering ram. He is absolutely devoid of principle.463

What Mrs Hickey could not control, and in effect, which constituted a response to the reply which came, whether she expected it or not, was contained some months later in that previously cited Editorial of *The Northern Territory News*, of 26 March, headed 'STATEHOOD CHALLENGES'. It warned of a lack of interest in the Constitutional Convention by the public.464

The newspaper, without adverting to an underlying psychological effect, summed-up a particular and peculiar public reaction to Australian political parties accusing each other of 'playing politics'. It must be remembered that this was the thrust of the charge by the Labor Party against the CLP. Despite there being ample evidence to support the charge, it is a popular, perhaps cynical, public reaction to blame both parties as being equally culpable of this trait, and to regard such behaviour in a pejorative light, reflecting well on no political party, neither one side nor the other. In such case, which is repeated almost daily, the public tend to 'turn-off', and the result is disinterest. The CLP would not have been overly disturbed by this phenomenon. The newspaper had read public sentiment well.

Unfortunately for the Labor Party, the essence and effect of Mrs Hickey's important speech was thus neutralised to a great extent. In a very great part, Labor had played its major hand, but its target, public sentiment, had not responded, or at best, responded with seeming apathy to the Opposition's charges. The distinction made here is that the editorial writer noted the lack of interest by the public, but instead of making it a stand-alone wake-up call to Labor, included it in a wide-ranging critique of the Convention make up.465

---

465 There is little known about whether readers of the print media also read editorials. And why would readers be influenced? There is a new editorial on a different subject each day. Some people read only the sports pages or horoscopes. Many more of them do not read newspapers, but watch television news and current affairs. But they still vote. It is submitted that the more useful advice to leaders and party members of all political parties is not to lose public sentiment by indulging in name-calling, based on political considerations.
It has already been asserted by me that the basis of the Labor Party discontent was being excluded from the process. It must be remembered also that the Labor Party was not advocating a ‘No’ vote, but its own manner of acting, albeit however well ostensibly justified, may well have been a factor in turning public sentiment into a negative trend, because the public would view only the crux of the argument and not necessarily the detail. It is relevant here because the statehood bid failed, and the final direct arbiter is the public, not an editorial. But the editorial may have signalled that Labor’s tactic of accusing the CLP of ‘playing politics’ needed no more substance to convince the public to act adversely. And what was the objective? Labor said it wanted statehood. To object so vigorously only served to reinforce the perception of not supporting statehood in the public mind. The land councils, by the same token, according to the same editorial, had fallen into the same process of ‘playing politics’ as a protest against the CLP’s Convention, but with the distinction that it had by doing so not suffered disadvantage, whereas the CLP had simply increased its running of the Convention. It was a good point made by the paper. Aboriginal land rights did prove to be crucial.

5.5. The Constitutional Convention’s work

So to the Constitutional Convention itself. It is not proposed to recount or canvass all or indeed any of the proceedings here. Readers can be acquainted with a two-volume report of the convention as cited. It is noteworthy and a commentary in itself that nearly five years-on from the event, no transcript proceedings of the convention is yet made available. There are however, summaries available in the said reports, of the salient outcomes, and some of them are of interest to this inquiry. 466

5.5.1. Changes embodied in Resolutions

The Resolutions of the Convention require attention. It is important to note that most of the resolutions determined by the convention were dealt with in accordance with the Chief Ministers instructions, as to the issues identified by him, as follows:

ISSUES IDENTIFIED IN CHIEF MINISTER’S LETTER TO THE CONVENTION TABLED ON 26 MARCH 1998

ISSUE NO. 1. Whether the Northern Territory should become a State.

Resolution: A. That the Northern Territory should become a new State in the Commonwealth of Australia.467

The first issue was hardly contentious and of course was answered in the affirmative. Part of the second issue however, was simply untrue, because it was patently different from the Final Draft Constitution of the Sessional Committee:

ISSUE NO. 2 The form of a constitution for the State of the Northern Territory.

Resolution: B That a constitution identical in substance to the Final Draft Constitution for the Northern Territory tabled in the Legislative Assembly by the Sessional Committee on Constitutional Development in its report entitled Foundations for a Common Future, with alterations to the effect indicated in the Schedule of Alterations attached to these resolutions, be adopted as the constitution of the new State of the Northern Territory.468

The Schedule of Alterations was the particular document-vehicle which embodied these shifts from the original draft. With respect, that description was a farce. This will be re-visited shortly, but first there were other issues to be resolved:

ISSUE NO. 3. The name of a new State of the Northern Territory

Resolution: C That the new State be called the State of the Northern Territory.

Although nothing turned on this point in terms of the failure of the statehood bid, many people still query the nomenclature contradiction in calling a ‘state’ a ‘territory’. It is in fact an Oxymoron, but there is no doubting that for many people, perhaps most Australians, the new entity would always be “The Northern Territory.” Next:

ISSUE NO. 4. When should the Northern Territory become a state?

Resolution: D Option 2: That the Northern Territory become a state as soon as possible.

Again, nothing turned on this issue. The best that can be said for it is that at the time it seemed a good idea. If Statehood was to be determined and settled in the affirmative, it seemed an accepted tenet to get on with it and do it. It is unlikely that any future bid would deal with this matter so summarily:

ADDITIONAL MATTERS NOT INCORPORATED IN THE CHIEF MINISTER’S LETTER TO THE CONVENTION REFERENDUMS

467 Ibid.
468 My italics and underlining. With respect, I vigorously disagree with this distortion Nothing could be further from the truth.
Resolution: E Option 2: That the following questions be put to a vote of the electorate of the Northern Territory:

(a) whether the Northern Territory should become a State;
(b) what the name of the new State should be;
(c) whether the proposed constitution be adopted as the Constitution of the new state of the Northern Territory.

This resolution is interesting. For a start it is not one which the Chief Minister prescribed. The delegates acted in a manner as an assertion of their independence. But it acted as and like a ruse. In fact, as will be seen in the next chapter, the three questions which the Sessional Committee set for a referendum, was substituted by what can be described as ‘one economical omnibus question’ by the Chief Minister. There is no doubt, however, that one of the major controversies at the very end of the process stemmed from the question asked, and the Convention delegates might well feel vindicated that at least they were not responsible for the embellishing by the government upon the answers they gave in this resolution:

SENATE REPRESENTATION

Resolution: G That, prior to the Northern Territory becoming a new State, the Parliament ensure that the following matters be finalised:

(a) the level of the new State’s representation in the Senate;
(b) measures to increase that representation.

In the view of many persons, Senate representation is at the centre of statehood. This question has caused argument and division.\(^{469}\) The dichotomy is between whether the Northern Territory should have the same number of senators as the other states in the federation at the time of Federation, or whether there should be a gradually increased number of senators from a number acceptable to the other states.\(^{470}\)

---


470 It is a tricky question because there are arguments on both sides. Advocates who insist on the full complement, point to it being amongst the big benefits of statehood, and they point to the Northern Territory having a population four times that of Tasmania at the time, which entered the Federation with ten senators. Having a complement of 10 from the Northern Territory in the Australian Parliament, to these persons, is the greatest advantage of being a state, as such representation in logic would surely favour Territory interests. Indeed this latter point is a valid one, and of which he states themselves are aware. There was and is a common feeling that not only would the more populous states be placed at a disadvantage, it would be inequitable. There is a widespread feeling that such a sudden increase would destabilise the Australian parliament and throw the political balances askew. This was particularly feared by states which were at the time “Labor states”.

The pragmatists in the Northern Territory's CLP recognised the fears held by the political parties, even kindred ones; indeed there were fears the governments of the southern states would demur to statehood on these grounds, and such proponents determined that there was nothing to be gained by insisting on the full 10 (now 12) but that some lesser figure, perhaps 4, would be appropriate to start off with. On that point, there was all sorts of conjecture. Some people believed it should stay at 4; but most felt that it should increase to a higher figure, whether 10, 12, or some lesser number of senators. The delegates of the Constitutional Convention were not about to nominate a specific number, and deferred that to parliamentary or other authority. It is a matter of personal opinion whether they evaded a decision or not, but the fact that there was not much discussion or criticism after the Convention, or even at the subsequent investigation, indicates that it was not central to failure. Nonetheless many people would say this question is still one of the most important to be answered in relation to the Territory's statehood question:

PART 4 — EXECUTIVE

Resolution: 21 Clause 4.2 Governor
Option 1: That the new constitution provide that the Head of State be appointed by the Premier.
Resolution: 22 Clause 4.2 Governor
Option 2: That the new constitution provide that the Head of State act only in accordance with the advice of the Executive Council unless expressly provided otherwise by the new constitution.

The above set of resolutions determined by the convention did have repercussions. Although all state Premiers in effect nominate their governors, they do so through the Governor-General, acting on the advice of ministers. Such nominations are rarely, if ever, withheld or rejected, nonetheless the procedure is part of the Westminster conventions of parliament which govern this area of constitutional government. What the Constitutional Convention did was to streamline the procedure directly to the Premier, by 'cutting-out the middle-man', to use language which might be said to be more in line with contemporary usage and practice. Somewhat surprisingly, this was interpreted, particularly by lawyers, as giving the Premier more power, and in such circumstances this was interpreted and regarded

471 There are numerous arrangements, supplementary to a constitution which needs to be negotiated, worked-out or imposed by subsequent agreement between the Territory and the Federal Government. This would be one of them.
472 The candidate is not one of them; preferring to treat the matter as a 'condition subsequent'.
as an undesirable aspect of statehood. The argument adopted by the objectors was that the procedure involving the Governor-General was at least some protection against arbitrary decision-making by the Premier. It is however a moot point because premiers in other states (indeed the Prime Minister in relation to the Commonwealth) can dismiss the representative head of state, in a state’s case, the governor.  

It was probably more of a warning sign that such a grant of power to the Premier was a precursor for further powers to reside in the Premier. There are still many people in the Northern Territory who believe that the nearest the Territory has to a constitution -- the Northern Territory Self Government Act - which can be itself amended or even revoked by the Commonwealth Parliament as an ordinary Act, and which contains provisions for the Commonwealth Parliament to overturn legislation of the Legislative Assembly, is still desirable. Resolution 22 however maintains a convention (and actual fiction) that the Governor would act on the advice of the Executive Council. This institution is maintained as the entity which actually advises the Governor, whereas the most important entity in government, the Cabinet is nowhere mentioned in this constitution. Although nothing really occurred to raise the matter as an issue, an opportunity for considering this aspect of government was passed-over:

PART 7 — ABORIGINAL RIGHTS

Resolution: 50: That Part 7 of the FDC be deleted.'  

In the eight words it took to reject Part 7 of the Final Draft Constitution, one of the most contentious actions of the Constitutional Convention was perpetrated and achieved. There is no doubt in my mind that this was a specific target of the government, and it is clear that the Convention went along with it. The Sessional Committee had included this Part in the Final Draft Constitution as a centre-piece of Indigenous rights to be protected by the Constitution.

The prize was the Aboriginal Land Rights (NT) Act, 1976 (ALRA), which was to be patriated to the Northern Territory, by the Commonwealth. It is a Commonwealth Act

---

474 In Tasmania the then Governor, Richard Butler (2001-2003) was obliged to resign, because of widespread criticism of an imperious manner, and expressing Republican views as Queen’s representative, an incongruous stance. There is little doubt that had he not resigned, he would have been sacked.

475 Part 7 - Aboriginal Rights, 57.
452 Protection of Aboriginal Land Rights, 57.
453 Protection of Aboriginal Sacred Sites, 58.
454 Aboriginal Self-determination, 58.
which applies specifically to the Northern Territory. Aboriginal groups were extremely concerned that if the Act is patriated to the Territory, that their Rights will be tampered with by the Northern Territory Government. It is true that the Act would be vulnerable to amendment. At least there would be protection of Land Rights if the patriated Act was guaranteed and ensconced in the new Constitution.

It is unclear whether the Constitutional Convention's rejection of this entire section was the major cause of the referendum failing, but it could be said that had the section been included in the Final Draft Constitution and adopted as such by the Convention, more Indigenous people might have voted "Yes". It was certainly a major reason for failure. The walk-out by the delegates of the Northern Land Council and the Central Land Council early in the Convention was intended as a protest against the CLP process, and whether or not Part 7 was included or excluded, it seems likely that the Indigenous peoples’ representatives already believed before the Convention began that the process had been tainted, and as can be seen in other sections of this paper, they suspected the CLP government, and had no trust in it. But in order for the protest to be effective, the delegates had to attend in order to walk-out!

Why then was ALRA such an important issue to be excluded from the draft constitution? To the CLP, the answer lay in one word: development.476 Whilst the ALRA remained protected and not amended, the great mass of Territory land, over 70%, remains either Aboriginal reserve, or subject to Native Title claim. Statehood is an opportunity for the Northern Territory to control a potential bonanza by the patriation of such Act to the Territory's own control, (read government), which could then amend it by ordinary legislation. Development on an unprecedented scale could be opened up. New state finance would be heavily dependent on development in mining or utilising the natural resources in this enormous area. The problem is in "control", and control is not, in such circumstances, that of the Territory Government. The Land Councils therefore assume greater control, and this was anathema to the Government. To some extent such fears have been borne-out as development applications accumulated for processing and there have been long delays. On the other hand, that stance is patently wrong-headed because several extraordinary partnerships and agreements with native land owners have been reached as this

476 Development was the strongest weapon in the CLP’s armoury. It still is. But in today’s real politics world means- in partnerships with Indigenous land-owners, particularly since the Mabo and Wik High Court cases. Mining companies followed suit and large projects now result (billion dollar mining at Gove; a new McArthur River mine).
segment of the market comes to terms with the new reality. But the Darwin Constitutional Convention process and result dominated other reasons for Aboriginal people to oppose the statehood bid.

Nothing in the statehood suite of process approaches the seriousness and importance of this issue being resolved in the future in favour of inclusiveness. And when there is another bid, the participation and inclusion of Indigenous people will depend largely on whether there is a ground-swell of opinion in favour of Indigenous Rights, including ALRA, to be entrenched in the Constitution, and with that assurance, it may be that the Indigenous population will see benefits for them (or at least a ‘lesser evil’) in agreeing to a state of the Northern Territory. (See Tambling’s view, affirming this point in Chapter 8).

There are elements present in the Darwin Constitutional Convention resolutions which draw attention to shifts within the Convention caucus. All the foregoing does not account for these shifts. Why did they depart from the Final Draft Constitution? Was it the persuasive power of the government team, led by future leader Denis Burke? I know Mr Burke personally, and the best that can be said in response to the rhetorical question is, it’s likely. This leaves another avenue of inquiry, but it is outside my expertise and qualification. It is the psychology of group behaviour, group dynamics, influences of the collective upon the thoughts and actions of individuals. With many delegates totally unfamiliar with their immediate elevation to decision-makers of a great undertaking, given copious materials to digest at short notice, it is understandable that most looked for guidance, easy to understand advice. And the CLP delegation were waiting, informed, committed and focused! There was extraordinary leadership available on several levels; and at least the eyes of the Chief Minister directing proceedings by ‘remote control’. As stated, there is little authority in my entering this arena, yet it is clear that the general mindset of the Convention was affected, such as to depart from the materials produced over ten years for this occasion to consider. It must be made clear that the antinomies of

---

477 For example in the former impasse of the long-running Kenbi land claims, the Larrakia Nation announced new development partnerships covering land previously subject to stalemate. The clan are now developing new estates as principals, in partnership with other interests.

478 Denis Burke is an honest toiler, a former Australian army Lieutenant Colonel and C.O. of 2nd Cavalry Regiment in Darwin. He is a good listener, and whatever else his failings in political strategic planning, he carries out his tasks faithfully according to how he perceives what is wanted from him. With Stone giving the orders, he acted like his training dictated, and led with vigour and tactical acumen at the Convention. He won for the boss! That was really no victory.

479 The thoughts of several master thinkers appear to be relevant in suggesting that there was present a collective mindset which is influenced by group dynamics: Arthur Koestler; C.J Jung, and others. See below.
decision-making could have come down one way or another, that the Final Draft Constitution as put forward could have been adopted, or ‘tweaked’, or as the Chief Minister himself urged them, the Convention could itself draft a constitution, as in Alaska.\textsuperscript{480} But it did have a carefully thought-out presentation intended for them, and the CLP delegates and supporters put pressure on the areas they wished to change. The Convention has the right, and duty to produce a Draft Constitution; and it had Stone’s ‘guidelines’, (to deconstruct the model they had). Had they not done so, delegates could validly question their intended roles.\textsuperscript{481} 

Meanwhile, a cursory reading of psychological influences on group dynamics led me to think that there may be substance behind my suspicions.\textsuperscript{482} Without conviction that there is, or is not cogency as a psychological phenomenon in persuasion, it did seem that the more officious delegates cowed those of lesser temperament, \textit{albeit} still leaders in their fields, good and intelligent citizens; that is suggested by there being no CLP numerical dominance, despite popular belief. There was, however, perhaps still is, a widespread belief in the Northern Territory non-Aboriginal community that many views held by the CLP as reflected in resolutions, and Constitutional Convention outcomes, were as expected, and not entirely inconsistent with an urban mindset. This is a case of the focused will dominating unsureness.

\textsuperscript{480} There was little opportunity, given the time allowed. But the delegates played the ‘different tune of the master conductor’ Stone, via Burke, instead of the one orchestrated by the Sessional Committee. There is no point in the allegation being denied of applied influence. Each CLP acolyte was independently committed to the same task. Had I been there, I would have done the same. I am not naming others, aside from Denis Burke, although their names are here. I have earlier argued that the CLP were not in a majority, nor selected as such. Nonetheless, 'reno-election' charge does apply.

\textsuperscript{481} As low-level research, the following brace of quotations simply selected from browsing \textit{Penetrating Quotes}, including a \textit{hotch-potch} of political-oriented psychology quotes, and still echo this possible explanation of behavioural shift:

- “a mob in action displays an extreme form of group mentality. But to be affected by it, a person need not be physically present in a crowd; mental identification with a group, nation church or party is quite often sufficient” - Arthur Koestler

- “Naturally the disciples always stick together, not out of love, but for the very understandable purpose of effortlessly confirming their own convictions by engendering an air of collective agreement” - C.G. Jung

- “The willingness to obey the "authorities," to do what the boss tells us, not to question the orders of our superiors, to surrender private conscience to the goals of the group is a part of the job description. Evil has become a byproduct of duty, an unfortunate consequence of loyalty” - Sam Keen

- “The collective shadow can take form as mass phenomena in which entire nations can become possessed by the archetypal force of evil. This can mean that people identify with an ideology or leader that gives expression to the fears and inferiorities of the entire society. When a minority carries the projection of that which a society rejects, the potential for great evil is activated” - Jeremiah Abrams

- “The common excuse of those who bring misfortune on others is that they desire their good” - Vauvenargues

- “Collective thinking and feeling and collective effort are far less of a strain than individual functioning and effort; hence there is always a great temptation to allow collective functioning to take the place of individual differentiation of the personality. For the development of personality, then, strict differentiation from the collective psyche is absolutely necessary, since partial or blurred differentiation leads to an immediate melting away of the individual in the collective. As a result, the one source of moral and spiritual progress for society is choked up. Naturally, the only thing that can thrive in such an atmosphere is sociology and whatever is collective in the individual. Everything individual in him goes under, i.e., is doomed to repression” - C.G. Jung.

- But cf a contrary view: “...But when a group struggles through to a choice, having heard this need and that demand, this proposal and another that contradicts it, gradually all the data become available and the decision reached is a hard-won harmony of all the ideas, needs, and desires of each and every one”. -Carl R. Rogers.

5.6. **Contradiction of principle**

There is a massive contradiction of principle present, it is explained in context in Chapter 7. The contradiction in terms which is mentioned above is in fact a simple set of propositions. (1) A government sub-committee is set-up specifically to help in drafting a constitution. (2) It does so at the level, standard and thoroughness which the Sessional Committee set, as distinguished from collating parts, conducting studies, consultations, and presenting ranges of options. (c) It is then required to present its work to parliament for approval, is intercepted and directed to go to a separate Constitutional Convention with urging (instructions) to alter it. (d) The CLP “team” at the Convention, persuade delegates by their bustling workshop sub-committee presence and recommendations, what should go and what should stay. In these four steps was contained the fate of the Constitution. It was bound to emerge a different entity to that which was originally presented. This is because one paradigm entity, the Constitutional Convention, is made-up of a different group, encouraged and in duty bound to do the same thing as the first entity, the Sessional Committee, actually achieved. The job is made much easier because the first construction contains detail which need not be constructed; but simply de-constructed where attention and pressure is directed. The two entities are thus transmuted to one, and therefore must be in contradiction and conflict, since one is the shadow of the other, ostensibly performing precisely the same task again. But shadows of one entity cannot perform different tasks without significant distortion, because they, as delegates, are human and must depart from the original, as it is meaningless not to do so when instructed to so act. They were plied with the revised agenda of changes.

Perhaps in tyrannical regimes where substance and form are antithetical but control is of one entity only, it might be achieved as of course, since the shadow reflects a precise mirror image of the dominant entity because it is that entity. Here, Stone and his government had no control over the earlier drafting, did not like it, and wanted it changed. The Constitutional Convention could change that if ‘handled’ properly.483

---

483 Contrast the position in Hawaii, where the Constitutional Conference delegates, although well equipped with experts, materials and time (like in Alaska), performed the whole central task, and the Territory contradiction takes on new meaning.
Further, the Revised Draft Constitution went back to Parliament to be approved, ratified or changed, (a fourth paradigm step) and then on to the referendum.

The implications of this impossible duplication of function is far-reaching. The Sessional Committee’s drafting of a definitive model draft constitution is not a paradigm-role, but played that role brilliantly, perhaps too well. On this understanding of incompatible principles, logic dictates that the cause be sought. And in this case it was not Shane Stone in suspicion; he was not even in the picture in 1989, nor in 1986; certainly not in command, and in this respect the constitution-making exercise would probably have failed with or without him. True, Stone took advantage of the Final Draft Constitution going to the Legislative Assembly, and the Revised Draft Constitution accepted and going to the referendum. Stone’s real interest was in setting the parameters of the Constitutional Convention. The constitutional committees were set-up twelve years ‘ere the main event in 1998, and the man in charge was...Steve Hatton. This is not to say Hatton was responsible for statehood failing, but the systemic failure over the whole period played a large role in the final result in allowing advantage to be taken.

5.7. Conclusion

Whatever else might be said about the main Constitutional Convention of 1998, it was a tightly-controlled major statehood process, in many ways brilliant in tactical planning and execution. A minimalist Revised Draft Constitution was produced by the Constitutional Convention. Yet it was a strategic failure, which many felt was central in statehood failing. The issue had not yet been decided by referendum. The Constitutional Convention soured statehood for nearly all Territorians for the way it was said to be prescribed, selected, and managed, almost like a puppet show, by the chief ‘puppeteer’, Chief Minister Shane Stone. The Convention delegates should have been entirely elected from the broad community. In not doing so, fundamental constitutionalism was denied, and democratic principles trammeled. The surprising discovery is a paradigm shift which allowed the government to itself become a determining factor, when its proper role is as facilitator.

484 The Constitutional Convention was held in the Legislative Assembly chamber, in the new Parliament House, which is equipped with a very efficient and intrusive camera video system, which is beamed into the offices of the Members upstairs. I have watched proceedings in the Legislative Assembly whilst sitting in a meeting room of a Minister. It is widely and credibly believed that even though Shane Stone did not attend the Convention in the Legislative Assembly chamber, he nonetheless over-sighted everything and all matters from the comfort of his office via this system. Some even suggest that messages were dispatched with instructions at points of proceedings as a result of Stone's viewing of them. Whether this is true or not is of no moment. But there is no doubt, he was in control.
CHAPTER 6
ILL MET BY REFERENDUM

6. Introduction

In the entire history of Northern Territory’s constitutional development, no question has ever sparked such controversy, outrage and rejection as this one. Below is the question voters were asked at the constitutional referendum. The question was rejected by Territory voters with a majority ‘No’ vote. But it seems hardly anyone believes that it was the subject matter asked in the question which was rejected. In fact, many people who voted ‘No’, wanted a state, according to the report of the Standing Committee, but not on the terms it was offered, and certainly not in the way the question was couched: 485

Now that a Constitution for the State of the Northern Territory has been recommended by the Statehood Convention and endorsed by the Northern Territory Parliament- do you agree that we should become a State? 486

In a post-referendum interview, reporter Murray McLaughlin insisted: “...but what apparently alienated Northern Territory electors most was the form of the referendum question. The Constitutional Convention had recommended three separate questions for voters, but Shane Stone insisted that they be rolled into one omnibus question.” 487 Interviewee, Peter McNab responded: “People were faced with a constitution which was illegal, complex issues were referred to in the preamble, and they were faced with a difficult task of unraveling what those issues were.” 488 The focus was the Territory constitutional referendum of 1998.

This chapter sets out to canvass the questions in the referendum phase which arise from the above problem stated, by looking at the event, and the subsequent reaction to it. It asks to what extent was the referendum handling responsible for statehood failing, and which led to such alienation of the voters? The problem, on the face of it, is that the single question glosses-over the approval by the Northern Territory parliament of the Revised Draft Constitution, following its adoption at the

486 This was the controversial Northern Territory statehood referendum question asked.
488 Ibid.
Constitutional Convention, not the questions put-up by the Sessional Committee. If given due credit for at least having a general knowledge of statehood progress, the voters responded to the question with a jaundiced and pejorative view.\textsuperscript{489} The unacceptable implications in a democracy of glossing over serious flaws, was not lost on them, even if few would or could define it then. To the public, parliament meant ‘politicians’, and with such hegemony through its numbers in the Legislative Assembly, that meant the CLP.\textsuperscript{490} And the Constitutional Convention was not theirs, the people’s, but the government’s hand-picked creation.

Simply stated, it is noted that the way that the question read, voters were being forced into a position contemplated by the Northern Territory government, which entity had not expected such an adverse reaction. Because the government saw nothing wrong with asking that question in such a way, it may have presumed that the voters would either 'skip' the wording, and approve it, perhaps not realising that it gave tacit consent to the processes by voting ‘Yes’. If this is the case, the government grossly under-estimated the comprehension dynamics of the electorate as to what the component parts of the question meant. The result of the referendum indicates that it was well-understood by the vast constituency. And for those who did not understand it, they weren’t going to give it their imprimatur, and so, voted ‘No’. It demonstrates that voters won’t tolerate ‘having the wool pulled over their eyes’.

\subsection*{6.1. About the referendum}

It was not as if the government had not at all prepared the ground for the referendum. Funding was applied to a brochure setting out the historical course of the statehood bid. It was long, and awkwardly produced in concertina form, so that for many people, it immediately joined ‘junk mail’ in their ‘wheelie bins’. Other information placed in letter-boxes was technical and complicated, and met a similar fate. But there was some significant activity, which took place after the Constitutional Convention, particularly in parliament and in the community.\textsuperscript{491} There were also other important events nation-wide which diverted headlines: another constitution-changing quest was proceeding concurrently with the planned successful culmination of statehood, that of the “republic”:

\footnotesize
\begin{itemize}
\item[489] \ldots in rejecting the referendum.
\item[490] The numbers in the Legislative Assembly circa 1998, were 19 CLP, 6 Territory Labor (ALP).
\item[491] The literature included materials listed in the bibliography, radio and television \textit{jingles} and media releases.
\end{itemize}
In fact, the referendum period was an opportunity for consolidation of the bid, but it seemed to have had the opposite effect, galvanising support against voting ‘Yes’ for statehood. It was a movement which surprised many who expected a smooth ride to the new state. The CLP faithful simply put their trust in the leader. But between April and October, concerns sprung up in the party, although any disquiet, or voicing of opposition in the parliamentary wing party-room simply did not occur any more after Hatton’s exodus.\textsuperscript{492} There was still a feeling that dangerous under-currents were building. The Hatton hiatus was beginning not to look so much like an aberration, but a malignancy, spreading to many people who were thought to be ‘on-side.’\textsuperscript{493}

Stone’s government was determined to press ahead regardless of further defections and a growing clamor from a significant portion of the population, by dismissing their claims as outlandish or divisive. But politicians can still count, and they do heed demographics relating to population. Politics always has emergency options in reserve, and safety-nets are deployed, sometimes by going into ‘full reverse’. Damage-control can normally be exercised. But there was a growing realization in CLP ranks that nothing could be done so late in the campaign. Everyone looked to the leader for some last-ditch salvage, but despondency replaced anxiety as time moved towards ‘R-Day’.\textsuperscript{494} And panic set-in.\textsuperscript{495} By dawn 4 October, the quest was lost and the \textit{impossible} had happened. And from that time forward the only question for \textit{aficionados} was why? The whole of the Northern Territory seemed to know, and focused upon the central player, Shane Stone! The real question awaited resolution.

In the world of scholarship, in due course, less colourful, but cogent conclusions were drawn and published. Heatley and McNab conclude that “…there is little doubt the Aboriginal opposition was the most potent factor in producing the negative result.”\textsuperscript{496} But this next explanation, ostensibly, a dispassionate summary in an otherwise sanguine paragraph, shocked me on its perusal, like no other:

\begin{quote}
The statehood referendum, conducted in conjunction with the federal poll on 3 October 1998 received a ‘No’ vote from the Northern Territory constituency. Prior to the referendum being put to the people, the preferred constitution as produced by the Northern Territory Statehood
\end{quote}

\textsuperscript{492} Steve Hatton was the former Chief Minister and CLP Chairman of the Select Committee. See Chapter three (\textit{infra}) and Appendix 7, \textit{The States-Men}.


\textsuperscript{494} “Arrogance” in this sense means the powers-that-were, believed the case would succeed according to plan, and the claims of others could be dismissed as being of little moment.

\textsuperscript{495} A government minister at the time, one week out from the referendum remarked to me the unforgettable words: “we’re stuffed”. There was, it seemed, even more derision at the social venues Aboriginal aspirations, expectations and dissatisfaction were well-known even before the time they held their Constitutional Conventions following the referendum, but their objections became more strident before the event.

Constitutional Convention in March/April 1998, was tabled in the Legislative Assembly for debate on its conclusions [Aug sittings]. Some changes were made to the Final Draft Constitution, although the government “accepted” the recommendations.497

It is difficult to see how or where the government “accepted” the report. In fact it was not accepted in the sense that the government agreed with it. Stone himself said so in his instructions to Asche. The best that can be said is that the Legislative Assembly did not reject the report outright, or did not object to it being tabled. There is an enormous difference between the two meanings. And “some” changes were in fact “major” changes, But other points made by Heatley and McNab are precise in analysis of the failure, and in doing so, outlined the ‘stress fractures’.

The authors point to an important departure from all previous constitutions, in that the Governor, replacing the Administrator, would be subservient in all matters to the Premier. This was in anticipation of a republican outcome for the entire country, another move which was to prove premature. There were even transitional provisions placed in the recommendations in the eventuality that Australia would become a republic. There would also be a formalising of current practice whereby there would be a Lieutenant Governor and an Acting Premier.498 There was however, preparatory activity which needed explanation, to understand the unsafe course of the referendum period.499

The Labor Party Opposition reflected the view that it was a fait accompli, that the voting in the Legislative Assembly was carried on the voices. The government majority in the Legislative Assembly ‘rubber-stamped’ the CLP’s position, which it had taken through the Constitutional Convention. There was partisan division similar to that earlier, concerning the composition of the Convention, and the ‘bare bones’ Constitution. During the April Sittings, legislation was introduced allowing for a referendum to be held, and this was concluded in August 1998.

Remembering that the statehood Sessional Committee proposed there be three separate questions, the government selected one question only. For Heatley and McNab, the problem concentrated on the words of the sole question, repeated below:

499 Op Cit., Supra.
Now that a constitution for a State of the Northern Territory has been recommended by the Statehood Convention and endorsed by the Northern Territory Parliament - do you agree, that we should become a State?\textsuperscript{500}

The Labor Party proposed three amendments to the question, but was defeated. As the question was ostensibly endorsed by all members, a "Yes" response only was allowed and officially authorised by the Chief Electoral Officer, for distribution to electors.\textsuperscript{501} The referendum campaign commenced with an assumption by the Labor Party that the referendum itself had no legal effect and was only an indication of the electorate’s view on statehood. Many of its members were dismayed by its support for a "Yes" vote. As expected, leading government figures and delegates to the Constitutional Convention indicated their support.\textsuperscript{502}

It was averred by me in the earlier chapter (5) that the delegates were ill-prepared for the Constitutional Convention, were over-awed at what it involved, and uncertain of its processes. If there was confusion about the binding nature of a referendum, it was a giant ‘under-education’ blunder. The authors claimed that it was widespread, and there is no reason to disbelieve that. To assume that a "No" vote would preclude further bids for statehood is to invite scepticism indeed, but I believe, as did the authors, that this is still a common phenomenon and understanding.\textsuperscript{503} Despite the apparent cynicism of the argument, it cannot be dismissed as a reason for a failure of the referendum, but only one possible reason. It is noteworthy that the Trades and Labour Council and the Aboriginal Land Councils advocated a "No" vote.\textsuperscript{504} So far as the referendum itself was a cause for the Northern Territory rejection of the "Yes" campaign, several issues were apparent. The first and most apparent one was whether the question was intended as a reflected endorsement of the Revised Draft Constitution. This was the most tricky question because the Prime Minister had written to the Chief Minister, stating that “the Commonwealth would not treat a “Yes” vote as endorsement of the proposed draft Constitution” (my italics).\textsuperscript{505}

\textsuperscript{500} Supra, 23.

\textsuperscript{501} Ibid.

\textsuperscript{502} Supra, 26.

\textsuperscript{503} It is to be hoped that the authorities or group in charge of an education campaign in the future will rectify this ignorance.

\textsuperscript{504} Supra, 27.

\textsuperscript{505} Supra, 32.
Territorians for Democratic Statehood (TDS) reacted to perceived confusion on the interpretation of the question by government ministers. And the TDS sought legal advice that a question which was ambivalent, even to government ministers, was not a proper question to put to the people in that it is not a “question” that can lawfully be submitted to the electors in order to conduct a referendum within the meaning of the Referendum Act, 1998 (NT).

This is a hypothetical situation, and is not a result of any precedent cited or of any decision made. It certainly has not been argued in court. The conclusions are therefore spurious, and even if there is reason to believe that such a question is contrary to the said Act, it is not beyond the imagination to perceive of those government ministers testifying in such a manner that there is little doubt the intention of the question was clear. This is completely distinct from the view held by the voters as to the merits of the question. The distinction is important.

There was however, the second more important matter concerning the legality of the Revised Draft Constitution, which was “tested” in an opinion by the former Chief Justice of the High Court, Sir Harry Gibbs. Because it was proposed that the status of Governor of the new state was different to that of other states, it would be contrary to the provisions of the Australia Act 1986 (Commonwealth). As this was proclaimed as a major impediment to the whole process, it was treated as if it were ‘set in stone’. Of course this was not the case. The question was not raised in the context of a “case stated” to the High Court, or other challenge. It was an indication by an eminent jurist only. Second, with respect to the (late) Justice, a staunch monarchist and anti-republican, he was not then a member of the High Court of Australia, and there are a number of other judges who might, like any Jurist anywhere, come to a different conclusion should the matter be referred to the High Court. Sir Harry Gibbs wrote:

[The Draft Constitution] in its present form would be inconsistent with the Australia Act so long as Australia remains a constitutional monarchy. Clearly, unless and until Australia becomes a republic, State governors, being the representatives of the Queen, must be appointed by her. Assuming (contrary to my hope) that Australia becomes a republic, the provisions for the appointment and dismissal of a governor are, in my

---

507 *Supra*, 33.
508 Its legality or otherwise could not be thus said to be given or accorded legal status.*Supra*, 34.
509 *Supra*, 35.
510 *Supra*, 37.
opinion, nevertheless objectionable. They would have the effect of subordinating the position of governor to that of the Premier and in that way rendering impossible the impartial exercise by the Governor of the reserve powers. If the Governor were to attempt to insist of the observance of a constitutional convention which the Premier was breaking or threatening to break, the Premier could forestall any action on the Governor by dismissing him or her.\textsuperscript{511}

The only comment necessary, I think, is that the view is a \textit{non secitur}. The issue was limited, but amounts to a view of who of the Premier or Governor can sack the other first. It does differ from the current situation, but did statehood’s vote suffer as a result. I think not.

6.2. Heatley’s last word on the referendum

In what is believed to be his last major work prior to his death, Alistair Heatley wrote a reflective article, “The Rise and Fall of Statehood for the Northern Territory”.\textsuperscript{512} It is an extraordinary insight, and an important one.

Heatley says that until there was a change in the Federal government prior to 1996, statehood faced seemingly extraordinary obstacles with the Hawke/Keating administrations. The reasons, he says, were ideological, ‘democratic’ and policy-related. He says the federal Labor government even declined to consider lesser proposals, such as the request of the Northern Territory government in 1989 to extend the scope of self-government. And he claims that even the Commonwealth—Northern Territory Joint Working Group (JWG) set-up in 1995 to study the implications of Northern Territory statehood was not a binding commitment on the Commonwealth, and it was made clear by a Prime Minister when it was instituted.\textsuperscript{513}

As stated in Chapter 4, the report of that Joint Working Group was published in May 1996. But, on the other hand, and to the contrary, the Liberal and National Party had offered statehood with willingness and sympathy.\textsuperscript{514} Heatley observed that when Shane Stone became Chief Minister there was a “perceptible lift in the local advocacy of statehood.” He says that Stone really elevated the statehood campaign and made it the government’s No 1 priority. He says that Stone was buoyed by the findings of surveys which indicated community sentiment favourable to statehood, at least by the urban non-Aboriginal population. This was under-lined by a \textit{Newspoll} in

\textsuperscript{511} \textit{Op Cit}, 5, 38.
\textsuperscript{513} The Prime Minister was Paul Keating. Heatley, A.J, \textit{Op Cit.}, 93.
\textsuperscript{514} \textit{Op Cit}, 93.
April 1995, which showed that 70 percent of the Northern Territory population were in support of statehood. Later polls swelled this level following the Northern Territory’s euthanasia legislation being overturned by the Commonwealth Parliament in February 1997 (See chapter 8). Heatley says that Stone used that incident to demonstrate the insecurity of government under the Self-Government Act, and the urgency to go quickly to statehood. Early statehood was a key plank in the government’s election policy of 1997, and Stone was returned comfortably, with 18 of the 25 Seats, and 58.1 percent of the two-party preferred vote. He was able to claim a strong mandate to proceed strongly to achieve statehood by 2001, the Centenary of Federation.

Heatley echoes the earlier stated history-view (Chapter 2) that when the Coalition defeated Labor in March 1996, the Commonwealth changed its approach, and by mid-year statehood had received support not only from the new Howard government but even the reluctant support of the states. The Northern Territory obtained an in-principle commitment from the Howard government, but with qualifications. Heatley says there is anecdotal evidence that ministers from both tiers of government (including the Coalition Cabinet) had reservations about the readiness for the Northern Territory to become a state; and even about the wisdom of creating a seventh State. He claims the states were insistent that even if the Northern Territory became a state it should only do so on the same terms in relation to powers as the other states (but presumably not in representation, that is, the number of Senators): it seems they were all fearful of the Northern Territory gaining some advantage over them. Almost everyone agreed that the route to statehood should be through section 121 of the Australian Constitution. And there would be complex and arduous negotiations between the Northern Territory government and the Commonwealth. Heatley claims that it gave the Commonwealth hegemony over the terms and conditions of the state's admission into the federation.

It seems clear that what happened here is that after all the rhetoric that statehood should be created by Territorians, the paradigm for doing so locally is compounded and severely pegged by the Commonwealth’s own process, so that it might be said that the Commonwealth in fact really controlled statehood. Stone however, was

515 Ibid.
516 Op Cit., Supra, 94.
confident that he could win-over his partisan colleagues in Canberra. But Heatley says Stone was aware of the difficulties which could occur within the enabling legislation in the Senate, where the government did not command a majority.

It is necessary to briefly repeat some of the history in this period as seen by Heatley. Following the elections of 1987, it was quickly determined that the Constitution for the new state should at least be developed by Territorians, and it was widely accepted by the Northern Territory population that it should not be handled by Canberra. In fact this had been worked-out much earlier. In 1986, a three-phase plan was adopted. The first stage was the formulation of a draft constitution by a bipartisan committee of the Legislative Assembly. The second part was consideration by a Constitutional Convention of the draft Constitution, and the last part was (that following ratification of the Constitution by the Legislative Assembly) that it would be put to a referendum - the stated preferred paradigm. These last two stages were ratified and recommended in the Sessional Committee’s final report, which was finally tabled in August, 1996. I have commented enough about them.

It is surprising to read Heatley’s commentary on this process. He said “Although Stone sometimes mused about shortcuts and adaptations, in the end, he followed the proposed process.” That is patently not true in substance, unless he meant “Stone’s process”. It is difficult to see how Heatley could come to this conclusion. It could only be so said under the most widely-scoped interpretation of that process, that is a process of (1) a committee, (2) a Constitutional Convention and (3) a referendum; and this was not the over-simplistic conclusion that Heatley could reasonably draw, given his sharp reasoning processes. I cannot explain how he could come to this conclusion. Some other, uninformed commentator, yes, one could understand this position, and of course Stone himself might well have fielded the process that way, but even he doubtless would concede that he ‘did it his way’. Much of the statehood discussion prior to this dissertation being undertaken was held with Heatley himself, and although there was almost a daily argument over statehood politics, I do not recall this point being an issue, and it would have been. This is Heatley’s view of the important events leading up to the referendum in October 1998, which includes the Convention of March-April, and the parliamentary

517 Op Cit., Supra, 94.
518 Op Cit., 94.
519 Op Cit., 94.
consideration between April and August. The referendum campaign itself followed. It is noteworthy that Heatley acknowledges (but stops short of endorsing) the way in which Stone and his government handled the process, and the controversy and criticism it engendered.\textsuperscript{520} In the end, Heatley acknowledges the controversy of the alleged \textit{stacking} of the Constitutional Convention, (controversy over the alleged ‘stacking’ is not questioned), the rejection by the Convention of much of the Final Draft Constitution prepared by the Sessional Committee and the nature of the (revised) Constitution endorsed by the Assembly.\textsuperscript{521} Heatley further acknowledges the criticisms of the referendum question, and the timing and conduct of the campaign for the referendum.\textsuperscript{522} He was well aware of the community’s derogatory perceptions.

The Labor Party’s tacit support for statehood is noted by Heatley, and he observes how the parliamentary Labor Party was so appalled at Stone’s partisan behaviour. There is no question that Heatley well observed the forces ranged against statehood, namely the Aboriginal groups which were mobilised, and in the urban areas, the rise of a new lobby, Territorians for Democratic Statehood (TDS).\textsuperscript{523} Although these events have been noted elsewhere, Heatley’s introduction to the referendum process puts the general perceptions of the public in context. There were a sizeable percentage of persons in favour of statehood, but now, heading towards the referendum, there were gathering forces opposed to it, according to Heatley, for the above reasons. In effect, he is saying that these critics were exhibiting accumulative, collective grounds for its failure; (the cultural backlash). The government and its supporters noticed it too. It was discernible not only in the media, but in public meetings and in anecdotal evidence of conversations at the university, and in the streets and social gatherings.\textsuperscript{524}

Heatley raises a most interesting point, about whether or not the critics’ complaints are justified or accurate at the time (he does not say they are), but the point, almost raised casually, or by the way, on reflection is stark: he claims that one factor

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{520} Ibid.
\item \textsuperscript{521} Heatley insists that the draft constitution was “endorsed” by the Legislative Assembly. It was in fact the Convention’s Revised Draft Constitution which was endorsed by the parliament by weight of persuasive influence, by CLP members.
\item \textsuperscript{522} Supra., \textit{95}.
\item \textsuperscript{523} Ibid.
\item \textsuperscript{524} I recall in an earlier footnote the perceived “danger signals” in this period, disrupting the thrill of statehood’s imminent next stage, and also noting “alarm bells going off”. But like other \textit{aficionados} of the genre it was still \textit{full steam ahead}! I was reassured by Heatley that it was “a crescendo anomaly” and to discount it as “last-minute nerves”, although he usually held that statehood was always going to be difficult to achieve.
\end{itemize}
\end{footnotesize}
contributing to Stone’s approach was not sufficiently taken into account. He refers to Stone’s thinking:

His original timetable for the Convention was delayed by his decision to call an early election in the NT. By the end of 1997, he believed that he had only a narrow time-span available to conclude the local process. Given the possibility that the Coalition might be defeated in the next Federal election, scheduled no later than mid 1999, and the prospect of an even less sympathetic Senate being in place from July 1999, Stone chose to accelerate the process. Inevitably he was accused of steam-rollering the statehood agenda, how would Stone’s preference for an early election fall short of his window of opportunity.\footnote{Ibid.} 

Indeed, this point has not been explored properly.\footnote{Such a parable could read like this: “There is a hastening, a quickening of process, and with it, seems to come a lessening of orderliness, a form of panic, but any stress determined by government at the engine controls, is not let-on to the public; an uncomfortable trip (process) which trundles forward like a locomotive putting-on too much pace down an incline, gathering speed under an authority which is increasingly concerned about running out of time, to cross the referendum bridge, which threatens to be inundated by the rapidly rising river waters (of dissent) The journey turns from a leisurely, unhurried “system” which was being jettisoned for further speed. And as for the public, (the paying passengers here), although mostly wanting to arrive at the destination too, become increasingly nervous as to its speed and condition, under control of a headstrong driver upon whom they have to depend, and with many now wanting to get off. The driver and crew are confident in the end of the journey, but the “passengers” being left-out of being consulted and feeling powerless, have mixed feelings, and at the end they themselves derail the process at the river crossing”.} This could be likened to a parable of the statehood train-wreck, and Heatley seems to have caught the action. As at the beginning of his article he describes in scholastic manner:

It will be argued that the reasons produced in the aftermath were insufficient to account for the failure and further that, given the dynamics of Aboriginal politics in the NT, there was no prospect of Aboriginal support for the statehood under conditions acceptable to the present NT government. A broader conclusion is that, despite the recent attempt to resuscitate the project, statehood at least in the foreseeable future, is an unlikely prospect.\footnote{Op. Cit., 92.} 

Heatley had long warned of statehood not being achievable under the prevailing circumstances. He was surprised it had got so far, and he had noted the time-frames of the inter-related events which concerned Stone, making him double his pace. He merely mentions in this article that such factor is not given sufficient attention. I would have had no hesitation in seizing upon and elevating the occasion in the saga, except that it still does not answer the central question. It is understandable that this accumulator process noted by Heatley has not become a popular myth, because it is nebulous and complex at the same time.\footnote{Police describing accidents often refer to "speed as a factor. But in statehood terms the same criteria is not credible.}
It could be that this was yet another significant factor in the process coming apart. It must be remembered that opposition to statehood was increasing the closer the days drew to the referendum, which seemingly occurred at a quickening rate. As Heatley, explains, this is precisely the point. But, concluding that an accumulator-process contributed to the failure, however, begs the question of determining *causa causans*, the basic cause of failure. He simply described the cumulative effect of the gathering forces opposed to statehood.\(^\text{529}\)

For all his pessimism, Heatley does ascribe other specific reasons for statehood not being achieved. Again, this involves his more recent reading of history. He says that since self-government, the Northern Territory has evolved into a "quasi-state," that most state functions have devolved to local control, the statehood institutional structure has been established, and funding is based upon normal federal processes. But the Northern Territory government (CLP) did not have state control of such state functions so as to deter the Commonwealth from interfering with its legislation, (like placing nuclear waste in the Northern Territory). And that together with other state powers and functions which had not been patriated to the Northern Territory, was the prime concern of the party in government.

Even so, the CLP’s feeling of being ‘short-changed’ held little relevance to Aboriginal groups in particular, and the Territory Labor Party. Heatley stated that of all the Australian jurisdictions, the Northern Territory provides Aboriginal people with the greatest political leverage, and through the operation of the Commonwealth’s *Aboriginal Land Rights (Northern Territory) Act 1976*, they have secured ownership and substantial control of nearly half of the Territory’s land mass (and an increasing part of the coastal waters). “The land councils are powerful organisations representing Aboriginal interests and which in some sense constitute para-governmental bodies.”\(^\text{530}\) Heatley sees these factors as predominant in the difficulties. They were obviously not shared by urban dwellers who constitute the majority, of course. But the Indigenous question, plus the Labor Party and its supporters and those who had doubts of the autocratic leadership of Stone on the issue and in the processes he propounded, these broader reasons were most likely the cause of failure, according to him. Against, that I must object, that the ‘devil is in the detail’ and not necessarily constituted by ‘broad strokes’. But there is no doubt

\(^{529}\) It is a common phenomenon- a *doppler* effect, like a speeding train approaching, passing by, or an aircraft, even a motor car- the sound and fury mounts until it passes then, fades.

that in putting these broader reasons together, the whole does make an informed case for statehood to lose much of its inertia. In particular, the state-like powers already given and the financing as a state, deprived the campaign of much of its power. In Hawaii and Alaska, their statehood campaigns stressed the lack of financial treatment as a territory, which could be achieved only by statehood.\textsuperscript{531} In the Northern Territory this was not so. And in this respect, Heatley’s comments must be considered as important. Nonetheless, there was more to it, the \textit{raison d’etre} of this thesis.

6.3. The Community and Public Sector (CPS) Union.

Before moving on to examine the referendum itself, it is instructive to observe the considered position of one Territory entity. It was actually the paper of the Community and Public Sector Union (CPS), but it reflected the views of the Northern Territory Trades and Labour Council (TLC).\textsuperscript{532} In its bulletin published prior to the referendum, it sets-out the "Yes" case and the "No" case in a brief but more broadly-based review than most single-interest organisations. But having set-out the ‘Yes’ case well, the TLC embarked upon an exposition of its own position. Remarkably, it started its preview by giving qualified support to statehood, but in the end it opposed a ‘Yes’ vote. It was therefore one rare group which actually was inconsistent in its stance, where all others appeared set from the start. Could it have made a difference? What made it go into ‘full reverse’? The clue is in the qualifier to support statehood: the TLC insisted it required authority from \textit{all} Territorians, wide community consultation, and of course, a referendum.\textsuperscript{533}

It first sets out the TLC view:

‘NT Statehood: Yes or No’

On 3 October, you will be asked to vote on whether the NT should become a State. CPSU though the NT Trades and Labor Council has played an important role in the development of the Unions’ position on Statehood. Like other community interest groups, we believe members should be able to make an informed choice. A recent meeting of CPSU’s

\textsuperscript{531} as can be seen in chapter 8.

\textsuperscript{532} The sources of this article have been included, because it is interesting to observe from whence they come and the positions argued on such an authority. The Electoral Office is cited as the source of "Yes" case material, in which situation it might be implied that this office is far from neutral—without an accompanying "No" case argument. In any event, any such "No" materials are not obtained from that source in this account. Secondly, the TLC sources disclose that the CPSU Public Sector Worker, the organ of the union, supported statehood, obviously on conditions, and the TLC acknowledges that it has drawn on the position of that union.

NT Branch Conference resolved that CPSU should issue details of both the 'Yes' and 'No' case to members. Both are set out in this Bulletin.

The 'YES' case.

Territorians should have the same rights and opportunities as other Australians. At present the federal government can over-rule decisions made by our elected representatives. In any national referendum our votes are only worth half those of Australians who live in other states. Also, we have reduced representation in the Senate compared to the States. Statehood will give us equal rights. ... Since 1988, the NT has been treated as an equal with other States as regards Federal funding. We pay the same taxes, contribute more to Australian exports than the national average. We should have the same rights....The Northern Territory is growing while some other States are declining. Territorians have a vibrant culture and lifestyle, a sense of belonging and a 'can do' attitude in its people. We have a strong public sector which has played an important role in this development. Territorians want to build a society that is different from the rest of Australia. Statehood brings us closer towards this goal.534

The TLC called for minimum conditions to be incorporated in the constitution. First and foremost was the preservation of the Industrial Relations system, including the right of employees to collectively organize and negotiate; plus continued involvement of the Industrial Relations Commission in the regulation of relations between employers and employees. The Commonwealth had not patriated industrial relations power to the Territory, but it was covered to a large extent by the Commonwealth, so its effect would be negligible; but that was one of the reasons a state was desired, to recoup all state powers and presumably to set-up the mechanisms for regulating Territory industrial relations. So what was the problem with Stone accepting these pre-conditions? The answer, it is submitted, is first that, like Indigenous powers, it is too prescriptive, and second that Stone’s government saw dangers in entrenching Rights to collectively organize and negotiate by an organization culturally and, on occasions militantly opposed to conservative interests. Almost certainly 'the minimum conditions were “ambit” claims, in which the TLC is well-practiced. And, it is suggested, that the TLC never expected to have its conditions accepted, thus it was de-facto in opposition to statehood from the start.535


Next, the TLC required that a Bill of Rights, (or charter of citizens rights), including freedom of speech, freedom of association (an essential plank for a trade union), right to privacy and honest, open and accountable government, all be entrenched in the Constitution. Each item appeals to most persons, and the TLC had at first good cause to expect such Rights, as they were offered. At time of writing there is applicable Privacy legislation, and Freedom of Information legislation (FOI), both of which contain restrictive bars and qualifications. Open and accountable government can be gauged in part by this latter Right. But none are enshrined in organic legislation, and FOI can be overturned, amended by ordinary law.

The TLC’s conditions delved further into detail, some of which over-lapped. I have the impression that the following conditions were not meant to convince any but ‘the already converted’. Of course everyone wants a ‘perfect world’, and the list, with respect, appears to be a workshop-session of wishes as objectives. They included: access to government services irrespective of where citizens live and their social or economic status, which includes; clean air and water, affordable electricity and properly resourced health and education; an independent electoral system; and recognition of Aboriginal people as Indigenous Territorians with continuous Rights by virtue of this status. It went further: respect and protection of Aboriginal land and heritage; non-discrimination and respect for diversity; humane and just laws.536

The TLC’s exposition of the ‘No’ case is disappointing. It had the opportunity to expound on empirical positions, which would have added credibility, but the thrust was union-centric. It recited how the TLC representative ‘walked-out’ of the Constitutional Convention, (thus leaving even more room for opposing forces to range with greater authority, given the exit too of the Aboriginal delegation members). It claims the walk-out was necessary because the Convention was not representative of Territorians. And to state that “any semblance of democratic debate was being stifled; resolutions being ‘crunched through’ on the numbers; plus, the process being alienating and paper-driven”, is bordering on insulting. Joint Chairpersons, Austin Asche and Bob Collins would doubtless strongly reject such

536 Op.Cit., Ibid. This is not to dismiss such features in a democracy, but to enshrine them in a Constitution, which operates immediately, with interested parties seeking compliance, would, it is submitted paralyse the judicial system, and become unworkable. There are matters of governance not in the public interest to be placed in the public domain for example, who says the Electoral Office is not (contemporaneously) independent. The TLC has since had its way with the Northern Territory Labor government, securing a review and rearrangement of the Territory Electoral system. Not all observers are happy.
claims, with good reason. The TLC was on stronger ground complaining about the form of the referendum question, and asserted that Territorians would not be able to affirm the form of constitution.

But another instance of insularity is contained in the plaint that:

The TLC's position has not been reflected either in the process or in the draft constitution. There is no 'Bill of Rights'. The acknowledgment of Aboriginal Territorians is a weaker statement than we expected. Also, there is no agreement between NT Unions and Government on industrial relations powers. These underpin your pay & conditions and other important things like redeployment and redundancy rights, protection from unfair dismissal.

Its argument is that, without these features embedded in a Constitution, the Territory would not be able to stand on its feet on the same basis as the other states. This is incorrect. What other states have negotiated agreements between state and unions in their Constitutions, or even prior to constitutional governance?

It is difficult to analyse some of the propositions of the TLC, apart from acknowledging facts, such as a contemporaneous Territory budget of $5 Billion, unfunded liabilities for infrastructure, and employee superannuation of $2.3 Billion, and 'marrying' these facts with a need to secure future financial arrangements from the Commonwealth; describing the effect as a state 'on bank-card'. That claim displays a fundamental ignorance of how states financial arrangements work.

Further, the arguments as to the Electoral Office being (then) part of the Department of Chief Minister, presumes that the Chief Minister is able to assert undue influence in the Electoral Office. The claim of 72% of seats being held by 55% of the vote simply ignores electoral systems of voting; and that outcome has more to do with a preferential system of voting, than any jerrymander. But the point to be made is that these are arguments made against statehood, and although few would argue

---

537 All parties concur that Asche and Collins could not be faulted in procedural fairness; all were given rights to speak. One must ask: how would the TLC know that debate was gagged: the delegate was not there, having walked-out.
539 This is arguing for a special position for a (trade union)organisation which at best represents little more than 14% of Territory employees as its membership.
541 Many states have unequal voting/seat juxtapositions in numbers. In South Australia during the long "reign" of LCL (Liberal) Premier Tom Playford (parliamentary ministerial career, Nov 5, 1938 - March 10, (1965) 1968, it was called Playmander, wherein two city votes equaled one country vote'. (My father, a South Australian country butcher, thought that was fair, given the advantages of city [v the bush!]) The system has since been reformed, first by Don Dunstan.
the points are desirable features of any democracy, the question remains: what is the relevance to the case of voting 'No'?

The TLC ‘No’ case recognized the complication of the dual polls, federal and Territory; but claimed that: “Statehood has been politicised by the referendum being linked to the date of the federal election. What should be a time of affirmation and celebration will be tainted by the connection with party politics”.

“Voting ‘No’ does not mean that you oppose statehood. However a successful ‘No’ vote or a close outcome will send a message to government about people’s dissatisfaction with the process and the need for a better Constitution”. This conclusion of the union’s ‘No’ case is politically basic in the extreme. Here a new state is being contemplated; its importance-level on an upper strata, and the TLC urges that a message be sent to government; they had already noted that the event may not come again. It was churlish! The concluding remarks are ‘motherhood’ statements to me. The article was authorised by Janet Crews CPSU NT Branch Secretary. In concluding remarks as to the union position generally, I am critical of the poor argumentation, bearing in mind that the union-movement is not to be dismissed as irrelevant: it is not. But it does not have the same ‘labour voice’ hegemony as in earlier times. And it did call for inclusion of union-centric planks to be entrenched, but which are in fact irrelevant in a general sense to a charter-instrument creating the new state. But there is praise too. Given the position and views of the TLC, it is an extraordinary gesture of generosity to give any support whatsoever to statehood, following the undeniable ‘snub’ handed to it, that the union delegates and their derivative groups supported and expected the Final Draft Constitution of the Standing Committee to be the basis of a constitution upon which the people would go to a referendum. The TLC states that it has given “qualified support” to statehood, which implies and requires a ‘Yes’ vote at the referendum. That the arguments supporting a ‘No’ vote were subsequently used by the union movement at the Constitutional Convention indicates (a) support for the Final Draft

543 Motherhood statement: “Our constitution should be a visionary and inspirational document. It should make a statement about who we are as Territorians, the place that people belong to or have chosen to live, and type of society we want to build for the future. The final draft of the Constitution is dull, boring to read, barely inspires and is not written in the language of ordinary people. It is more likely to cause people to ‘tune out’ rather than get involved”. Op.Cit., Supra.
544 ‘Yes’ case sources: Statehood referendum material issued by the NT Chief Electoral Officer March 1996 Editorial Column of the CPSU Public Sector Worker; The Northern Territory News article by Frank Alcorta, 1 July, 1988. ‘No’ case sources: NT Trades and Labor Council position as represented to the Constitutional Convention. Other NT Trades and Labor Council resolutions; March 1996 Editorial Column of the CPSU Public Sector Worker. Contributions from CPSU officials and members.
Constitution of the Standing Committee, and (b) condemnation of the departures from that position in the question to be put to the referendum. It is submitted that this appraisal by the TLC, despite my remarks, in fact gives a clearer presentation of the two positions and the distinctions between them.

6.4. Referendum analysis and figures

The new Standing Committee, which replaced the Sessional Committee, analysed and interpreted the results of the referendum. Nonetheless, the referendum results are also given further attention by Heatley in his paper on the same topic. And because the essence of this present thesis is to determine how statehood failed, it is desirable to draw a number of implications from the referendum itself as the catalyst of all the factors involved. Heatley determined his own interpretation, which is now considered.

The overall margin of defeat was 3.8 percent. It might as well have been 99.9 percent and condemned statehood to the ‘back-burner’ for years to come. Many people believed a ‘No’ vote meant that it (statehood) should not be raised again. In non-urban booths, 51.9 percent voted ‘No’ and 38.1 percent voted ‘Yes’. At the non-Aboriginal booths (static booths), covering most of the urban electorate, a small majority was in favour of statehood, 51.5 percent, but it was not enough to get over the line. There was a regional variation, in the greater Darwin area, 52.5 percent who voted ‘Yes’, whilst in Alice Springs it was a different result: only 49.4 percent in favour. Katherine, the third largest area, recorded 50.8 percent ‘Yes’, but in other regional centres, towns and settlements, statehood was opposed. In the mobile polling, mainly Aboriginal voting settlements and communities constituting 15 percent of the total, rejection was as high as 75 percent. If the urban or town Aboriginal vote followed this trend, the Aboriginal community was also "strongly disinclined" to support the question. Heatley contends that:

If the significant Aboriginal population who reside in 'urban' settlements voted in the same way, and there is every reason to conclude that they did, then there is little doubt that Aboriginal opposition was the strongest

545 And that analysis is further observed in selected, salient respects in chapter 5 and 8 herein.
548 Heatley, A.J, Op.Cit., 96. The booths and figures are considered in detail later.
factor in producing the negative outcome.\textsuperscript{549}

The observations which Heatley considered most important in determining the outcome of the referendum, indeed statehood being achieved at all, centred upon the Northern Territory Aboriginal voting polity, to accept statehood. It was clear to Heatley at least, that this prospect was bleak, because it was countered by a widespread distrust of the Northern Territory government securing and maintaining Aboriginal rights, which were then and are still subject to resistance in both the national psyche and institutional law implementation. Heatley refers to discussions necessary for the successful referendum outcome involving ‘super-majorities’ and ‘concurrent-majorities’ in both Aboriginal and non-Aboriginal electorate-spheres, and he notes that the Sessional Committee did not make any recommendation in relation to these methods of counting votes, nor did Stone and Prime Minister Howard. A bare plurality was assumed to be sufficient.\textsuperscript{550} But why did Heatley mention ‘super-majorities’ and ‘concurrent-majorities’ at all?

Surely in a work of this nature, besides his scholastic method of mentioning everything within the purview of a topic, good or bad for argument, relevance is also a predominant factor as to what goes in and what goes out. These two concepts of counting-up votes, it is submitted, were mentioned because in the first instance, with the Aboriginal population in mind, there would have been reduced hopes of securing a majority in a referendum; and second, a ‘concurrent majority’ would ‘fly in the face’ of democratic processes. If understood correctly it means a separate counting of Aboriginal votes, placed alongside non-Aboriginal results, the highest of the two is the ‘concurrent’ majority. Such a method would be tantamount to a ‘rigged’ outcome such as to cause significant ‘apartheid’ outcries. There would be more lost than gained by doing it. It is odd for Heatley to comment on a scenario which did not occur; and most people would not know about it anyway. Statehood did not occur either, and had it passed under the above circumstances, I have said elsewhere, that it would have been a flawed statehood. On the one hand, a ‘super-majority’ would have put the referendum validity beyond doubt, if there had been voting support (to vote ‘Yes’) as the CLP thought to exist of those who favoured statehood.

\textsuperscript{549} Ibid.
\textsuperscript{550} Heatley, A.J. Op. Cit, 95. I heard first-hand from a senior Territory government figure that the referendum would pass easily, because even if 25% of the Aboriginal population voted ‘No’, 75 %, it was known, would vote ‘Yes’. This was really existing in a “comfort zone of muddle-headed thinking”, and it is quite alarming, as it was a Minister speaking
A simple majority (plurality) however, was considered the right balance for counting, and the referendum would still pass on this basis. Why is this so? Heatley observes that most media commentators (except himself) thought the referendum would pass easily, in the non-Aboriginal community. And early polling, particularly by Sol Liebowitz’ News poll, had shown a comfortable majority of Territorians favoured statehood. Further, the bipartisan support by both major Territory parties seemed to confirm the result. But the difference between these levels of support and the percentage of persons who voted ‘Yes’, was sufficient for the referendum to fail.

The truth was however, that the government was in possession of its own last-minute polls, indicating that it would fail. And this raises a mystery. The private polling of necessity needed to be conducted in an urban or semi-rural environment, yet it is clear from the polling result figures that the Indigenous community did not want statehood on the terms it was presented, and it was this community which should have indicated that in polls. The mystery is whether that sentiment was so included, or how it was possible to be included in polls, given the dispersion of the non-urban Aboriginal people. If not, as I suspect, it was the urban community polling which would have ‘set the alarm bells’ going. In these areas, particularly of Darwin, there was a slight ‘Yes’ vote majority. The fateful part of the journey toward the ‘train-wreck’, expressed as such earlier, then took place, and extraordinary measures were taken on this, the ‘11th hour’. There was an immediate intensive and costly media advertising campaign mounted, adding significantly to the total campaign cost in 1995 of $1.2 million. Half of that sum was spent in the ‘panic period’. The word soon got out into the public arena, spreading like ‘a bush-fire’, that the polls indicated failure at the referendum. It was not long before the Darwin daily newspaper, The Northern Territory News published a ‘Street’ survey, which showed the dire situation. Opponents of statehood gained confidence, and a shrill message resounded through the community that the referendum would fail.

Other reasons militating against statehood could have been absorbed into the ‘urban’ results of polling. Arguments, which had been previously used to oppose statehood for the Northern Territory included concerns that the population base was

552 Ibid.
553 Ibid.
554 The results are stated in chapter 5 herein, but it is worth being reminded that 51.9 percent voted ‘No’, and the referendum question was defeated by 3.8 percent. Op. Cit., Supra, 96.
not large enough to support statehood. But this has always been a nebulous argument, and it is explored further in Chapter 7. And another argument against statehood was that of its narrow economy, with very little industrial and manufacturing backbone. It is undeniable that there is a high level of dependence upon Commonwealth funds and that the Northern Territory is somewhat favoured. However, under the system of ‘relativities’ of the Commonwealth Grants Commission formula, that point only demonstrates the level of disadvantage of the Northern Territory related to other states. Heatley dismisses these arguments as reasons for the failure of the referendum, and I concur, because although these arguments did surface from time to time, they were quickly played down, and the responses were definite.

An unusual argument had taken place from time to time, that as the Northern Territory would acquire extra responsibilities, it would not be ready to take them on. Indeed there was some truth in these accusations. Even during the self-government period, there were concerns about the capacity of the Northern Territory government to handle the extra functions and powers transferred. But the argument developed into another form of adverse comment: on the Territory Government being ‘unfit’ to govern the state. This was that it was seen widely to be too immature, too reckless, and most significantly ‘red-neck’ in its approach to Aboriginal affairs. Heatley contends that this “essentially partisan position played no small role in the referendum’s failure”.

The analysis of the referendum continued in various ways after the result, with several groups claiming their stances were instrumental in the rejection by the electorate. On the one hand, Heatley groups Territorians for Democratic Statehood (TDS), the Labor Party, the Australian Democrats and Aboriginal organisations, all of which blamed “deficiencies in the constitutional process, and the ‘new’ state constitution itself.” These groups variously blamed the timing of the referendum, its form, and the Chief Minister’s “style and conduct.” Heatley says that such was also the conclusion of the Standing Committee. On the other hand, the government argued in the Legislative Assembly debates that there were, admittedly, problems with process, timing and leadership, but that the failure of the referendum was much

555 See the financial implications discussed in Chapter 8 herein.
556 Ibid.
557 Ibid.
more “the product of orchestrated opposition, openly waged by Aboriginal groups and, more overtly, by the Labor Party.”

In typical style, Heatley states: “Any balanced analysis should take into account elements of both interpretations.” He says that the first stream of argument is that support for statehood was high, but the government's handling of it turned the people off that particular presentation. By that reasoning the idea of statehood had not really been rejected. The government, on the other hand, knew that the depth of Territorians' commitment to statehood was not strong, despite the earlier polls. Heatley says that even privately the government knew that a high approval for statehood generally would not translate naturally to that result at the referendum.

And Heatley himself believed that Territorians are 'soft' on statehood. Accordingly he comes down in favour of the government's line:

Although there is little hard evidence (other than the outcome of the referendum) to support the government's view, it is the more plausible line. At best, the allegiance to statehood is soft and opposition to it can easily be mobilised. As with other Australians, knowledge about an attachment to constitutional change among Territorians is weak.

But in the next lines, Heatley makes another statement, and it must be distinguished from the one above, as this first part will be challenged shortly. Heatley says:

Demonstrating the advantages of statehood to the individual citizens in the NT and allaying fears about the financial and policy ramifications have always been difficult tasks. If it is accepted that support for statehood was both weak and conditional in October 1998, then the referendum failure should not have been unexpected.

In these two citations are contained the essence of Heatley's important observations of the outcome of the statehood exercise. To Heatley's mind it was not unexpected. The words 

fait accompli

cannot be used because it is known he rarely ruled-out anything in politics. And it is important because it 'flies in the face' of the more detailed explanations in this thesis, the Standing Committee report, and certainly, in folklore. Heatley believes, as I do, that there were multiple reasons for the statehood bid failing, but that there was a polyglot of more general, perhaps uninformed

559 Supra, 97.
560 Ibid.
561 Ibid.
562 Ibid, 97.
opinions, which are ‘bandied-about’ at backyard barbecues, responsible for voters not supporting statehood as they were supposed to do.\textsuperscript{563}

Is Heatley right? Is this ‘real politick’? There is no doubt that there were, and are still, un-informed opinions, for instance about the ‘cost’ of statehood. That does not necessarily mean they are wrong, although important aspects are countered (see Chapter 7). There may well be added cost, not readily apparent.\textsuperscript{564} But, presuming that money is at the centre of it, there is either insufficient information in the community about that aspect, or people simply do not believe what they are told over and over again.\textsuperscript{565} In financial terms at least, the Northern Territory was placed on the same basis of funding as the states in 1988. It has been repeated several times in this thesis, together with its aetiology. The ‘pros’ and ‘cons’ are argued in Chapter 7, but Heatley states there was not sufficient sentiment for statehood at the time of the referendum as a result of an amalgam of arguments, ranging from strong to weak.

Using Heatley’s own term “plausible”, it is submitted that, contrary to what he contends, it is not so plausible that the government’s explanation is to be preferred. This is because opposition, particularly that which is \textit{ad hoc}, not just institutional opposition, requires cause, not consequence to gain support. For instance, the Territorians for Democratic Statehood (TDS.) opposed the undemocratic form and style of statehood, not necessarily or at all statehood itself. Of course there were and still are many persons who are totally opposed to statehood on any terms.\textsuperscript{566} And the causes as opposed to consequences run the gamut of issues from Aboriginal rights and customs at risk, through the CLP government’s own agenda, Stone’s over-lordship, ignoring the Sessional Committee's Final Draft Constitution, the manner of mounting the Constitutional Convention and all the other matters which have been identified.

In the second part of his statement, Heatley is on firmer ground in claiming that Territorians are hard to convince that there are benefits in statehood. It is hugely

\begin{itemize}
  \item \textsuperscript{563} Indeed Stone himself, ruminating in a post-referendum interview, said that there may have been 30 odd reasons for the failure, including the abolition of “cracker night” (annual public fireworks allowed on June 30 only, to celebrate Territory Independence Day), and the end of unlimited speed controls on the Territory’s highways.
  \item \textsuperscript{564} During several meetings after its formation in 2002, of the Northern Territorians for Statehood Association there was a vigorous debate between some members on whether there was such a “price”, yet to be ascertained, particularly with arrangements in the funding of Aboriginal affairs. This debate remains unresolved.
  \item \textsuperscript{565} Particularly by governments. It seems that people started questioning governments more intently and with less belief, in, around or after the Vietnam war era, and have continued to do so, ever since. This is purely a personal opinion.
  \item \textsuperscript{566} See later in this chapter dealing with the Standing Committee's report. See also the “flawed federation” aspect in Ch 8.
\end{itemize}
ironic that by the establishment in 1988 of parity of financial status with the states, the Northern Territory was deprived of arguably its most potent weapon for statehood. So this is a valid point. But, a fortiori, it is one based upon the financial benefits area only and even then, it is submitted, that was only because the people did not receive the information they wanted. The concept was grossly misunderstood in relation to finance. But one could go even further, and suggest that people considered the point less objectively, asking themselves what is in it for them, or would it cost them something? The rhetorical question is still based on a lack of understanding in the community. And that is where the argument breaks down. It is submitted strongly that this ignorance in an educational sense and meaning, was a direct result of the parsimony of the government in providing the Sessional Committee with grossly inadequate funds for an appropriate education campaign. It just did not happen. What did happen was a publicity campaign conducted in a panic at the last moment when the government realised the project was out of control. It was a mistake of judgment and misconception on a monumental scale, which contributed significantly to the outcome. If Heatley was right, that Territorians were not convinced of the benefits, it was because no real effort was made to do so, to educate them, not merely to indoctrinate them. Territorians can evidently tell the difference. There was plenty of information put out, but education gets to the minds of individuals who are receptive to its content and method, and this was what the Standing Committee, in effect, concluded did not occur. Education is a vital aspect of enlightening the public of the entire 'sounds' of statehood's 'symphonic music', not just the financial 'drum beat'.

There was one other argument which was put forward by Heatley for the failure of the referendum. And he says that it is common to both streams of the above arguments and that was the matter of timing. Both Stone and Prime Minister Howard agreed that holding the statehood referendum and the referendum on the republic simultaneously would not only aid in getting the statehood bid through in the Northern Territory, but that the elections for the Northern Territory's federal member (there were also simultaneous federal elections, let it not be forgotten) would enhance the CLP's chances to elect its candidate (Nick Dondas) to the House of Representatives. None of these schemes were successful, and in respect of the

567 Education was subsequently considered so important in the statehood process, that it has formed the basis of several papers to the Standing Committee, and the Northern Territorians for Statehood Association was formed primarily for the purpose of providing education about statehood, good and bad. There were 75 members of the association in July 2002.
election, Labor Party candidate Warren Snowdon took the then seat of the Northern Territory. But there were interesting electoral figures which support Heatley’s (and the government's) views concerning the timing. Heatley:

A comparative analysis of voting in the election and referendum shows a close linkage between the two and a distinct politicisation of the statehood question. While some cross-voting did occur, there was a fairly tight correlation between the Labor (on a two-party preferred basis) and the ‘No’ vote. (Divergence on partisan lines mainly occurred - and notably in the non Darwin areas - in the CLP vote.)

Heatley adds that even though the parliamentary Labor Party reluctantly supported statehood, it was obvious that the voters who favoured the Labor Party candidate did not favour statehood. There is another way of looking at this however, and that is that the electorate did not favour voting-in the CLP candidate, Nick Dondas. There is a synchronicity in not giving an affirmation as sought on all three ballots. Not only this, but at the polling booths, at least in the urban areas there was a virtual gauntlet to be run by voters of ‘how-to-vote’ pamphlet-wielding supporters, and most of them were actively agitating for statehood. And It may be perverse, but it is arguable that there was resentment, if not anger over this last-minute harassment by the conservative supporters such as to deplete a greater urban ‘Yes’ vote. But in the clamour over the greater issues, there is no evidence to support this point.

6.4.1. Electoral results

Closer examination of electoral results from selected static booths and mobile teams reveals some interesting electoral trends. No attempt is made to cover all polling booths, nor indeed all electoral results. Because in a general sense it is claimed that the Aboriginal vote went against statehood, an attempt has been made to determine the extent and nature of the grouping. Heatley has pointed to the mobile polling teams as indicative of this trend. There were 21 mobile polling teams allocated numerous places and areas in the Northern Territory, sometimes with only two persons in the area on the register. The first statistic, repeatedly found elsewhere, indicates such an outcome, and no votes were obtained for any number of reasons,

569 The reason for including this vignette as text is because pre-referendum/elections, the CLP mobilised its forces like never before in my memory, co-opting supporters, their relatives, friends, even strangers.
5de17?
whether exotic or simple—perhaps the inhabitants were passing through, had gone somewhere else, or simply, could not be found in the vast tracts of the Territory's land area. This could well have posed problems, because many of the non-urban Indigenous people are itinerant and mobile, and as the polling teams moved from place to place over various times, it would be difficult to regulate and process the voters in a normal sense of “ticking-off names”. What is more impressive is the coverage by the Electoral Office workers. In Appendix 5 (polling results) many place names visited have been omitted from the lists simply because there were so many, and in many instances covered so few voters. Therefore only the places with most numbers under the mobile team jurisdictions have been included. And it must be conceded at once that there is no certainty whatsoever that Aboriginal people are in a predominance, or even excluded from rolls, at the places named. No register is kept, nor should be kept, in the general electoral system, of individual Aboriginal voters. So how do we know who is Aboriginal or not? Indeed, in ATSIC elections, Aboriginal voters are not identified, but are encouraged to register to vote.571

Accordingly, the Appendix accounts of places may be assumed to contain Aboriginal voters, but the voting places named and included in some cases is disappointingly hit-or-miss; and yet, in the case of the mobile teams, it may be presumed that there is a predominance of Aboriginal voters expected at those places. Because the mobile teams are allocated specific areas, it cannot be presumed that the table of each of those areas indicate trends of tribal groupings. This is because each team area is an artificial construction, and which geographically crosses tribal territories and nations; but the mobile teams did return polls from specific regions, so it is possible to gauge the extent (in general terms) of sentiment in such areas. Not all the totals indicated a ‘No’ majority, and there were a number of polling booths in the general system which returned significant ‘Yes’ majorities. On a closer examination, the latter group generally followed the host electorate MLA’s political party, in this case CLP members.572 The ‘No’ majorities in the Static booths are not included in Appendix 5, as the point is demonstrated by the comment immediately above. In all these statistics, and in the sentiment of the voters involved in this segment of the referendum, lay the fate of the referendum bid.

571 Aboriginal and Torres Straight Islander Commission (ATSIC).
572 The Wanguri electorate was an exception, following the lead of Labor MLA John Bailey, a strong statehood supporter and member of the Sessional Committee.
6.5. Conclusion

The referendum was tantamount to the ‘bottom-line’ on statehood. The ‘No’ result effectively closed-down any further processes, such as the expected negotiations with the Commonwealth. In its results reposed the reasons for its failure. The most important features of the referendum as a process included the question asked, and the panic-like advertising campaign, when it appeared that it would fail. Heatley has raised other reasons for the referendum failure, claiming that it has no hard sentiment historically, that Aboriginal opposition in particular doomed it, and that the claims to the contrary were incorrect. But his argument (which echoes the government line) that the concerted opposition of groups were primarily responsible, begs the question of cause. Stone’s judgment on holding the referendum at the same time as the referendum on the republic, plus elections for the Northern Territory’s House of Representatives seat was ill-advised, as all three conservative bids failed. Tambling believes these factors did play a role. (See Chapter 8).

Electors are not required to put their reasons for voting, so objective criteria must be sought by Psephologists and others to analyse an election. In this referendum however, opposition to the creation of a Northern Territory state was observable through the grouping which Heatley names. That the Territory Labor Party did not campaign against statehood, for reasons more associated with its electoral fortunes (in the urban community) if it did so, is inconsistent with its previous stance, and the views of many of its supporters. This has already been observed. What cannot be measured however in contextual terms, are the number of people who do not favour a state on any terms, and who regard this referendum result as a formal legal direction that it is not to be raised again. There is, however, no legal bar to another such referendum, and it is likely a referendum or plebiscite on statehood for the Northern Territory will be held again in the future.
PART THREE

AUTHORITIES EVERYWHERE
CHAPTER 7
CRITICS, POSTMORTEMS & INTROSPECTION

7. Introduction

The referendum has been decided, and the entire ‘home-grown’ process encapsulated in Part Two begs the question: what should have been done and what should not have been done in creating the state of the Northern Territory within the federal system? Part Three of this dissertation attempts to give insights from which answers might be drawn. It is a reflective archive, which covers a wide field of investigation; and seeks the views of critics not essentially involved. This current chapter considers the aftermath of the statehood campaign, the ‘wash-up’. It does this with the benefit of hindsight, being wise after the event. Sometimes the criticism is shrill, and uninformed. But in other cases, sage advice is offered, seen through the eyes of articulate and astute citizens. The chapter explores the thoughts and actions of several of the more outstanding Territorian players whose concerns led to their interventionist involvement in statehood actions. They include barrister Colin McDonald QC, a prime figure in Territorians for Democratic Statehood movement (TDS). Earl James' views are given prominence because they reflect (accurately) the expertise and guidance which lay in the creation of the American states of Alaska and Hawaii. (See Appendix 8) Why were their contributions not heeded when they were most needed. It is a rhetorical question because the answers are based upon political reasons, not logic. Indeed, these same people were either not selected, or not considered as delegates to the Constitutional Convention because there was no electoral opportunity to do so. Chapter 7 then reviews statehood creation as a whole, and by overseas comparisons of what has been done there. Much wisdom, scholarship and data is available about the creation of states, as critics have been quick to point-out. In the final chapter (8), because the thesis ambit is set within federal parameters, the juxtaposition of the Northern Territory's relationship with the Australian federal system is explored, particularly regarding the federal government's impact on the statehood bid. Euthanasia is raised. And for those who just don’t want statehood, an explanation is offered.

There were, and still are, no shortage of critics. It is an area where everyone is an expert. Commentary and actions emanated from many levels, voices, and sources. There was much guidance which had been available before and during the
statehood campaign for anyone who wished to see. In fact some references and materials were considered as part of the planning. But, by entanglement, they were forsaken when the campaign ‘changed management’. Informed criticism is usually the domain of the trained observer, the academic and expert. But the extent, scope and effect of critical input is necessarily kaleidoscopic and multi-layered, ranging from the highly informed but distant authority, to the seeming superficial mutterings of locals, who strip-away contextual minutiae to grasp core meaningfulness with startling cogency. Who possesses the greater truth?

Remarkably, there has been little academic analysis of the process as a whole, although what there is of it is soundly authoritative.573 The criticism which has arisen is trenchant, much of it envisioned in hind-sight, or in survey form as reported to the Standing Committee, seeking reasons for failure.574 Some critics believe that the whole statehood process is a waste of time, money and effort. Some believe it will cost too much and some just ask ‘Why’?575 The inclusion of such a chapter is made for several reasons; that in such circumstances, such criticisms may indicate where statehood failed; to confirm or cast doubts on the concept and process of statehood itself as a test of its strengths and weaknesses; to take the analysis of it to other levels, and throw-up ideas through suggestions from the community of what should be done on any future occasion.

Thus, a polyglot of disparate ways and means must be recognised as valid critical expression, including student demonstrations, ‘whingeing’ at social gatherings, cavilling by obsessed writers, journalistic licence, and political ‘backbiting’. Not all modes can be studied for relevance as to failure. A few such inputs however, disclose erudite knowledge if not a technical understanding of factors, which completely eluded the later statehood controllers. One such includes an argument whether there was a prior existing impediment in the constitutional and legal development of the Territory such as to invalidate a current, presumed capacity to change its status to statehood.576 Moreover it is a section where myths, tales and shibboleths about statehood are situated, whether they be factually-based, or fanciful


574 The critical assessment of another section of the Standing Committee investigation, relating to be market survey, is treated over several chapters because of its relevance to the particular sections’ objectives.

575 …like former Prime Minister, Bob Hawke, when asked in an interview.
presumptions, dressed up in literal finery, even sophistry. But the chapter starts with
the widely-held belief and catch-phrase: “statehood will cost Territorians more.”

7.1. The persistent cost question

One of the most persistent criticisms levelled at statehood, that is, the Territory
becoming a state, is its purported cost, (not the campaign cost. See Chapter 6).\textsuperscript{577}
Even the Labor Party objected to statehood on such grounds before it decided under
its then leader, Bob Collins, (see Chapter 8) to support statehood for the Northern
 Territory. But the levels of criticism in the many ways expressed has not been
anywhere near as consistent as the charge and suspicion that statehood would cost
Territorians more.

The critics reason that the Territory would be placed on a new basis, that of financial
inequality with the states in receiving revenues from the federal distribution
processes. The logic used is as follows: the Territory is limited in its revenue
capacity, and its financial dependence as a Territory runs at over five times the
proportional assistance to the other states; upon achieving statehood, this support
will discontinue in order to place the new state on a par with existing states; it will
therefore cost more through taxes and charges to run the state, independent of
Canberra. Indeed this perception exists at time of writing, and it seems that no
explanation to the contrary will satisfy the doubters. This is not to say they are
entirely wrong.\textsuperscript{578} But the financial arrangements are complex. But lay persons may
simply need educating about it. To be fair, it is a technical apparatus and formula,
and few people have the motivation, time available or can bother to grapple with it.

The financial question in fact was addressed before Stone’s time, by former Chief
Minister, Marshall Perron. It was however, first raised seriously as an issue by
academic Dean Jaensch, who sparked the question of statehood’s cost.\textsuperscript{579} The
following journal comment is by David Carment:

\textsuperscript{577} ABC TV current affairs program \textit{Lateline}, “What Went Wrong? Game Plan”, 15 October, 1998, reporter Murray
McLaughlin; “But half a billion dollars spent by the government to promote the case for statehood could not sway the
majority of the voters who voted on October 3.”

\textsuperscript{578} Some learned people, one known to me, deny that financial equality would exist upon statehood being attained (even in the
future) without massive reorganization and reconstitution of funding regimes and arrangements with the
Commonwealth, particularly in regards to programs directed to Indigenous Territorians.

The Chief Minister was especially critical of academics, such as an NTU academic (himself) and Dr Dean Jaensch of Flinders University, who warned that there would be higher taxes in the Territory if statehood was granted. He (Perron) said on 5 November that the Territory had been in the same funding position as the States since 1988 and that would not change under Statehood.580

But Jaensch wasn't the only one interested in the cost, The Northern Territory News gave its view, directly linking cost with population, but asserting that the added burden on the Commonwealth would be no more a factor under statehood than it is in its present condition.581 The Northern Territory News believed it necessary to explain the juxtaposition between state finances and the Northern Territory not long after the conclusion of the Constitutional Convention, thus:

‘STATING OUR CLAIM’

The Territory government's growing dependence on Commonwealth grants to fund its annual Budget will have little or no bearing on whether statehood is ever achieved. This was not the view of the right-wing economic think tank, the Institute of Public Affairs, in its analysis of Treasurer Mike Reed's Budget this week. The reality, however, is that federal funding is unlikely to ever be a factor in whether Territorians are granted statehood.582

The paper claimed that Territorians more than earn the share of the taxation distribution to them. This principle still applies under CGC’s relativities but at the time the issues were more parochial. It showed how territory/states revenue is limited:

While Mr Reed's interstate colleagues may well complain that they're subsidising of the NT Government, Territorians more than earn their fair share of the taxation cake. As the budget papers show, the Territory government will receive about $1.5 billion in Commonwealth grants in 1998 - 99. The figure represents about 80 percent of Territory revenue - a 5 percent increase over previous years. The proportion of Commonwealth monies paid to every State and Territory has increased this year after the High Court last year struck down State alcohol and tobacco franchise fees583

The newspaper attempted to deflect the prospect that federal funding would affect the grant of statehood. The editorial devolved into a ‘spin’ on the way the question should be seen. It said that the case "left a huge hole in state finances, and was

resolved only when the Commonwealth agreed to levy the charge on behalf of each of the states. In the Northern Territory, that means that about $104 million previously collected by Territory agencies is now collected by the Commonwealth and paid directly to the NT Treasury. The paper also said that while every dollar paid to the Territory is accounted for, no such figure was readily available for the level of income tax and business taxes paid to the Commonwealth by Territorians.

The High Court decision left a gaping-hole in state and territory revenues. The newspaper recited contemporaneous current events where the Commonwealth agreed to levy the charge on behalf of the states. It explained the significance of the figures:

Each year, the NT government receives roughly five times more per capita in Commonwealth funding than the States. But the Commonwealth acknowledges that services to Territorians cost about 2.5 times more than elsewhere. There is a price to pay for the provision of hospitals, schools and police stations, for example, because our population of 190,000 people is spread over such a vast area. While the NT population remains relatively small, the cost of servicing Territorians will remain proportionally much greater. Whether the economists like it or not, this will not change one iota when the NT is finally granted statehood.

The Northern Territory News highlighted the major problem as it saw it, and adopted an ‘educational’ role to explain the cost problems facing statehood. It would be a very courageous (Standing) committee which questioned the public’s understanding, in effect saying the public made judgments based on ignorance of the facts. But it did that in a oblique way. In other words, the education campaign looms larger as a crucial missing element. And the local newspaper stepped into that role, too late.

The newspaper followed this lesson by a statement that statehood guaranteed financial parity with the states. It already has financial parity, but it is by no means guaranteed. Any administration could induce, provoke, or oblige an ideologically opposed federal government to take over the financial administration of the Northern Territory.

587 Those who say this could never happen, need only contemplate the fate of the indigenous semi-autonomous statutory body, Aboriginal and Torres Strait Islanders Commission (ATSIC), and the debate about its abolition in March 2004, and proposed taking-over of responsibilities by the Federal Government.
In relation to cost, an argument can indeed be made for the proposition that statehood is unnecessary and at worst, runs counter to a perceived favourable treatment of the territory status of the Northern Territory. Such an argument does not gain credibility with me. But the step-up to statehood does not have the same popular swelling of the demand for independence which statehood represents, and opens speculation that self-government took away the ground for this step as being inclusive of statehood. That argument is: why fight for something which is already in situ. Further, what more is gained in a pragmatic, and tangible manner by going to statehood?

The fallacious costs argument has extended to the Grants Commission. There appears to be no extra advantage from the Commonwealth Grants Commission, for instance, weighting the Northern Territory more favourably because it is a state than as a territory under the arrangements for grants and payments because of the Goods and Services Tax (GST). Payments of GST revenues to the states and territories have no effect of changing payments in respect of the Horizontal Financial Equalisation (HFE) formulas to favour a state over a territory. Standing alone without more, there is no added advantage in GST terms to be a state. The question of costs, in relation to the Commonwealth Grants Commission (CGC) at least, guarantees equal standing with the States, although it is clear that the Territory's relative disadvantage results, state or no State, in the need to factor-in proportional dollar-equivalent values which the States would receive under the Commonwealth Grants Commission (CGC) formula. It is clear also that this argument has a compounding effect. If so many people believe that the Territory would be worse off financially by becoming a state, a fortiori, the same people would not be motivated to seek statehood in order to gain financial parity with the other states, as was the case in Alaska. In fact that was, as will be seen shortly, a powerful incentive for people to vote for statehood. This is not to say that so many people were turned-off because there was no such Territory incentive. The polls selected show that this is not the case, but as seen, the polls are fickle, and sentiment has been described as 'soft'. The informed reasoning is that statehood will not cost more than as a territory.

---

588 The Commonwealth Grants Commission's (CGC) Horizontal Financial Equalisation (HFE) is formulated with a "Relativities" loading, which creates the five times multiplier. It indicates just how expensive Northern Territory services are to deliver.

7.1.1. More financial implications of Statehood

National commentators joined-in the statehood debate, and some publications, like the influential *Business Review Weekly* (BRW) became shrill. It is however, an important article, and at a risk of some prolixity, the article is considered closely, because it garners up almost all the general arguments in one ‘swoop’. But how does it stand-up? The introduction sets the tone:

Darwin’s opulent Parliament House provides a snapshot of the reasons for and against the Northern Territory becoming Australia’s seventh state. State Square, which cost $110 million to build and $2.2 million a year to run, hosts just 25 elected members for 33 days a year. It is a symbol of the territory’s frontier swagger, a sign of its determination to have the biggest and best. It is also a symbol of fiscal over-indulgence, political immaturity and heavy dependence on federal generosity.

The BRW story, “A state of uncertainty on Northern Territory”, is provocative, although there are many Territorians, let alone ‘outsiders’, who might wryly agree that the ‘Wedding Cake’ (as Parliament House is often called), was indeed very expensive. But BRW writer Ryan makes a contextual mistake in linking over-indulgence, political immaturity and dependence on federal ‘generosity’ with a reference to symbolism. The same tone is taken in another remark by BRW:

Prime Minister John Howard’s announcement that the NT can become a state in 2001 was greeted in the NT with a mixture of concern and indifference, with reports of man-eating crocodiles taking precedence in the NT News.

Everyone in the Northern Territory, including the editors of that newspaper, know that ‘croc stories’ are regular fare, even when there is other news. It is a standing joke with Territorians, which BRW did not appreciate. The article moved-on:

Elsewhere, two questions are being asked. Will it mean more politicians? Will it cost more money? Political analyst Dr John Hepworth, long an

---

591 Op Cit., Ibid.
592 This was widely debated under the Hatton government, when construction industry workers leaving the Northern Territory, forced the government’s hand. It was also under considerable pressure from business and construction industry interests to act. Political pressure was thus also applied. Indeed the Construction Industry was in imminent peril of complete collapse. The then Legislative Assembly building was antiquated, more befitting a country-town council-chamber. Public infrastructure investment was urgently needed and there was no prospect of a railway, or gas on-shore, or indeed much else. Chief Minister Hatton ordered the go-ahead. The corollary is that the construction industry survived, probably as a result of the timely financial injection, and the present parliament house is by-and-large regarded with pride by Territorians. It also serves as Executive suites for ministerial staff, a venue for numerous conferences, functions of state, and it contains the State Library.
593 Ibid.
observer of NT politics, doesn't think costs will rise. "They (the NT Government) have done all the worst things they could do," he says. "The State Square development is one of the world's most expensive parliamentary complexes in per capita terms ... and that has been at the expense of very sensible development such as road and rail infrastructure."

With respect to the now Bishop Hepworth, a former NTU academic, road and rail infrastructure does need far greater allocation of resources (for example, the $1.2 Bn Alice Springs-Darwin Railway) than was available to the Northern Territory Government at the time, requiring national, public and private participation; and can easily be distinguished on that basis. But the following statements are factually correct and if intended as a criticism, Territorians would agree that equality with other Australians is desirable. Stone did present a strong national case, as follows:

Chief Minister Shane Stone, who hopes to become the first premier of the State of the Northern Territory, sneers at critics. In a recent article, he appealed to the Australian ethos of a fair go: "When asked, 'Why statehood for the NT?' my response is straightforward - equality with other Australians." Stone has other arguments: financially, the NT has been treated as a state since 1988; but it produces 1.5 times the national average in export earnings; and its population of 190,000 is bigger than Western Australia's when it became a state at Federation.

BRW continued its arguments against statehood:

The arguments against statehood are well-rehearsed: it is too small and too dependent; 73% of the NT's expenditure is derived from national taxpayers while Commonwealth payments to other states are, on average, less than 50%; and, at a time when the future of the states is being debated, why create a new one?

A new critic, columnist Gerard Henderson, is introduced by Ryan; an important one because his newspaper column is widely read. The article excerpt is followed:

Gerard Henderson, executive director of the Sydney Institute, believes the timing is wrong: "I would have thought the last thing we need ... is more governments ... Whether we should be adding new states for a population of a bit under 200,000 - which is really a couple of suburbs of Sydney or Melbourne or Brisbane - I don't think it's a particularly smart move."

---

597 *Ibid.* Territorians reading this reason against statehood will bridle at such drivel. Yet Henderson's view echoed much sentiment, and is particularly alarming, as the same view will be waiting in the future when another bid is launched.
Ryan commented that Henderson suspected statehood would involve substantial costs, such as a bigger Public Service and more resources for the Premier. Hepworth didn’t think so, because, he says, the Northern Territory already has at least the same level of bureaucratic and political structures as other states.

The criticism from Gerard Henderson however, requires closer attention. His ‘fear’ could be right or wrong at given times. In Territory terms, although it is hypothetical and his charges are not backed-up with figures, the Northern Territory Public Service has expanded post 1998. Cost-cutting however, was undertaken by Stone himself, in the Education sector, when he was Education minister.

His next criticism of the new state causing the advent of too many politicians, still hypothetical, requires a consideration because between the Commonwealth and the Northern Territory, and in the states themselves, it was a talking point, not only at (the now ubiquitous backyard barbecue) social gatherings, but in halls of power:598

The number of politicians is the biggest concern. Every state now has 12 senators, and the NT and the Australian Capital Territory each have two. Howard has tentatively supported giving the NT three senators on statehood, to rise to 12 when the territory’s population reaches that of Tasmania. The ACT, with almost double the NT’s population, says it wants its number of senators to match the NT’s. Under the Constitution, the House of Representatives must be twice the size of the Senate. Fifty years on, if the NT and the ACT were entitled to 12 senators each, 60 extra politicians would have to be paid for. A disgruntled electorate would never buy into that.599

Under this scenario there would need to be eight states. The Northern Territory as a territory has been (to date) content with two Senators, although another MHR has recently been added with the advent of the new federal Seat of Solomon. But the ACT will never be a state, it was never intended as such, as it is an Australian Capital Territory, like the District of Columbia is to the USA. Granted it has a growing permanent population, and if greater representation is required, then, so be it. If Territorians want 12 Senators, that is federal equality: no less, no more. It is possible that arrangements may allow for a build-up to that figure over years.600 Both

598 This argument was the basis for the falling-out between then Chief Minister Ian Tuxworth and first Chief Minister Paul Everingham during and after a CLP Central Council meeting (see Chapter 3). Everingham wanted 12 Senators, Tuxworth wanted a proportionate number graduating to 12.
600 Prime Minister Howard followed a Senate Select Committee's recommendation that the number start at 3 and graduate to 12 when the population matches that of Tasmania. That may be sooner rather than later.
commentators under-rate Territorians with a charge of being too immature for statehood. The then CLP government may be so branded, but voters have since proved that immaturity is not a feature of Territory people. BRW sent a damaging message to the business world when it published the following:

Hepworth and Henderson agree that the NT is politically immature, and that statehood would send the wrong message to the world. They cite the racial divisiveness of its politics and its laws, such as mandatory sentencing. A former senior NT Government strategist, Andrew Coward, says Aborigines in the NT have been deliberately excluded from the benefits enjoyed by everyone else. After 21 years of self-government, inequities in Aboriginal health and social services are as apparent as ever. “It comes back to spending priorities,” Coward says. “The cost of an overseas trip for a minister could provide a health centre at an isolated community.” Opposition Leader Kim Beazley touched on similar concerns, warning that the NT Government was “not a truly democratic outfit”. Even Howard seemed doubtful, refusing to cede authority over Aboriginal land rights, uranium mining and the Kakadu and Uluru national parks.601

It must be said that neither of the three critics mentioned above now live in the Northern Territory, and only some at the time. Mr Coward was a former staffer with the CLP who, at the time of his comment above, had a conflict of interest with his former employer. His objectivity is in doubt because his accusations of so-called ‘rorts’, must be presumed to be properly authorised overseas trips. No-one sanctions ‘junkets’. What overseas visits for MP’s have to do with statehood is questionable. Why have legislatures everywhere retained them as parliamentary functions?

The final judgement on the contemporaneous ambitions of the Territory is cast when BRW asserts:

Some critics, Henderson among them, would rather see the NT merge with South Australia, thus rationalising government resources. Hepworth prefers the idea of a northern state, stretching from Cairns, through Katherine to Broome. “The bit that fronts our northern neighbours would become a coherent political identity,” Hepworth says.602

Ryan noted that Howard does not envisage a debate or federal referendum on Northern Territory statehood; instead, he recites that “Territorians will vote on the

601 Ibid. Mandatory minimum sentencing has been repealed.
602 Ibid. That’s not a state. He is confused with regionalism, a concept which deserves greater scholastic attention. I also favour regional groupings of interests as a matter of political theory. The details and proposals to avoid manifold disruptive aspects of Australia’s Constitutional federal system, needs years of preparation, argument, and resources. The Northern Territory should not lead the way. It should be included first as a state within the system. The republic could follow, perhaps even come first; then regions could gain more importance, but they may never replace states. These are hypothetical projections without substance, like the argument of Bishop Hepworth, above.
issue on 3 October and, if they ask for statehood, the Federal Parliament will pass legislation in 2001 to create the seventh state. To switch the subject in mid-argument (to argue for Regions) is as poor as the critiques given.

7.2. Letters Patent

This criticism comes from a much different approach: that the Northern Territory cannot be made a state because there is no legal authority to do so. Is that fanciful? The topic was prefaced in Chapter 2. In a letter to Steve Hatton, Timothy Bickmore, a sceptic of statehood's viability, a member of the Territory Greens, then a nascent political entity, queried the constitutional status of the Northern Territory thus:

Now I know that you have been working on Territory statehood for quite a number of years, and if anyone in the Territory were extremely well informed on this issue then it would be yourself. So I was wondering why it is that I have yet to hear in the public arena any mention of the current Constitutional Status of the Northern Territory? If we are to create a new Constitution, then surely it is our legal and moral obligation to ensure a valid annulment of our existing Constitutional determinations; and for us to follow the correct transitional process?

The correspondent then cited the reasoning and work of K.T. Borrow, a South Australian resident who, in an address to the Royal Geographical Society in 1956, questioned the legal status of the Northern Territory through its constitutional development. The constitutional history research of Mr Borrow is in fact incorporated in Chapter 2 herein, and it complements the early understanding of the Territory's development in that respect. But in the criticism in point here, Borrow argues that 'the wastelands' of Australia's northern territory, had never been legally transferred to the Commonwealth from South Australia's defective title to it. The land had been 'Granted' to the near continent-wide NSW, through the contemporaneous Crown mechanism for exercising its powers - Letters Patent under the Great Seal, which was never formally altered by Imperial Act.

Borrow's address is technically verbose, based on his understanding of constitutional law and history. His argument is paraphrased by the Greens objector, to impart the central argument, and repeated here. It is nonetheless an interesting argument, and

605 *Ibid*.
606 See Chapter 2 for the legal basis in historical context, repeated above.
there were difficulties in the transfer of the Northern Territory, which occurred mainly in the transfer to the Commonwealth in 1911. Borrow claims that:

The crux of those documents, is that the transfer of control of the Northern Territory (from South Australia to the Commonwealth in 1911) was flawed because South Australia did not hold title to the land; that in fact the Northern Territory was, and still is, Crown Land. The validity or otherwise of any new Constitution, depends upon the validity of the “take-over” of the Northern Territory of Australia by the Commonwealth of Australia in 1911, and that this “take-over” cannot be reconciled with the Royal Letters Patent of 1863.

Borrow asserts that the Colonial Office in 1884 refused to confirm the title to the Northern Territory. When the Chinese population was far greater than the white, the South Australians thought of handing it to an Australian Federation. John Langdon Parsons, he says, proved that this was illegal. Alfred Deakin, the Victorian federationist, concocted spurious arguments to pretend that the Northern Territory was part of South Australia, which it was not, says Borrow.

The result of all this, Borrow says, is that the current Constitutional status of the Northern Territory is the 1863 Letters Patent, and any new state of the Northern Territory would have to buy this fifth of Australia from the Queen. Perhaps a capital levy could be made to find the money. Also, therefore, this would mean negotiations over a new Constitution or State would be with the Imperial (ie. British) Parliament, not Canberra. Borrow’s argument fails on two points at least. The first is that in this case an averment has been made that the South Australian, Langdon Parsons, proved that handing the Northern Territory to the Commonwealth was illegal. No such proof was ever officially legally accepted, even given that writer’s version of the

607 See Chapter 2 herein: 1812-1911.
608 Ibid.
609 There is a conundrum here. Is Borrow referring to John Langdon Parson, (1837-1903) MHA for Encounter Bay, and later North Adelaide, Minister for Education and Adelaide merchant, or his son, Sir Herbert Angas Parsons, KC, (1872-1945)? Like his father, John Langdon Parsons had an interest in the Northern Territory, and became a Supreme Court judge and Deputy Governor; also an MHA and Attorney- General. SA Chief Justice, Sir Mellis Napier said on Herbert's retirement in 1945, he had been 'invaluable as a touchstone with which to test too fine spun theories'. Elizabeth Kwan, 'Parsons, Sir Herbert Angas (1872-1945)', Australian Dictionary of Biography, Volume 11, Melbourne University Press, 1988, 148-150.
610 Langdon Parsons was also minister controlling the Northern Territory. His tour of that area in 1882 and to Mackay, Queensland, next year, fired him with the Territory's possibilities, particularly concerning sugarcane. As minister, government resident (1884-90), and member for the Northern Territory (1890-93), he pressed for developmental measures: the building of a railway from Palmerston (Darwin) to the gold-mining settlement at Pine Creek (completed 1889), and from Oodnadatta to Pine Creek; and immigration of indentured Asian labour. He invested in land, but despite his optimism agriculture in the Territory failed to prosper; mounting costs led to a royal commission in 1895 to which he gave evidence. He continued to explore the Territory's potential, traveling widely in East Asia on private and official business, notably in 1895 as honorary commissioner for South Australia. Op.Cit.
events.\textsuperscript{611} It is clear that there was an issue, and an argument was put forth, considered carefully by some contemporaneous players, ignored by others; and if Deakin was ‘playing politics’, so was everyone else. Even if there was such a flaw in the transfer of title, the argument was in any event over-ridden by the Imperial Parliament's \textit{Australian Constitution Act}, which devolved supreme constitutional power over Australia in the Australian Constitution through the federal compact. That was followed by the United Kingdom’s \textit{Australia Acts}, which purported to clarify relationships between Australia federal entities and the United Kingdom, particularly abolishing Appeals to the Privy Council. There have been ample tests of the extent of Commonwealth, state and territory powers in the High Court of Australia. And that leads to the second point: the landmark case of \textit{Mabo}.\textsuperscript{612} The status of Crown land was changed (rather, rectified). The doctrine of \textit{Terra Nullius} was overturned and in such case ‘waste lands’ also changed in status. States and territories are of a different context and nature to land ownership, as distinct from jurisdiction and the exercise of the specific legislative, judicial and executive power in relation to such jurisdiction. But \textit{Mabo} and \textit{Wik} cases are landmark departures from pre- nineteenth-century thinking, which persisted well into the twentieth-century (post 1956).

It is settled law that Australia is not dependent upon all Imperial instruments, (the \textit{Australian Constitution Act}, being the major exception, together with the \textit{Australia Acts}).\textsuperscript{613} In the event, nothing turned on the proposition as advanced, so far as the statehood bid was concerned.

7.3. \textbf{The Standing Committee’s market survey}

The Standing Committee’ Market Survey captured a certain manner of thinking about what its respondents wanted to know. It was a very basic need. They want to know how statehood would affect them. it is a very subjective appreciation, and planners would do well to remember this point.

The executive summary of the Standing Committee’s post-referendum analysis "Statehood for Northern Territory" reports on the findings of the market survey

---

\textsuperscript{612} The transcript can be obtained by internet; http://www.nt.greens.org.au/public_html/rgs1956.htm .
\textsuperscript{613} That is not entirely true. For instance some Imperial Acts, still apply to Australian states, for example, the \textit{Australia Acts}.  
ordered after the referendum. The Office of the Chief Minister of the Northern Territory retained *Market Equity* to conduct random samples of Northern Territory residents to provide a quantitative measure of general opinion. The survey was conducted by telephone, and claims to be representative of the Territory by location, age, gender, and work status. The summary states that interviewing was conducted at the end of February, 10 days after the resignation of the previous Chief Minister. It is significant that this is mentioned at all. The crucial finding of the Survey is a consistency in voter sentiment towards statehood *per se* over an extended period. The question remains whether that voter sentiment will hold-up in future years; but in any event it can only succeed if it is accompanied by saturation education, also over an extended period. Up to 2006 there is little sign of it, but there is some movement in that direction. The Committee report stated:

Most significant is that the Summary claims of the findings of the study match those we have from the findings of the *Newspoll* study conducted in April 1995, over three years prior to the October 1998 referendum. This is followed by the claim that "Territorians are sure that they want statehood and that eventually this will happen."

### 7.3.1. Lacking an Education focus

The Summary goes on to state that the general public wants to be fully informed of issues that go to the heart of, or at least affects, changes at a personal, community and business/employment level. It continues that such information would be acceptable to them if "endorsed by an independent, non-political source. All information should be available through the media and in pamphlet or mail-out formats."

It is interesting to note that the keyword here is *endorsed*. It does not say that such information should be prepared by an independent source, it merely emphasises that it should be endorsed. In isolation, this statement and its implications of lack of trust in politicians and of the government is a common theme which occurs in both the Committee's report and the survey polling.

---


615 Education is a primary objective in the Constitution of the Northern Territorians for Statehood Association. And a new Statehood Executive Committee has been appointed by the Northern Territory Martin Labor government.

616 Op Cit., Ibid.

617 Op Cit., Ibid.
The Summary notes that the timing of the October referendum, the phrasing of the referendum question, bi-partisan support for the ‘Yes’ case, and the “traditional attitude of Australians in adhering to the known rather than initiating change,” created an atmosphere of uncertainty. Of lesser authority is the summary statement that: “generally it is felt that the question could be posed again and that it will be carried”. It is submitted that if this were to occur, it would risk a second disaster, as the question posed in the referendum was itself a major cause of dissonance.

The Executive Summary reiterates that the “most often cited reason for forming opinions on the issues that were actually made in a certain way in October, was lack of information.” Again, a question of information arises, but the Executive Summary ventures that:

This statement is not directed at the providers of information. Most agree that information was available. It is more that the public did not feel that they were personally informed on aspects of the issues. The personal program of information preparation did not include sufficient sources to provide confidence to vote ‘YES’ - signifying a changed format had unknown consequences.

This Executive Summary is specific, but is more a deduction of logic than of summary. It is interpreted by the Standing Committee to mean a very subjective understanding of the legal and other processes was lacking. Despite the manner of obtaining this result, the fear of changing the statehood format is still a cogent argument, and has extraordinary implications. It has been stated elsewhere that the complexity of the issue defeated many voters. They are only human and it could only be expected that many were interested how statehood would affect them personally, good or bad. This is in no way a criticism of the intellectual abilities of voters: to the contrary, the voters were most discerning, and such complexity obliges any prudent person who is in doubt, to resolve such a matter in the negative.

Some way must be found in the next statehood attempt to mount a continuous education campaign of the public to make that penetration of information personal and important to each of the voters. Not one advertisement has been placed in media advertising to time of writing. Advertisers and public relations experts well know the principles required for such mass market penetration, of “selling”

618 Op Cit., Ibid.
619 Op Cit., Executive Summary 3- 4.
information and concepts, which has derived from many years experience of packaging messages with subtle psychological triggers to target the desired market. This is said in knowledge that there is much difference between selling \textit{per se} and educating. Perhaps the semantics of the matter is that the education needs selling.

Public education concentrates on television advertising, but there is a 21st Century silence over the ether. Anything would be better than nothing. The following is a contemporaneous Territory Government advertisement, a full page in print media, repeated regularly in a ‘jingle’, sung on TV and over the radio frequencies:

\begin{quote}
\textit{It's our right to be equal with Australians countrywide; it's our right to demand things, that right cannot be denied; its our right to choose our future without having our hands tied; its our right to call for statehood with full Territorian pride…}\end{quote}

\begin{itemize}
\item There is however, no getting around the fact that the Northern Territory statehood bid proceeded without any effective marketing campaign, in the educational sense, which took into account the factors raised by the pollsters. It is strongly suggested that a half-hearted effort would condemn the next or any other bids as surely as any of the other (now manifold) deficiencies which sunk statehood the first time.
\end{itemize}

7.4. \textbf{Earl James}

Earl James, AM, a retired Darwin Surveyor and his wife Wendy, each active in community matters, made a written submission to the Standing Committee, and he, Earl, appeared before it on 4 February, 1999. It was not the first time the James' had offered advice to a constitutional development committee.

The James' joint submission is thoughtful, although generally highly critical; and offers considered insights to the statehood process. Mr James, speaking to the committee, noted that the Standing Committee members were required to consult with Territorians and report back to the Legislative Assembly with recommendations on appropriate measures to be taken to achieve statehood by the year 2001. He then levelled his sights on the whole statehood ‘imbroglio’, which had gone-on to this stage. His first target was the date set for statehood.

\begin{itemize}
\item 620 \textit{ABC Television}, current affairs program \textit{Stateline}, “What went wrong? Game Plan”, 15 October 1998, reporter Murray McLaughlin, 4. It is a personal judgment, but by memory, the jingle was quite awful.
\item 621 Earl B.M. James, AM, “A Submission to the Standing Committee on Legal & Constitutional Affairs”, 4 February, 1999.
\item 622 See Chapter 8 herein.
\end{itemize}
Let me first of all say that whatever the measures needed to achieve statehood they will be the same whether they are achieved by 2001 or not. Indeed I believe there has been too much emphasis placed on the 2001 timetable and this emphasis may end up being the cause of another failure through haste. My wife and I would not care if it took another five or even ten years to achieve statehood so long as it is achieved. Because of the recent catastrophic result of the referendum, I doubt very much that a target date of 2001 can be achieved. I base this on the reaction of people in other states that I have visited recently, people whose standing in the community varied from federal politicians to professionals, to the man in the street.\(^{623}\)

James made four points, most probably echoing the sentiments of many other people.

Of four things I am sure. Firstly, statehood cannot possibly be achieved if the people of Australia, and those in Canberra who will be making the final decision cannot be convinced that the recent negative vote was an aberration.\(^{624}\)

His second point was that the Territory must be given another opportunity at another referendum. Earl James is alive to the alternatives for creating a state, and that the Federal Parliament has the power to do that. But if there is one matter upon which most people are agreed, it is that the people of the Northern Territory should decide at a referendum what form of state and constitution it should be. This is not a matter that can be presumed. A state which is created by Canberra would be as undesirable as any which might have been created had it received a majority ‘Yes’ vote under the flawed failed process.\(^{625}\)

Thirdly, according to Earl James, the people of the Territory will not provide a ‘Yes’ vote at a referendum unless another Constitutional Convention is held in a form acceptable to the people.\(^{626}\) This reference to a democratically elected Constitutional Convention is one of the most common criticisms of the statehood process.

\(^{623}\)Ibid.


\(^{625}\)Ibid. This point is reinforced by an ill-considered remark by the federal Member for Solomon in March 2004 that Canberra could create the state by the stroke of a pen. Technically, of course that is possible. Mr Tollner might recant that thought after reading authoritatively on constitutionalism in statehood creation. The practical and political fallout would be prodigious. On the other hand, if a Territory government behaved so recklessly in Commonwealth or federal matters, such as being unable to account for spending taxpayers funds associated with contentious issues, the Commonwealth could withdraw certain powers and functions. For example Aboriginal health and housing, given the deterioration of conditions in Alice Springs and at Wadeye community (the former Port Keats).

\(^{626}\)Ibid.
And fourthly, said James, the next referendum should be a vote on the acceptance of the constitution devised by the convention and not a vote on a 'wisy washy' question like "should we become a state?" It is a matter of determining the "appropriate measures" that will achieve these four ends.627

In this point, he highlights the referendum question issue. If the questions to be asked are redrafted in a form which neither presumes nor implies the predetermined course, it should pass, subject to other considerations:

In this regard I would say that the "appropriate measures" were well in mind of the former Sessional Committee on Constitutional Development which produced a Draft Constitution and made recommendations for the consideration of that draft by the people of the Territory through a Constitutional Convention of elected and nominated members. Had these recommendations been followed; had we had such a Convention; had the Convention debated only the draft constitution placed before it by the Sessional Committee; and had the people been asked to accept the resulting constitution, I am sure we would have had a different result to our referendum.628

As a fair summary of that post-referendum sentiment, the corollary of it is that there should be a ‘re-run', utilising the work of the Sessional Committee, continuing on the course it had set. Mr and Mrs James jointly contend that such a course should be repeated. Regrettably, the failure in itself has lessened the cultural sentiment which was at the time at its peak, and there may need to be some further changes made, particularly in view of an inevitable prodivity to review that process. But the James' do lament the loss of the Sessional Committee's continuity, as do many others:

In our view it was deplorable that those ‘measures’ and recommendations made by the Sessional Committee were ignored. Even so, I was one of those who believed the people of the Territory, while they were decrying the measures actually used, would have in fact voted ‘Yes’ for statehood even if they had to redress perceived wrongs after the event. In this, like many others, I was sadly mistaken. So it is now essential that those perceived wrongs be righted before a change in attitude can be expected from the people of the Territory.629

This critic was indeed prophetic as to the future prospects, and as time has gone on, his fear has come to pass. Although the new Northern Territory government agreed in 2000 to restart the statehood process, the Chief Minister, Clare Martin, remarked

to me in a discussion on statehood that there was little support for it at that time.\textsuperscript{630} Sadly, there is no reason to believe otherwise. And it seems it is little better supported in 2005 and 2006, despite the official stance to promote statehood. That could change, and in 2007, some forward steps were made, but not nearly enough.

\textbf{7.5. The paradigm planning flaw}

What paradigm for creating a state did the Northern Territory's Constitutional and Legal Affairs Committee's own Select Committee propose? This is discussed in greater detail in Chapter 4, and the effect of what occurred was there stated; namely the deconstruction of a model (draft) constitution. But how did it happen? The following is a fundamental criticism of its genesis, and properly resides here in Chapter 7. In terms of the Northern Territory’s role, there were three paradigm stages. The first of the parliamentary committees (of constitutional and legal affairs), the Select Committee, was clear about the process by which the new state Constitution should be framed. The three stages are: The Select Committee on Constitutional Development will prepare a draft constitution for presentation to the Assembly. Options, where necessary, will be included.

- The draft constitution will be put before a Territory Constitutional Convention. The Convention will be established by appropriate action of the Legislative Assembly and will include broad representation from across the Northern Territory Community. It will receive the recommendations of the Legislative Assembly following debate on the Select Committee's report, will discuss the proposals and ratify a final draft of the constitution.

- The constitution as ratified by the Convention will be submitted to a referendum of Northern Territory electors for approval.

This three stage process was endorsed by the Select Committee at its meeting of 3 November 1986.\textsuperscript{631} The paradigm is simple in its major constituent parts: a committee to draft a constitution; to be submitted to a Convention for ratification; and submit a Draft

\textsuperscript{630} This conversation as to the merits of a further statehood campaign occurred at a parliament house Reception in 2001.

Constitution as ratified by the Convention to a referendum of Northern Territory voters. The fact that the task was to draft a constitution has already been attacked by me as a major contradiction of principle (Chapter 4). With respect, the instructions were so simple, they were glossed-over by all, except the Select Committee and its successor, the Sessional Committee. Those committees did a superb job of drafting a constitution. But the residual language of the endorsement in 1986 was left unattended. And it was that language which provided the seeds for the Legislative Assembly to play a major part, so that it became a fourth factor, when in fact the fourth part is the federal role, whereby the nascent state and the Commonwealth negotiate terms for admission. The irony is that the Committees' so recommended the reference. The vault was open for Stone, and CLP objectives. The process was intercepted.

The crucial words are (i) ‘for presentation to the Assembly'; and (ii) 'and will include broad representation from across the Northern Territory Community.' And particularly crucial are the words 'It will receive the recommendations of the Legislative Assembly, following debates on the Select Committee's Report...' In (i) above, the Legislative Assembly is included as a major recipient of the report, which is not controversial by itself, but when combined with (ii) “following debate on the…report”. That never happened. And in specifying only 'broad' representation, there was no direct proposal for a Constitutional Convention to be fully elected. The door was left open for the Legislative Assembly itself to determine what should constitute 'broad' representation. It was the opening 'handed' to it as desired by the government, and propounded by the Select Committee itself. It was presumed that the parliament had a fashioning role. It was stated by Stone (Chapter 4) as a normal matter of process.

What recommendations would be received by the Constitutional Convention from the Legislative Assembly, after it had debated the Sessional Committee's report? For a start, the report which really mattered, as developed over the interregnum, and which was eventually tabled by the Sessional Committee 10 years later, was not debated. And the recommendations were not so much received, as dismissed by the government which had a large majority in the Legislative Assembly. There was certainly a response taken from the Legislative Assembly to the Constitutional Convention. But it was a government program for deconstructing the Final Draft Constitution on the basis of predetermined instructions, and ably carried out by the leader of the Northern Territory government delegation to the Constitutional
Convention, future Chief Minister Denis Burke. This was the major error referred to in Chapter 4.

Chief Minister Shane Stone was nowhere in sight; although no one was under any misapprehension that it was he who was directing the government side, probably even watching proceedings.632

There was still a paradigm for procedure specified by the Select Committee, despite the flaw, and it strains credulity to apportion criticism to the process recommended in 1986, when ostensibly it still covered the essential elements of democratic process, although the ‘devil was in the detail’. But during the next ten years, the Sessional Committee refined the process and changed much of the potential for misinterpretation, which the Select Committee had unwittingly allowed itself to provide. A fortiori, government MLAs’ reading the three-part process might also believe that they had been invited to provide the fourth factor; their recommendations to be received by the Constitutional Convention. They might be forgiven at such stage for believing that as the governing party it was their right and duty to provide the guidance to the Convention. After all, it was the CLP government whose terms of reference set the parameters for the Select Committee. But in the intervening 10 years and with the advent of a strong Chief Minister, there was a transmutation of such roles to that of the Chief Minister intending to carry the Constitutional Convention according to political, not democratic objectives. Government MLAs’, including ministers, laboured under this common transmutation, obviously abrogating their collective leadership roles in favour of the Minister for Constitutional and Legal Affairs, the Chief Minister. In the manner of Cabinet government and process adopted throughout the federal system, in the conservative ranks, the minister responsible for a particular item has the carriage thereto. On the other hand, there is no convention or Cabinet practice which constrains the other members of Cabinet from speaking up for or against measures proposed by the responsible minister in Cabinet. It is done all the time. The only difference here was one of personality, in that the Chief Minister was a domineering figure in his government.

632 This system is used to enable ministers and advisers alike to observe proceedings in the Chamber, whilst attending to other business in their offices. It also serves as a warning system for Divisions and notification of business requiring their presence. The televised proceedings are very clear. See comments on this control device in Chapter 5.
The above setting demonstrates the changes which *prima facie* set the beginning of the exercise in its federal context. This context is seen to change with the passage of time and circumstance. The only thing that did not change in the Northern Territory, at least, was that the CLP government remained in power throughout the whole of the latter statehood exercise. This is therefore the specific context, inter-meshing with the *locus* in which the statehood bid of 1998 was played-out. And the same characteristics will doubtless dictate the setting of any future bid. But the criticism is in misconstruing the paradigm, and opting for something else, which in my opinion caused extraordinary trauma, sufficient to engage a process of failure, something like switching rail tracks to an obscure spur-line which led to nowhere, very much a ‘never-never line’.

7.6. Colin McDonald, QC

 Criticism, mainly of the undemocratic nature of the Constitutional Convention, came from many quarters. One voice was heard strongly. It is of well-known Darwin barrister, Colin McDonald, QC. He was a key-note speaker at the inaugural Territorians For Democratic Statehood meeting on 5 March, 1998. His address was eloquent and stated in simple, but direct terms. Speaking a few weeks before the Constitutional Convention began, McDonald struck at the core of objections based on the notion of democratic representation

> We, the people of the Northern Territory, want a say in our constitution. We want our values and aspirations reflected in it. We are gathered here to say that it is the people who should decide the content and the spirit of the forthcoming state constitution. We are also here because we, the people of the Northern Territory, have been denied our voice, our say in our and our children’s political future.

McDonald QC echoed the sentiment that would ‘bedevil’ the statehood bid thenceforward. Some say that the Group which formed on 11 March was pivotal in

---

633 This is a veiled reference to the ill-fated North Australian Railway line, more hoped for than intended to become the northern link in the north south continental railway, but which went…nowhere really, and petered-out at Birdum, near Larrimah. It has been the subject of at least two books, one by J.Y. Harvey, (1987), entitled: *The Never Never Line: the story of the North Australian Railway*, Hyland House Publishing, Melbourne; and I.R. Stevenson’s *The Line That Led to Nowhere* (1972), Rigby, Adelaide.

634 Barristers always prize having the last word, addressing the jury last. His requested original address nearly achieved that status. It was finally received by me on 30 April 2004.


defeating statehood. Whilst that assertion is arguable, there is little doubt its rise and presence shortly before the Constitutional Convention with no hesitation in loudly condemning the pathways adopted, and therefore placing itself in opposition to statehood, played no small role in placing doubts in the minds of the public. It also reinforced the views of those opposed to the government’s hegemony of process. Members of this group, however, were not intrinsically, nor necessarily opposed to statehood, and that was made clear by the title of the group, the key words being … *Territorians for Democratic Statehood.*

McDonald outlined the forthcoming Convention’s problem to a large crowd gathered at Darwin city resort, *Mirambeena*, that on 25 March, a Constitutional Convention is proposed of 45 delegates (actually 53) who will discuss and debate the content of the future constitution of the Northern Territory. He said “The people’s future is in *their* hands. I am sure they will do their best. But that is not the point. We, the people, should have our future in *our* hands!” In case any one was under any delusion of what that meant, McDonald laid it out:

> Not one of these delegates has faced the people. Not one delegate has informed us of his or her views as to what kind of constitution we should have. All the delegates are appointed by the government or elected from restricted groups nominated or approved by government. The proposed constitution is the opposite of democracy. It is about colouring, channeling and obstructing the voice of the people.

McDonald went on to say that “History will record the significance of our meeting here tonight. We are making history... We, by our presence, say ‘No’ to the Government model imposed upon us.”

Colin McDonald was clearly predicting the outcome of the statehood bid, in the belief that the group he addressed that night would be the catalyst of it failing. He considered that meeting more indicative of participating in the constitutional development of the Northern Territory, an interesting notion, given its negative stance, but he repeated the well-known reasons for doing so:

> The proposed Constitutional Convention is undemocratic and should be scrapped. In its place should be a popularly elected people’s...
constitutional convention where at least 75% of the delegates face the people. The first step ...is complete. This step is the decade of careful work of the Sessional Committee... chaired by Steve Hatton. That committee arrived at fair, balanced and democratic recommendations.640

I support this last point, and it seems to be a commonly popular tenet. McDonald played his audience well in stating: “So often, we, the ordinary people of the Northern Territory feel powerless. Government appears all powerful. Let us take heart with the numbers who have turned out here tonight and voted with their feet and by their presence.”641 Newspaper readers, perusing these sentiments the next day, doubtless attributed the words ‘we’ and ‘ordinary’ to themselves and may well have hardened in attitude due to this master lawyer. He continued to beguile:

Why is there so much opposition to the proposed Constitutional Convention? It is easy to see why. All the regions of the Northern Territory have been denied a voice—the people of Alice Springs, Tennant Creek and Nhulunbuy will not get their say. The workers beyond the towns have been given no say. The mothers and child carers of Darwin and everywhere else in the Northern Territory will not get their say. Professional people of all kinds, doctors, dentists, engineers, lawyers, vets – the people in whom the community have vested most—will have no say. Territorians of different cultural backgrounds, many Aboriginal Territorians, secretaries, information processing workers, computer technologists, the disabled, university students, journalists, the sick, will not have their say. A majority of people in the Northern Territory do not belong to an approved group for the purposes of the proposed convention.642

McDonald pressed-on to his finale:

You are not in one of the groups. You are just an ‘ordinary citizen’ is the bland but extraordinary reason for exclusion...we are not only the witnesses at creation of a new state. We are the temporary trustees of our descendant's future... Why should we be second class citizens in our own Territory?...The formation of this free association is about the assertion by the people that they will not let their constitution be hijacked by Government and be guessed at by unrepresentative appointees.643

McDonald knew through media reporting that the country was watching these events, and said so. And he covered that ephemeral aspect of whether the Northern Territory is seen to be fit to gain statehood. He demonstrated a scholarly knowledge of ‘constitutionalism’. He said: ‘Without a democratic start with an authentic voice of

641 Ibid. Without wanting to patronise him, Colin McDonald QC is anything but ‘ordinary’; a gifted orator and counsel, having turned the course of many lives in his career, presumably for the better.
642 Op.Cit., Supra, 3. The litany of occupational identities is a little too glib: there were members of these ‘groups’ present, but the symbolism was the message and it was effective.
643 Ibid.
the people at the Constitutional Convention; then the quest for statehood is necessarily compromised and diminished." McWhinney would doubtless approve of the statement. He finished on a high-note: "I say: Let the people decide our constitution. Let the constitution come from and be the product of a democratically elected people’s convention."644

It is obvious that Colin McDonald QC could have led a serious challenge to statehood in a sustained manner or campaign, even outside of parliament. In fact, he did not lead at all, apart from a newspaper article. McDonald is first and foremost a lawyer in legal practice at the Northern Territory Bar, and binds himself in a plethora of ethical restraints, befitting the expectations of the conservative nature of the Profession. Yet the speech reported above gives an indication of latent lethality in public persuasion had he devoted himself to leadership of the cause, which is as far as he would go, apart from reported comments sought by the media. It is a hypothetical assessment by me, that had McDonald taken on Stone, the result would have been worse for statehood proponents. Paradoxically, had the Sessional Committee’s recommendations been followed, McDonald could have come down on the pro-statehood side, and assuming all other contributory factors had been equal (such as proportional Indigenous representation) in a necessarily enlarged or changed Constitutional Convention, the result may have been closer, perhaps even a majority for statehood. The episode demonstrates dangers of alienating ordinary voices in the public domain, which clearly carry an extraordinary weight of persuasive opinion.

7.7. **Overseas experience: valuable guidance missing**

The following discussion and overseas references are more useful as dialectical guidance than providing a direct bearing on statehood failing. Yet there is still the knowledge that had some of the lessons been learnt and adopted with appropriate changes for local environmental factors, the outcome may have been different. Conversely, a possible reason it might have failed was the lack of successful measures which worked overseas and were conspicuously absent in the Territory.

Precedents and authority for creating federal states not only existed at the time of the Northern Territory statehood bid, but were also contained in materials available from

---

644 *Op.Cit., Supra*, 4. By all accounts, the applause was loud and protracted.
overseas sources, considered by the Sessional Committee. In the main, these were the experiences of Hawaii and Alaska; and it must be said at once that their respective statehood processes resulted in achieving statehood, in different ways and times, but by utilising modified paradigms of process. Hawaii took two attempts to succeed, even after it first gained its “conditional” statehood. It is important to note that point, particularly by those who believe voting ‘no’ means ‘not ever again’. No less important is that of Alaska’s bid, which also succeeded, through careful preparation by the whole constituency. The Alaskan Constitutional Convention drafted Alaska’s constitution in its entirety. Bearing in mind other instances of statehood creation in federal systems overseas, these two American examples highlight options available in the Northern Territory statehood bid. Not all methods adopted by either American contender should have been imported. There was widespread political interference in Hawaii’s 1958 effort. The problems can surface in copying from one federation to another.

7.7.1. Comparative constitution-making - New Guinea

Peter Bayne suggested that the Northern Territory should have consulted more widely like the Papua New Guinea Independence Commission, but first he wisely cautioned about adopting overseas models verbatim:

There could well be a tendency on the part of those with long experience in the Territory, to seek to reproduce the process followed in some other jurisdiction. The experience of the States provides an obvious model, but the socio-economic complexion of the territory is very different from that of the states, and different even from the condition in the Australian colonies in the 1890s.

It is well to insert here one of the canons of constitutional prudence distilled by Professor McWhinney from his study of comparative constitution-making:

Rule 11. Be cautious in your borrowings from other Constitutional Systems, developed from other societies. Remember the principle of the non-transferability of Constitutional institutions. What works beautifully in

645 The successful constitutional convention in Hawaii for instance was preceded by an election campaign in a contested party political arena, with delegate candidates including many politicians, already members of the legislature, running for office in this way.
648 Ibid.
another society may turn-out very badly, or at least quite differently and unexpectedly, when translated to your own society, since the underlying political, social, and economic conditions may be quite different between that society and your own.649

As much may be said about the process of constitution-making from foreign or overseas sources. To quote again from McWhinney:

Study of the different modalities of exercise of Constitutional power in different countries indicates a wide variety of options as to the arenas for Constitutional drafting and enactment. The choices among these different options may be made casually or inadvertently, but it will never be value-neutral in its consequences. What looks like a simple, technical machinery choice may in fact predetermine or influence the final substantive recommendations as to the content and direction of a new, or “renewed”, Constitutional system. The evidence would suggest that governments are very often aware of this truth, and shape their choice of the instruments of constitution-making accordingly.650

Bayne expresses a similar view:

Without wishing to suggest that it is inadequate to its task, the process of consultation of the Australian Constitutional Commission is hardly a model for the Territory. This process is essentially one which will occur within a highly literate elite. The Territory might find more instructive guidance in the experience in Papua New Guinea. The Commission appointed to make recommendations for an Independence Constitution consulted extensively with the many communities in the country….I do not suggest that an identical condition prevails in the Territory, but it has been noted by Senator Kilgariff that the process of constitution-making might well stimulate more community support for the transition to statehood.651

The Papua-New Guinea Constitution was debated and adapted by the Constitutional Assembly, which comprised of the Members of the pre-Independence House of Assembly who simply declared that they were possessed of the authority of the people to enact the Constitution. The process had an explicit legal objective. Bayne said that the pre-independence Constitution was contained in the Papua New Guinea Act 1949, but that no attempt was made to create the Constitutional Assembly in accordance with its terms. Bayne suggests that this device to achieve an ‘autochronous Constitution’ might well be studied in the Northern Territory.

context. But even so, PNG experience is hardly a relevant Australian federal experience, and certainly not a Northern Territory experience whereby two thirds of the population might come within the elitist context that was avoided in PNG.

7.7.2. States of success: Hawaii and Alaska

From the two latest American states created, there were materials available brimming with ideas. Given McWhinney’s cautions aforesaid, there are lessons here for the future. One of these ideas includes Hawaii’s example of employing the device of a private citizens statehood group to inject the perceptions of democratic process. That concept was lacking in the Northern Territory. It was a body independent of parliament, democratically elected to craft a constitution, at the Constitutional Conference. It was so well-done that the Constitutional Convention adopted it. These two examples stand-out and a few primary pointers and instances to illustrate the utility of the examples, is given. There are other examples of the pursuit of statehood in federal systems, including Nunavut, and by contrast, India, and Nigeria. They may be seen in Appendix 8.

. The Hawaiian and Alaskan experience is summed-up as follows:

- In the Hawaiian example, there was no contradiction, as there was in Darwin; and yet there was intense drafting activity. The civic organization, which undertook the mounting of the Constitutional Conference organised the task of drafting the final Constitution. The task was made easier by preliminary activities all directed toward that event. In this area lies the possibility, a hypothetical situation, of one of several causes for the Northern Territory Statehood effort failing. Put another way, the chances of success would have been enormously enhanced had the Northern Territory Constitutional Convention either drafted the Constitution itself, or determined the options of the Sessional Committee, and approved that Final Draft Constitution.

- So why a constitutional convention in 1968 when the state already existed, with a constitution? The answer, according to Meller, was dissatisfaction, and

652 Supra, 120.
653 See the claim made by me in Chapter 7 in relation to the incongruity of the two functions.
it was widespread.\textsuperscript{654} In many ways it was a state with a condition subsequent, which only the US Supreme Court would resolve. It was brought-back to non-state status. The process began again. I believe that this could have occurred in the Northern Territory too, had its referendum passed.

- Meller asserts brashly: “There are two classical methods of preparation for a constitutional convention. One consists of instituting a ‘grass roots’, citizen endeavour, designed to acquaint as many voters as possible with the convention and involved in some form of participatory activity, even if only by voting. The other approach seeks to achieve more limited, specific objectives through professional public relations services in a well-financed campaign.”\textsuperscript{655} With respect, the measures are neither traditional nor exclusive of the other. But each measure is (in hindsight) helpful to a successful statehood attempt. The notion for forming citizens groups arose simply as a result of disparate interest groups insisting on a point-of-view in how they saw statehood arising. Although many men very actively participated, and it was headed by a male, the \textit{Citizens' Committee on the Constitutional Convention} was primarily a women's undertaking. When in mid-1967 the members of the American Association of University Women, the Junior League of Honolulu, and the League of Women Voters discovered that each organisation was contemplating embarking on some form of citizen-education program for the constitutional convention, they decided to pool efforts and ask other interested organisations to join with them.\textsuperscript{656}

- The Alaskan experience, also may be instructive for the manner of its constitution-making. Vic Fischer's \textit{Alaska's Constitutional Convention} and Robert Frederick's \textit{Alaska's Quest for Statehood 1867 -1959} are particularly

\textsuperscript{654} Meller, Norman, (1971), \textit{With an Understanding Heart: Constitution Making in Hawaii}, University of Hawaii, and the National Municipal League, (State Constitution Convention Studies Number Five), New York, 35. Emeritus Professor Meller, in the faculty of political science at the University of Hawaii, died recently at the age of 85.


\textsuperscript{656} In addition to the highly motivated members of the three women's organisations, the son of the 1950 Convention's president served as temporary chairman of the committee. A respected person, known for his confidence in community affairs, it was only to be expected that he would be chosen for the permanent chairmanship. When the group elected its other officers at the second meeting, it was more than luck that a representative of the A.A.U.W. became vice-chairman, another from the Junior League was designated as secretary, and later, the representative from the League of Women Voters was appointed to the key post of public information. Supplementing these officers in comprising a "working committee" were a co-opted controller, treasurer, Constitutional Convention conference coordinator, and the 13 chairman of the 12 sub-committees (the Sub-committee on Continuing Information Effort had two co-chairman). Meller, \textit{Op.Cit}, 21
appropriate literary guides in the present circumstances. The convention was allowed by the law which created it seventy-five days in which to complete its task, with a two-week recess. But the planning also allowed for time to publicise the coming of the convention, to hire research consultants and have them prepare papers for the convention delegates and the public.

- The Alaskan convention, unlike the Northern Territory's, was not held in that territory's Legislative buildings, nor even in the capital city. Juneau is the Alaskan capital and the site of the legislature, and it had the necessary facilities. Fischer explains: "... it had the unsavoury reputation that often goes with politics, special interest lobbying, heavy drinking and the like. To overcome such perceived odium, the Act provided for the convention to be held on the University of Alaska campus in Fairbanks. This had the effect of providing the necessary isolation and academic atmosphere without the interference of political lobbyists, nearby drinking houses and other commercial distractions. The campus location put delegates in the midst of a community directly interested in their work and it proved highly conducive to achieving a sense of objectivity and detachment."

- Another point: In an objective study titled *Alaska's Press and the Battle for Statehood* the conclusion was that statehood was attained because Alaska's newspaper publishers provided the stimulus and kept the public aroused until the battle was won. Also, some of the main features of the Alaskan Constitutional Convention: The scheme of electorates for convention delegates departed deliberately from that which governs the election of members of the legislature. An election on the pattern of the latter "would

657 Earl and Wendy James, written answers to my questions about their views. In my possession See also, Fischer, V, (1975), *Alaska's Constitutional Convention*, National Municipal League, State Constitutional Convention Studies Number 9, University of Alaska Press, Fairbanks.
660 Frederick, R.A, Monograph, (1985), *'Alaska's Quest for Statehood 1867-1959', Anchorage Silver Anniversary Task Force, Anchorage, Op.Cit. In this respect it was enthusiastically aided by the media. By the early 1950's three of the Territory's newspapers were pressing for statehood. While most Alaskan papers covered the campaign, The Times, The Chronicle and the News Miner ... actually championed statehood.
have effectively prevented representation of all but a few of the largest communities, and would not have committed territory-wide selection of any delegates." The larger communities were urban in nature. One device was to allow for the election of a number at large from the whole territory considered as an electorate. According to Fischer “the result was by far the most representative assembly ever elected in Alaska. It was a diverse body in terms most of the regions and communities represented and of the occupational backgrounds of the delegates. There was however, only one non-white ethnic Alaskan elected.”

7.8. Conclusion

Simply and shortly put, the authorities and critics de jure, came from everywhere, and the authority of their voices resounded in backyards, in offices, in kitchens, and lounges watching the TV news! It is important to mention that for two reasons: first the ‘mums and dads’ were the voters, but it is very difficult to include their views, otherwise it would be a list of fairly meaningless adjectives. Polls can reflect their views, but we saw few of them and in any event, their voices were heard in the referendum. Secondly the critics herein were attuned to the issues of statehood and able to articulate their views. Accordingly, the above account, whilst attempting to be kaleidoscopic, is only a brief series of snapshots of reactions and responses; of views and theories; of actions, which might be considered in retrospect. The great lesson here is that if constitutionalism requires local experience then the people of the jurisdiction should have been brought into and allowed to participate in the making of their state. That is constitutionalism in its most fundamental sense. And in general terms it demonstrates that a lack of wide consultation and elected participation was a factor in failure. The bottom line is that the ex-post facto search for reasons for statehood’s failure contained more negative than positive motivational imperatives for voters.


CHAPTER 8

THE FEDERAL CONNECTION AND ITS IMPACT

8. Introduction

The siting of this chapter at the end of the thesis is a reminder of the place of the central and all-powerful role exercised by Canberra.\textsuperscript{664} An event in 1996 may have impacted adversely upon the statehood bid, but only circumstantial evidence exists to demonstrate the truth or otherwise of the sub-heading below. The issue was euthanasia; with the Australian parliament striking-down the Territory’s \textit{Rights of the Terminally Ill Act, 1995}. There is much written on the question of euthanasia, and care must be taken lest one be diverted and caught-up in the debate. The sole question here is whether the issue contributed to the failure of the statehood bid.

8.1 State Rights or a moral question recalled?

In this context statehood may have been saved by incorporating some ideas. The Northern Territory does not enjoy constitutionally guaranteed powers. The states on the other hand \textit{do} have guaranteed powers with which Federal Governments cannot tamper That status was amply illustrated in 1995 first with the enactment of the \textit{Rights of the Terminally Ill Act (NTRTIA)}:

On 1 February 1995, Mr Marshall Perron MLA, who was then Chief Minister of the Northern Territory, announced that he would introduce a private member’s bill into the Territory’s Legislative Assembly to provide for a form of active voluntary euthanasia. He introduced the Rights of the Terminally Ill Bill, on 22 February 1995… It passed the third reading stage by fifteen votes to ten. One of the amendments let the Government delay the Act’s coming into force in order to allow time for regulations to be prepared, and training, education and information-gathering to occur. The Administrator of the Northern Territory assented to the Bill on 16 June 1995.\textsuperscript{665}

The Territory legislation was validly passed according to the Full Court of the Northern Territory Supreme Court, but it outraged anti-euthanasia activists throughout the country, who vowed to fight it. In federal parliament, Kevin Andrews MHR, (Menzies, Vic.) indicated that he intended to introduce a Private Member’s Bill (Euthanasia Laws Bill 1996) to overturn the Territory legislation. The subject raised extraordinary emotions and passions. The single question for examination here is: did this issue, the overturning of Territory legislation, become a reason for statehood failing in 1998? First, why were the two events, euthanasia and statehood linked?

The Alice Springs News published a response to that question, written by Alistair Heatley:

Inevitably, the euthanasia decision became intertwined with the statehood issue. Two schools of thought have developed. The first suggests that the quest for statehood has been made more urgent and desirable because of the demonstrated insecurity of the present constitutional position; the second sees euthanasia as yet another example of the Territory’s unfitness to claim statehood. In my opinion, however, there are really no clear ramifications to be drawn and no conclusive grounds for arguing that the decision will either impede or assist progress towards statehood.666

However, what of the likelihood of effects on the yet-to-be-held statehood referendum? The following observation by David Carment was made, connecting statehood and the proposed over-turning of the euthanasia law:

The argument for Statehood seemed significantly diminished when on 25 June Prime Minister, John Howard supported a Liberal member of the House of Representatives, Kevin Andrews, who planned to introduce a private members bill to overturn the so-called Euthanasia Act, Rights of the Terminally Ill Act, the Territory legislation. An angry Northern Territory Chief Minister argued the move represented the most serious assault on the Territory since self-government.667

From another perspective, Natasha Cica, a Commonwealth parliamentary analyst of the proposed Bill, observed:

Undertakings have been given to confer full Statehood on the Northern Territory. Passage of the Andrews Bill would create problems in the lead-up to Northern Territory Statehood. Removing powers that have already been granted at self-government could seriously impede the progress of the Northern Territory towards Statehood. Further, passage of the

Andrews Bill would introduce doubts as to whether any future grant of Statehood would give the Northern Territory the full range of legislative and executive powers enjoyed by the existing States. If the Andrews Bill’s removal of legislative powers over euthanasia survived the grant of Statehood, the Northern Territory would still be treated as a second-class jurisdiction compared with the other Australian States. If the conferral of Statehood restored the Northern Territory’s powers to make laws about euthanasia, there is little point in passing the Andrews Bill as it can only be of transitional effect.668

8.1.1. The impact of the euthanasia legislation on statehood

Euthanasia is an issue which not only divided Territorians, but Australians generally. The issue contains such universal moral implications (in this case raised not by a state but by a territory) that it attracted critical attention from everywhere. To many it was like a ‘domino theory’: first the Territory, then it might spread to other states, and beyond. Some, like Shane Stone regarded the matter as a question of state rights, although he is Catholic, and the Catholic Church took a strong stance on the Rights of the Terminally Ill legislation. Others against euthanasia outside the Territory, agreed with the progenitors in federal parliament for moving to over-turn the Territory law in a conscience vote. The reaction from Darwin was swift and sharp:

The following day, Stone stated that the two CLP members of the Commonwealth Parliament, Dondas and Tambling, may be asked to leave the Federal Coalition and sit on the parliamentary cross benches. Tensions were further inflamed on 27 June when a Federal National Party Senator, Julian McGauran, accused Stone of supreme arrogance over his stance on the euthanasia legislation and described Darwin as a “tin-pot little Hamlet”.669

Stone obviously felt that the challenge to the legislation cast doubt on the Territory’s integrity as a self governing entity, but at least some observers considered that it was very unwise for him to pursue a dispute with the Commonwealth on the matter when many Territorians remain so strongly opposed to euthanasia. The salient point here is that people and groups in the Territory, including the churches, opposed the legislation, and if statehood gave a guarantee against the Commonwealth overturning such laws, that was a good reason for voting ‘No’.670


670 See Chapter 6 and earlier this chapter. This is a reference linking Aboriginal fears with euthanasia.
This is an instance of the Commonwealth asserting its power over the Northern Territory, although many people can be said to have agreed with the Commonwealth action because the outrage to the overturning of validly enacted Territory legislation was said to be confined to a group of states-rights enthusiasts. In terms of Commonwealth powers, it certainly contained indirect threats of sanctions, but it was not confined to the Northern Territory. It has been claimed by various people that the case meant that all states had to “toe the Commonwealth line”, though they disliked being dictated to as well. I do not believe that is the effect of the disallowance which was confined to the Northern Territory. Stone was well aware that statehood was no defence against Commonwealth hegemony.

8.1.2. Power of Commonwealth to overturn Territory Acts

Following the House of Representatives passing the Andrews Bill on a so-called conscience vote, the Senate Committee examined the proposed legislation to overrule the Territory’s NTRTIA. The matter was treated on two bases. First was the constitutional position; and second was the ‘ought to’ test. This test is whether the Senate should overturn the NTRTIA. The first of these is mentioned briefly as there is little doubt the Commonwealth could overturn Territory legislation. Note, it did not invoke the power to disallow the legislation within six months of it gaining Administrator’s consent, contained in s9 of the Northern Territory (Self-Government) Act, 1978. The Senate committee noted:

Does the Constitutional Power Exist? We are in no doubt that the Commonwealth Parliament has the power under section 122 of the Constitution (which gives the Commonwealth unfettered power to legislate in respect of the Territories) to enact the Euthanasia Laws Bill 1996. In our view therefore, the question is whether it is appropriate for the Parliament to do so. ..The Territories derive their legislative capacity from the Commonwealth, whereas the states do not. States therefore, are different to Territories. Territorians are therefore subjected to a different legislative process than are the residents of the various states.671

The Commonwealth not only possesses extraordinary powers over the Northern Territory in its current form, but used that power.672 But should it have done so?

---


672 In strictly legal terms, under s121, if the new state gained a referendum majority, and arrangements were then agreed with the Federal parliament, and a Commonwealth Act was passed under s122, to admit the Northern Territory as a state, the Commonwealth could still repeal its own legislation under Australian Constitution Part V, creating the state by
8.1.3. Should the Commonwealth Parliament outlaw euthanasia?

The Senate Committee stated pre-emptively, that the second question is the one which may determine the outcome of the issue. Lobbying against Territory euthanasia was fierce. The churches represented a large and powerful lobby and the submissions were impassioned. The Senate thus believed it had good reason to make the call, delve into the matter and make a decision. The Committee reported:

The Churches that comprise the National Forum are as follows: Anglican Church of Australia; Religious Society of Friends (Quakers); Antiochian Orthodox Church; Roman Catholic Church; Armenian Apostolic Church; Romanian Orthodox Church; Assyrian Church of the East; The Salvation Army-Eastern Territory; Churches of Christ in Australia; The Salvation Army-Southern Territory; Coptic Orthodox Church; Syrian Orthodox Church; Greek Orthodox Church; Uniting Church.  

It would be a courageous entity to disavow the names listed above in the National Forum. The committee’s argument put for taking the action it did (to guide the Senate) was simple:

The Primate’s submission also advised that the National Forum of the National Council of Churches, the most representative body of the Christian churches in Australia, has rejected euthanasia as “contrary to God's law and the values of a civilised society.”

8.1.4. Did the impact upon Aboriginal people affect statehood?

The inquiry thus far determined the questions of Commonwealth power, now it must be asked how and where this may have affected statehood. The area equally as sensitive, in the context of the failure of the bid were the fears held by the Territory’s Aboriginal people about euthanasia. The Senate Committee reporting on the Rights of the Terminally Ill Act, 1995, specifically referred to Aboriginal fears. It said:

The claim that the Northern Territory's Rights of the Terminally Ill Act is having unacceptable impacts on the Aboriginal community.(24) These Senators dispute claims that the Christian churches have provided misinformation to Aboriginal communities about the RTI Act and manufactured Aboriginal opposition to that legislation. They find

Admission. Entrenchment can be achieved but it is not a constitutional guarantee. In my view, the only sure way to achieve equality with states, that is, to make the new state inviolable to Commonwealth interference, is for a successful (Australian) amendment by Commonwealth (Australia-wide) referendum under s128. The signs do not augur well on past amendments, but it is a course open to Northern Territory negotiators.

674 Op.Cit., Ibid.
'compelling' the view of one witness to the Committee that the very existence of the RTI Act is a 'significant threat to Aboriginal health'. They note that all of the 200 submissions to the Committee from Aboriginal people opposed the RTI Act and that these submissions consistently referred to Aboriginal fears of seeking medical treatment because of legalised voluntary euthanasia.675

The Senate Committee focussed on the evidence presented by a Territorian, Chips Mackinolty, who gave evidence that the Aborigines he had spoken to through interpreters, were afraid of being euthanized if they went to hospital with serious ailments. In fact to many Aborigines, the concept was unknown. Fear of getting needles at Health centres and clinics grew. The Senate Committee referred to specific instances, mainly presented to the Northern Territory’s Legislative Assembly’s own inquiry, The Right of the Individual or the Common Good?, Report of the Inquiry by the Select Committee on Euthanasia.676 They were:

(1) concepts of euthanasia and suicide were unfamiliar to Aborigines, and the people of Hermannsburg for instance had no words for them in their language;
(2) however, old people who are ready to die may stop eating and drinking, at least after consultation with their families;
(3) the difficulty with a person providing assistance to make a patient die is that, whatever the assister’s intentions, they could be viewed as an instrument of sorcery or payback in the larger picture, and possibly as a murderer;
(4) as a result, euthanasia could result in payback against a person giving assistance or otherwise involved, such as a doctor, relative, interpreter or person signing a prescribed form on behalf of the patient;
(5) euthanasia was regarded at least by some as morally, ethically and traditionally wrong;
(6) hospitals were often feared or regarded as culturally alien;
(7) there was a risk that Aborigines would fear that they could be killed without their consent, which had the potential to deter them from attending hospital;
(8) English is a fourth or fifth language for some Aborigines in the bush, giving rise to obvious difficulties with communication and education.677

There was strong opposition to the claims made herein. I do not canvass them all, in fact only selectively, as there are reams of this report on the topic, and little material

relevant to my narrower investigation. Some objections to the above, however, are important and raised the ire of their proponents, particularly Creed Lovegrove, who contradicted Chips Mackinolty’s evidence. The report stated:

Mr Lovegrove, a former senior Northern Territory public servant with experience in Aboriginal affairs, also suggested that Aboriginal fears of euthanasia may have been deliberately exacerbated and exploited by anti-euthanasia groups.678

In fact Lovegrove went further, expressing disgust:

…at the misrepresentations some were making to people over whom they have an emotional hold. Where this group happens to be Aboriginal, I believe some of the frightening lies they were told about the subject were a psychological and emotional exploitation of them, as blatant as any that has ever occurred in the Territory. I have been seeing it happen on other matters in the Territory for a long time. For example, the uranium debate, land rights, mining, green issues, self government, statehood. By way of example in this case, I happened to be recently with a group of mature and influential Aboriginals of my own generation who came from eight different communities in the Territory. They were all tribal people. We were discussing a range of important matters. During morning tea one of the ladies informally raised the matter of euthanasia and said, ‘We have been talking about that law which Marshall Perron is making next week. We are all really frightened.’ Another said, ‘Yes. We heard about it too. They reckon the government is going to round up all the real sick people and those with V.D. and things like that and finish them off. That's not the Aboriginal way. People are frightened to go to hospital now.679

On the other hand, the Reverend Djiniyini Gondarra, Executive Director of the Northern Territory Council of the Uniting Aboriginal and Islander Christian Congress, said: “We are not frightening people. We are telling them the truth about this legislation.”680 The upshot of this issue was that a majority of committee Senators recommended that the euthanasia legislation be overturned by the Senate, using Kevin Andrews’ MHR proposed bill. And that is what happened.

8.1.5. An issue not to be forgotten, but secondary

In light of the evidence, euthanasia did have an impact on the Aboriginal people of the Northern Territory, rightly or wrongly, and by association. But it was a secondary effect, which lingered into the statehood arena. To clarify this remark, it could be that

678 Ibid.
the Federal parliament by overturning the legislation made itself a ‘good’ entity to them, whilst the Territory government led first by Perron then Stone, were ‘bad’ entities. Therefore the flow-on to statehood was consequential in nature.

In concluding this issue, which might otherwise have been treated in Chapter 3 or in Chapter 7, I believe the euthanasia saga was a catalyst acting both ways, with forces gaining strength for statehood, being placed mainly in the states-right camp, and looking for statehood to cure the defect. On the other hand the Indigenous people looked upon the Commonwealth as something of a protector, in this instance, when many believed they were saved from being euthanized, (whether mischievously imbued with this belief, or not) and feared the Territory CLP government, particularly when land rights were also mentioned, concerning possible patriation of the Aboriginal Land Rights (Northern Territory) Act, 1976. Under these circumstances it would be easy (and prudent) to vote ‘No’ to statehood. The secondary effect was more directly related to statehood. The power of the Commonwealth over the Northern Territory’s validly enacted legislation is unquestioned. It provides a powerful voice for statehood. But I have cautioned earlier that it would need a national referendum to entrench the state in order to provide safeguards similar to the other states. Accordingly, my analysis is that euthanasia was not a primary causal factor in the reasons for statehood failing, particularly so far as Aboriginal people were concerned, but acted only as reinforcement. Their block vote was determinative.

8.2. Why enter a flawed federal system?

Finally, to seek the causes of statehood’s failure in the Northern Territory, it is timely to ask whether the federal system (as distinct from its federal role) played any part in the failure of the statehood bid. Australians have now over a hundred years experience of a system which is organic in nature and practice: it has changed. Could it be that Territorians also decided that they did not want to join a faulty federation as a state? It is a harsh question: confidence and pride is needed in Australia’s system of governance. The question asked here is why would Territorians want to join a malfunctioning federation? Is it better ‘the devil we know’, a territory status rather than to join-up with a flawed structure? But if the federal system has changed from the time of Federation over the interregnum (for the worse), did it impact adversely on statehood? What essentially is wrong? In Chapter 7, it was observed how people feared additional costs of becoming a state. The financial factors of entering the federation as a state are canvassed here, including the main
problem area, fiscal federation, and how it has changed the federal scene. Also
some other overseas federal systems are briefly viewed, to understand better
Australia’s own condition.

The Northern Territory is in a different position to the states. It has been seen above
how the Territory is constitutionally and legally inferior in status as contrasted with
the states in relation to its federal “parent”. Part of this section demonstrates the
additional authority incumbent upon Australian states to engage cooperatively, and in
the alternative, submissively, through the Commonwealth’s hegemony, (always
subject to High Court challenge), particularly in financial federalism. The states
themselves are given cursory attention, as they did not vigorously oppose statehood
for the Northern Territory. The federal connection needs testing here for relevance to
the failure of creating the new state, not because it had been still-born, but because it
never did reach the next vital stage of its journey: Canberra. The national parliament
is a nurturing friend, but also a powerful foe. The parent-child comparison does occur
here, but it is more like a relationship of ‘blood’ than anything else. It tolerates the
territory entity, but rues the attitudes and behaviour which attends its junior
‘underling’, knowing it has a proclivity for ‘maverick’-like independence. This
relationship could easily be illustrated (as introduced above) in parent-infant
figurative similes. To do that further however, is to over-simplify the particular
imagery. The reality is of constitutionally volatile federal entities constrained largely
by constitutional barriers, with changes in the static condition affected by the
decisions of the High Court. The final viewpoint is from the memory archive of a
person who has been privy to Northern Territory politics and constitutional
development since 1974, and better still, a consummate authority on the subject,
being intimately involved with “the Canberra connection” for over 20 years. He is
former Northern Territory Senator, Grant Tambling. His Oral history interview set-out
in Appendix 9, with salient comments hereunder, serves as a window of his federal
perceptions of Northern Territory statehood.681

8.2.1. Difficulties of obtaining federal agreement

To chart the waters of this federal system, I recollect the preferred, stated paradigm
for creating a state first includes its three-stage process (made into a four-stage

681 Oral history Interview by the candidate with Grant Tambling, Karama, 2003.
process in the Northern Territory). After those steps have been successfully completed, and entering in the federal arena directly, admission to the Australian federation requires the additional stage of approval (of negotiated arrangements) and the new state admitted through ordinary legislation by the Federal Parliament. It is arguable that this last step is the most difficult and unsure hurdle. One of the more important factors is involved here: the addition of a number of Northern Territory Senators. Original states were entitled to ten, but the formula for a full complement could, arguably would, destabilise federal balances. The other states could be expected to fight vigorously such an allocation in the High Court of Australia. My experience as a lawyer tells me a compromise will result, perhaps up to five would be allowed; but even that is pure speculation. The real problem is that it is only part of the problem to be fixed. Federalism itself needs an overhaul. In light of what has transpired in the failed first attempt, the task seems formidable. That question is futuristic, and clues to its likely answer might not reflect hypothetical future conditions which may inure at the time (such as the number of Senators, and whether euthanasia legislation revives). But lessons from the past can be interrogated from the federal connection. Part of the latter inquiry was made in Chapter 1 herein, through delving into the contextual constitutional aspects of the formation of the federal compact. But what of the life of federalism itself? Its purport and understanding varies like many other catch-words which have amorphous meanings to many people, and that's the way it will almost certainly remain. But its core elements and the manner of its changing nature can be highlighted.

8.2.2. Commonwealth position on statehood

The Commonwealth's position on statehood for the Northern Territory needs to be seen in its more recent historical sense. In the crucial time-frame leading-up to the events of 1998, Prime Minister John Howard resolutely assured Shane Stone of the federal government's commitment. And, like most of Prime Minister Howard's personal views, the federal government's stance on statehood has not changed. On 11 August, 1998, Chief Minister Shane Stone visited Canberra and appeared with the Prime Minister John Howard to announce that the Commonwealth supported the

---

682 To wit: 1. Constitutional (Sessional) Committee; 2. Constitutional Convention; 3. (The interloping) Northern Territory Parliament approval; 4. Referendum. Total steps now include 5, with the Federal Parliament imprimatur, pursuant to s121 of the Australian Constitution. The Legislative Assembly through Stone intercepted the Final Draft Constitution, changed the parameters and accepted the outcome of the Revised Draft Constitution. Parliament’s role thus impinged on Constitutionalism.
The Northern Territory’s claim for statehood and had set 1 January 2001 as the date on which it should occur. The Minister for Sport, Territories and Local Government, The Hon. Warwick Leslie Smith MP, simultaneously announced the legal basis under which the Northern Territory would be admitted: section 121 of the Australian Constitution. “The terms and conditions of statehood would be subject to full consultation and negotiation”. There were matters such as Aboriginal land rights, the payment of mining royalties, the ownership of uranium, environmental control of uranium mining, management of the two National Parks and industrial relations powers. The matter of Senate representation would also be negotiated, as would the status of the two Indian Ocean Territories which are attached to the Northern Territory in its Commonwealth electorate (now, of Lingiari). It is noteworthy that the Minister for Territories stated that the Commonwealth had accepted that the referendum would be held in conjunction with the forthcoming federal election and that it would be held on the same day. In the following parliamentary debate on the minister’s statement, the Labor Party objected that the simultaneous election and referendum might provide an advantage to the ‘Yes’ lobby:

On 21 February 2001, (former) Chief Minister Denis Burke, in responding to a question in the Legislative Assembly on the Federal Government’s position on Statehood, reported the following position relayed from the Prime Minister: It remains the policy of the federal government that the Northern Territory should achieve full statehood. It’s for the people of the Northern Territory to make a decision on the matter. We won’t stand in your way and we won’t be reluctant to put in place the necessary support and necessary government decisions that are needed.

683 Op Cit., Supra, 14, 15, 16.
684 Supra, 17. These two territories are: Christmas Island and Cocos Island.
685 Ibid, 4, 19.
687 Denis Burke also announced three further initiatives, to take the statehood matter further in the post 1998 Referendum era:
1. That the Legal and Constitutional Affairs Committee of the Legislative Assembly (the Committee) carry out the following reference: (a) evaluate proposed specifications, including program guidelines, for the engagement of an independent consultant to devise and implement a Statehood public education program; and (b) advise and consult with the Chief Minister as to the outcome of the Committee's evaluation within twenty-one days of receipt of the proposed specifications.
2. The Committee nominate one of its members to participate in the evaluation and assessment of tenders received and the selection of the recommended tenderer to be engaged as the independent consultant.
3. The Committee be available for consultation with, and to provide advice to, the independent consultant as may be required during the course of the consultancy.” Op Cit. Supra. This idea appears to have lapsed, and was not taken up. There was at least one tenderer: John Bailey. Perhaps Denis Burke did not regard the former Territory Labor Party's Deputy Leader of the Opposition, John Bailey, as sufficiently 'independent'. There is no doubt that Bailey's contribution to the Select, Sessional and Standing Committees was of great value, and his wealth of statehood information should not be lost to posterity. The issue lapsed. The Martin Labor government has since advertised for and appointed an Executive Officer to head a small statehood executive to provide executive assistance to the government statehood committee for its announced statehood policy. Statehood is still an agenda item; and the government statehood committee is charged to restart preliminary steps for a fresh attempt.
That position then is static until further notice.

The federal connection is the last of the factors which may have a bearing on the failed outcome. It is not easy to find direct reasons for failure because of Canberra: in fact, if anything, the federal parliament and its Members should have given a boost to statehood, and several motivational points for Territorians should be recalled. The first is that the federal parliament has power over the Northern Territory in its territory mode and engendered much of the cultural movement backlash against territory status during its constitutional development period to 1998 through neglect. Second, that the Northern Territory is not equal as a state, although it is said to enjoy (many) state-like powers, the Commonwealth has unquestioned dominion over the Territory, and this hegemony was resented. Third, is the example demonstrated of Canberra's power to disallow validly enacted Territory legislation. And last, the event still in waiting, that federal parliament's imprimatur is vital if statehood is to be achieved. The federal parliament should not be taken for granted. It could stop statehood in its tracks, even if Northern Territory voters approve any future bid. Conversely, its role to pass the legislation necessary to give effect to the Northern Territory-drafted constitution is an additional term of the paradigm in creating a state.

There are however, several factors which might have impinged directly on statehood. The holding of the Commonwealth's referendum on the republic on the same day as the Northern Territory referendum was one event. Heatley thought it important (see Chapter 6). Paradoxically, there is little evidence of this linkage. There is also the question of substituting the role of the Premier for the representative of the Head of State, the Administrator, who in turn is responsible to the Governor-General in the Revised Draft Constitution. This lessened Canberra's control, but I think this argument was nebulous so far as voters were concerned. In lawyer's hands, it is quite another matter. Doubtless, it was done as much in anticipation of the republic as for any political reason. Much was made of the 'switch', by lawyers.

It is appropriate to consider the views of a top lieutenant of Shane Stone's government, and leader of the CLP stance at the Constitutional Convention, the former Minister for Health, Denis Burke. When he became Chief Minister, he made a revealing statement on methodology for creating the state. He said:

To those who are wedded to the notion of plebiscites or referendums, to the exclusion of all other methods of achieving this objective, let me make a few observations without in any way prejudicing what the parliament
may decide. Firstly, a commitment to any particular methodology so far in advance may well prove unwise. No one on this side of the House, nor on the other, is in a position today to know what process we, or indeed the federal parliament, may deem appropriate tomorrow. After all, the terms and conditions of our entry as a new state are matters of agreement between that place and ourselves. Negotiations have not yet even begun in detail.688

What was Burke leading up to? The answer was soon forthcoming:

Let us look briefly at the role played by the referendum in the birth of constitutions in the great democracies. The most renowned constitution, I venture to suggest, that of the world's most powerful democracy, the United States of America, was never referred to the people by way of referendum. Nor was the world's most spoken of and newest constitution, that of the Republic of South Africa, determined by referendum. That was done by a convention and by consultation, and it successfully brought together the world's most complex and bitterly divided nation. Nor was the constitution of our near neighbour, Papua New Guinea - the most recent example of an Australian territory, which has moved to independence - put to the people by referendum. It should be remembered also that the advent of nationhood for that country was sponsored by Australia under United Nations supervision.689

It is difficult to understand the point here. Is he arguing to bypass a referendum? Yes, it is possible to move to statehood without a referendum, and Burke was partly right. But the real point is missed: the desirability to engage the people of the jurisdiction in matters of their own destiny, who no longer live in nineteenth-century conditions of social organization, but in a twenty-first-century inclusiveness. Yet, even nineteenth-century thinking still insists on constitutionalism of state creation in any age. But Burke was having none of it, as can be seen:

Finally, in our own country, none of the constitutions of the Australian states was put to referendum. All were mere creatures of their own state parliaments, or rather colonial parliaments, and are by and large subject to amendment by them, and rightly so.690

Burke's sentiments are assertively expressed, although he is factually wrong in the case of South Australia's referendum before federation, at least (See Chapter 1). But as with the moving (or prosaic) prose of Shane Stone before the Constitutional Convention, it is to be hoped that more democratic notions prevail, paradoxically as Burke himself says.

689 Ibid.
690 Op.Cit., Ibid.
Unfortunately, it leaves little doubt that the ‘bitter-taste’ of the referendum ‘lingers in his mouth’; after-all, he won the ‘battle’ of the Constitutional Convention by doing what he believes was his job and duty, but lost the ‘campaign’. Since then Burke has lost two Territory elections, the leadership of the CLP, and his Territory seat of Brennan. It has not been his best time. It would be a shame if referenda were excluded, as that action is the definitive voice of democratic acceptance or rejection. Burke speaks of a hypothetical event, but the federal government should dismiss the idea of going directly to statehood by s122, by omitting a Territory referendum. Just by its presence in the paradigm, it did not cause failure per se. It was all the events leading-up to it, which caused the referendum to fail.

8.2.3. Comparative journey around federal systems

It is apt to inquire as to exactly what sort of federation the Northern Territory would, or its leaders hoped to, enter. The relevance to the failed bid is to illustrate the tensions which exist at the heart of each state in the federation, towards their brethren states. Each state is always watchful for advantages not given to it. It also applies conversely to the Northern Territory electorate itself. It may well be that there is some form of collective intelligence on the part of many Territorians, which rejects the nature of the federal financial arrangements as applicable to the states. But this would be an error, since the Northern Territory is already intrinsically involved, in the federal financial arrangements. Perhaps the argument as to costs goes beyond the ‘pockets’ of voters and centers upon the apparent residual heart of all power, the financial power of the Commonwealth in its federal guise. And does that Commonwealth hegemony differ from similar federations overseas? That query draws-out a requirement for a comparison with such federations; and then, to follow-on, to see how Australia fares in its own federal realm; an appreciation of salient features of Australia’s federal finance arrangements is needed. The journey to this area can shake confidence in the equity of our federalism.

Similar federal systems apply (inter alia) in the United States, Australia and Switzerland where the method of distribution of powers requires that residual powers stay with the states and specific, enumerated powers are allocated to the central government. Contrast this with the Canadian model where specific, enumerated powers are allocated to the Provinces and the central government has the residual powers. In the German Bundestag, another federal system, the Lander (states) are inserted into the Bundesrat (the Upper House). Thus central government is
cooperative, and contains participatory elements to provide a more efficient application of the federation theories, and is, in my view, closer in purity to the original ideal. Academic author Colin Howard has propounded a similar view. In Germany, members of the Bundesrat are appointed directly by the governments of the Lander. They are not chosen as individuals but as delegates of each Land government and can be recalled. Each Lander must vote in a block. And most of the work of the Bundesrat is done in committees, one for each major federal ministry, in debate. Importantly, the Bundesrat carries out administration of the federal legislation, leading to less overlap and duplication. It must consent to passing money bills, and it can introduce bills, which must be presented by the Federal Government.

The term state is used in Australia, Brazil, India, Malaysia, Mexico, Nigeria, the USA, and Venezuela. In the composite council of states it also appears in the French and Italian texts of the Swiss Constitution. Here the common term is cantons or stande. The term republic is used in Czechoslovakia, the former CCCP and Yugoslavia. Austria and Germany have Lander, as aforesaid. Argentine, Canada and Pakistan have provinces. In the German case, states’ rights are valued more than the political devaluation of Australia’s Senate, as a former State’s House (See Galligan’s view in Chapter 1 herein). Whatever the juxtaposition of the federal arrangements, states and the central government, it makes a difference to the creation of a state or failure to create a state in Australia, because in Australia’s instance, electors make judgment on values held of our federal arrangements, politically, even generally. As with juries, their judgments may incorporate all, some or specific issues.

The Australian equivalent of equal Senate representation from each state has proved less representative of the views of a state because of the political party numbers in the Senate as a whole. In a better system, the governments in power in the several states would each provide this state representation. The parliamentary role of the Senate has changed the federal voice of the states in the parliament to a ‘political party-fest’. Galligan considers the Senate’s return to being a true states House a waste of time; it can play other roles. He says Senate reform is needed and could

---

follow Germany’s model, with qualifications (perhaps the Austrian variant), to offset the virtual elimination of minor parties or independents from the Senate; perhaps a change in the electoral system to give minor parties a greater presence in the House of Representatives, or a hybrid (Swiss) system of some state appointees and some elected, under proportional representation. There could be an automatic Standing Committee referral system, which would be busy dealing with federal matters, since virtually all legislation has an intergovernmental nexus. In a choice between federal systems I prefer the hybrid system, but would advocate the Bundesrat system and allow the expected objections to work its inexorable way to the Swiss or Austrian positions, with the objective of stimulating and focussing public debate as a specific agenda of Senate reform. The relevance is academic and very distant to the Northern Territory’s bid, but given that there will be a further attempt, the European models may contain valuable planks, pathways and understandings for a new state to consider, certainly in a joint federal effort. The above account is greatly truncated here.694

8.2.4. Fiscal Federalism

What sort of federal financial system does the Territory belong to if it has financial equality with the Australian states? Fiscal federalism is, in my submission, a crucial locus of federalism's failure. It is said to be relatively simple in theory: all government activity primarily designed to influence the distribution of income and wealth and to enhance stability and growth of the economy is regarded as a responsibility of the Federal Government. Government activity in the area of resource allocation is said to be spread according to the spatial distribution of benefits to which it gives rise: activities whose benefits can be confined within specific boundaries are assigned to lower levels of government.695 Agreement as to how this should work is conjectural: although assigning economic activities to the Federal Government fits neatly in theory, but in practice there are often dual requirements at federal and local level.

---

694 Cabinet Office, NSW, 1995, Draft Paper: Strengthening the Australian Federation: Proposals for Reforming the Senate, Op.Cit., 12. And Galligan, B, (Ed), Australian State Politics. 1986, Longman, Melbourne, Ibid. The authority for describing the European systems is obtained from a variety of sources, but mainly from the German parliament website (translated into English) which helpfully describes its federal relationship with other similar countries: http://translate.google.com/translate?hl=en&sl=de&u=http://www.bundesrat.de/&prev=/search%3Fq%3DBundesrat%26hl%3Den%26lr%3D%26sa%3DG.

695 B.W. Head, (Ed.), State and Economy in Australia, 1983, Oxford University Press, Melbourne, 170, 2. Caveats to the meaning of what this area now embraces should be made since the evolution of Commonwealth ascendancy: economic growth and stability, protection, wage and monetary policy, growth of the welfare state, taxation policy, industrial relations and the changing role of governments in all these spheres. Of particular interest currently is the health care system riding on expenditure-high Medicare.'
What is federal and what is ‘local’ is influenced and determined not only by constitutional responsibilities, but by perceived attitudes to the conflicting needs for uniformity (such as gun controls) and diversity (a Territory Oncology unit), or, for central control versus regional independence. Immediately a political question arises. It depends on whose view of the federal system is being offered. It is in this context the relevance to the Northern Territory occurs more as a need for understanding the mechanics of fiscal federalism, so that the informed ‘pundit’ may better understand how the states and Commonwealth work financially, and what can and cannot be done, even in general terms. It is relevant to the statehood bid because it was widely held that the Territory would be worse-off financially if it became a state.

The assessment of those considerations in (political philosophy) general terms means in translation that the right-of-centre parties generally favour a devolutionist point of view, although it rarely occurs; whilst the left and centre generally urge a centralist collective of powers. Over the years, it is the left which has prevailed in an oddly conservative context.

Regardless of political party philosophy, the Commonwealth has invariably increased and coalesced its power. Within the federal system of allocation, sharing and retention of powers, resources and functions, the states have lost out to the Commonwealth on an increasing basis. How has it been done? S87 of the Australian Constitution provided for revenue distribution to the states for ten years; thereafter other methods of distribution would be considered. The problem started with the Convention debates and is basically the same problem today. It was left to the political process. Since 1910, various systems have been tried: per capita grants; grants based on raised revenue; on formulae. Various schemes of tax-sharing arrangements have been tried. The method of distribution has alternated between calculations based on collections, population and on variations of both. There was a procession of events constitutionally related, and arising from many different sources and issues. Chief amongst them was the 1927 Financial Agreement, which must be understood in conjunction with the establishment and role of the Commonwealth Grants Commission (CGC) in 1933, and the power to the

Commonwealth to make grants on any terms, pursuant to s96. In 1933, (and of relevance to the Northern Territory) was the payment of additional or special grants to the less prosperous and claimant states, through the formula of relativities, which is in fact attached to General Purpose Grants and Special Purpose Grants: the hated Tied Grants. Attempts to assuage outraged states sensitivities, in accordance with fiscal equalisation principles, were tried through formula-based revenue redistribution grants, which existed from 1942 until 1976. In 1975 a proposal for tax-sharing emerged in the New Federalism policy of the Fraser government. It came to save!698

Tax-sharing operated in two stages: the first is that the states would be entitled to a fixed percentage of Commonwealth personal income tax collections and was enacted under the States (Personal Income Tax) Sharing Act 1976, (Cwth). From 1981-2 the tax-sharing base became total tax collections. Under s13(3) this would be divided according to the recommendations of the CGC.

It is noteworthy that it is more difficult to make this system work than in Canada where provinces have recourse to their own income tax resources, or in the United States where the central government is responsible for both the provision and financing of government services. The Australian states by contrast, have the constitutional authority to legislate for and implement public policy decisions, but lack adequate fund-raising powers to back them up.699

From the above, two structures are apparent: the horizontal allocation battle which has arisen since the uniform tax case in 1942, and it is this division which concentrates on the formula for division of revenue between the states. Inequalities can also result from strident state premiers obtaining extra allocations, such as Victoria’s Sir Henry Bolte in the 50’s and 60’s. Victoria and NSW considered themselves being disadvantaged in that their distribution depended on the Australian distribution on an ‘egalitarian’ basis.700 Although these states need to make concessions if the federation is not to splinter financially, away from the south-east coasts, the problem seems more, to me, to be associated with the vertical polarization than the horizontal distribution, a factor ameliorated somewhat by the

698 Galligan, B, (Ed), Australian State Politics, 1996, Longman, Melbourne, Supra
700 Supra, 139.
introduction of the *Goods and Services Tax* (GST), which is distributed amongst the states and territories exclusively.

Not for Australia, the expectation, recently expressed in Canada that “first, ministers govern it with a sense of collective interest and decent manners” as a necessary concomitant of an effective federal system. 701

Decisions of The High Court of Australia, have had a major effect in changing federalism; in centralising power. From the landmark *Engineers Case*, which defined expanded parameters of Commonwealth powers, to the *Income Tax Case* (*Victoria v The Commonwealth*) there were far-reaching consequences for the federation. And to *rub it in* there was *Gosford Meats Pty Ltd v New South Wales, 1985.* 702 This case extended s90 prohibition of excise duty on states, to include almost all forms of taxation on goods by the states. This is a very serious blow to states. Following one of the few successful constitutional amendments, s105a of the Constitution, the Loans Council was set-up with a decidedly centralist control, the Commonwealth having two votes and a deciding vote and needing only two states to win its way. It continues as an advantage in uniformity but disadvantageous in autonomous action. 703 Ineffectual counter-attacks from the states are mounted and are continued through annual Premiers Conferences; and latterly through the assertive, more effective, Council of Australian Governments (COAG) meetings.

Why would a reading of the Australian Constitution have a bearing on the Territory bid? It would be a distant effect because federalism, Australian-style, does not mean equality all-round. The Federal Government is supreme in the partnership, and the states are now almost mendicant; so how would a state of the Northern Territory surmount such a hurdle, to garner a good reason, an advantage, by entering the federation as a state? The truth is, it cannot be anything other than inferior to the Commonwealth. It will be subject to the same conditions as the other states, financially, so it will be equal with them at least. Why? The main factor in the failure of equality federalism, in my opinion, is still in the taxation powers of s51 (ii). It is followed closely by s109, only as an ancillary to the concomitant effect of the

Commonwealth subsuming uniform income taxation to the exclusion of the states. And s96 cannot be left-out, the power to make grants to the states; with Tied Grants. But nothing has (in peace-time) been so restrictive as the power of the Commonwealth to levy, collect tax, and distribute it according to how the Commonwealth Treasury wishes it to be done. Despite all the horizontal ‘juggling’, unless the states regain such additional powers or receive a greater share of the growth of the total vertical ‘pie’, the federation will be that in name only, and centralism will prevail. It is noteworthy that the Commonwealth exercised these powers as a 1941 war-time measure (on the understanding taxation would be patriated to the states after the war). It did not patriate the power. The power was challenged and tested in the Commonwealth v Victoria (1945), 71 CLR, 237 (the second uniform tax case), and has been reaffirmed many times since. In the latter case, the High Court found that there was sufficient power in s51 (ii) for the Commonwealth to levy income tax, ‘covering the field’, and could therefore exercise s109 which would make state taxation legislation in the field invalid. Nor can states impose excise on manufactures, only on some sales of goods/services. That was the beginning of the ‘rot’ which set-in, but not the end of the argument.

Prior to World War Two, the states had taxation powers but no customs and excise powers, which was the sole preserve of the Commonwealth in s90. For years, much Commonwealth revenue came from this source. The intention must have been to leave the question then to the political process as one of a common desire for cooperation. It failed.

It must be understood that the Commonwealth's taxation power is not an exclusive power. The states always had such powers of taxation. It is doubtless a concurrent power, although one that does allow s109 to operate. It would be disrespectful and hopelessly naive to mount any cogent argument that the High Court got it wrong, but some Premiers have said as much, including former Western Australia Premier, Richard Court. Indeed the ‘hand once played’ cannot now be overturned without a Commonwealth political act of will. But Court has a point, one which has been considered: that as a concurrent power of taxation, the intent was that it should be exercised by the Commonwealth as if the states themselves actually levied it, or that

---

the states should retain income tax powers limited only by the specific powers of a central government. Resource-rich Western Australia, Queensland and, yes, the Northern Territory, should/would then obtain full sovereignty over resources such as mining. It should be more a legal stance than a polemical argument. But the solution is political.

Constraints on constitutional changes under s128 exacerbate the condition. The sovereignty of states constitutions are rendered almost sterile by federal changes, despite the passing of the *Australia Acts*, which terminated the last vestiges of British Imperial constitutional connections with the federation, except of course the Australian Constitution. Federal culture is countered by precisely apposite cultures of the states and regions, hostile premiers, contentious issues and competitive intra-state economic conditions, which favour Commonwealth intervention. Over-all, however is the shadow of the Executive of the Commonwealth government.

Finally, there is the question of what proposals exist for possible reform. During 1984, the Fiscal Powers Sub-Committee of the Australian Constitutional Convention developed a series of proposals for constitutional change with a view to enhancing responsibility of governments and the more effective operation of the federal system. There were two submissions to the committee from the USA and from the Federal German Republic, respectively, which remarked on the form and interpretation of the Constitution. In both these countries this was approached on the basis of a political need to protect the federal system by ensuring that considerations relevant to the system as a whole and to its component parts was taken into consideration when decisions of the central government were made.\textsuperscript{705} It is hard to know how to respond to this: on one hand it is a patronising *serve* of self-congratulatory advice out of context to Australian history; on the other hand it seems to entrench the problem.

Despite federalism failing in such respect, Australia will ‘live’, but not in the true sense of the federal spirit and meaning, until the states’ sovereignty is restored. This depends largely on political will to accord new financial arrangements and effect constitutional reforms, including the reformation of the Senate. Political parties in power continue to have effect on the federal balance. Labor is generally centralist

\textsuperscript{705} Australian Constitutional Convention, Fiscal Powers Sub-Committee, 1985,(paragraph 2.11).
oriented and the Liberals are more for states rights, except when in power federally, when there is still centralist rule.

If the Centenary of Federation recommendations of COAG are any indication, the above discussion is purely academic, because in the public booklet of submissions and recommendations there is no mention of federalism's problems, although the book is about the federation. Every other topic is discussed for the centenary celebrations in 2001, including statehood for the Northern Territory, and Aboriginal reconciliation, but neither of these celebrations, if accomplished, will be regaled with the full splendour of their worth and potential unless the federation is mended first. It is as if there is no problem. But there is a very big problem with federalism.

There is ample evidence to support the claim of a flawed system. It has largely failed its promise. Brian Galligan in particular asserts that the Senate’s role has changed, and is no longer a states’ House of Review. The High Court of Australia has also changed the balance of powers between states and the Commonwealth from its original conception. This in turn has meant a change in favour of the Commonwealth, in financial terms. Comparative systems demonstrate the variety of federal arrangements. But the Australian states are each jealous of the other and challenge any departures and so, regardless of more preferable arrangements, the Northern Territory is sure to be kept in line and subservient to the Commonwealth at least. It is possible that the unknown number of voters, the ‘No’ means ‘not now, not ever’, refused their consent because of the flawed federal system. This must be qualified for the future as GST funding flows to states and territories. Therein hangs a quandary. Because the funding is based on the relativities formula, the Territory gains from its geographical disadvantages, but loses impetus because it is treated equally with the states on a HFE basis. Accordingly, looking at the effect of a flawed federation, it is within the purview of the ‘No’ voters; and can be said to have some effect, but probably not as much as other grounds mentioned herein.

8.3. **Interview with former Senator Grant Tambling**

Almost from the inception of the CLP, Grant Tambling became involved in Northern Territory politics, as a conservative legislator in first, the Legislative Assembly and

---

then in the Senate. Tambling is widely known in the Territory, and his name is synonymous with the Northern Territory and the federal parliament, such was his long ‘stint’ to Canberra. I have known Grant Tambling for many years, and I am aware that his intellect is kaleidoscopic, lateral-thinking, and spontaneous. He doesn’t stop talking long enough for questions to be asked. He is a walking encyclopaedia on Northern Territory politics. He was given a list of questions, which he digested, and set-off on a monologue which answered the inquiries, and more, in his own non-stop way. Regrettably the full interview cannot be included in text, but is set-out in full in Appendix 9. In relation to Canberra, the interview itself is instructive as to its peculiar workings in relation to the Northern Territory. The questions asked however as included here in footnotes, indicate the scope of the exercise.  

707 The questions:

- Give a brief overview of your antecedents, upbringing, pre-political vocation, religious influences and other influences on your life?
- What led you into politics, and why did you decide to run with the CLP? During your time as a member of the Territory parliament, what was your role in the CLP government?
- What made you decide to enter Federal politics? Can you give a brief overview of the electoral side of being a Northern Territory Senator covering some 20 years–including the elections? Were there any notable election campaigns so far as you are concerned? In the Federal sense, when did you first become interested in Statehood for the Northern Territory, and what did you consider your role to be?
- How did you promote Statehood in Canberra? Can you elucidate the various actions and measures taken by you?
- Were you able to act independently of the NT government, or did you consider your role to act as a States person? If so, does the Territory governing political party have primacy in this respect?
- In the period leading up to 1998, were there specific actions in the Senate that you took? Did you engage other senators or Members in the cause of statehood? If so, how? What is needed in Federal Parliament to engender interest in territory statehood? Do our local members have an influence and to what extent? Can our present and future local members and senators play a significant role- how?
- What was the attitude in the Senate and in the Parliament to statehood for the Northern Territory at various times, and particularly leading up to the NT’s Constitutional Convention?
- Are you willing to disclose your views as to Shane Stone’s handling of statehood, specifically the Constitutional convention and the referendum? Were you concerned that the delegates to the constitution were hand-picked by Stone, and not democratically elected? How did the Federal Parliament view this aspect? And how did you explain that?
- Would you agree that statehood was on track through the Sessional Committee’s handling of the draft constitution until it was taken away from it? Were you concerned about the simultaneous NT Referendum and the referendum on the Republic? And what about the election to the House of Representatives of the Northern Territory Member, was it all or nothing in your mind?
- In relation to the political parties in Canberra, what was the attitude of the Labour Party to the prospect of Territory statehood? And what about the coalition parties, were they united that the Territory should get statehood? If the Territory referendum had passed, in your view, would Federal Parliament have made it hard by imposing conditions? Were there any members of Parliament you knew of two were prepared to either oppose the grant of statehood, or to impose conditions?
- The Prime Minister was a staunch ally of Shane Stone, and of a similar political persuasion, and he wrote to former Chief Minister Burke that nothing has changed. Would the coalition reflect the Prime Minister’s view on Statehood or be likely to change if Labor is in power federally; in or out of power in the Territory at time of statehood, or is it more a question how of the Territory presents itself in Canberra?
- In terms of statehood itself, what do you think the Federal Parliament could do to make it more attractive to Territorians and the States? Do you think you that statehood could be given a birthday present such as special funding, or say the sealing of bush roads– even a new east– west highway? What should be done by the Territory in Canberra and the States?
I submit that Tambling’s account is an important historical federal perspective, from a long-standing Northern Territory authority on Canberra.\footnote{708}{Interview at Karama with Grant Tambling on the 15th January 2003. Tape Side 1. Tapes in my possession}

Tambling has a specific view of what factors defeated statehood. He said one was the federal election held at the same time as the referendum, between candidates Dondas and Snowdon and marshalling the Aboriginal vote in favour of the latter:

… it was a very disciplined vote in the Aboriginal constituency. The Land Councils certainly had a land rights issue because that has always been an under-current right through the state of debate where they are not yet convinced that statehood would preserve their rights under the \textit{Aboriginal Land Rights (NT) Act}, particularly if it was patriated to the Territory, so they were always opposed to it and they certainly ran a very significant campaign in ‘98 which in turn was fuelled by the federal parliament’s contest for the House of Representatives (seat) between Dondas and Snowdon. Snowdon had been defeated by Dondas in ‘96. And in ‘98 Snowdon was determined to return. And the only way he could do that was by very carefully mustering the vote in Aboriginal communities. So his troupers... were out there working hard to have Snowdon return, which they successfully achieved. It meant that you had people with the same philosophical agenda questioning statehood, so the proportion of the Aboriginal community that voted against statehood was very high.\footnote{709}{See Appendix 9, my interview with Grant Tambling, p441.}

Tambling on the referendum:

…there was certainly the debate about the wording on the referendum question, how it was to be phrased. And again I think the general community lost the focus of what it was about. The academics, the intelligentsia, the lawyer groups were all hassling and it wasn't in language that could be understood in the Pine Creek or the Karama pub and therefore people were not wedded as they were in the ‘70s to taking the issue through to self-government. There was the added complication of the referendum issue. So all of these things were causing a co-mixing, which only \textit{scrambled the egg}. But I think there was far too much to swallow in the electorate where people could put things in boxes, understand them and make three separate decisions. It was far easier to say no to Dondas, no to the referendum and no to the statehood.” \footnote{710}{Ibid.}

* Does the Territory need to demonstrate to Canberra, and specifically to which parties and persons, its qualification and credentials, that it is now mature and has shed its red-neck image? Does it need to show that it will be inclusive of indigenous aspirations? particularly in a constitutional Bill of Rights? Do you think the CLP is ready to take a step forward to acknowledge the fact that there will be no statehood without inclusion of Aboriginal aspirations. Philosophically, what do you think the benefits of statehood would be to Territorians over present arrangements? Would you agree the financial parity of 1988 deprived statehood of much of its motivational power? Would you like to see Statehood created by the Northern Territory community instead of government, or should it be a partnership--as only the governments could provide the funding of an adequate education campaign?*
8.4. Conclusion

The federal compact is a troublesome, often squabbling family, each entity jealous of the other, yet it is relatively stable in its Australian federation setting. In comparison to its German and Swiss counterparts, it suffers from structural anomalies, which in its bicameral operation makes for a continuation of legislative difficulties, which is good and bad, depending where one is in the political equation. Its financial federal operation can be particularly problematic, because of the intense ‘neighbourhood watch’ which each state and territory maintains over the other, and this undoubtedly militates against the statehood aspirations of Northern Territory. It now has equal financial parity with the states, and a lack of motivating passion which such a deprivation would otherwise engender; so that factor is negated, and with it, much of the driving force which propelled territories like Alaska into statehood. His theory that Stone became undisciplined in selling statehood because of other diversions, however, has the ‘ring of truth’. But Tambling sees the overall problem in the strong campaign by Labor’s Warren Snowdon to win his federal seat from Nick Dondas, and the accumulated Aboriginal vote with the Labor Aboriginal community apparatus, which was fatal. He cautions that statehood was doomed unless the Aboriginal Land Rights (NT) Act 1976 was isolated and left with the Commonwealth.711

The role of the federal connection to Canberra, whilst illuminated here, still awaits the next challenge, and it is still as elusive and difficult to predict.

---

711 I have paraphrased and abridged Tambling’s remarks, so his theory is best read whole in his terms, but it is cogent. And it also warns of the future. There are many ‘land’ aspects needing attention; land rights can be separated he claims.
CONCLUSIONS

Introduction
At first sight, it seems that the least difficult part of this dissertation would be to draw conclusions, based on a précis of each part of the work, consult the chapter conclusions, add, subtract, contextualise, make value judgments, and then rethink the entire work in a page or two. In fact it is the most difficult part of this thesis. Over five year’s work, would ostensibly come to an end. It has been loved at times, including the last revision period, positively hated at other times; but the Introduction itself is the accusative instrument, which draws me back to the discipline and intellectual test in store as predicated in the high-sounding processes of the all -governing Abstract. I believe strongly enough in rationalization, reasoning, deductive and inductive processes to be challenged by the type of queries set -out to await discovery.

Stone. One matter needs settling at the beginning of these conclusions here: people still say why bother! Shane Stone is the obvious answer to this thesis investigation. No, he is not! But yes, Stone was central to the failed first statehood effort. It might follow in logic that his control was therefore central to failure, then, he is to blame, without the need for 260 pages of text to reach that breath -taking announcement. But the questions are different, and the answers to them are different too. And this is not a witch-hunt for Stone.\(^{712}\) I did not set -out to exonerate or ameliorate Stone’s culpability either; indeed, I do not believe that can be done. Shane Stone spoke to me in July 2004 for the first time in years, about statehood. Without asking, but with knowledge I was writing a thesis on statehood failing, he offered the following observation, different from any others he or anyone else had previously stated. He said:

We spent years trying to show that Territorians are treated differently to other Australians and deserve to be treated the same, with the same rights as a state, but we should have gone the other way; and we may now need to spend years showing Australia how different we are, if there is to be a state”.\(^{713}\)

\(^{712}\) Like thousands of others, I was disappointed in Stone that he failed to get statehood over the line, despite so many obvious shortcomings in process. Anger was widespread. He was trusted by so many who raised their own efforts to promote statehood, and it seemed that he let them down. He did what the CLP expected of him, but he went a lot further. Respect has since returned for the leadership qualities still apparent in a man, who could have been a hero, but who is still suspected of arrogance and crucifying the first statehood quest in the Northern Territory.

\(^{713}\) Discussion between Shane Stone and myself at a ‘morning-tea’ for Prime Minister John Howard at the Kalymnian Club, Marrara, Northern Territory, 14 July, 2004. If only he could have been ‘grilled’ about this view years ago, but he did not answer my request. How times change, and change again.
He could have been a hero to many people, he probably fits the mould of the great ones. But further discourse on this level gets away from the purpose here, so it ends now. Any conclusions to be made about Shane Stone will be made in the appropriate chapter summary.

**Numerous reasons for failure.** As I suspected from the outset, the research and the deductions made, even serendipity, diverts attention to other failings within the culture engendered. There were multiple major reasons for failure, including elitism, structural failure, mal-definition, system malfunction, failings in human nature, over-confidence, ignorance and non-comprehension, collective fear, hedonism, subversion, tribalism, the dynamics of population management in a political context, financial equalization, lack of motivating dynamics, party-political maneuvering and persuasion, even the flawed federal system failing itself. These are some of the better theoretical causative factors. The more that this historic episode is amplified, magnified, dissected, deconstructed, reconstructed, the more it is obvious that the major failing, the centre-piece of failure, as it were, is that of a profound lack of constitution.

**Specific reasons.** I now enumerate the specific reasons for failure of the first statehood bid to the actual findings in précis. The only way I know of extracting such answers is through utilising my experience as a lawyer, of finding the *ratio decidendi* of each of the investigation summaries in each chapter. In other words, what is the essential principle reason *reductio ad absurdum*, for failure in the category in question, without which it would not be a negative finding?
CHAPTER ONE: THE CONTEXT

1.1 New states bound by federation. The context of statehood in its federal guise discloses its supreme vulnerability and servility in relation to state creation in the Australian federal family. The difficulty becomes apparent when seen from the point of view of consistency, equity and 'leveling' of whatever may be determined constitutionally with an eye for the future. You can create a state in whatever form you like, so long as it conforms to the rules, powers of the other state members and is subject to the same rules and dominance from Canberra. It also risks High Court intervention as well if it escaped the leveling of the national parliament. The new state also inherits the same failings as other entities of the federation. In terms of its uniqueness, there is little contrary case, unless we are seeking to establish whether Chief Minister Stone could have got away with it his way. There is no question here; he could have triumphed, it was close; and he could point to doing it 'the Territory way'. It would still leave the great principles of constitutionalism bereft, much democracy and specifically, Aboriginal aspirations behind. But he lost it; and principles are fundamental where 30% of the people are concerned. Creating statehood in a 'home-grown' way, without the fundamentals in play, or outside them, also contributed to the failure of the bid.

1.2. Lack of Constitutionalism the most important reason. The context of any statehood bid of the Northern Territory demonstrates the impact and limiting factors of the federation, through the Australian Constitution, indeed the federation itself. The question of constitutionalism and its lack is central here. Not only can it be described as lacking in a variety of ways, but also subject to High Court consideration if not applied, similar to America's experience of law in books versus law in action (Eighteenth Amendment). Constitutionalism is like an axiom in Equity: that which ought to be done, should be done. The central planks (inter alia) of democratic process, entrenchment of Rights and guarantees, good governance, and access to redress and justice for all under the rule of law in its indissoluble charter, plus special aspects of local environment befitting the federal jurisdiction through the Australian Constitution. These planks were predominantly missing. In its macro sense, these are the reasons for failure.
CHAPTER TWO: CONSTITUTIONAL DEVELOPMENT HISTORY

2.1. **Slow constitutional development** Chapter 2 is an objective in itself, to trace in outline the constitutional development history of the Northern Territory. It is not designed to show how statehood failed, although in its constitutional progress through the greater time of its ‘settled’ history, the Northern Territory’s development has been handled badly; its sequential constitutional milestones indicate that democratic values reflected poorly in its governance. A Eurocentric social history would show the development of a “laid-back” lifestyle different to other places as well as a Eurocentric bias towards an ever-growing majority of non-Indigenous Territorians. But in constitutional terms the story is of frustration and disappointment whilst driving for greater autonomy. There is ample evidence historically that administrative considerations were the only issues of moment to administrators. In the historical timeframe too, disproportionately embarrassing numbers of Indigenous Territorians attended the Darwin Constitutional Convention due to non-democratic constrictions on their numbers. It must have acted as a signal that it wasn’t also their state being created, but belonged to the greater non-Indigenous population (who certainly worked hard to develop it). The ensuing imbroglio virtually destroyed the democratic ideal of Constitutionalism.

The constitutional development of the Northern Territory is an unfinished saga. It began and proceeded with setback after setback. Progress has been grudgingly won. Their efforts seem to have exhausted or dispirited the progenitors. Dozens of movers can be lined-up: from the nineteenth century, throughout the twentieth century and into the twenty-first century. There is one observation which can be made, which runs throughout the whole of the period in issue. The Territory was developed on a two-fold basis. The first was to claim and defend its vast land against non-British interests, as Crown territory, through absent Imperial, then Colonial decision-makers, who extended forms of governance to exhibit legality to their claims (ignoring here any legitimate claims of Indigenous inhabitants). Second, the reason for so doing was its exploitation potential, but what type of potential? Military, pastoral, mineral, agricultural, trading, what sort of development was in mind? The answer seems to be, and it is as apparent now
as it was in the nineteenth century, anything that can be got out of it. And apart from the acts of some notable persons, like George Goyder, Indigenous land ownership was treated as non-existent. The *Mabo* decision changed that, but statehood is still not seen as a friendly goal to Indigenous people. The reality is however, that constitutional development of the Northern Territory needs to proceed further, because as a territory it has limitations which restrict Indigenous partnerships under the new reality. Investment by corporations alone will require state-equal guarantees, so that territory frailties cannot jeopardize investments.

2.2. **Financial parity kills statehood dynamic.** Financial parity with states is a historical milestone, agreed in 1985, and applied from 1988, but its effect was to deprive the statehood bid of one of its great motive tractions. Overseas bids were successful because fiscal equality with states was forthcoming only on statehood; not so, in Australia's Northern Territory, it had already benefited from the Financial Agreement post self-governance. Ironically, in that account, the biggest blow came after self-government was accorded when financial equality with states was granted in 1988. I have no doubt that if that had not occurred, the Northern Territory would now be a state. The Territory and its rich history does not hold romance in constitutional development, so long as it is merely financially viable, and it can be said that its constitutional history has virtually plateaued whilst that status inures.

Be it as it may, apart from the above, there is little other nexus in Chapter 2 with the failure of statehood. To the contrary, there should have been a fillip and dynamic impetus created. In political economy terms, that is a description which is apt. The economic development of the Territory has been rapid during the changeover into the twenty-first century, being described by *Access Economics* as a "pocket dynamo". Ironically much prosperity is in the resources sector of mining, energy and primary industry in partnerships with Aboriginal landowners. As if *slingshot* to the fore, development may well qualify the Northern Territory for statehood, and it certainly was no reason for its failure. When that landmark is reached, there will be a completeness, an entirety, from which further forms of constitutional development can spring; but only for all its inhabitants. Constitutional development has come a long way, slowly.
2.3. **Neglect and slow development inculcated mutual distrust.** In the late nineteenth and early twentieth century, the Northern Territory proceeded by bare momentum of its too few mentors. Efforts centered on obtaining the barest representation in Canberra; and activity was mainly bureaucratic. Only from 1974 onwards did party political considerations really arise, and mainly to seek an elected local legislative government, and measures to assist development, hence the advent of the CLP. Social history had definite but different connotations: The furtherance of constitutional development mainly impacted on Aboriginal people and usually very poorly. Hasluck, a brilliant and concerned federal executive initiated policies the legacy of which is still regretted by many, yet there was economic progress in other areas. The resource-rich Territory was afflicted by official neglect for development infrastructure in a continuous manner. The land was locked. Cultural antipathies on one hand and development frustrations on the other, caused sufficient tensions to build into mutual distrust through politics.

2.4. **Territory constitutional development not a pressing need.** Contemporaneous admission of the Northern Territory as a federal state; being a remote, costly, sparsely populated area, was of secondary importance federally, as against ever-increasing demands of the south-east corner of the continent. Relegating remote regions like the Territory to a lower priority has been a theme constantly running through Australian history generally. Some states protest too, with lesser cause.

2.5. **Statehood not seen as a historic destiny.** In the Northern Territory, statehood was not always seen as its historical destiny, and there were few external groups which supported it otherwise than the CLP. The local media was critical; the national media treated it as a feature article, rather than in news items. Historically, statehood was a warm future terminus, not a hard, must-have objective of the people. In 1962, Neil Hargrave managed to highlight a pseudo legal protest of Territory neglect to Canberra, the so-called Remonstrance, which listed eight grievances. Canberra had given begrudging crumbs of government functions, but antagonized local citizens by the appointment of public servants and others to legislative and executive posts, and those who were elected were
mostly without meaningful functions, and their powers were limited. In my opinion that 'stunt' was more effective than it seemed, even without official debate.

2.6. Elected executives gain ground. By 1968, '69, elected representation began to overhaul the detested administration of appointed representatives. Hargraves' grievances were still the matters outstanding. They were:

- political rights of Territorians were inferior to other Australian citizens;
- the Commonwealth had failed to develop the Territory;
- the Legislative Council had no say in government expenditure;
- the Council was not treated with respect and dignity;
- the Commonwealth had created a false impression that the Territory could not pay its way;
- the Commonwealth had failed to stimulate population increase;
- and Defence in the Territory had been neglected.

But as the developments over such a period were drawn out, the objectives were hauled in bit by bit, and by self-government, exhaustion by attrition almost set-in on popular action; which then rested mainly with the CLP as the flag-bearer. The result was that from that time onwards, the people were there to be pushed towards statehood, not pulling themselves to it. And they didn't like the way they were being pushed. Local progenitors of statehood were divided about the extent of senate numbers. There was a need to go beyond consolidating self government promises. The march of historical events in constitutional development, together with the social divide between those who believed the Territory unique in its laid-back lifestyle, which might be lost on statehood being attained, did not in the end favour the first statehood bid.
CHAPTER THREE: STATEHOOD CULTURE

3.1. **Statehood’s cultural movement struggles fail.** People do not automatically arrive at a particular mindset, in a specific place at a certain time. They are moved by the currents of history acting and reacting in their environment, and that means predominantly man-made phenomena so far as non-spiritual beliefs are concerned. The motivating forces leading to the technical steps of achieving any goal set by society’s institutions are every bit as volatile, because something and someone must drive the quest and movement for statehood forward. But for every action forward there is reaction from dissenting voices. Even before 1998, before statehood could be created, in the years leading to self-government, there needed to be inculcated a feeling of history’s manifestation of what it means to live in the Northern Territory dream of equal terms with other Australians. This was particularly felt in those who would be affected by the quest, and those who would win or oppose it. There needed to be built-up a movement towards the desired goal. But what exactly was the goal? Some Territorians did not wait for others to let evolutionary forces of history direct the course; they claimed the mantle on behalf of the whole and built up new cultural edifices towards a statehood ethos. Regrettably, the processes considered were largely unrehearsed, unprecedented, and unwise, and when the cultural gambit reached its apogee, it still was not sufficiently inculcated in peoples hearts and minds to succeed.

3.2. **Limitations of self-government.** Statehood failed in relation to the culture of statehood as it was gradually being constructed. First, its rise was slow, meeting obstacles, and opposition, fraught with conflict; but its fall was instantaneous, crashing in the counting of referendum votes. The dynamics of progress were affected by the limitations to self-government and, later, the parity in finance. Hatton claims statehood was always a target sought, but there is contradictory evidence of proceeding to the further objective, once self-government was attained. The struggle then was to consolidate gains, and the Northern Territory Majority Party politicians were pleased to attain this feat, whilst publicly fulminating about withheld powers and functions. The statehood movement went
into free fall on its failure and has remained at a low level ever since, despite heroic efforts to revive it (by the new Statehood Executive).

3.3. **People excluded, only leaders directing.** People felt they played little part with statehood; and relied on their democratic right to elect representatives to govern, and take the Territory forward, men like leaders, Letts, Everingham, Hatton, and Stone. The people means the community of interests, and constitutionalism requires processes which incorporate the people as participants in proportion to numbers and groups, particularly as stakeholders. Leadership means little unless people are willing to be led. Some will always follow if their interests are believed to be protected, but those missing out are usually antagonistic. In the modern Australian political system of two opposing major political groupings, one side invariably fulminates in Opposition. In Territory terms, the Legislative Assembly, then so one-sided in numbers favouring the CLP, was the unquestioned ostensible authority. It was actually the CLP’s charismatic leader and Chief Minister, whose abilities struck most who dealt with him, who was in charge of the government, indeed the parliamentary apparatus. Shane Stone was undoubtedly controlling the process after the Sessional committee had reported and Hatton had been neutralized. But great numbers in groups were stranded, handled in a disproportionate way, and they suspected the government and statehood. Marginalised people left without a proportional voice or representation constitutes a failing of leadership, and that occurred in this case. The political party system however, demanded that Stone run with statehood and backed him, expected him to obtain it for them, as no-one else appeared interested. But regardless of good will in an ostensibly worthy cause, it ran contrary to getting the statehood quest over the line.

3.4. **Dysfunctional Government action towards statehood.** A crucial event was leaving Hatton off the Constitutional convention team for the government side. A possible second item is where Stone’s implied hold and perceived threat to his cabinet ministers intimidated them into submission at various times, especially when the Sessional committee report was tabled. No one dared challenge his way, except Hatton, who was thereafter banished. The number of CLP wing members made that possible by a) fearing loss of position and b) aspiring to
position. But another crucial event relating to Stone was choosing delegates rather than making a decision to hold elections. This resulted in an omission of Rights, directing a different Convention outcome. In all this, cabinet ministers could have spoken out. Presumably the majority, were happy with Stone’s stewardship. The ministry abrogated their duty to provide collective leadership, and that was possible; but they left it to Stone. It was bankruptcy of cabinet collective leadership. These were crucial failures, primary cause failures.

3.5. **Media supports own interests; stakeholders occasionally.** The CLP’s effort to convince the voters through its media power in the end failed. But the stakeholders did not obtain traction either. The example of Hawaii inspired this question because of the enormous impact a cooperative media had on the voters. Not so here: it was critical at times and nearing the Constitutional Convention it took-up the cause of one stakeholder, the Aboriginal people. This was fortuitous because they hardly had the same media exposure, except by Imparja television coverage. Thus the media played a spoiling role here, but it was ‘preaching to the converted’. The pro-messages didn’t get through to Galliwicku, Nguiu, Ngkurr, Wadeye, Beswick, Docker River, etc. It needed to do just that. On the other hand, Hatton’s committees did consult in those communities.

3.6. **Labor’s ambivalence.** The Labor Party attempted to demonstrate its statehood credentials ostensibly by support for statehood, though qualified enough to suggest that it was not altogether in favour. It was indeed split on the issue. The other stakeholders were sufficiently put-off to create an input vacuum or political reaction, but only in respect of the statehood bid itself; and in the Northern Territory seat contest for the House of Representatives. It did not flow on at that stage to the Northern Territory Parliament.

The social consequence was implicit in the alienation felt by the Indigenous population from the CLP government. It did not flow over to racial animosity, nor to established institutions generally. Mrs Hickey’s interview herein was instructive of the internal workings of her Party at the time, and demonstrates the animosity felt against Stone, and equal frustration that Labor would play little part in
fashioning statehood. In fact, the Labor Party's greatest contribution was through its Sessional Committee members, particularly then Deputy leader John Bailey. His statehood input was creditable. Conversely, through its opposition to the CLP, Labor's followers and members may not have been able to bring themselves to vote for a CLP proposition, such was the level of antagonism; this despite the nominal bilateral support for statehood. So Labor's ambivalence did, in a defacto sense, go against statehood succeeding.

3.7. **Labor's schizophrenia neutralized its impact** It must be said that Labor's role in statehood enculturation was contradictory. The party had long opposed statehood on financial grounds, starting with Isaacs. But they were caught in the CLP's trap of either supporting it or risk being branded anti-Territorian. They tried to support statehood whilst opposing Stone; and the CLP made the most of that quandary. Mrs Hickey was outraged with Stone's sophistry. She condemned him for his 'double-speak', but it is more the frustration at her parliamentary party being swept aside by the culture of a statehood surge created by the CLP.

The stakeholders, particularly the Labor Party could have supported statehood, but were never going to do that by dint of two main factors: simultaneous polls (the republic referendum and the Territory House of Representatives seat). Few in the CLP gave any consideration to concessions, or trade-offs; and the insistence (by the CLP) of the patriation of the land rights legislation as a natural corollary of statehood was axiomatic. But with Labor stymied, neutralized as an opposing force, the CLP marched on, some would say, arrogantly. Did, for example, anyone in the CLP think that running an election simultaneously as the referendum would alienate voters who would otherwise vote differently, but in this case, they clearly voted along party lines? If so, there was false confidence, an over-confidence that it would not prevail. It was myopic, and confusing. When in doubt, don't do it, and they did not approve statehood. For the sake of concessions, intelligent, ethical deals and inclusion, statehood was put in jeopardy.

3.8. **Aboriginal industry encourages independence.** CLP party observers, those who wished to see statehood most, were suspicious that the issue of statehood
would be an opportunity for those in the so-called Aboriginal "industry", those supporters, liberals and leftists, government welfare officials, with whom Aboriginal people have dealings, many of whom were non-Indigenous, would encourage the prospect of political independence, even to the creation of a separate state. The Indigenous people of the Northern Territory simply dismissed the main Constitutional Convention in Darwin as a ‘whitewash’, deciding to hold their own Constitutional Conventions. The schisms between the two antagonistic groups ran deep. Although the wording of the Aboriginal Convention outcomes is ambivalent in some respects, were they planning a separate state? There was such a scare as the result of the Kalkaringi Convention. I believe it was innocuous, but others believed it was the “thin edge of the wedge”. It is unlikely, based on the evidence of Kalkaringi and Batchelor, and there is no firm evidence suggesting this intention, despite Mrs Hickey telling me that some in which camp desired a separation. They were just seeking greater autonomy. Meanwhile the Indigenous community remained true to its own timing, pace and requirements, not bothering to compromise. They certainly require a future agreement with the Territory government as to their collective requirements for statehood.

3.9. Effect of patriation of ALRA. The real fear of the Aboriginal population centred on their relationship to the land and the control and management of it through ‘protective’ Commonwealth legislation. Land Councils did agitate against statehood on the basis of land rights at risk, and land is deeply entrenched in the Indigenous psyche and belief systems, also life support; it is indivisible from self. The question of statehood was perceived as a concurrent threat to deprive them of land rights, their cultural and spiritual heartland. That threat was seen through patriation of the Aboriginal (Northern Territory) Land Rights Act 1976, from the Commonwealth to ‘CLP’ government hands. This was reason number one for Aboriginal people to vote ‘No’. Opening land to development was the CLP goal.

3.10. Culture reverses. The enculturation of the statehood movement encountered all of the above factors in the examples given. The conflicts and counter-action were extraordinary. It must be concluded that the reaction against the movement succeeded.
CHAPTER FOUR: COMMITTEES

4.1. Cataclysmic changes: mistakes in interpretation of Job Description. A crucial moment which contributed to the failure of statehood passed almost unnoticed, when the first of the constitutional committees were enfranchised twelve years before the referendum. The nature of what was proposed should have attracted criticism and argument that by allowing interception of the committee’s work by the Stone government in the Legislative Assembly for ‘directions’ the whole structure of statehood creation was changed. The steps listed were:

- The Select Committee on Constitutional Development will prepare a draft constitution for presentation to the Assembly. Options, where necessary, will be included.

- The draft constitution will be put before a Territory Constitutional Convention. The Convention will be established by appropriate action of the Legislative Assembly and will include broad representation from across the Northern Territory Community.

- It will receive the recommendations of the Legislative Assembly following debate on the Select Committee’s report, will discuss the proposals and ratify a final draft of the constitution. The constitution as ratified by the Convention will be submitted to a referendum of Northern Territory electors for approval.

The problem can be seen in all three instructions. Nowhere is it specified that the Final Draft Constitution was to be put before the Legislative Assembly for its input. That is an intrusion between committee and Convention. The report, of course, was to be tabled and debated. And the report contained the draft constitution, but the interpretation of the above instruction was that the Assembly, read government, could now do what it wanted with the constitution, that is, “…receive the recommendations… and effect changes through its own instructions.” It is wrong. It should have opened the report to debate, observed the strength of the drafting and handed it to the Convention saying as much. But the structural damage occurred over a decade before the referendum, and that it was
terminal, because the Assembly believed it had a role in fashioning the draft. This cataclysmic change in process during preparation stage, affected future events, including the Convention, which resulted a denial of democratic values.

The Sessional committee inherited the instruction to provide *inter alia*, a draft constitution. It more than fulfilled its preparatory task, it offered a model constitution. But process stepped outside of a workable paradigm. This not only included the Constitutional Convention’s virtual re-write of a model draft constitution, but there was also an instructional process error by the Legislative Assembly. Its proper role: collate components of a draft Constitution only A negative outcome still resulted when the committee performed sterling service, which could possibly have carried the day, had the legislature supported its work.

The lack of support was a ‘sea-change’ in a federal context, because prior to that change there was contained the essence of constitutionalism for an inclusive next-stage-process. This did not occur. Statehood could still have resulted but it was flawed from this point-on. There was an argument available that the Sessional committee’s brief should only have been to consult, educate and collate components -parts and options of a draft constitution for the Constitutional Convention to assemble. The Sessional committee in fact did this, but made such a good job of it that it looked like (and was) a complete draft constitution, which needed only affirmation of the options (of Rights) recommended, or put forward. The Sessional committee cannot be faulted for seeking a holistic solution, indeed it would have been criticized had it not done so and offered only piece-meal constitution bits and pieces. And with respect, the delegates would not have done it in the time-frame or circumstances allowed, because the Convention could only deconstruct an acceptable document from the model they already had in pristine form. The fact is, the committees did their job, as influenced by the CLP delegate acolytes. No-one saw the flaws in the job description structure.

The aforesaid catastrophic misinterpretation can be put another way. It was the Select Committee which began the process that the committee system for constitutional development to statehood intended. By *its own instructions*, it was required to produce the materials and engage in the research and investigations
which would ultimately lead to a new draft constitution. When the committee's status was changed to that of the Sessional Committee, it acted upon the recommendations of its predecessor to develop a draft Constitution. It did so. And in doing that, it carried out its brief to the letter, but preempted the work of the Constitutional Convention, so that the Convention, in accepting its instructions written by the government, was virtually obliged to change its content so substantially that it no longer resembled the document submitted. But because of emasculation of the Sessional Committee's Final Draft Constitution, by omissions, drastic editing, and rewriting, it was a completely different instrument, deconstructed from its liberal connotations to a ‘dry’, minimalist, amended Draft Revised Constitution. This was a major contributor and reason for the failure.

The committee's each worked in the background, but each had their strong and weak points, and in the case of the pioneering Select Committee, its strong points were also the making of a conundrum, the construction of a constitution and associated tasks, which proceeded as if the definitive model constitution was its objective, instead of collation of parts of it. And the Standing Committee is mentioned here out of sequence, because its predecessor contributed most to the concept of constitutionalism in heading towards statehood. The closer examination of the Standing Committee reveals, as has been found in Chapters 3 and 7 of this paper, that ‘finger pointing’ is easier to do, satiates emotive responses, but is insufficient as an answer when put to closer scrutiny: it does not assist in finding and marking the fundamental causes (causa causans) needed to redress wrongs. Absolutely nothing happened from either the Chief Minister's position or any of the government ministers and members with the Sessional committee's report when tabled in 1996. It is submitted that at this point, the statehood bid was doomed. It does not mean it was the principal reason, nor the only major reason, but this is without doubt, where the tide turned against the statehood bid succeeding. Even Hatton was not in the Chamber at the time; he could not face ten years of work to that time, starting its nebulous journey into oblivion, and he knew any true statehood bid was over; it was a matter of time.
4.2. **Labor’s de facto abandonment.** The Labor Party did not even attempt to put up a model or plan. It was left to John Bailey MLA, in a local sense to do what he could in committee, with Mrs Hickey leading in parliament and assisting in committee. But it was Bailey who led Labor’s informed position for statehood in committee in a gallant solo role. That was the extent to which the party abrogated statehood to the CLP’s hegemony, aided by its internal division on the matter. So statehood to that extent was abandoned by the Labor Party generally, and therefore it cannot escape that charge of abandonment and refraining from being pro-active as a reason for failure. There was clear evidence of a legally flawed process, which the lawyers emphasized. Statehood needed legal support and did not get it. In fact prominent lawyers campaigned against it and with punishing articulation. From the major stakeholders’ points of view, there would be little doubt about what form of organizational model this state was to be created from; the chorus would scream: autocratic; elitist! This is as much a corollary of the bid failing as the failures such as to allow a takeover of the state-creation process, particularly in the eyes of detractors. In fact, the setting was democratic enough, pluralist, although statehood itself was corporatist in the sense the CLP had such a hold over it. The name tags only matter to the extent that the bid can be safely set, scholastically, academically and democratically in a learned manner befitting the creation of a new state in the federation. Insufficient notice was taken of voices of the acknowledged wisdom present.

4.3. **Split between government and Sessional Committee.** The Aboriginal community were under no illusion that collectively they were to be the victims of a new constitutional management, and they understood who that management was: the CLP, not the Sessional committee. Economically, the committee’s work had little effect. In a macro economic sense, the committee itself was subject to parsimony because of lack of funding in its educational role, and the denial of fiscal allocation worthy of an education campaign was the actual signal and the strongest indicator that the committee’s work was not embraced and applauded by the CLP government. This was an enormous blow to statehood being understood by the constituency.
4.4. **A crucial lack of Education through parsimony.** The Standing Committee identified a number of causes for failure. And it was unequivocal about the chief reason: an appalling lack of appropriate education. This was a reference to the parsimony in budget cuts at the crucial time needed to assist all sections of the public to understand what was intended and how it might impact upon them. That stage never occurred. The Standing Committee report is instructive in itself for reasons, besides the blame it placed on Stone for statehood failing. The Standing Committee opted for populism in its emphasis, although most faults were certainly mentioned. Accordingly, this chapter (4), treats the question of ‘Stonehood’, discussed in Chapter 3 and Chapter 7, as being passe, of little practical use, whilst acknowledging the allegation, placing it in the context to which it belongs. The real issue from the committee purview was its practical preclusion from the provision of statehood education through lack of budget. Funds were not allocated.

4.5. **Providing for the republic and a bill of Rights.** The Sessional Committee’s progressive efforts had to surmount unprecedented obstacles, which included preparation for a republic-based state or constitutional monarchy-based state. It issued plans for both. It also faced a hostile government, yet still provided and presented a Bill of Rights in clever ‘brinkmanship’. In these chapters, together with appendices 3 and 4, readers can observe what Rights were prepared, and what was not to be. And in extending itself, the Sessional committee ironically created a model constitution, which could only be deconstructed, not substantially ‘improved’, and that in itself was a problem which the Constitutional Convention could not, or did not overcome. Most probably, few delegates, or anyone else, were aware of the paradox caused for contributing to the fate of statehood!
CHAPTER FIVE: CONSTITUTIONAL CONVENTION

5.1. **A brilliant victory was the greatest loss.** Whatever else might be said about the main Constitutional Convention of 1998, it was a tightly-controlled major statehood process, in many ways brilliant in tactical planning and execution. A minimalist Revised Draft Constitution was produced by the Constitutional Convention. Yet it was a strategic failure, which many felt was central in statehood failing. The CLP got what it desired. The issue had not yet been decided by referendum. The Constitutional Convention soured statehood for nearly all Territorians for the way it was said to be prescribed, selected, and managed, almost like a puppet show, by the chief puppeteer, Chief Minister Shane Stone. The Convention delegates should have been entirely elected from the broad community. In not doing so, fundamental constitutionalism was denied, and democratic principles trammeled. It was a huge blow to statehood, apparent before it failed. The surprising discovery is a paradigm shift which allowed the government to itself become a determining factor, when its proper role is as facilitator.

5.2. **Disproportionate Indigenous inclusion and numbers.** This is the crux of the complaints against statehood’s democratic departures; that the people of the Northern Territory were denied a democratic opportunity to participate in the statehood process. It was a denial of natural democratic rights, and this time, the charge stuck. The Aboriginal people in particular felt left out of the Constitutional Convention altogether, their small delegation of nine was extremely disproportionate to their numbers, at that time, about 27% of the Northern Territory population. But it was not only Aboriginal people who felt left out. The government nominated the selected groups which could send delegates, and appointed the individuals, such as myself, an active member of the CLP. The general public, including Aboriginal people were not invited, and were not able to seek election. The recommendations of the Sessional Committee were ignored, and democratic constitutionalism was the chief casualty. This fault probably accounted for many voters voting ‘No’, and again, it was one of the leading reasons for statehood failing.
Aboriginal Constitutional Conventions of Kalkaringi and Batchelor reflected known views of almost a quarter of the Territory population. It must be recalled that neither major event occurred before the referendum and so had no influence per se, on the outcome. It could have done so. But as the Aboriginal vote, particularly in non-urban areas, was crucial to the outcome, other leadership and power factors were at work. In terms of the statehood attempt failing it is value negative, although some readers may reverse this to value positive. The Aboriginal Constitutional Conventions spelled out the problems, aspirations and demands of the Indigenous peoples of the Northern Territory; the earlier delegation to the Constitutional Convention reflected the sentiment of collective beliefs by walking out. The message was and remains clear: no inclusion of Aboriginal world viewpoint, no statehood.

5.3. **Elite model of organization loses popular traction.** Stone’s *de facto* organizational model for statehood was closer to the elite model than the corporatist government in action. He operated in a Cabinet organization which in broader terms is formed under a democratically elected government. But in effect, there was a cabal of one in relation to statehood. This was also possible as the Chief Minister was the Minister for statehood. That hegemony is a pity, because he could have used the skills of others: but the closest he got to that condition was by placing loyal minister Denis Burke in charge of the government Constitutional Convention team. The battle was won but the campaign was lost in this way. There is little contrary case, unless we are seeking to establish whether Stone could have gotten away with it doing it his way. There is no question here; he could have triumphed, it was close; and he could point to doing it the Territory way. It would still leave the great principles of constitutionalism bereft, including much democracy; and, specifically, Aboriginal aspirations would have been left behind. But he lost the bid; and principles are fundamental where almost 30% of the people are concerned. I conclude that treating statehood in a ‘home grown’ way, without the fundamentals of election by proportional inclusion, also contributed to statehood failing.

5.4. **Delegates led by persuasion not by stacking numbers.** The delegates to the Constitutional Convention, however, could not be said to be predominantly CLP
acolytes, as I have sought to establish, but they did respond to the CLP message and influence, and together the delegates virtually rewrote the draft constitution. The way the delegates were appointed also denied the aura of democratic process, a perception which is high in the general view of a flawed effort. At no point in the traditional perception of autocratic behaviour did Shane Stone prohibit delegates from exercising their discretions, but it came close, when in the parliament, he laid out the parameters of their Convention endeavours. One of the ironic reasons putting the electors off, was the perception which ranged from unfair rigging of the Constitutional Convention (which did not occur) to rigging to disenfranchise so many (which did occur).

5.5. **Omission of Rights: No sovereign source of authority.** Holding of a Constitutional Convention does imply democracy, as it requires the inclusion of the political polity, and delegations are representations of groups, usually elected. But it is on the stricter basis of interpretation of electoral values that a negative view was inculcated; and because it was an issue perceived as undemocratic in the Northern Territory statehood bid. Not all that was done, however, could be said to be negative here. Convention co-chairmen, former Senator Bob Collins, and former Chief Justice and Territory Administrator Austin Asche, presided over an otherwise well-run Convention, and *prima facie* it could not be criticised for its procedures. But what is more important, a well-run organization or what it does? The omission of Rights and the wholesale deletion of references to Aboriginals as set out in chapter 5, was nothing less than deconstructing the better model Final Draft Constitution. It brought the episode into contempt from the "outside". Constitutionalism requires *opportunity* for the participation of all. Moreover it must be seen to be done through electoral processes, that it might be regarded as deriving its authority from the greatest sovereign source. It was one of the most trenchant criticisms of the process, and a major reason for failure.
CHAPTER SIX: THE REFERENDUM

6.1. Seeing through the question. In the referendum results reposed the ultimate failure. The referendum was tantamount to the ‘bottom-line’ on statehood. The referendum process itself was a major obstacle, twelve years of statehood culture coming down to a few seconds for voters making their final choices in the polling booths.

The most important features of the referendum as a process included the nature of the question asked, preceded by the panic-like advertising campaign, when it appeared that it would fail. The question asked was framed so poorly as to pose a dilemma for voters, and that dilemma was to confirm that decision. They had to trust a parliament dominated by the CLP which had approved a Revised Draft Constitution, fundamentally different from the one that was expected by so many voters. Many were not prepared to do that, because it was obvious to all that the CLP wished the voters to ratify its statehood version. This was a remarkable instance of the electorate seeing through what they perceived to be false and misleading language.

Further crucial events included the timing of the referendum with the republic referendum, and voting for the Northern Territory House of Representatives seat. This too impacted, but the greater reason for failure was the referendum question, which was ill-met by voters. There is a psychological moment too, that when one is in doubt, do not do it. The wording of the question to be asked has an impact in this query, because there is no alternative but to vote ‘Yes’, ‘No’, or not to vote at all. The voters’ responses cannot be qualified, and the nature of the question almost certainly invited qualification in answering it. There was major failure in this area.

6.2. A variety of causes. Heatley has raised other reasons for referendum failure, claiming that it had no hard sentiment historically, that Aboriginal opposition in particular doomed it, and that claims to the contrary were incorrect. But his argument (which echoes the government line) that the concerted opposition of groups were primarily responsible, begs the question of cause. And Heatley, on
firmer ground, also blames Stone's judgment on holding the referendum at the same time as the referendum on the republic, plus elections for the Northern Territory's House of Representatives seat was ill-advised, as all three conservative bids failed. But Stone did not set the date of the latter polls, the Federal Government did. This is combined with Tambling's evidence below. Heatley however, did expose the lead-up to the referendum 'train wreck'. When the government saw that its lead-up to the referendum was not 'a done deal', it threw extraordinary sums of money into advertisements and public relations (it was by then too late for an Education campaign). The monies were totally wasted. But of course, the impacts were relative to adverse perceptions of propaganda before Territorians voted. The effort before the referendum was wasted; afterwards being of academic interest. Cynicism by the perceptive public at the obvious 'eleventh hour' panic-moves contributed to failure.

6.3. **Warnings ignored.** A crucial moment affecting the statehood management leading-up to the referendum, was the danger of proceeding on the same course, on one poll, Newspoll, which held a static affirmative message to the CLP to proceed regardless. The public Newspoll did have an effect, if only upon the government, because it gave false hope; Stone and the government wanted to believe it. Newspoll has a history of relative accuracy; most entry polls when properly organized reflect voter intentions fairly accurately. That the poll was very wrong could be put down to a number of variables, and obviously because of the close result, it could be said that the variables in the poll questions were inadequate. Was the sample too small, or taken the easy way, in urban areas, whereas the crucial vote was out there in the communities. Even when it was obvious that there were more than mutterings in the community, the government stayed the course, until it was too late. I do not know the questions asked, and only a handful of officials are privy to poll details, but of those sampled, the respondents must have been positive about statehood when asked. It is tempting to consider what the same group would have answered if asked "do you intend to vote in favour of statehood?" Was the wrong question asked? Or did respondents change their minds in time for the referendum. The government had trusted in, and wanted to believe the poll, and it was wrong. Lesson: beware of polls and the commissioners of them, because the questions asked need to reflect the precise
environment encountered. What is known is that the government acted on the only known (public) poll conducted prior to the referendum to its fateful risk.

6.4. **Not a rejection of statehood per se.** The paradox is that there is little evidence that the referendum was a rejection of statehood, so much as, in Hatton's words a rejection of 'Stonehood'. In retrospect, the charge should have been leveled in a far wider sense. It could even be suggested that the voters themselves should take some responsibility because they returned Stone and his government on 30 August 1997, with a record majority, (58% of the vote on a 2-party preferred basis), and he campaigned almost solely on the issue of statehood, by which time the voters knew both of his style and the direction he intended to take. The one 'wild card' they did not expect was the wording of the referendum question. It was here that statehood actually failed.

6.5. **Elitism to the end on behalf of the party.** The Northern Territory Electoral Office exercised decisions concerning the operations of the referendum. But, as with other aspects of the statehood bid, Chief Minister Stone had a 'hands-on' role, and was its chief director. In this sense, in general governance, he was acting in a corporatist manner, but in some respects of statehood his actions and thus those of the government were doubtless elitist. That is, where Stone made decisions arbitrarily, not necessarily in Cabinet, even if approved in Cabinet. This was Stone's portfolio and he ran it in a hands-on manner. For the most part however, he acted in speaking strongly for the views of his party. The party was behind Stone, who had the support of the organisational wing of the CLP. The CLP took it upon itself to determine what was best for the people of the Northern Territory, *albeit*, it did so in good faith. Elitist behaviour was therefore a cause and a reason for failure.

6.6. **Media go to action stations after the battle over.** The media, as can be seen now in retrospect, continued to give lukewarm, qualified support to the referendum, and thus to statehood prior to the event. Very little was made of the triple event of two referenda, plus an election for the House of Representatives. After the result was known, however, with banner headlines of its failure, there was what can be described as a "feeding-frenzy", particularly on Shane Stone's
role in bringing statehood undone. Its greatest effect was after the event. The media could have been a participant in the event, like in Hawaii. But it was a part-time supporter, and therefore had a negative effect on the bid, more by default.
CHAPTER SEVEN: CRITICS AND GUIDANCE

7.1. **No shortage of authorities.** Chief critics prior to the bid were the major stakeholders, a rump protest group (Territorians for Democratic Statehood), and the legal fraternity, or an important part of it. There was no orchestrated leadership of critics in the statehood arena, but there was leadership, and what gives this category its pluralist flavour are the different classes of criticism, distributed between community leaders, interested members of the community, and ‘wildcat’ or ‘backyard’ critics, the latter perhaps even more important than at first sight. Simply and shortly put, the critics came from everywhere, and the authority of their voices resounded in social gatherings, in offices, in kitchens, and lounges watching the TV news. The critics were simply voicing opinions, which may or may not have been widespread in the community. One sure item was the spectre of cost, and despite the argument being resolutely refuted, the purported cost was more a shibboleth of folklore that still persists. It is all very well being wise after the event, and this proclivity was confined not only to a few articulate persons. Moreover, beyond any mythology, the quality of learned instruction by the informed general public was and is most potent, and was under-rated. The great lesson here is that the people of the jurisdiction should have been brought into and allowed to participate in the making of their state. That is constitutionalism in its most fundamental sense. And in general terms it demonstrates that lack of wide consultation and elected participation was a factor in failure.

7.2. **Views of individual critics limited.** Some of the other effective, informed individual critics include: Maggie Hickey, former leader of the Opposition; Galarrwuy Yunupingu, then Chair of the Northern Land Council; Colin McDonald QC; Earl and Wendy James; Kerry Altamura. This list is not exhaustive. There were numerous local critics of the process, But the wider critique should have been heeded. That they were not was a fatal flaw. This is an action of constitutionalism denied. There is evidence that standing alone, the critics’ influence on voting intentions was not substantial. That is the problem: their views could have been heeded at various stages. The Standing Committee’s report of the survey taken does not indicate such influence; rather most eyes
were on the CLP government and Stone. Remarks must be qualified here, because the individuals named above did gain adherents to their points of view, both through the news stories and current affairs sections of the media, as well as their public meetings. But expressions of their views were limited by being ignored, or unsought. Ironically, the Indigenous people had more consultation directed to them, particularly by Hatto n’s committees. They could have provided guidance if their points of view had been ‘taken on-board’, And this too, is seen by me as a failure.

7.3. *The Northern Territory News as Critic.* The media was one of the critics, as mentioned above and could have played a much more influential role, particularly through television. Little more than paid advertisements were shown, and that must be rectified at the next attempt. Arguably the most influential of the media which did engage, sporadically, with statehood is *The Northern Territory News.* The newspaper in its editorials warned prior to the Constitutional Convention of the consequences of the CLP government’s hedonistic actions. It homed-in on Shane Stone in a landmark article entitled "The Mark of Stone". This public condemnation in strong terms on the stewardship of the statehood bid could have had an effect on readers. But the extent of this effect is likely to have been limited. It was one of a series of adverse actions against statehood by drawing attention mainly to the exclusion of Indigenous interests. There was a neutral or negative effect from the media, whereas it held the potential to do so much more, like in Hawaii. And though it was not the ultimate reason for failure, it was, in a separate sense to that given in Chapter six conclusions, a reason for its failure.

7.4. *Institutional critics muted.* Only the institutional critics, that is the likes of the Northern Territory Opposition, the newspaper and other media outlets, and the Northern Land Council, plus (in the end) the trade union movement, were organised in the structured ways which gave them the best and most influential posture of their respective fields of interest. For instance, the trade union movement in particular, utilised its Community and Public Sector Union (CPS) bulletin to analyse the statehood effort in order to advise whether to provide a ‘Yes’ or ‘No’ vote. This was designed to sway union members and their families, and at first it seemed to be an even-handed analysis, giving the advantages and
disadvantages, but in the end it reverted to its own sectional interests. It finally turned against statehood. This latter group in particular had sufficient influence to be a reason for failure due to its extensive membership. The institutional organisations had a significant capacity for putting out their views in the community.

7.5. **Nuisance publicity disseminates negative information.** The influential Business Review Weekly is an example of a respected print media publication of issues given serious consideration, and the specific article relating to statehood required a detailed refutation to demonstrate the mischief in the information imparted. I don’t think it played a major role in statehood failing, but in demonstrating this publication as being pejorative in its outlook, it was redolent of other commentaries from afar, mostly ill-informed, but ‘going with the flow’ of statehood criticism, pandering to populism. It is not that it was all wrong; it was right (in few parts) for the wrong reasons given by the interviewees. Multiply this type of publicity and it is not hard to conclude that it was not helpful; and its effect could be magnified when placed with other uninformed or misleading criticisms. Such material was part of a generally bad press, which played a minor role in defeating statehood.

7.6. **The fatal paradigm planning flaw.** In Chapter 7, I included my own criticism of a major fault which gave opportunity for the CLP government to itself be influential in the statehood process. This is what I call the fatal paradigm planning flaw. It specified the instructions to the Constitutional committee, and then described how the appropriate model or formula for state creation was altered so that it came to government for action, as if it were part of the process; everyone expected that it was a normal part of process, but it was not. Then, after the Convention it went back to the Legislative Assembly for adoption. But it was the new revised draft adopted. I have described all this before. At the time I simply thought that Shane Stone was controlling the committee’s Final Draft Constitution for total revision to a minimalist version. That’s what the CLP wanted for reasons given in the text. And the way that was to happen was subtly done by careful instructions as to the parameters of the Constitutional Convention’s consideration, and through Denis Burke’s CLP government-oriented team acting
vigorously in Convention sub-committees and in drafting resolutions for adoption, ‘working the room’ to persuade delegates of the case. Had I been there and not on an operating table, I would have been part of that calumny. It seemed clear to me at the time that Rights would kill statehood, and introduce specialty to one group of people by nominating them by race. It was to be without race, creed or colour. The other side of the coin was simply not entertained. It had nothing to do with racism. But as statehood was going to occur, as believers thought, the mindset was on its survival after the fact. I believe the changed paradigm was the single greatest cause for changing the course of statehood, and again in hindsight it was contrary to everything constitutionalism stands for. It was a major reason why statehood failed.

7.7. **Overseas statehood examples ignored.** The lessons from overseas statehood campaigns were available for consideration; that is understanding the principles which contributed towards successful campaigns experience needed to be taken aboard by the statesmen. In Hawaii for instance, promoting the citizens constitutional committee to organize a constitution drafting function was a brilliant exercise of involving the people. That it was done for political purposes, to elect the legislature, did not detract from the exercise of democratic involvement. Or in Alaska where the Convention wrote the entire Constitution with liberal support, time and in a more appropriate environment. The media supported the pushes to statehood in both cases. In the Northern Territory, only Hatton heeded the Hawaiian example; although the other, Stone, could point to McWhinney, not to copy other jurisdictions slavishly. But under Stone’s stewardship, it was ‘home-grown’ all the way. And that over-confidence and exclusion of overseas experience cost too much.
CHAPTER EIGHT: FEDERAL IMPACT

8.1. Federal parliament: the powerful constitutional authority. Ultimately, the prior proceedings of the Northern Territory must be subjected to the federal hot-houses of the Australian parliament, the House of Representatives as well as the Senate. But the actions of the Federal Government could also be said to have played a role in deciding to hold the referendum for the republic and the Northern Territory elections for the House of Representatives seat on the same day as the statehood referendum. That decision was imposed on the Territory. It had little to do with constitutionalism, more to do with politics and convenience. This conclusion was originally placed under those in Chapter six, but it has such federal connotations that the following conclusions in 8.2., 8.3., 8.4., and 8.5., is now included here, before moving on to the other and more specific federal impacts upon the statehood bid.

8.2. Three reasons to vote ‘No’. In organisational terms, at least the three simultaneous events impinged one upon the other, but the exact effect is hard to define. The organisational system adopted in the Northern Territory not only affected the referendum, but the simultaneous republic referendum and the federal election campaign for the one seat (at that time) of the Northern Territory, a crucial one in political terms. It is not claimed that the voters could not discern between these three, but there is some suggestion that there was in some areas, mainly the communities which voted ‘No’ in the patterns revealed in the Appendix, a vote along political party lines, which favoured Labor. In the Territory, it was hoped by Stone and the Howard government that the tri-partite voting would favour the CLP'S position, and to the extent it did not; that intention ‘backfired’. It would have been better to hold the referendum on its own, although in Hawaii elections coincided with referenda. The ‘No’ result effectively closed down any further processes, such as the expected negotiations with the Commonwealth. In its results represented the reasons for its failure.

Stone's judgment on holding the referendum at the same time as the referendum on the republic, plus elections for the Northern Territory's House of
Representatives seat, was ill-advised, and all three conservative bids failed. Tambling believes these factors did play a role. (See Chapter 8). So do I.

8.3. Labor’s candidate for Canberra obfuscates issues. In this referendum however, opposition to the creation of a Northern Territory state was observable through the groupings which Heatley names, one of them being the Labor party. Yet Labor protested that it was for statehood. That the Territory Labor Party did not campaign against statehood, for reasons more associated with its electoral fortunes (in the urban community) was inconsistent with its previous stance, and the views of many of its supporters. The election for the House of Representatives seat was waged vigorously outside the urban areas in Labor’s heartland by its candidate Warren Snowdon. Snowdon had no such qualms. And it is unlikely he campaigned on a yes to this and no to that; such approach would only serve to confuse his message. So, the main interest of defeating CLP’s MHR, Dondas, was automatically equated with voting ‘No’ to statehood too, and the republic referendum was left to voters.

8.4. Vote ‘No’ to some meant ‘not now or ever again’. Electors are not required to put their reasons for voting, so objective criteria must be sought by Psephologists and others to analyse an election. What cannot be measured however in contextual terms, are the number of people who do not favour a state on any terms, and who regard this referendum result as a formal legal direction that it is not to be raised again. There is however no legal bar to another such referendum, and it is likely a referendum or plebiscite on statehood for the Northern Territory will be held again in the future. It is assumed that polls incorporate the notion that every person surveyed and each question asked involves criticism, in that it is a viewpoint on the topic provided by the person questioned. In such polls there are no ‘maybe’ questions, or “please expound and give reasons,” although there is sometimes a category of ‘don't know’. The statehood bid required ‘Yes’ or ‘No’.

8.5. Statehood means increased costs argument. Federally, most of the states representatives, attuned to looking after the interests of their constituents, faced being asked about the cost of statehood - to them - the constituents of each of
the states and territories. It wasn't just the setting up of the State, but once raised the question of costs loomed large. Would any new financial arrangements disadvantage such constituency, as informed people seem to understand that the Northern Territory receives a very generous share of Federal revenue. In logic it can also be imputed that this charge could be utilised by political representatives of states, to blame heavily subsidised areas, such as the Northern Territory for receiving generosity, to highlight needs of their own political arenas. The need. There is no direct evidence adduced of that, but it is the logical corollary of such circumstances. The question of costs impacting externally of the Northern Territory, means that support was muted from these jurisdictions. What can be deduced from the issue is that political impacts were present and were potentially far more damaging if the argument was raised in relation to any constituency, of any member of parliament being disadvantaged, as a diversion. This question occupied many minds during the bid and did have a negative but minor impact on the potential for the statehood bid failing. But as previously noted, it was not actually in play, and thus cannot be said to be a reason. Nor can it be entirely dismissed either. This is an education item for the future.

8.6. Euthanasia. The federal parliament’s absolute constitutional power to control the governance of the Northern Territory did not directly impact on the result, but reached back two years to the overturn of the Rights of the Terminally Ill Act. It acted as a catalyst for people who saw it as an infringement of state and territory rights to vote “Yes” as a remedial matter, believing that the Northern Territory as a state would be placed on the same basis as other states and be guaranteed against such interference. On the other hand, euthanasia is regarded by many as a moral or ethical matter, and strikes basic principles of right to life. To medical doctors, it is contrary to their Hippocratic Oath. It is also feared by Indigenous people, although some evidence suggests this was inflamed by mischief-making. Whatever they believed, misinformed, or not, the Aboriginal people believed euthanasia, unknown as a phenomenon, was bad for them, and was connected to the CLP Territory government; that they were protected by the Commonwealth, which over-turned the legislation, and this, connected with a similar argument relating to land rights, was reason enough to vote ‘No’ at the referendum. It was a ‘cold case’ re-emergent and a secondary reason for
statehood failing. It must be remembered that churches also rallied strongly against euthanasia on religious, ethical and moral grounds; and it is possible some anti-statehood sentiment carried -over, based on the same assumptions and possibilities that beset Aborigines, that statehood would enable euthanasia to be revived, so to speak.

8.7. Insularity from successful states examples The lessons of Alaska and Hawaii were available, and have been adjudged above; but in federal terms it might be assumed that collective intelligence contemplates other jurisdictions overseas for comparison to judge the merits or otherwise of Australia’s federal system. It may only be minimal, and could be expected that influential thinkers such as Professor Galligan, extends a purview so far. In pragmatic terms, other factors are likely to affect local decision-making. The attractive models of Germany and Switzerland were known, (but hardly available for transference in a practical sense) to assess the extent to which local conditions could be changed from the constitutions and federal arrangements of Australian states.

8.8. Financial Federation. A more compelling circumstances was the combination of a lack of dynamic force (because of financial equality with the states) and the non-appeal of joining a flawed federation, even if not entirely understood by voters. Undoubtedly this militated against the statehood aspirations of the Northern Territory. It is an unseen and remote reason for failure, and has particular appeal for those who voted ‘No’ means no, not ever. The federation in its financial operation, is problematic, not necessarily because of the intense ‘neighbourhood watch’, which each state and territory maintains over the other requiring equity, but more the changes wrought upon it since federation, mainly by the constitutional interpretation of the High Court of Australia. Galligan claims it is a flawed federation (amongst other claims). The time differential was substantial, but the views in a political and social sense were present from the beginning of the statehood campaign twelve years before it reached its fault-line. Accordingly, there was a negative value from the critics, which in such respect simply included those who formed opinions that statehood would not be good for them. For them statehood was anathema, and many were of the view that ‘No’ means never. It should not be forgotten that persons who opposed statehood for
its own sake, without need for reasoning, are still part of the reason it failed. It now has equal financial parity with the states, and as Heatley says, it is a weak sentiment engendering a lack of motivating passion which such a deprivation would otherwise create; so that factor is negated, and with it, much of the driving force which propelled territories like Alaska into statehood. This must definitely be a good reason why statehood failed. It is the only area where constitutionalism plays little or no role.

8.9. **Former Senator Grant Tambling.** Tambling raises several new theories, not covered by the Standing Committee purview or other evidence. Based on logic and Northern Territory 'savvy', Tambling's theory of generational change, though undoubtedly stronger in logic, falls down in effect. There is no evidence adduced of the correlation between more 'extended' families and their common views held, especially between generations. There may be measurable future effects, but at the local or domestic informal level social dialogue is likely to place statehood on a low, cursory priority. It would hardly rate against the family budget. However, discussions may have occurred to influence other people who rely on the perceived greater authority of colleagues and family than themselves. It is not a matter to be dismissed, but is likely to be associated more with other reasons mentioned in these conclusions.

Tambling's theory that Stone became undisciplined in selling statehood because of other diversions, however, has a ring of truth. And the evidence of the Standing Committee backs that up. Government-sponsored propaganda rather than education could not surmount the difficulty. Combine this with Heatley's charge that Stone was caught out in timing when the coinciding referendum on the republic and the Territory election for the House of Representatives seat (Chapter 6) were announced. Added weight is thus given to this point. Voting down all three unpopular or doubtful propositions holds some cogency.

Tambling sees the overall reasons for failure in a two-fold context: first, the strong campaign by Labor's Warren Snowden to win his federal seat from the CLP's Nick Dondas, and the accumulated Aboriginal vote promoted with the Labor party's Aboriginal community electioneering, which was fatal. They were seen as
existing side-by-side. Secondly, he cautions with great alacrity, that statehood was in any case doomed unless the *Aboriginal Land Rights (NT) Act 1976* was isolated and remained with the Commonwealth. That has a great ring of truth.

**SUMMARY OF ALL CONCLUSIONS**

9.1. **Changed direction started statehood demise.** The committee process adopted under was ostensibly on track, but came under the direct management of Chief Minister Stone by a combination of good luck and opportunism, to add a further paradigm to statehood creation: that of an intervening, shaping role by the Legislative Assembly (read, the Chief Minister). The opportunity enabled Stone to set parameters for the Constitutional Convention to promote the CLP’s desired minimalist position. The parliamentary tabling of the Sessional Committee’s final draft Constitution resulted in a dutiful silence of CLP politicians. It included an informed paradigm of democratic method, embodied in the draft constitution. The important feature which was also tabled was a set of Rights for inclusion. They were ignored.

9.2. **The illogical contradiction of separately redrawing a well-drafted Constitution condemned statehood process and substance.** The time of initial instruction occurred twelve years before the statehood bid, and evolved in the same manner as the CLP desired. The Revised Draft Constitution was fundamentally changed from the Final Draft Constitution. The former only was ratified by the Legislative Assembly. In any event, the voters saw through this particular ruse and voted it down.

9.3. **Denial of democratic process.** The stage-managed Convention process and delegate selection process resulted in wide distrust of political direction, denying universal election opportunities. This flew in the face, as did other main faults, of constitutionalism, the fundamental principles of statehood creation.

9.4. **No statehood education or education funding.** The absence of an adequately funded education campaign, and the substitution by a massive last-minute propaganda assault was crucial; and a major factor of failure. The lingering threat of reviving euthanasia could have been dispelled amongst Aboriginal by education campaigns in just that area alone. Many people wondered in vain what statehood would mean to them, their family and their interests.
9.5. **Ignoring the Indigenous population, entrenched suspicion.** Those six words are all that are needed to emphasise the point; and it is shown they voted ‘No’ in a block.

9.6. **That referendum question.** The single, untimely, presumptuous referendum question, combined with the simultaneous republic referendum, and an election for the Territory’s then single House of Representative seat, was also fatal.

9.7. **Important voices of advice from the community were ignored.** The upshot was that the government thus alienated otherwise neutral or helpful opinions, which were then turned against the manner of dealing with statehood; and guidance was lost, enemies and opposition were made.

9.8. **The crux of the statehood bid, the abrogation of constitutionalism, is the single greatest failure encompassing most of the above.** Failure to understand the features and criteria (mainly of a democratic nature) which are necessary to fulfill its cultural content, to underpin and guarantee the fundamental basis of the new state, ultimately brought down the bid. It is impossible to specify the correct ingredient parts of a fundamental charter because unique local factors are involved, but of all reasons:

   The best models are drawn from one’s own society and its past successes and mistakes, there is by now a certain common pool of comparative constitutional experience, of institutions and processes, and also, to some extent, fundamental philosophical principles.

   The law-in-action of constitutionalism can clearly be seen in another constitutional context, in amending of the American Constitution. For example, the Eighteenth Amendment (Prohibition) was (inter alia) struck-down by the Supreme Court. In the American case, constitutionalism can thus be seen as organic. Take away fundamental rights and processes and all other reasons listed above are in some ways subservient to and derivative of this principle. A balance of factors is formed below which adjudged correct mix, like the Waldorf salad, mentioned at the beginning, statehood fails. The living life of the state is distilled in the culture of the constitution. Constitutionalism is not any ‘ism’ to be dismissed with derision: it is prescriptive. Constitutionalism and the failure to fulfill it is present in all but a few of the above reasons for failure of the first Northern Territory statehood bid. A new approach to statehood, encompassing constitutionalism, allowing it to develop and be known for what it is, with the perceived involvement of all the people, without rushing or having times placed on it, statehood will occur, with the Grace of God, when the wonderful and unique people of the Northern Territory are ready for it.
BIBLIOGRAPHY

Table of Contents- Categories:

Books

Journals, Articles, and Periodical Publications

Media, Newspapers, Magazines, Public Reports, Transcripts, Television programs

Government Publications and Reports of Committees

Theses, Dissertations, Papers, Lectures, Seminars, Letters

Legislation, Reference Sources

Case Law references

Websites and Internet Sources

Books


Journals and Periodical Publications


Hoyle, A, “British Discoveries and Settlements of the North Coast of Australia" (MS York Gate Library), Proceedings, The Royal Geographical Society of Australasia, South Australia Branch, Volume 33, 12.


Australia: Options and Implications*, Australian National University, Canberra, 203- 
217.

Williams, G. and M. Darke, “Euthanasia Laws and The Australian Constitution”, 

Wilson, H.J., "The Loss of RMSS Gothenburg", in *Journal of Northern Territory History*, 
Darwin, Historical Society of the Northern Territory, 1992, Issue No.3.

Wilson, K, “Northern Territory Criminal Code Compromise”, in *Legal Service 


---

**Media, Newspapers, Magazines, Non-Government Reports, Transcripts**


*ABC Television, Lateline*, “What went wrong?: Game Plan”. Reporter Murray 


*ABC Radio News*, 5 April, 2001


Ajit Sahi, “Decks cleared for creating two more states”, *India Abroad*, 11 August, 
2000, New Delhi, India.

Crews, Branch Secretary, First Floor, 38 Woods Street, Darwin NT 0800.

“The Way We Were: Looking at our History”.


Transcript, Oral History interviews with Steve Hatton

Hatton Interview, Friday 3 November, 2000. Electorate office, Nightcliff. 2:30 PM. In my possession.


Transcript, Oral History interview with Maggie Hickey,

Hickey Interview conducted at my home, at Karama, The Build-up, 2001. In my possession

Transcript, Oral History interview with (former) Senator Grant Tambling.

Tambling interview conducted at my home at, Karama, week 3, January, 2003. In my possession.


Government Publications and Reports of Committees


1966

1974

1976

1985
Australian Constitutional Convention, Fiscal Powers Sub-Committee, 1985, (paragraph 2.11).

1986


1987


Legislative Assembly of the Northern Territory, Select Committee on Constitutional Development, Information Paper No. 1, Options for a Grant of Statehood, September 1987, Northern Territory Government Printing Service, Darwin.

1989

1991

1992

1993

1994


1995


1996


1997


1998


1999

Legislative Assembly of the Northern Territory, Standing Committee on Constitutional and Legal Affairs, “Report into appropriate measures to facilitate Statehood”, April 1999, Northern Territory Government Printing Service, Darwin.

Report into appropriate measures to facilitate Statehood, 1999. From Table 16, Market Equity report. Standing Committee on Legal & Constitutional Affairs.

2001

2002


---

Papers, Theses, Dissertations, Lectures, Seminars, Letters

Bickmore, T, of Milikapiti, 29 July 1998, Territory Greens, letter to Steve Hatton MLA.


Heatley, A.J, “Federalism and the North”, Paper presented to the 1982 Federalism Project Conference, 11-12 February, 1982, Australian National University, Department of Political Science, Canberra,


_____________________________

**Legislation, Constitutional Authorities (in chronological order)**


*Lord Stanley’s Act, 3 and 6 Vict. c 76.51, and 24 and 25 Vict. c 44.2.*

*‘The Australian Constitutions Act, 1861’ (UK).*

*Northern Territory Representation Act, 1874 (SA); Northern Territory Surrender Act 1907;*

*The Australian Constitution Act, 1900 (UK),*

*Northern Territory (Administration) Act, 1910 (Cwth);*

*Northern Territory Representation Act, 1919 (Cwth).*

*North Australia Act, 1926 (Cwth)*

*Statute of Westminster, 1931 (Cwth)*

*Atomic Energy Act, 1953 (Cwth)*

*Northern Territory (administration) Amendment Act, 1959 (Cwth)*

*Senate (Representation of Territories) Act, 1974 (Cwth)*

*Racial Discrimination Act, 1975 (Cwth)*
Aboriginal Land Rights (Northern Territory) Act, 1976, (ALRA) (Cwth).

Northern Territory (Administration) 1910 (Cwth) Amendment Act, 1976

Commonwealth Public Service Act 1977 (Cwth)

Northern Territory (Self-Government) Act, 1978 (Cwth)

The Aboriginal & Torres Strait Islander Heritage Act 1984 (Cwth)


Australia Act 1986 (Cwth); Australia Act 1986 (UK).


Freedom of Information Act 1982. (Cwth)


Native Title Act 1993 (Cwth)


The Rights of the Terminally Ill Act 1996 (NT)


Referendum Act, 1998 (NT).

Anti-Discrimination Act 2002 (NT)

Information Act, 2003 (NT).

Dictionaries, Reference Sources


Dunstan, T, lecture notes, CDU Politics course, Heatley, October 1996, in my possession.


The Australian Constitution, 1901 (UK), Australian Government Parliamentary website.

The Constitution of the Union of Soviet Socialist Republics, Articles 50, 52, 53, 54.


---

Case Law references

Commonwealth v Victoria (1945), 71 CLR, 237


Capital Duplicators Pty Ltd v Australian Capital Territory (1992), 177 CLR, 248

Mabo and Others v Queensland, (No.2), 1992, 175 CLR, 1, F.C, 92/014


Websites and Internet Sources

Australian Government, Website, “Australian Constitution”,
http://www.statusquo.org/constitution/constitution_index.htm

Borrow, K.T, Greens, “NT Statehood and Australian Constitution”,

Borrow, K.T, “ Territory greens, Letter to Steve Hatton”,

Borrow, 1956, K.T, “Summary of an address given to the Historical Division, Royal
Geographic Society of Australasia”, South Australian Branch, Royal Geographic

Constitutional Development and Legal Affairs Standing Committee,
http://www.nt.gov.au/lant/parliament/committees/lca/Info%20paper%20No-1-
%20Chronology%20of%20Events-22-Aug-2002.pdf

Theory: The Canberra Papers”, Social and Political Theory Program Workshop”,
Research School of Social Sciences, Australian National University, Canberra, ACT


Goldhammer, J.D and Prometheus Books, © 2000, Methods of Group Persuasion,
http://www.goldhammer.com/article5.htm

Inkatha World English Dictionary,
http://dictionary.msn.com/find/entry.asp?search=corporatist)

Johnson, P.M., 1994-1996, Glossary of Political Economy terms, ©,
http://www.auburn.edu/~johnspm/gloss/o.html

Legislative Assembly of the Northern Territory, Standing Committee on
Printer, Darwin.

Mauk, K.M, 'Approaches to Altering State Constitutions', Public Law Research
Institution Report, 1994 (copyright) San Francisco,
http://www.unchastings.edu/plri/spring/95/statecon.html

NorthernTerritoryAnti-DiscriminationAct 2002
http://www.nt.gov.au/lant/parliament/committees/lca/Info%20paper%20No-1-

Northern Territory Government Statehood website Overview:

Northern Territory Government Electoral Office Statehood Referendum Results,
91f3616d099ab13f692569c20005de17?OpenDocument
Northern Territory Government website:

Numerous Contributors, “Group/Individual Level, Persuasion, decision, commitment Decision-making, Rational decision-making methods”,

Omoigui, Nowa, Article, “Gowan’s broadcast to the nation, dividing Nigeria into Twelve States”, May 27, 1967, Segun Dawodu, P. O. BOX 8843, Albany, NY 12208-0843, USA, © 2000 Segun Toyin Dawodu. All rights reserved, segun@dawodu.com.

Australian Parliament, Senate Website,

South Australian Government Website:

Territory Greens, “Territory Statehood, General comments”,

Territory Greens, “Northern Territory Statehood and the Australian Constitution”,
APPENDICES
APPENDIX 1

EVOLUTION OF CONSTITUTIONALISM

A.1.1.1. Musing on the evolution of Constitutionalism

In the thesis Introduction, a brief overview is made of the central themes upon which the work is based. The candidate’s dictionary, (Oxford English Reference Dictionary) defines constitutionalism simply as: ‘1. a constitutional system of government; 2. the adherence to or advocacy of such a system of government. It describes a constitution as ‘a). The body of fundamental principles or established precedents according to which a state or other organization is acknowledged to be governed. b). The written record of this’. ¹ The whole question begs to be set in its developmental setting. The following is the candidate’s take on the tropes and theories of a wider philosophical growth, which is eminently liberal in direction, if not in practice. It is however, incidental to the focii of the thesis, hence, setting-out here in Appendix 1, twixt the thesis proper and my, philosophical musings, which nevertheless seem appropriate, to round-off this meaning.

A.1.1.2. Legitimating Power and authority

From time immemorial, wielders of absolute power asserted sovereignty and dominion over subject peoples, and lands- everything animate and inanimate, of life itself, within their maximum spatial and territorial claims. In early recorded ‘civilisation’, emperors, kings, potentates and lesser rulers, affirmed their power by calling upon the highest authority known or believed to support such legitimacy. Some rulers themselves assumed the mantle of deity - the most notable being the Caesars. Or by asserting authority from and through the divine being of their belief system. Securing the trappings of power needed something beyond might and riches, a validation, to impose, maintain, and expand such power-to enshrine the edicts, their beliefs in perpetuity as supreme, ineluctable law. The Greeks were prototypical of innovative norms of law. The need to enshrine authority through supreme symbols of sovereignty necessitated definitions of that power, limited to geographical areas under pragmatic, temporal control --borders. Nations bound by commonness of race, tribe, class, language, custom, or belief system- societies-evolved the form of the modern state, be it kingdom, empire, or city-state. But also from time immemorial, subject man still living under feudal rule could only hope that somehow the system could free him, enrich him, empower him; that sovereignty

would one day reside with him- of the people. The early experience was mainly that of rights belonging or denied by conquest and tyrannical rule, or by royal decree- backed by rule of force. But in latter times, increasingly through the late 17th, 18th and 19th centuries, mainly in Europe, and in the latter period, America, more 'democratic' processes and means were asserted, such as they were, still as much by the sword, as by the pen, ostensibly by, for and under the rule of law. The changes wrought evolved from the writings of the great philosophers and thinkers, to present day charters of governance- the constitution arrived as the pinnacle instrument(s) underpinning legal authority and power. The hopes of the dreamers however, were and are only partially fulfilled, as autocrats and repressive regimes still rule with supreme state authority- even under fraternal constitutions. There is regression too, with many examples throughout the last three centuries where constitutions have been abolished, suspended or arbitrarily redrawn. Little seems to have changed from the earliest of feudal, even medieval times, in some respects. There are trends in parts of the world for constitutions to be confronted by major competitors- holy writ, sacred writings, and creeds, which fundamentalists place above any temporal, unrecognised writings as their supreme law. But generally, structures of states are increasingly synonymous with the guiding charters- their constitutions. Constitutionalism therefore is the predominant universal canon sought for underpinning the supreme rules, legality, and legitimating force of a society through its organisation, be it statehood or other system of governance. And in no less a way, the constitution is the mode specifying the manner in which states may be created or altered. The precise manner by which this is done is determined by the specific system involved, but requires minimum fundamentals, such as democratic processes, human rights, rule of law, anointed by a pluralist-based sovereignty. This is constitutionalism, and it began to take shape as aforesaid, but in its philosophical understanding and rationale, the great Greek thinkers could be said to have begun a line of progression, which in its analysis looks suspiciously like a history of liberal political philosophy. The following is a progression of definitional summaries, extracted from the cited works, which throw-up themes of constitutionalism in nascent form, under development. It is included in this appendix (1), as it really doesn’t fit the structure of the thesis; yet constitutionalism underpins much of statehood creation.

2 Edward McWhinney explains his understanding on Constitutionalism in Thesis chapter 1.
3 The candidate owes this excerpt from reading the works, referred in lecture notes taken in political science, given by a fine lecturer, Jim Jose, at former NTU, circa 1995.
APPENDIX 2
LIST OF DELEGATES TO THE CONSTITUTIONAL CONVENTION

A.2.1.1.Appointed Delegates
Dr Alistair Heatley Specially Appointed Delegate  
Delegate Mr Col Friel Specially Appointed Delegate;  
Delegate Mr David Curtis Specially Appointed Delegate;  
Delegate Mr Edison FC Ferrier  Senior Delegate;  
Delegate Mr Gatjil Djerrkura OAM Specially Appointed Delegate;  
Delegate Mr John Antella Specially Appointed Delegate;  
Delegate Mr Julian Swinstead Specially Appointed Delegate;  
Delegate Mr Michael Kilgariff Specially Appointed Delegate;  
Delegate Mr Nigel Scullion Specially Appointed Delegate;  
Delegate Mr Peter McNab Specially Appointed Delegate;  
Delegate Mr Sakib Awan Specially Appointed Delegate;  
Delegate Mr Ted Dunstan Specially Appointed Delegate;  
Delegate Ms Eileen Cummings Specially Appointed Delegate;  
Delegate Ms Joyce Deering Senior Delegate;  
Delegate Ms June Tuzewski Specially Appointed Delegate;  
Delegate Ms Kay Rose Specially Appointed Delegate  
Delegate Ms Margaret Clinch  Specially Appointed Delegate;  
Delegate Ms Moira O'Brien  Specially Appointed Delegate;  
Delegate Ms Patty Buntine BEM  Specially Appointed Delegate;  
Delegate Rev Dr Djiniyini Gondarra OAM Specially Appointed Delegate;  
Delegate Senator The Hon. Bob Collins Appointed by the Leader of the Opposition  
Convention Deputy Chairmen;  
The Hon Austin Asche, AC QC  Convention Chairman Chairman;  
The Hon. Jim Robertson  Convention Deputy Chairman Deputy Chairman.

A.2.1.2.Elected
Captain Annette Shearer Church and Minister Fraternal Groups Delegate;  
Councillor Margaret Vigants Local Government Delegate;  
Mr Adam Lowe Ethnic Community Delegate;  
Mr Bob Vander-Wal  NT Small Business Association Delegate;  
Mr Charlie Philips Trades and Labour Delegate;  
Mr Chris Lugg MLA NT Legislative Assembly Delegate;
Mr Clarry Robinya ATSIC Delegate;
Mr Geoff Shaw OAM ATSIC Delegate;
Mr George Michael Roussos Ethnic Community Delegate;
Mr Gino Antonino Ethnic Community Delegate;
Mr Jimmy Tipungwuti Aboriginal Land Councils Delegate;
Mr John Ah Kit MLA NT Legislative Assembly Delegate;
Mr John Bailey MLA NT Legislative Assembly Delegate;
Mr Kerry Osborne Industry Organisations Delegate;
Mr Kym Cook Tourism Delegate;
Mr Laurence Ah Toy Primary Producer Organisations Delegate;
Mr Peter Brown Industry Organisation Delegate;
Mr Peter Carew Industry Organisation Delegate;
Mr Rick Murray Tourism Delegate;
Mr Samuel Urbano Marquez Ethnic Community Delegate;
Mr Wali Wunungmurra ATSIC Delegate;
Ms Anita Renee Frystak Youth Delegate Delegate;
Ms Josie Crawshaw ATSIC Delegate;
Ms Karen Smith Primary Producer Organisation Delegate;
Ms Kezia Purick Industry Organisation Delegate;
The Hon. Denis Burke MLA NT Legislative Assembly Delegate;
The Right Worshipful the Lord Mayor George Brown Local Government Delegate.

A.2.1.3. Ex-Officio

Mr Pryce Dale Round Table of Young Territorians Delegate;
Ms Catherine Wauchope Delegate;
Women's Advisory Council Delegate Ms Diane McEwan
APPENDIX 3
ADDENDUM TO DRAFT CONSTITUTION: A BILL OF RIGHTS?

A.3.1.1 Elements of the Bill of Rights offered

Last-minute amendments to Draft Constitution
Addendum to the Final Draft Northern Territory Constitution
OPTIONS FOR DEALING WITH RIGHTS

'The draft Constitution to which this Addendum is attached contains a limited number of specific proposals …, which summarises the rights already contained in the draft Northern Territory Constitution, that are relevant to matters that could be included in a "Bill of Rights" (or similar document, however called) if one was to be inserted into that draft Constitution.

The Committee has not, however, recommended the inclusion of a comprehensive set of "rights" in that draft Northern Territory Constitution.

As to any remaining "rights"-type matters not so included in the draft Constitution, the Committee felt that it was sufficient to bring this subject to the attention of Honourable members of the Legislative Assembly and other readers, in the manner contained in the Addendum, listing the options. For this purpose, the Addendum needed to be read in conjunction with the Committee's Discussion Paper No. 8 entitled "A Northern Territory Bill of Rights" of March 1995.

The Committee notes that there are several alternate views as to how these remaining matters could be addressed. Traditionally, these matters have often been incorporated in constitutional provisions at the national level, setting out the rights in question. A second method can be through incorporation in ordinary national legislation rather than in legal provisions (constitutional or otherwise) at a State or Territory level. A third alternative is by ordinary State or Territory legislation. The options are listed more fully below. It does not necessarily follow that these matters must be dealt with in the State or territory constitutions or even in organic laws (if any) of a State or territory.
The *Sessional Committee* does not have a unanimous view on whether all or any of these remaining matters should be included in the draft Northern Territory Constitution.

The purpose of this Addendum is to set out in summary form those rights dealt with in the Commonwealth Constitution, those rights already dealt with in national legislation and in international treaties and conventions to which Australia is a party and which have been implemented by national legislation, those rights already included in the Committee's draft Northern Territory Constitution, and then to list the options for dealing with any remaining rights. This approach reflects the fact that the Northern Territory is a part of the Australian constitutional system (even though not yet a State) and that it and its citizens have (or at least will have upon any grant of Statehood), the benefit of certain guarantees in the Commonwealth Constitution, as well as relevant protections provided by national legislation and by treaties and conventions (to the extent that they are implemented in Australian law).

**2. Relevant Rights Provisions already in the Commonwealth Constitution**

(i) Express Rights-These are of a fairly limited nature in the Commonwealth Constitution, as that Constitution does not contain a comprehensive "Bill of Rights". They include:

(a) no compulsory acquisition of property otherwise than on just terms; Section 51(xxxi) of the Commonwealth Constitution prevents the passing of valid laws by the Commonwealth Parliament for the acquisition of property from any State or person unless the acquisition is on just terms. This only applies to a compulsory acquisition under Commonwealth law, not under State law, nor a self-governing territory law. The guarantee may not apply in territories at all.

A similar statutory guarantee in section 50(1) of the *Northern Territory (Self-Government) Act* 1978, preventing the Legislative Assembly of the Northern Territory from legislating for the acquisition of property otherwise than on just terms, will presumably disappear if that Act is repealed and replaced by the draft Northern Territory Constitution. See however, the proposal in section 3.1(3) of the draft Northern Territory Constitution to incorporate a similar provision to that in section 50(1).
(b) trial by jury for indictable offences; Section 80 of the Commonwealth Constitution provides that the trial of indictable offences against a law of the Commonwealth shall be by jury in the State where the offence was committed. This does not apply to non-indictable offences, nor to any offences under State and self-governing territory law. The section may not operate in territories at all.

(c) absolute freedom of movement between States; Section 92 of the Commonwealth Constitution guarantees absolute freedom of intercourse between States. It has no application to movement occurring solely within a State or within a Territory, nor to movement between a State and a Territory. It does, however, prevent the Commonwealth or a State from infringing the right of free movement between States except on clearly justifiable grounds.

A similar statutory guarantee to section 92 found in section 49 of the Northern Territory (Self-Government) Act 1978, applicable between the Northern Territory and a State, will presumably disappear if that Act is repealed and replaced by the draft Northern Territory Constitution. Section 92 of the Commonwealth Constitution would fill that gap if the Northern Territory became a new State contemporaneously with the commencement of that new Northern Territory Constitution, but otherwise there would be a gap which may have to be filled by Commonwealth legislation.

(d) freedom of religion; Section 116 of the Commonwealth Constitution prevents the Commonwealth Parliament from legislating to establish a religion, to impose any religious observance and to prohibit the free exercise of religion, and the Commonwealth cannot require a religious test for any office or public trust under the Commonwealth. However, the section does not control the actions of States and State Parliaments and possibly not Territories and self-governing Territory legislatures. The section has so far been interpreted narrowly by the High Court. There is no general legal right of religious freedom in Australia, even though such freedom is widely accepted in practice.

See, however, the proposal in section 8.1 (1) (c) of the draft Northern Territory Constitution to prevent the unreasonable denial in the Northern Territory of the right to manifest a person's religion or belief in worship, ceremony, observance, practice or teaching.
(e) protection against disability or discrimination based on State residence; Section 117 of the Commonwealth Constitution provides that a resident in one State is not to be subject in any other State to any disability or discrimination not equally applicable to that person if he or she was a resident in that other State. The section imposes a limit on both the Commonwealth and on States, but it must be a disability or discrimination between States and referable to State residence. It may not apply in territories at all. It would apply to the Northern Territory if it became a new State under its new Constitution.

(f) certain democratic rights; The Commonwealth Constitution contains some provisions designed to guarantee the democratic nature of the national Parliamentary system of government. Thus both Houses of the national Parliament must be directly chosen by the Australian people (sections 7 and 24), with each elector having one vote in elections for each House (sections 8 and 30) and a guarantee of regular elections (sections 13 and 28). The House of Representatives electoral divisions for each of the States must be based on a population quota (section 24). Persons having the right to vote in State elections are guaranteed the right to vote in national elections (section 41), although the High Court has given this a narrow interpretation.

These democratic guarantees form the basis of the system of representative government, but only apply at the national level, not at the State and Territory levels in respect of their legislatures. However, see below as to implied constitutional rights and see also the provisions of the draft Northern Territory Constitution establishing the democratic, representative nature of the new Northern Territory Parliament.

(g) an independent federal judiciary; The Commonwealth Constitution in Chapter III deals with the federal judiciary, comprising the High Court of Australia and other courts established by the national Parliament (section 71). It guarantees the tenure of judges of those federal courts up to 70 years of age, such that they can only be removed from office before that age by an address in both Houses of national Parliament on the grounds of proved misbehaviour or incapacity. Their remuneration is also guaranteed (section 72).

The Constitution now establishes the High Court as the final court of appeal for Australia from State and other federal courts (sections 73 and 74) and also
guarantees some of the most important aspects of the original jurisdiction of the High Court (section 75).

On the basis of these provisions, the High Court has adopted a doctrine of separation of powers at the federal level, requiring a constitutional division between federal judicial power and non-judicial power. This has not so far been extended to the State level.

However the Constitution does not establish the independence of State and Territory courts and their judges.

See, however, the proposals in Part 6 of the draft Northern Territory Constitution, designed to establish the Northern Territory Supreme Court and to give to its judges a similar measure of judicial independence. The full doctrine of separation of judicial power, if applicable, would be qualified by section 6.3 of the draft Constitution.

(h) provisions designed to maintain the Australian federal system. The Commonwealth of Australia Constitution Act recites that the people of Australia "... have agreed to unite in one indissoluble Federal Commonwealth ...". The Commonwealth Constitution itself establishes that federal system, comprising the Commonwealth and the States, original and new, and entrenches that federal system in a variety of ways. This has been further reinforced by the Australia Act 1986, giving the States direct links with the Crown in England. Section 51 of the Constitution contains a federal division of legislative power between the Commonwealth Parliament and the State Parliament, with the residue of legislative power to the States. Where a Commonwealth law is within constitutional power, it will prevail over an inconsistent State law (section 109), but otherwise State law prevails. State constitutions are protected (section 106).

There has been much debate about whether the federal system has been eroded by broad High Court interpretations of section 51 of the Constitution, giving very wide scope to Commonwealth legislative power and thereby eroding residual State legislative power. This has been particularly the case under the external affairs power (section 51 (xxix)). Once the Commonwealth executive Government has entered into an international agreement on any subject, the Commonwealth Parliament has the constitutional capacity under this head of power to legislate to implement that agreement in Australian law, thereby over-riding inconsistent State
law. From a State perspective the Commonwealth law cannot be altered and has the force of a constitutional limitation on State power.

The federal system has no direct applications to territories, including the Northern Territory under Self-government. The Commonwealth Parliament has an almost unlimited legislative power over Territories under section 122 of the Constitution. This would change if the Northern Territory became a new State within the federal system, putting the new State in much the same position as existing States (unless restricted by valid Commonwealth imposed terms and conditions on the new State under section 121 of the Constitution).

The draft Northern Territory Constitution has been prepared on the basis that the Northern Territory will, either contemporaneously with the coming into effect of that new Constitution, or at some later point in time, be granted Statehood within the Australian federal system on the basis of that new Constitution. See in particular the last Preamble to that draft Northern Territory Constitution and the reference to the Commonwealth Constitution and the Australia Acts in section 2.2 (a) of that draft Constitution.

[Additional Note]

If a national "Bill of Rights" was to be adopted, whether in the Commonwealth Constitution or in Commonwealth legislation, this would almost certainly have the effect of either extending, limiting or otherwise varying any Northern Territory constitutional rights provisions. Such a national "Bill of Rights" could be expected to directly impinge on the Northern Territory in some way.

In addition, it is of course possible that the Commonwealth could seek to impose other human rights provisions on the Northern Territory as a condition of its further constitutional advancement, including by way of a term or condition under section 121 of the Commonwealth Constitution upon any grant of Statehood.

(ii) **Implied Constitutional Protections**

The evolution of implied constitutional protections is a subject of some controversy as a result of some recent High Court decisions. The scope of these protections has yet to be fully enunciated by the Court. In reality there are very few identified constitution protections that have been implied in this manner.
The main implied constitutional right clearly enunciated by a majority of the High Court to date is the implied freedom of communication in political matters. This right arose out of a decision of the High Court in 1992, involving a challenge to the validity of Commonwealth legislation seeking to restrict political election advertising in the lead up to Commonwealth, State and Territory elections, with certain limited free time being required to be given to political parties on the electronic media. The *Australian Capital Television* case, High Court, 1992. The majority of the High Court took the view that in a representative democracy such as Australia under its Constitution,(See Item 2(i)(f) above) the people must have a constitutional right to freedom of communication in political matters, otherwise it would not be possible for those democratic ideals to be put into practice. This, the High Court said, was necessarily implied in the Commonwealth Constitution, even though not expressly stated in that document. This comes close to a guarantee of freedom of speech based on the views of some of the Justices of the High Court. It apparently applies at both Commonwealth and State levels and may also apply in and to territories.

The High Court has yet to fully explore whether there are other implied constitutional rights relating to the legal system and due process, based on the separation of powers doctrine or on some doctrine of equality before or under the law, or the equal protection of the law. To date, other than as referred to in (g) above, the implied constitutional protections of this nature recognised in the Court's decisions have been limited.

There is a well established implied federal principle that the Commonwealth may not act in a manner that prejudices the continued existence of the States nor discriminates against any of them.

**13. Relevant Commonwealth Legislation**

There are a number of Commonwealth Acts which contain human rights provisions and which, from a State or Territory perspective, have a constitutionally entrenched force which cannot be altered by State or Territory laws. These include:

(a) *Human Rights and Equal Opportunity Commission Act* 1986. The Act schedules the *International Covenant on Civil and Political Rights* 1966 (which contains comprehensive individual human rights provisions) plus several other international human rights instruments. The *UN Declaration on the Elimination of all Forms of Intolerance and Discrimination* based on Religion or Belief and the *Convention on the Rights of the Child* have since
been added to these international instruments by declaration under section 47 of this Act. The Act contains a complicated process whereby people who consider their rights have been infringed under any of these international instruments may lodge a complaint with the relevant national body. That body then investigates the matter, may arrange for mediation and then a report may be made. If the matter cannot be resolved by agreement between the parties, recommendations are made that can only be enforced through Federal Court orders. However, it is not possible for the person aggrieved to directly enforce any of these international instruments by court action taken in the Australian courts without first complying with this complicated mechanism in the Act.

*The Human Rights & Equal Opportunity Commission Act* is expressed to bind the Commonwealth and hence its instrumentalities and employees, but not the States and the Northern Territory. An exception to this is in relation to equal opportunity in employment under Part II Division 4, which does bind the States and the Northern Territory. Other than this the States and the Northern Territory cannot be subject to enforcement action under the Act except in limited circumstances where they are involved in a joint project with the Commonwealth.

It is to be noted that under the *Optional Protocol to the International Covenant*, to which Australia is a party, complainants in Australia have a remedy of last resort to the Human Rights Committee in Geneva for any alleged breach of the Covenant's provisions.

It is also to be noted that a number of matters dealt with in the International Covenant are also dealt with under other Commonwealth legislation; for example, race discrimination is dealt with in *the Racial Discrimination Act* in a manner binding on the States and Northern Territory.

(b) *Racial Discrimination Act* 1975 and *Racial Hatred Act* 1995. These Acts outlaw a variety of conduct of a racial nature. The Acts are binding on the Commonwealth, States and Territories and allow for Federal Court orders for enforcement.

(c) *Sex Discrimination Act* 1984 and *the Affirmative Action (Equal Opportunity for Women)* Act 1986. The *Sex Discrimination Act* outlaws a variety of conduct involving discrimination on the basis of sex, and allows for enforcement by Federal Court orders. The Act is primarily directed at
discrimination based on sex by the Commonwealth, its instrumentalities and employees, but extends to discrimination by non-government persons and bodies to the extent of Commonwealth constitutional power (including in the case of discrimination against women under the Sex Discrimination Convention and discrimination by foreign, financial and trading corporations), and in limited circumstances by the Self-governing Northern Territory, for example in the course of trade and commerce or as part of a Commonwealth program. The provisions as to the application of the Act are complicated.

A. The Affirmative Action (Equal Employment Opportunity for Women) Act is primarily directed at private employers to the extent that is within Commonwealth constitutional power.

(d) Other statutes such as the Freedom of Information Act 1982, the Privacy Act 1988 and the Disability Discrimination Act 1992.

The Freedom of Information Act and the Privacy Act both are directed at the Commonwealth and its instrumentalities, not the States and the Northern Territory.

The Disability Discrimination Act utilises the Commonwealth's constitutional power to prevent government and non-government persons and bodies from discriminating against others on the basis of disability in various fields. It is expressed to bind the States and Northern Territory and applies to them to the extent of the constitutional power of the Commonwealth, with some additional application to the Northern Territory, for example, in the course of trade and commerce. The provisions as to the application of this Act are complicated.

(e) Various Commonwealth Acts on Aboriginal rights, including the Aboriginal Land Rights (Northern Territory) Act 1976, See Section 7.1 of the draft Northern Territory Constitution, facilitating the patriation of the Aboriginal Land Rights (Northern Territory) Act to the Northern Territory as a Northern Territory law, subject to constitutional guarantees of Aboriginal title to land. the Native Title Act 1993 and the Aboriginal & Torres Strait Islander Heritage Act 1984.

Note that the first of these Acts only applies to the Northern Territory, whereas the last two of these Acts apply Australia wide. From the point of view of the Northern
Territory, they have superior force to Northern Territory law and hence can be seen to have a constitutionally entrenched status.

(f) The Human Rights (Sexual Conduct) Act 1994, which protects sexual conduct between consenting adults in private from any invasion of privacy that is otherwise applicable by the effect of any Australian law. The Human Rights (Sexual Conduct) Act followed on from the decision of the Human Rights Committee in Geneva in the Toonen Case, in which the view was expressed that certain Tasmanian criminal laws on homosexuality were in breach of the privacy provisions of the International Covenant on Civil and Political Rights, to which Australia is a party. The Act is designed to override those Tasmanian laws, relying on the external affairs power in section 51(xxix) of the Constitution.

4. Relevant Treaties and Conventions to which Australia is a Party

The traditional legal rule inherited from England is that, generally speaking, international agreements creating international legal obligations on the part of nation-states that are parties to those agreements have no effect in their domestic law until implemented by domestic legislation. It is clear that the Commonwealth Parliament has the necessary constitutional power to implement such agreements to which Australia is a party under the external affairs power (section 51(xxix) of the Commonwealth Constitution). It has already so legislated to a limited extent. Reference should be made back to the Commonwealth Acts listed in Item 3 of this Addendum in this regard.

This leaves the question of the extent to which such international agreements can have some effect in domestic Australian law even without statutory implementation. In Teoh's case, (Minister for Immigration and Ethnic Affairs v Teoh (1995) a majority of the High Court held that ratification of such an agreement by Australia was a positive statement that Australia and its agencies will act in conformity with it, and that this can create a legitimate expectation which must be addressed by Australian decision makers and brought to the affected person's notice before the decision. It is to be noted that Government statements have been made both in the Commonwealth Parliament and in the Northern Territory Legislative Assembly, refuting the existence of any legitimate expectation of the kind mentioned in Teoh. The Commonwealth also proposes to legislate on the matter.
The rule in Teoh's case is in addition to the rule of interpretation that where the domestic law is ambiguous or uncertain, the courts will favour an interpretation that accords with Australia's international obligations under any international agreement. In principle it is possible in Australian law for an Australian parliament (including a State or self-governing Territory parliament), by sufficiently clear words, and including the Commonwealth Parliament under the external affairs power, to legislate inconsistently with the provisions of an international agreement to which Australia is a party. In the absence of legislation, consistent or otherwise, those international agreements have no effect in domestic Australian law. Thus the domestic human rights protections afforded by international agreements, even where Australia is a party, are fragile. In the absence of Australian legislation implementing these agreements, their value largely rests on international opinion and action (including in some instances the opinion of an international tribunal in Geneva deciding the international rights of the case).

5. Rights Already Contained in the Draft Northern Territory Constitution

The Sessional Committee’s draft Northern Territory Constitution already contains provisions of relevance, intended to be entrenched in that Constitution and directly enforceable in the courts by any person adversely affected. The provisions of relevance are:

(a) elements of representative democracy, such as direct elections to the new Parliament, equality of Territory electorates, secret ballot, wide qualifications of electors and candidates, regular general elections, etc. These are to a large extent now covered by the Northern Territory (Self-Government) Act, but this Act is proposed for repeal. The draft Constitution incorporates all of these;

(b) any constitutionally implied rights, if they also already apply in the Northern Territory, See Item 2(ii) of this Addendum above. They may, if the new Northern Territory Constitution is implemented, continue to apply in the Northern Territory and may even be enhanced by the provisions of that Constitution;

(c) provisions as to the independence of the Northern Territory Supreme Court Judges. See section 6.2 of the draft new Northern Territory Constitution. These provisions are not already covered by the Commonwealth Constitution or by other Commonwealth protections;
(d) Aboriginal rights in respect of land under the *Aboriginal Land Rights (Northern Territory) Act 1976* if it is patriated to the Northern Territory, Aboriginal sacred sites, Aboriginal self-determination, and recognition of Aboriginal customary law as a source of law in the Northern Territory. See sections 2.1.1, 7.1, 7.2, 7.3 and 11.2 of the draft new Northern Territory Constitution. All of these provisions have elements which would go beyond existing Commonwealth protections of Aboriginal rights and also of the common law;

(e) rights in respect of language, social, cultural and religious matters; See Part 8 of the draft new Northern Territory Constitution which deals with these matters, and applicable to all people in the Northern Territory;

(f) in addition, the Committee has more recently agreed to provide in the draft new Northern Territory Constitution that the power of the new Northern Territory Parliament in relation to the making of laws does not extend to the making of laws with respect of the acquisition of property otherwise than on just terms. See section 3.1(3) of the draft new Northern Territory Constitution. Compare section 51(xxix) of the Commonwealth Constitution and section 50(1) of the Northern Territory (Self-Government) Act 1978, discussed in Item 2(i)(a) of this Addendum.

6. Options for Dealing with Residual Rights not already Protected

There are a number of rights that are not already dealt with in the above-mentioned Commonwealth provisions or in the draft Northern Territory Constitution at all, or are dealt with in a different manner to that if there was a Bill of Rights, and which the Sessional Committee has identified in its Discussion Paper No. 8. See the Committee's Discussion Paper No. 8, "A Northern Territory Bill of Rights", March 1995. as potentially capable of being incorporated in the new Northern Territory Constitution. Whether they should be so incorporated is of course quite another matter, upon which the views of members of the Committee differ. These are set out in the Committee's Discussion Paper No. 8. Ibid, Item F, pp 28-46. The arguments for and against entrenching these additional rights in the Northern Territory Constitution are also set out in that Discussion Paper. *Ibid*, Item E, pp 21-27. It will be obvious from reading this Addendum that, to some extent at least, entrenchment of many of these additional rights in a new Northern Territory Constitution would result in some degree of overlap with the existing protections listed above.
The Sessional Committee wishes to point out again that there are other options that can be considered for dealing with these additional rights rather than entrenching them in a new Northern Territory Constitution in some form of an enforceable Bill of Rights. Options for consideration are set out in Discussion Paper No. 8. *Ibid*, Item G, pp 50-52. They include:

(a) reliance on national constitutional or legislative provisions supplementing the common law only, rather than on any additional Northern Territory legislation;

(b) the incorporation of these additional rights in ordinary Northern Territory legislation;

(c) the incorporation of these additional rights in the new category of organic laws;

(d) reference to these additional rights in an expanded Preamble to the new Northern Territory Constitution;

(e) the incorporation of these rights in the new Northern Territory Constitution, but not in a form that makes them directly enforceable; rather, in a form that is relevant to matters of statutory interpretation and public administration only;

(f) some form of reference to these rights for the purposes only of Parliamentary scrutiny of new proposals for Northern Territory legislation, and/or for the purposes of investigation by the Northern Territory Ombudsman into complaints as to Northern Territory administrative actions.

If none of these options are considered acceptable, there is always the option of maintaining the present *status quo*, reliance being placed on the existing protections mentioned above as well as on the common law and the capacity of the new Territory Parliament to legislate in the future where there is a perceived need.

The Sessional Committee makes no specific recommendation as to any of these options.
A.4.1.1. Abridged, edited extract of Draft Constitution as prepared by the Sessional Committee.

By no means does the following constitute the entirety of the Draft Constitution, for practical reasons. It is edited at the discretion of the Candidate to include perceived fundamental provisions, and to exclude non-vital provisions and, where possible, unnecessary (here) legalistic language. All Divisions are not listed in sequential order. All footnotes except the two footnotes at the end, have been excluded: footnotes explain the purpose of sections. Reader may see the entire Draft Constitution on the NT Government Website.

DRAFT CONSTITUTION OF THE NORTHERN TERRITORY -PREAMBLE

1. Before the proclamation of the Colony of New South Wales in 1788 and since time immemorial all or most of the geographical area of Australia that now constitutes the Northern Territory of Australia (the Northern Territory) was occupied by various groups of Aboriginal people under an orderly and mutually recognised system of governance and laws by which they lived and defined their relationships between each other, with the land and with their natural and spiritual environment;

2. In 1788, that part of Australia East of the 135th parallel of Longitude East was proclaimed a Colony of Great Britain as the Colony of New South Wales;

3. By Letters Patent of 1825, the boundaries of the Colony of New South Wales were extended to the 129th parallel of Longitude East, thus encompassing all of the area of the Northern Territory;

4. The Northern Territory remained a part of the Colony of New South Wales (except for that period in 1846 when it became, and while it remained, part of the Colony of North Australia) until 1863 when, by Letters Patent, it became a part of the Province of South Australia;

5. The Province of South Australia became a State of the Commonwealth on the proclamation of the Commonwealth of Australia in 1901 under the Commonwealth of Australia Constitution Act of the Imperial Parliament;

6. The Northern Territory Acceptance Act 1910 of the Commonwealth provided for the ratifying of an Agreement between the Commonwealth and the State of South Australia for the surrender of the Northern Territory by that State to, and its acceptance by, the Commonwealth;

7. By section 122 of the Constitution of the Commonwealth it is provided that the Parliament of the Commonwealth may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth;

8. The Parliament of the Commonwealth, by the Northern Territory (Administration) Act 1910, made provision for the government of the Northern Territory, and by the Northern Territory Supreme Court Act 1961 provided for its Supreme Court;
In 1978, by reason of the political and economic development of the Northern Territory, the Parliament of the Commonwealth, by the Northern Territory (Self-Government) Act 1978, conferred self-government on the Northern Territory and, for that purpose provided, among other things, for the establishment of separate political, representative and administrative institutions in the Northern Territory and gave the Northern Territory control over its own Treasury;

The self-government conferred on the Northern Territory by the Northern Territory (Self-Government) Act 1978 was a limited grant of legislative and executive powers, the Commonwealth retaining certain reserve powers and a power to disallow Northern Territory legislation. There was also retained in the Parliament of the Commonwealth a plenary grant of legislative powers in respect of the Northern Territory under section 122 of the Constitution of the Commonwealth, unlimited by subject matter;

In 1979 the Parliament of the Commonwealth enacted the Northern Territory Supreme Court (Repeal) Act 1979 and the Legislative Assembly of the Northern Territory enacted the Supreme Court Act;

A Committee of the Legislative Assembly of the Northern Territory on the Constitutional Development of the Northern Territory was established in 1985, and produced and tabled various papers and reports in the Legislative Assembly, including a draft constitution for the Northern Territory;

The Legislative Assembly of the Northern Territory, by the Constitutional Convention Act 199x, established a Convention comprising a broad representation of the community of the Northern Territory to receive and consider the recommendations of the Legislative Assembly on the establishing and form of a new constitution for the Northern Territory and, on the x day of xxx 199x that Convention, in accordance with that Act, ratified a draft of that constitution, in the following form, to be put to a referendum of the electors of the Northern Territory for approval;

On the approval of this Constitution at that referendum by a vote of more than the number of Northern Territory electors prescribed in legislation enacted by the Legislative Assembly of the Northern Territory, it is intended to submit the Constitution as so approved to the Commonwealth to be adopted as the Constitution of the Northern Territory and for the contemporaneous repeal of the Northern Territory (Self-Government) Act 1978 of the Commonwealth;

The people of the Northern Territory are concerned to preserve a harmonious, tolerant and united multicultural society, and to this end, it is desirable that no person should be unreasonably denied the right:

(a) to use his or her own language in communicating with others speaking or understanding the same language;
(b) to observe and practice his or her own social and cultural customs and traditions in common with others of the same tradition; and
(c) to manifest his or her own religion or belief in worship, ceremony, observance, practice or teaching, and that within the framework of such a society, the people of the Northern Territory recognise that the Aboriginal people of the Northern Territory are entitled, under and in accordance with this Constitution and the laws of the Northern Territory, to self-determination in the control of their daily affairs;

The people of the Northern Territory, voting at the referendum, have freely chosen to associate in accordance with this Constitution as free, diverse yet equal citizens and to be
governed under it in accordance with democratic principles, within the federal Commonwealth of Australia.

NOW THEREFORE it is declared that this is the Constitution of the Northern Territory.

2. LEGAL SYSTEM OF THE NORTHERN TERRITORY

Division 1. Laws of the Northern Territory

2.1 Laws

The laws of the Northern Territory consist of -

(a) this Constitution;
(b) the Organic Laws;
(c) the Acts of the Parliament;
(d) enactments, including subordinate legislative enactments, in force immediately before the commencement date and continued in force by this Constitution;
(e) laws made under or adopted by or under this Constitution or any of those laws, including subordinate legislative enactments;
(f) the common law; and
(g) other laws recognised as a source of law by this Constitution.

2.1.1 Aboriginal Customary Law

Aboriginal customary law, to the extent of its existence in the Northern Territory immediately before the commencement of this Constitution -

<table>
<thead>
<tr>
<th>Alternative 1</th>
<th>Alternative 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) shall be recognised as a source of law in the Northern Territory; and</td>
<td>(a) shall be recognised as a source of law in the Northern Territory;</td>
</tr>
<tr>
<td>(b) except where it is implemented and enforced as part of the common law or the practice of the courts, shall not be implemented or enforced by the Northern Territory, its institutions (including judicial institutions), instrumentalities, officers (including law enforcement officers), employees or agents except as expressly provided by or under an Organic Law or other Act.</td>
<td>(b) may be implemented or enforced in respect of any person, but only under and in accordance with that Aboriginal customary law where the person considers that he or she is bound by that law; and</td>
</tr>
<tr>
<td>(c) may also be implemented or enforced in so far as it is part of the common law or in accordance with the practice of the courts,</td>
<td>(c) but subject to paragraphs (b) and (c), shall not be implemented or enforced by the Northern Territory, its institutions (including judicial institutions), instrumentalities, officers (including law enforcement officers), employees or agents except as expressly provided by or under an Organic Law or other Act.</td>
</tr>
</tbody>
</table>
2.2 Constructions of Laws

All laws of the Northern Territory (other than this Constitution) shall be read and construed subject to -

(a) in any case - this Constitution, the Commonwealth of Australia Constitution Act including the Constitution of the Commonwealth and the Australia Acts 1986;

(b) in the case of -
   (i) Acts of the Parliament (other than Organic Laws); and
   (ii) laws of the Northern Territory in force immediately before the commencement date and continued in force by, this Constitution,

but not including an Organic Law, any subordinate legislative enactments made under such Acts or laws, the common law or Aboriginal customary law - any relevant Organic Laws;

(c) in the case of subordinate legislative enactments - the Organic Laws, the Acts of the Parliament and the laws by or under which they were enacted or made; and

(d) in the case of other laws of the Northern Territory - the laws mentioned in paragraphs (a), (b) and (c),

and so as not to exceed the authority to make them properly given, to the intent that where any such law would, but for this section, have been in excess of the authority so given, it shall nevertheless be a valid law to the extent to which it is not in excess of that authority.

2.3 Organic Laws

(1) For the purposes of this Constitution and any other law of the Northern Territory, an Organic Law is a law of the Northern Territory—
   (a) declared by this Constitution to be an Organic Law; or
   (b) an Act of Parliament which itself expressly states that it is an Organic Law.

(2) A Bill for an Act of Parliament that is expressly stated to be an Organic Law shall not when enacted take effect as an Organic Law unless -
   (a) subject to subsection (3), it was supported on its second and third readings by a division in each case in accordance with the Standing Orders with an affirmative vote equal to or more than a [Alternative 1: two-thirds - Alternative 2: three-quarters] majority of the total number of members of the Parliament at the time of those respective divisions, and whether or not the Bill was amended in Committee;
   (b) there was not less than 2 calendar months between voting on its second reading and voting on its third reading;
   (c) if the Bill was amended in Committee other than by way of minor drafting or consequential amendments, there was not less than 2 calendar months between voting on the last amendment to the Bill and voting on its third reading as amended; and
   (d) there was an opportunity at its second reading stage of the Bill for debate on its merits.

(3) The Parliament may in a Bill for an Act that expressly states that the Act is an Organic Law, increase (but not decrease) the percentage of affirmative votes specified in subsection (2) in respect of an Organic Law or class of Organic Laws, and when enacted in accordance with this section it has effect accordingly.
The Speaker shall present to the Governor for assent a proposed Organic Law passed in accordance with this section, and on doing so must certify to the Governor that the requirements of this section have been complied with.

The certificate referred to in subsection (4) shall state -

(a) the dates on which the votes on the second and third readings of the Bill were taken;
(b) the date on which the vote in Committee on the last amendment to the Bill (if any, and other than minor drafting or consequential amendments) was taken;
(c) the date or dates on which opportunity for debate on the merits of the Bill at its second reading occurred;
(d) in relation to the vote on the second and third readings -
   (i) the total number of members of the Parliament at the time; and
   (ii) the respective numbers of members of the Parliament voting for and against the proposal,

and is, in the absence of proof to the contrary, conclusive evidence of the matters so stated.

Nothing in this section prevents an Organic Law from -

(a) making any provision that might be made by or under an Act of the Parliament and which is expressly declared by that Organic Law as not being subject to the Organic Law procedures in this Constitution; or
(b) requiring any provision to be made by an Act of the Parliament that might otherwise be so made,

but any such provision may be altered by the same majority that is required for any other Act of the Parliament.

Division 2. ALTERING THE CONSTITUTION AND ORGANIC LAWS

2.4 Constitutional Amendment

(1) This Constitution may be amended in accordance with this section, and not otherwise.
(2) Subject to section 2.6(4), an amendment to this Constitution shall not take effect unless a Bill for an Act has first been passed by the Parliament, setting out the precise terms of the proposed amendment and providing for the question of its adoption to be submitted to a referendum of electors of the Northern Territory on that proposed amendment.
(3) That Bill shall not be taken to have been passed unless -

(a) there was not less than 2 calendar months between voting on its second reading and voting on its third reading;
(b) if the Bill was amended in Committee other than by way of minor drafting or consequential amendments, there was not less than 2 calendar months between voting on the last amendment to the Bill and voting on its third reading as amended; and
(c) there was an opportunity at its second reading stage of the Bill for debate on its merits.

The Speaker shall present to the Governor for assent a proposed law passed in accordance with this section, and on doing so must certify to the Governor that the requirements of subsection (3) have been complied with.

The certificate referred to in subsection (4) shall state -
(a) the dates on which the votes on the second and third readings of the Bill were taken;
(b) the date on which the vote in Committee on the last amendment to the Bill (if any, and other than minor drafting or consequential amendments) was taken; and
(c) the date or dates on which opportunity for debate on the merits of the Bill at its second reading stage occurred,

and is, in the absence of proof to the contrary, conclusive evidence of the matters so stated.

(6) On the assent by the Governor to the proposed law, the question of the adoption of the proposed amendment to the Constitution shall, not earlier than 3 or later than 12 calendar months after that date of assent, be submitted to a referendum of electors of the Northern Territory qualified to vote at an election of the members of the Parliament.

(7) Except as provided in subsection (8) a referendum question shall not be taken to be approved unless it is carried at the referendum to which it is put by valid affirmative votes of not less than 50% of the total number of valid votes cast at the referendum.

(8) In respect of those parts of this Constitution specified in Column 1 of Schedule 1 the percentages of valid affirmative votes required to carry a referendum to amend those parts shall be the percentage shown in Column 2 of that Schedule opposite those parts.

(9) The Speaker shall present to the Governor a certificate as to the results of a referendum held in accordance with this section, and on doing so must certify to the Governor that the requirements of this section as to the referendum have been complied with.

(10) The certificate referred to in subsection (9) shall state -
(a) the date or dates on or over which the referendum was held;
(b) the number of valid votes cast at the referendum; and
(c) the numbers of valid affirmative votes cast at the referendum,

and is, in the absence of proof to the contrary, conclusive evidence of the matters so stated.

(11) If a referendum question is carried in accordance with this section, the amendment shall be effective on the date on which the Speaker presents the certificate to the Governor under subsection (9), or on such other date as specified in the amendment.

2.5 Amendment of Organic Laws

(1) An Organic Law may be amended either by an amendment of this Constitution under section 2.4 or by a law enacted in accordance with this section, and not otherwise.

(2) Subject to sections 2.3(6) and 2.6(4), a Bill for an Act for the amendment, in whole or part, of an Organic Law shall not take effect as an amendment of that Organic Law unless it is enacted by the Parliament in the same manner as required by section 2.3 for the enactment of an Act of the Parliament which itself expressly states that it is an Organic Law and which would, upon assent, be an Organic Law.

2.6 Standing Committee on the Constitution and Organic Laws

(1) The Parliament shall appoint a Standing Committee to be known as the Standing Committee on the Constitution and Organic Laws.

(2) The powers, functions, privileges and procedures of the Committee shall be as provided in the Standing Orders.

(3) The Committee shall be composed of such members of the Parliament and other persons, holding office on such terms and conditions, as are specified in a resolution of the Parliament made in accordance with the Standing Orders.
A Bill for an Act to amend this Constitution or to amend an Organic Law shall not proceed to its second reading in the Parliament unless the proposal contained in the Bill has first been considered by the Committee and the Committee has reported on the proposal to the Parliament.

The Committee may receive and consider a petition from persons in the Northern Territory requesting an amendment of this Constitution or of an Organic Law, and the Committee may, at any stage of its consideration, report to the Parliament on the requested amendment.

The Committee shall consider a reference from the Parliament by way of a resolution of Parliament, following the introduction of the Bill into the Parliament proposing an amendment of this Constitution or of an Organic Law or on any other matter, and the Committee shall report to the Parliament on the reference as soon as practicable after considering it.

The Committee shall receive from persons in the Northern Territory, and consider, a petition requesting amendment of this Constitution or of an Organic Law if the petition is signed by at least 10% of the numbers of electors qualified to vote at an election of members of the Parliament and on the roll for such an election at the time it is presented to the Committee, and the Committee shall report to the Parliament on the requested amendment as soon as practicable after considering it.

The Committee shall not be restricted to the subject matter of any petition or any resolution in making its report to the Parliament, but may consider any other options and all matters incidental to or consequential upon that subject matter or those options.

Where the Committee, in its report, makes recommendations to the Parliament for the amendment of the Constitution, and the recommended amendment deals with 2 or more separate and distinct subject matters, then the Committee shall also recommend that the question of the adoption of the proposed amendment at a subsequent referendum shall be dealt with by way of separate questions for each such separate and distinct subject matter.

The reports of the Committee shall be tabled in the Parliament.

An Act shall prescribe the procedures for a petition under subsections (5) and (7) and the method for verification of the signatures to such a petition.

3. PARLIAMENT OF THE NORTHERN TERRITORY

Division 1. LEGISLATIVE POWER

3.1 Legislative power of the Northern Territory

(1) The legislative power of the Northern Territory is vested in the Parliament.

(2) Subject to this Constitution, the Parliament has power, with the assent of the Governor as provided by this Constitution, to make laws for the peace, order and good government of the Northern Territory.

(3) The power of the Parliament conferred by this Constitution in relation to the making of laws does not extend to the making of laws with respect to the acquisition of property otherwise than on just terms.

3.2 Assent to proposed Laws

(1) Every proposed law passed by the Parliament shall be presented to the Governor for assent.

(2) On the presentation of a proposed law to the Governor for assent, the Governor shall, subject to this section, declare that he or she -
(a) assents to the proposed law; or  
(b) withholds assent to the proposed law.

(3) The Governor may return the proposed law to the Parliament with amendments that he or she recommends.

(4) The Parliament shall consider the amendments recommended by the Governor and the proposed law, with those or any other amendments, or without amendments, may be again presented to the Governor for assent, and subsection (2) applies accordingly.

3.3 Proposal of money votes

An Act, vote, resolution or question, the effect of which is to dispose of or charge any revenues, loans or other moneys received by or on behalf of the Northern Territory, shall not be proposed in the Parliament unless the purpose for which such revenues, loans or other moneys are to be disposed of or charged by reason of the Act, vote, resolution or question has, in the same session, been recommended by message of the Governor to the Parliament.

3.4 Appropriation and taxation laws not to deal with subjects other than those for which appropriation made or taxation imposed

(1) A law which appropriates or provides for the appropriation of revenue or moneys for the ordinary annual services of the government of the Northern Territory shall deal only with such appropriation.

(2) Laws imposing taxation and laws which appropriate or provide for the appropriation of revenue or moneys for purposes other than the ordinary annual services of the government of the Northern Territory shall deal with no matter other than the imposition and collection of that taxation and the purposes in relation to which it is imposed, or the subject in relation to which the revenue or moneys are to be appropriated, as the case may be.

3.5 Powers, Privileges and Immunities of Parliament

The power of the Parliament includes the power to make laws -

(a) declaring the powers, privileges and immunities of the Parliament and of its members, committees and officers; and

(b) providing for the manner in which powers, privileges and immunities so declared may be exercised or upheld.

Division 2. CONSTITUTION AND MEMBERSHIP OF PARLIAMENT

3.6 Parliament

(1) There shall be a Parliament of the Northern Territory which shall consist of a single house.

(2) The Parliament, subject to this Constitution, shall be constituted by such numbers of members as prescribed by an Act.

<table>
<thead>
<tr>
<th>(3) Subject to this Constitution, the members of the Parliament shall be directly elected as prescribed by an Act. Alternative 1 - Single Member Electorates</th>
<th>Alternative 2 Single or Multi-Member Electorates</th>
<th>Alternative 3 Equal Multi-Member Electorates</th>
</tr>
</thead>
<tbody>
<tr>
<td>(4) For the purposes of the election of members of the Parliament, the Northern Territory</td>
<td>(4) For the purpose of the election of members of the Parliament, the Northern Territory</td>
<td>(4) For the purpose of the election of members of the Parliament, the Northern Territory</td>
</tr>
<tr>
<td>shall be divided into as many electoral divisions as there are members to be elected.</td>
<td>Territory shall be divided into single or multi-member electoral divisions, (or a combination of both) by or under an Act.</td>
<td>Territory shall be divided into electoral divisions, each division to return 2 or more members, but the same number as each other division, by or under an Act.</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>(5) For the purposes of subsection (4), an electoral division shall contain a number of electors which is, as far as practicable and having regard to such factors as are prescribed by an Act, equal to the number in each other electoral division.</td>
<td>(5) For the purposes of subsection (4), an electoral division shall contain a number of electors which, when divided by the number of members to be elected for the electoral division, is, as far as practicable and having regard to such factors as are prescribed by an Act, equal to the number so calculated in each other electoral division.</td>
<td>(5) For the purposes of subsection (4), an electoral division shall contain a number of electors which is, as far as practicable and having regard to such factors as are prescribed by an Act, equal to the number in each other electoral division.</td>
</tr>
<tr>
<td>(6) A member of the Parliament shall, before taking his or her seat, make and subscribe an oath or affirmation of allegiance in the form in Schedule 2 and also an oath or affirmation of office in the form in Schedule 3.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(7) An oath or affirmation under subsection (6) shall be made before the Governor or a person authorised by the Governor to administer the oath or affirmation.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.7 Qualifications of Electors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All persons who are, under a law of the Commonwealth, qualified to vote at an election of a member of the House of Representatives of the Parliament of the Commonwealth for the Northern Territory and who have resided in the Northern Territory for not less than 3 calendar months immediately before the polling day for an election of a member or members of the Parliament of the Northern Territory are qualified to vote at that election.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.8 Voting at Elections</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Each person qualified to vote at an election of members of the Parliament is entitled to vote only once and the method of voting shall, as far as practicable, be by secret ballot as prescribed by an Act.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.9 Writs for Elections</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Writs for the election of members of the Parliament shall be issued by the Governor on the advice of the Executive Council or the Premier.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.11 Election Procedures</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subject to this Constitution, a general election of members of Parliament shall be held on a date determined by the Governor on the advice of the Executive Council or the Premier.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alternative 1 No Fixed Term</td>
<td>Alternative 2 Three Year Partial Fixed Term</td>
<td>Alternative 3 Fixed Four Year Term</td>
</tr>
<tr>
<td>(2) The period from the date</td>
<td>(2) The period from the date of</td>
<td>(2) Subject to subsection (4),</td>
</tr>
<tr>
<td>Alternative 1</td>
<td>Alternative 2</td>
<td>Alternative 3</td>
</tr>
<tr>
<td>--------------</td>
<td>--------------</td>
<td>--------------</td>
</tr>
<tr>
<td><strong>No Fixed Term</strong></td>
<td><strong>Three Year Partial Fixed Term</strong></td>
<td><strong>Fixed Four Year Term</strong></td>
</tr>
<tr>
<td>of a general election of members of the Parliament to the date of the next succeeding general election shall be not more than 4 Years.</td>
<td>a general election of members of the Parliament to the date of the next succeeding general election shall be not more than 4 Years.</td>
<td>the Parliament, unless sooner dissolved in accordance with this Constitution, shall expire on the expiration of the Friday immediately before the fourth anniversary of the main polling day for the last general election of members of the Parliament, and the general election of members of the new Parliament shall be held on the first Saturday after that Friday.</td>
</tr>
</tbody>
</table>

(3) Subject to this section, the Governor shall not dissolve the Parliament except on the advice of the Executive Council or the Premier.

(3) Subject to this section, the Governor shall not dissolve the Parliament except on the advice of the Executive Council or the Premier.

(3) Except as provided in subsections (4) and (5), the Governor shall not dissolve the Parliament.

(4) If -

(a) the Premier resigns or vacates his or her office or a vote of no confidence in the government of the Northern Territory is carried in the Parliament by a majority of its members present and voting; and

(b) the Governor has not been able, within such time as he or she considers reasonable, to appoint a member of the Parliament who the Governor considers commands or is likely to command the general support of a majority of members of the Parliament, to form a government, the Governor may dissolve the Parliament and may do so without the need to refer the matter to, or act on the advice of, the Executive Council or the Premier.

(4) Except as provided in subsection (5), the Governor shall not dissolve the Parliament within a period of 3 years from the commencement of the first meeting of the Parliament after a general election of members of the Parliament.

(4) The Governor may dissolve Parliament within 2 months before it is due to expire under subsection (2) where-

(a) the general election would otherwise be required to be held during the same period as a Commonwealth election directly affecting the Northern Territory;

(b) the Parliament would otherwise expire on a public holiday; or

(c) where the Governor, in his
| Alternative 1  
No Fixed Term | Alternative 2  
Three Year Partial Fixed Term | Alternative 3  
Fixed Four Year Term |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>or her absolute discretion, considers that there are exceptional circumstances for bringing forward the general election, and the general election shall be held not later than the Saturday referred to in subsection (2).</td>
<td>(5) No Provision</td>
<td></td>
</tr>
</tbody>
</table>
| (5) If -  
(a) the Premier resigns or vacates his or her office or a vote of no confidence in the government of the Northern Territory is carried in the Parliament by a majority of its members present and voting; and  
(b) the Governor has not been able, within such time as he or she considers reasonable, to appoint a member of the Parliament who the Governor considers commands or is likely to command the general support of a majority of members of the Parliament, to form a government, the Governor may dissolve the Parliament and may do so without the need to refer the matter to, or act on the advice of, the Executive Council or the Premier. | (5) If -  
(a) the Premier resigns or vacates his or her office or a vote of no confidence in the government of the Northern Territory is carried in the Parliament by a majority of its members present and voting; and  
(b) the Governor has not been able, within such time as he or she considers reasonable, to appoint a member of the Parliament who the Governor considers commands or is likely to command the general support of a majority of members of the Parliament, to form a government, the Governor may dissolve the Parliament and may do so without the need to refer the matter to, or act on the advice of, the Executive Council or the Premier. |
| (6) No provision. | (6) No provision |
| (6) A general election shall be held after the dissolution of Parliament under subsection (5) as soon as the Governor considers it to be practicable, but in any case not later than the Saturday referred to in subsection (2). |
3. PARLIAMENT OF THE NORTHERN TERRITORY

Division 2. Constitution and Membership of Parliament

3.10 Term of Office of Member
Subject to this Constitution, the term of office of a member of the Parliament commences on the date of his or her election and ends immediately before the date of the next general election of members of the Parliament.

3. PARLIAMENT OF THE NORTHERN TERRITORY

Division 2. Constitution and Membership of Parliament

3.12 Resignation of Members of Parliament
A member of the Parliament may resign office in writing signed by the member and delivered to the Speaker or, if there is no Speaker or the Speaker is absent from the Northern Territory, to the Governor, and on the receipt of the resignation by the Speaker or the Governor, as the case may be, the office of the member becomes vacant.

3.13 Filling of Casual Vacancy

<table>
<thead>
<tr>
<th>Alternative 1</th>
<th>Alternative 2</th>
<th>Alternative 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Member Electoral Division</td>
<td>Single/Multi Member Electorates</td>
<td>Equal Multi Member Electorates</td>
</tr>
<tr>
<td>Where a casual vacancy in the office of a member of the Parliament occurs earlier than 3 years and 6 months after the first meeting of the Parliament following the last general election, then, within 6 months after the vacancy occurring, unless writs for a general election of members of the Parliament are sooner issued, an election shall be held in the electoral division in respect of which the vacancy occurred, for the purpose of filling the vacant office for the remainder of the term of office of the member who last held the office.</td>
<td>Where a casual vacancy in the office of a member of the Parliament occurs earlier than 3 years and 6 months after the first meeting of the Parliament following the last general election, then, within 6 months after the vacancy occurring, unless writs for a general election of members of the Parliament are sooner issued, a replacement member shall be elected in the manner prescribed by an Act for the purpose of filling the vacant office for the remainder of the term of office of the member who last held the office.</td>
<td>Where a casual vacancy in the office of a member of the Parliament occurs earlier than 3 years and 6 months after the first meeting of the Parliament following the last general election, then, within 6 months after the vacancy occurring, unless writs for a general election of members of the Parliament are sooner issued, a replacement member shall be elected in the manner prescribed by an Act for the purpose of filling the vacant office for the remainder of the term of office of the member who last held the office.</td>
</tr>
</tbody>
</table>

3.14 Qualifications for Election
Subject to this Constitution, a person is qualified to be a candidate for election as a member of the Parliament if, at the date of his or her nomination, the person -

(a) is an Australian citizen;
(b) has attained the age of 18 years;
(c) is entitled, or qualified to become entitled, to vote at elections of members of the Parliament; and
(d) has been resident in the Northern Territory for not less than 6 calendar months.
3.15 Disqualifications for Membership of Parliament

(1) A person is not qualified to be a candidate for election as a member of the Parliament if, at the date of his or her nomination -
   (a) the person -
      (i) is a member of either house of the federal Parliament or of a State or territory legislature (by whatever name called) of another State or territory of the Commonwealth;
      (ii) is the Governor-General, Administrator or head of government of the Commonwealth or the Governor, Administrator or head of government of a State or territory of the Commonwealth; or
      (iii) holds office, of whatever tenure, as a judge under a law of the Commonwealth or of a State or territory of the Commonwealth;
   (b) the person -
      (i) holds an office or appointment, prescribed for the purpose of this section by an Act, under a law of the Commonwealth or a State or territory of the Commonwealth; or
      (ii) not being the holder of such an office or appointment, is employed by the Commonwealth, by a State or territory of the Commonwealth or by a body corporate established for a public purpose by such a law, and prescribed for the purposes of this section by an Act, and he or she is entitled to any remuneration or allowance (other than reimbursement of expenses reasonably incurred) in respect of that employment;
   (c) the person is an undischarged bankrupt; or
   (d) the person has been convicted and is under sentence of imprisonment (including while on parole or under a suspended sentence) for one year or longer for an offence against a law of the Commonwealth or of a State or territory of the Commonwealth.

(2) A person elected as a member of the Parliament who, immediately before being so elected -
   (a) held an office or appointment (other than an office or appointment prescribed for the purposes of this section by an Act) under a law of the Northern Territory; or
   (b) not being the holder of an office or appointment under such a law, was employed by the Northern Territory or by a body corporate established for a public purpose by a law of the Northern Territory (other than employment prescribed for the purposes of this section by an Act),
and who was entitled to any remuneration or allowance (other than reimbursement of expenses reasonably incurred) in respect of that office, appointment or employment, ceases, by force of this subsection, to hold such office, appointment or employment on being so elected.

(3) A member of the Parliament vacates office if he or she -
   (a) becomes a person to whom any of the paragraphs of subsection (1) applies;
   (b) ceases to be an Australian citizen;
   (c) without the permission of the Parliament, fails to attend the Parliament for 7 consecutive sitting days of the Parliament;
   (d) ceases to be entitled, or qualified to become entitled, to vote at elections of members of the Parliament; or
(e) takes or agrees to take, directly or indirectly, any remuneration, allowance or honorarium for services rendered in the Parliament, otherwise than in accordance (unless the member honestly believes it to be in accordance) with an Act that provides for remuneration and allowances to be paid to persons in respect of their services as members of the Parliament, members of the Executive Council or Ministers of the Northern Territory.

Division 3. PROCEDURE OF PARLIAMENT

3.16 Sessions of Parliament
(1) Subject to this section, the Governor may, by notice in the Gazette, appoint such times for holding the sessions of the Parliament as he or she thinks fit and may also, from time to time, in like manner, prorogue the Parliament.

(2) At the written request of a majority of members of the Parliament, the Governor shall, by notice in the Gazette, appoint a time, being not later than 14 days after the day on which he or she receives the request, for holding a session of the Parliament.

(3) The first sittings of the Parliament shall be commenced within 6 months after the declaration of the polls after a general election of members of the Parliament and thereafter shall be held not later than 6 months after the last day of the previous sittings.

3.17 Quorum
(1) The quorum for a sitting of the Parliament is not less than one third of the number of members in the Parliament at the time.

(2) The Standing Orders shall make provision for the action to be taken in the event of a lack of or loss of a quorum at any time.

3.18 Speaker
(1) The Parliament shall, before proceeding to the dispatch of any other business, choose a member of the Parliament to be the Speaker of the Parliament and, as often as the office of Speaker becomes vacant, the Parliament shall again choose a member to be the Speaker.

(2) The Speaker continues to hold office until -
   (a) the Parliament first sits after a general election of members of the Parliament that takes place after he or she is chosen as Speaker under subsection (1);
   (b) he or she resigns office in writing signed by him or her and delivered to the Governor;
   (c) he or she ceases to be a member of the Parliament otherwise than by reason of the dissolution of the Parliament; or
   (d) he or she is removed from office by the Parliament, whichever first occurs.

(3) The Speaker has such functions, powers and privileges as are imposed or conferred on him or her by or under a law of the Northern Territory.

3.19 Acting Speaker
The Standing Orders may provide for the appointment of an Acting Speaker and for a further Acting Speaker in place of the Acting Speaker, and for all matters incidental to such an appointment.

3.20 Voting in Parliament
(1) Subject to this Constitution, questions arising in the Parliament shall be determined by a simple majority of votes of the members present and voting.

(2) The Speaker or other member presiding at a sitting of the Parliament or of a Committee of the Parliament is, in all cases, entitled to vote, provided that where there is an equality of votes on a question and the Speaker or member presiding has not exercised a deliberative vote on that question, the Speaker or member presiding is entitled to a casting vote.

3.21 Validation of Acts of Parliament

Where a person who has, whether before or after the commencement of this Constitution, purported to sit or vote as a member of the Parliament at a meeting of the Parliament or of a Committee of the Parliament and -

(a) was not a duly elected member by reason of his or her not having been qualified for election or of any other defect in the election of the person; or

(b) had vacated office as a member,

all things done or purporting to have been done by the Parliament or that Committee shall be deemed to be as validly done as if the person had, when so sitting or voting, been a duly elected member of the Parliament or had not vacated office, as the case may be.

3.22 Minutes of Proceedings

(1) The Parliament shall cause minutes of its proceedings to be kept.

(2) A copy of minutes kept under subsection (1) shall, on request made by any person, be made available for inspection by the person or, on payment of such fee, if any, as is fixed by or under an Act, be supplied to the person.

3.23 Standing Orders

The Parliament may make Standing Orders, not inconsistent with a law of the Northern Territory, relating to the order and conduct of its business and proceedings.

4. EXECUTIVE

4.1 Extent of Executive Power

The duties, powers, functions and authorities of the Governor, the Executive Council and the Ministers of the Northern Territory imposed or conferred by or under this Part extend to the execution and maintenance of this Constitution and the laws of the Northern Territory and to the exercise of the prerogatives of the Crown so far as they relate to those duties, powers, functions and authorities.

4.2 Governor

(1) There shall be a Governor of the Northern Territory who shall be appointed by Her Majesty on the advice of the Premier and who shall hold office during Her Majesty's pleasure.

(2) Subject to this Constitution, the Governor is charged with the duty of—

(a) upholding and maintaining this Constitution; and

(b) administering the government of the Northern Territory.

(3) Except as otherwise expressly provided in this Constitution or an Act, or where, in the Governor's sole opinion, to so act would be contrary to his or her duty under subsection (2) (a), the Governor shall act, in administering the government of the Northern Territory, only in accordance with the advice of the Executive Council.
If the Governor acts in or purportedly in administering the government of the Northern Territory otherwise than in accordance with the advice of the Executive Council or a Minister of the Northern Territory duly given, he or she shall, on the first sitting day of the Parliament after so acting, cause to be tabled in the Parliament a written statement of his or her reasons for so acting.

4.3 Remuneration and other terms and conditions of Governor

The Governor shall be paid out of the public moneys of the Northern Territory such remuneration, and shall be engaged on such terms and conditions, as fixed by or under an Act, which remuneration, terms and conditions shall not be reduced while the Governor continues in office.

4.4 Acting Governor

(1) The Parliament may, by resolution, appoint one or more persons to act in the office of Governor and to administer the government of the Northern Territory during any vacancy in the office of Governor or whenever the Governor is absent from duty or from the Northern Territory or is, for any other reason, unable to exercise and perform the powers and functions of office.

(2) An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the resolution of the Parliament.

(3) An Acting Governor administering the government of the Northern Territory has, and may exercise and perform, all the powers and functions of the Governor.

(4) The exercise of a power or performance of a function by an Acting Governor during the absence of the Governor from the Northern Territory does not prevent the exercise of any of those powers or the performance of any of those functions by the Governor.

(5) The appointment of an Acting Governor, and any act done by a person purporting to act under this section, shall not be called in question on the grounds that the occasion for his or her so acting had not arisen or had ceased.

(6) In the absence of any appointment of an Acting Governor, or if the Acting Governor is absent from duty or from the Northern Territory or is, for any other reason, unable to exercise and perform the powers and functions of the office, the Chief Justice shall be the Acting Governor.

4.5 Oath or affirmation to be taken by Governor and acting Governor

(1) The Governor or Acting Governor shall, before entering on the duties of his or her office, make and subscribe an oath or affirmation of allegiance in the form in Schedule 2 and also an oath or affirmation of office in the form in Schedule 4.

(2) An oath or affirmation under this section shall be made before the Chief Justice or a person authorised by the Chief Justice to administer the oath or affirmation.

4.7 Ministerial Office

There shall be such number of Ministerial Offices, having such respective designations, as the Governor, acting on the advice of the Premier, from time to time determines.

4.8 Appointment of Premier and other Ministers of the Northern Territory

(1) The Governor shall, from time to time, appoint as the Premier the member of the Parliament who, in the Governor's sole opinion, commands or is likely to command the general support of the majority of members of the Parliament.

(2) If a vote of no confidence in the government of the Northern Territory has been carried in the Parliament by a majority of its members present and voting and the Governor considers that there is another member of the Parliament who commands or is likely to command the general support of the majority of the members of the Parliament, the
Governor may terminate the appointment of the Premier, and may do so without the need to refer the matter to or act on the advice of the Executive Council or the Premier.

(3) Subject to this Part, the Governor may, on the recommendation of the Premier -
(a) appoint a member of the Parliament to a Ministerial Office, who, on being so appointed, shall be a Minister of the Northern Territory; and
(b) at any time, terminate the appointment.

4.9 Tenure of Office

(1) The appointment of the Premier takes effect on the day specified in the instrument of appointment and terminates -
(a) if he or she ceases, by reason of his or her resignation or by reason of the provisions of section 3.15, to be a member of the Parliament;
(b) if his or her appointment is terminated under section 4.8 (2) by the Governor;
(c) if he or she resigns office in writing signed by him or her and delivered to the Governor;
(d) when the Parliament first sits after a general election of the Parliament that takes place after the appointment takes effect; or
(e) in the case of the Acting Premier, when the Premier resumes the powers and functions of his or her office.

(2) The appointment of a person to a Ministerial Office takes effect on the day specified in the instrument of appointment and terminates when -
(a) he or she ceases, by reason of his or her resignation or by reason of the provisions of section 3.15, to be a member of the Parliament;
(b) his or her appointment is terminated under section 4.8 (3) by the Governor;
(c) he or she resigns office in writing signed by him or her and delivered to the Governor and the resignation is accepted by the Governor; or
(d) the Parliament first meets after a general election of the Parliament that takes place after the appointment takes effect.

4.10 Oath or affirmation to be taken by Members of Executive Council and Ministers

(1) A member of the Executive Council shall, before entering on the duties of the member's office, make and subscribe an oath or affirmation in accordance with the form in Schedule 5.

(2) The Premier and a person who is appointed to a Ministerial Office shall, before entering on the duties of the office, make and subscribe an oath or affirmation in accordance with the form in Schedule 6.

(3) An oath or affirmation under subsection (1) or (2) shall be made before the Governor or a person authorised by the Governor to administer the oath or affirmation.

6. JUDICIARY

6.1 Judicial power of the Northern Territory

(1) The judicial power of the Northern Territory shall be vested in -
(a) the Supreme Court of the Northern Territory (including that Court exercising its jurisdiction as the Court of Appeal and the Court of Criminal Appeal) and which shall be a continuation of that Court as it existed immediately before the commencement date; and
(b) in such other courts as they existed immediately before the commencement date pursuant to an enactment or as the Parliament establishes by an Act.

(2) The Supreme Court shall consist of a Chief Justice and such other Judges and officers as prescribed by an enactment continued in force by this Constitution or by an Act.

(3) The Supreme Court (including in its appellate jurisdiction both civil and criminal in relation to appeals from another court) shall be a court of general jurisdiction in civil and criminal matters relating to the Northern Territory, including as to matters arising under this Constitution or involving its interpretation and, without limitation, its jurisdiction and that of other courts referred to in or established in pursuance of subsection (1) is as prescribed by an enactment continued in force by this Constitution or by an Act of the Commonwealth or of a State or territory of the Commonwealth.

(4) The jurisdiction of the Supreme Court under subsection (3) extends to -

(a) an advisory jurisdiction in matters arising under this Constitution or involving its interpretation, but only at the instance of the Governor in his or her sole discretion, the Speaker of the Parliament on the resolution of Parliament, the Executive Council or the Premier; and

(b) a supervisory jurisdiction which shall be not less extensive than its supervisory jurisdiction immediately before the commencement date, including its jurisdiction in relation to habeas corpus.

(5) The Supreme Court may in its discretion, whether on application or of its own motion, decline to exercise its advisory jurisdiction in matters arising under this Constitution or involving its interpretation, but it shall publish its reasons in writing for so doing.

6. JUDICIARY

6.2 Appointment, Removal and Remuneration of Judges of the Supreme Court

(1) The Chief Justice shall be appointed by the Governor in accordance with the advice of the Executive Council, after consultation by the Minister of the Northern Territory having ministerial responsibility for the matter with the Leader of the Opposition and with such bodies representing the legal profession in the Northern Territory as that Minister thinks fit.

(2) The Judges other than the Chief Justice shall be appointed by the Governor in accordance with the advice of the Executive Council, after consultation by the Minister of the Northern Territory having ministerial responsibility for the matter with the Chief Justice, with the Leader of the Opposition and with such bodies representing the legal profession in the Northern Territory as that Minister thinks fit.

(3) The Governor, in accordance with the advice of the Executive Council, may appoint a person who is or was at any time a Judge or a Judge of any other superior Court in Australia to be an acting Judge on or after that person attains the age of 70 years, for such period not exceeding 12 months at a time, and subject to such terms, conditions and limitations, as are specified by the Governor.

(4) A Judge shall not be removed from office except by the Governor on an address from the Parliament praying for the Judge's removal on the grounds of proved misbehaviour or incapacity.

(5) A Judge shall retire from office on attaining the age of 70 years, or such greater age as is prescribed by an Act.

(6) Judges and the members of other courts referred to in section 6.1 shall be paid out of the public moneys of the Northern Territory such remuneration, and be employed on such terms and conditions, as provided by or under an enactment continued in force by this Constitution or by or under an Act.
The remuneration or other terms and conditions of appointment of a Judge shall not, without the Judge's written consent, be reduced while the Judge continues in office.

In this section, other than in subsection (3), a reference to a Judge includes an additional Judge but does not include an acting Judge.

6.3 Doctrine of Separation of Powers

Subject to section 6.1(4)(b), nothing in this Constitution prevents the passing by the Parliament of an Act -
(a) conferring judicial power on a person or body outside the Judiciary; or
(b) providing for the establishment by or in accordance with an Act, or by the consent of the parties, of arbitral, conciliatory or other tribunals, whether ad hoc or otherwise, outside the Judiciary, on such terms and conditions as the Parliament thinks fit.

7. ABORIGINAL RIGHTS

7.1 Protection of Aboriginal Land Rights

(1) Subject to this Constitution, the Parliament shall enact an Organic Law entitled the "Aboriginal Land Rights (Northern Territory) Act" which shall contain provisions based on those contained in the Aboriginal Land Rights (Northern Territory) Act 1976 of the Commonwealth as in force immediately before the commencement date, but with variations to give effect to that Act as a law of the Northern Territory and with such other variations as are determined by the Parliament, being in either case variations in a form agreed to by the Commonwealth.

(2) An Organic Law enacted in pursuance of subsection (1) may be amended only by another Organic Law in accordance with section 2.5, and the affirmative votes required for such an amendment under that section shall be equal to or more than [Alternative 1: two-thirds - Alternative 2: three-quarters].

(3) Notwithstanding anything in the "Aboriginal Land Rights (Northern Territory) Act" as an Organic Law, an estate in fee simple in Aboriginal land shall not be capable of being sold, assigned, mortgaged, charged, surrendered, extinguished, or otherwise disposed of unless, after inquiry, a court or body established or identified by an Organic Law is satisfied that -
(a) all Aborigines having an estate or interest in that land, being of full legal capacity, have been adequately informed of, and a majority of them have voluntarily consented to, the proposed transaction; and
(b) the proposed transaction is otherwise in the interests of all Aborigines having an estate or interest in, or residing on, that land.

(4) An Organic Law shall provide that the court or body referred to in subsection (3) shall be constituted by a Judge nominated by the Chief Justice, that it shall have power to conduct such enquiries as it considers necessary and to issue a summons for the attendance of witnesses and for the production of documents and that the findings of that court or body shall be subject to appeal as if it was a civil judgment of a single Judge.

(5) Notwithstanding anything in the "Aboriginal Land Rights (Northern Territory) Act" as an Organic Law, but subject to subsection (6), Aboriginal land shall not be resumed, compulsorily acquired or forfeited by or under a law of the Northern Territory.

(6) An Organic Law may provide for the compulsory acquisition of an estate or interest in all or any part of Aboriginal land where that estate or interest is less than an estate in fee simple, providing that the acquisition is on just terms and for or in furtherance of any purpose which is for the benefit of the public (other than as a park) and whether or not that purpose is to be effected by the Northern Territory or by any other person or body,
and otherwise upon terms and conditions not less favourable than for the compulsory acquisition of other land under a law of the Northern Territory.

(7) Where an estate or interest in all or any part of Aboriginal land is compulsorily acquired under subsection (6), then upon the permanent cessation of the use of that acquired land for or in furtherance of any purpose which is for the benefit of the public (and whether it is the original purpose or otherwise), and if the land is still Aboriginal land, the estate or interest so acquired is extinguished.

(8) An Organic Law may declare that any other law of the Northern Territory is capable of operating concurrently with the “Aboriginal Land Rights (Northern Territory) Act” as an Organic Law, and upon such a declaration, those laws shall be interpreted and applied accordingly.

7.2 Protection of Aboriginal Sacred Sites

An Organic Law shall provide for the protection of, and the prevention of the desecration of, Aboriginal sacred sites in the Northern Territory, including sacred sites on Aboriginal land, and in particular it shall regulate or authorise the entry of persons on those sites, and that Organic Law shall provide for the right of Aborigines to have access to those sites in accordance with Aboriginal tradition and shall take into account the wishes of Aborigines relating to the extent to which those sites should be protected.

7.3 Aboriginal Self-Determination

Subject to this Constitution, an Act may provide for Aboriginal self-determination and for all matters incidental thereto.

8. RIGHTS IN RESPECT OF LANGUAGE, SOCIAL, CULTURAL AND RELIGIOUS MATTERS

8.1 Language, Social, Cultural and Religious Matters

(1) Notwithstanding anything in the laws of the Northern Territory other than as provided in subsections (2) and (3), a person shall not be denied the right -

(a) to use his or her own language in his or her communications with other people speaking or understanding the same language;

(b) to observe and practice his or her own social and cultural customs and traditions in his or her relations with other people of the same tradition; and

(c) to manifest his or her religion or belief in worship, ceremony, observance, practice or teaching.

(2) The rights in subsection (1) (a), (b) and (c) shall be subject to this Constitution, any Organic Law and any reasonable regulation imposed by an Act (not being an Organic Law) in the public interest.

(3) The rights in subsection (1) (b) and (c) shall only operate to the extent that they are not repugnant to the general principles of humanity as contained in any international agreement to which Australia is a party.

9. LOCAL GOVERNING BODIES

9.1 Local Government

Subject to this Constitution, there shall continue to be a system of local government in the Northern Territory under which local governing bodies are constituted with such powers as the Parliament considers necessary for the peace, order and good government of those areas of the Northern Territory that are from time to time subject to that system of local government.
(2) The manner in which local governing bodies are constituted, and the nature and extent of their powers, functions, duties and responsibilities and all matters incidental thereto, shall be determined by or under an Act.

(3) Without limiting the generality of subsection (2) the Parliament shall, in any Act in respect of local governing bodies, provide for -

(a) matters relating to their -

(i) objectives, powers, functions, duties and responsibilities;
(ii) rating and any other forms of revenue, expenditure and fiscal accountability;
(iii) membership; and
(iv) boundaries; and

(b) protection from dismissal of the members of a local governing body or from the dissolution of a local governing body without public enquiry.

(4) Any local governing body in existence immediately before the commencement date under an enactment continued in force by this Constitution shall, subject to this section and any law of the Northern Territory, continue in existence on and from the commencement date.

5. FINANCE

5.1 Public Moneys

(1) The public moneys of the Northern Territory shall be available to defray the expenditure of the Northern Territory.

(2) The receipt, expenditure and control of public moneys of the Northern Territory shall be regulated as provided by an Act, or by an enactment continued in force by this Constitution.

5.2 Withdrawal of Public Moneys

(1) No public moneys of the Northern Territory shall be issued or expended except as authorised by or under an Act or by or under an enactment continued in force by this Constitution.

(2) The public moneys of the Northern Territory may be invested in such manner as provide by or under an Act or by or under an enactment continued in force by this Constitution.

13 FOOTNOTES

Footnote 58

Purpose of Clause 7.2
This clause, based on a provision of the Aboriginal Land Rights (Northern Territory) Act of the Commonwealth, will place the constitutional obligation on the new Parliament to have in place on an ongoing basis legislation by way of an Organic Law to protect and prevent desecration of sacred sites in the Northern Territory. In relation to that legislation, there will be a constitutional guarantee that Aboriginal traditional access to sacred sites will be preserved and their wishes will be taken into account. A transitional provision in the new Constitution declares that the existing Northern Territory legislation on sacred sites is an Organic Law.

Footnote 48

**Purpose of Clause: 4.7** Provides for the Governor, acting on the advice of the Premier, to
determine from time to time the number of offices and designations of Minister of the Northern Territory.

**Variations:**
(a) Republic: No change.
(b) Pre-Statehood: No change.

**Reference to Discussion and Information Papers:** See Discussion Paper on A Proposed New Constitution for the Northern Territory, 1987: Part I.
A.5.1.1. Lists of polling returns at specific booths - targeted Aboriginal

**Mobile team 1**
Black Point (Coburg Peninsula) 7 on roll; no-one voted
Milikapiti
Minjilang
Murgane
Nguiu 628
Oenpeli (Kunbarllanjnja) 321
Pirlangimpi
Warruwi
Wuranku

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Informal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mobile team 1</td>
<td>389</td>
<td>1289</td>
<td>24</td>
<td>1712</td>
</tr>
</tbody>
</table>

**Mobile team 2**
Maningrida 385 and 14 other places

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Informal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mobile team 2</td>
<td>104</td>
<td>384</td>
<td>19</td>
<td>507</td>
</tr>
</tbody>
</table>

**Mobile team 3**
Milingimbi 331

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Informal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mobile team 3</td>
<td>70</td>
<td>388</td>
<td>1</td>
<td>459</td>
</tr>
</tbody>
</table>

**Mobile team 4**
Yirrkala 195

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Informal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mobile team 4</td>
<td>104</td>
<td>410</td>
<td>23</td>
<td>537</td>
</tr>
</tbody>
</table>

**Mobile team 5**
Borroloola 450
Galiwinku 420
Gapuwiyak 187
Numbulwar 225
Ramingining 226

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Informal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mobile team 5</td>
<td>409</td>
<td>1090</td>
<td>9</td>
<td>1508</td>
</tr>
</tbody>
</table>

**Mobile team 6**
Ngukurr 376
Milyakburra (Bickerton Island) 92
Badawarrka (Roper Bar) 17
Umbakumba 145
<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Informal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>253</td>
<td>401</td>
<td>9</td>
<td>663</td>
</tr>
</tbody>
</table>

**Mobile team 7**
Angurugu 263  
Miniyeri 142  
Robinson River 82

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Informal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>169</td>
<td>376</td>
<td>5</td>
<td>550</td>
</tr>
</tbody>
</table>

**Mobile team 8**
Wairia (Adelaide River) 84  
Belyuen 83  
Bulman 81  
Kybrook Farm 48

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Informal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>162</td>
<td>344</td>
<td>1</td>
<td>507</td>
</tr>
</tbody>
</table>

**Mobile team 9**
Barunga 139  
Beswick 168  
Binjari 64  
Jilkimilkan 67  
Mataranka 100  
Rockhole 46

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Informal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>234</td>
<td>408</td>
<td>16</td>
<td>658</td>
</tr>
</tbody>
</table>

**Mobile team 10**
Daguragu 128  
Elliott 144  
Kalkarinji 107  
Nayiyu (Daly River) 217

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Informal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>148</td>
<td>479</td>
<td>12</td>
<td>639</td>
</tr>
</tbody>
</table>

**Mobile team 11**
Lajamanu 232  
Palumpua 113  
Myatt (Timber Creek) 151  
Peppimenarti 131  
Wadeye 455  
Bulla Camp 42  
Yarralin 97

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Informal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>359</td>
<td>949</td>
<td>21</td>
<td>1329</td>
</tr>
</tbody>
</table>

**Mobile team 12**
Dundee Lodge 36  
Bynoe Haven 11  
Woolaniong 17
<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Informal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>52</td>
<td>26</td>
<td>0</td>
<td>78</td>
</tr>
</tbody>
</table>

**Mobile team 13**
Kaltukatjara 98
Kintore 124
Laramba 99
Nyirrpi 95
Yuelamu 84
Yuendemu 271

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Informal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>88</td>
<td>666</td>
<td>17</td>
<td>771</td>
</tr>
</tbody>
</table>

**Mobile team 14**
Alpurrurulam 147
Canteen Creek 58
Finke 39
Orrtipa Thurra 53
Warrego 62
Wutunugurra 83

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Informal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>116</td>
<td>404</td>
<td>11</td>
<td>531</td>
</tr>
</tbody>
</table>

**Mobile team 15**
Areyonga 101
Haasts Bluff 86
Mount Liebig 94
Papunya 177

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Informal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>70</td>
<td>413</td>
<td>10</td>
<td>493</td>
</tr>
</tbody>
</table>

**Mobile team 16**
Hermannsburg 179
Wallace Rockhole 32

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Informal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>128</td>
<td>200</td>
<td>5</td>
<td>333</td>
</tr>
</tbody>
</table>

**Mobile team 17**
Inampa 60
Mutitjulu 118
Santa Teresa 171
Titjikala 65

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Informal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>99</td>
<td>336</td>
<td>28</td>
<td>463</td>
</tr>
</tbody>
</table>

**Mobile team 18**
Nturiya 54
Pmara Jutunta 87
Tara 58
Ti Tree 53
Wilowra 144
Wilora 46
<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Informal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>94</td>
<td>341</td>
<td>32</td>
<td>467</td>
</tr>
</tbody>
</table>

**Mobile team 19**
Ampilatwatja 102  
Arlpara 66  
Iylentye 51  
Irwelty 39

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Informal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>79</td>
<td>367</td>
<td>112</td>
<td>457</td>
</tr>
</tbody>
</table>

**Mobile team 20**
Ali Curung 177  
Atitjere 52  
Engawala 49

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Informal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>80</td>
<td>289</td>
<td>9</td>
<td>378</td>
</tr>
</tbody>
</table>

**Mobile team 21**
Finke 65  
Amoonguna 35  
Mutitjulu 28  
Erdunda 2

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Informal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>40</td>
<td>95</td>
<td>3</td>
<td>138</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Total Yes</th>
<th>Total No</th>
<th>Total Informal</th>
<th>GRAND TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>3257</td>
<td>9655</td>
<td>266</td>
<td>13178</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Informal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prison Mobile team</td>
<td>74</td>
<td>158</td>
<td>2</td>
<td>234</td>
</tr>
<tr>
<td>Special Hospital Mobile team</td>
<td>128</td>
<td>111</td>
<td>2</td>
<td>241</td>
</tr>
<tr>
<td>Postal</td>
<td>1696</td>
<td>1084</td>
<td>6</td>
<td>2786</td>
</tr>
<tr>
<td>Pre-poll</td>
<td>4677</td>
<td>3760</td>
<td>48</td>
<td>8485</td>
</tr>
<tr>
<td>Provisional</td>
<td>948</td>
<td>1359</td>
<td>35</td>
<td>2342</td>
</tr>
</tbody>
</table>

Static booths also catered for large numbers of aboriginal voters in addition to Mobile Teams.

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Informal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yirara</td>
<td>354</td>
<td>306</td>
<td>9</td>
<td>669</td>
</tr>
<tr>
<td>Yulara</td>
<td>211</td>
<td>145</td>
<td>3</td>
<td>359</td>
</tr>
<tr>
<td>Railway Side</td>
<td>58</td>
<td>266</td>
<td>43</td>
<td>356</td>
</tr>
<tr>
<td>Tennant Creek</td>
<td>569</td>
<td>798</td>
<td>29</td>
<td>1396</td>
</tr>
<tr>
<td>Sadadeen</td>
<td>1084</td>
<td>1214</td>
<td>18</td>
<td>2316</td>
</tr>
<tr>
<td>Pine Creek</td>
<td>99</td>
<td>93</td>
<td>1</td>
<td>193</td>
</tr>
<tr>
<td>Nhulunbuy</td>
<td>657</td>
<td>1025</td>
<td>22</td>
<td>1704</td>
</tr>
<tr>
<td></td>
<td>Yes</td>
<td>No</td>
<td>Informal</td>
<td>Total</td>
</tr>
<tr>
<td>------------------</td>
<td>------</td>
<td>------</td>
<td>----------</td>
<td>-------</td>
</tr>
<tr>
<td>Ludmilla</td>
<td>952</td>
<td>943</td>
<td>27</td>
<td>1922</td>
</tr>
<tr>
<td>Larapinta</td>
<td>730</td>
<td>645</td>
<td>6</td>
<td>1381</td>
</tr>
<tr>
<td>Jabiru</td>
<td>326</td>
<td>364</td>
<td>10</td>
<td>700</td>
</tr>
<tr>
<td>Batchelor</td>
<td>149</td>
<td>205</td>
<td>1</td>
<td>355</td>
</tr>
<tr>
<td>Alyangula</td>
<td>236</td>
<td>170</td>
<td>4</td>
<td>410</td>
</tr>
<tr>
<td>Alice Springs</td>
<td>759</td>
<td>866</td>
<td>14</td>
<td>1639</td>
</tr>
</tbody>
</table>

Where "Yes" outstripped "No"

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alyangula</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Anula</td>
<td>1342</td>
<td>1248</td>
</tr>
<tr>
<td>Berrimah</td>
<td>421</td>
<td>275</td>
</tr>
<tr>
<td>Braitling</td>
<td>928</td>
<td>878</td>
</tr>
<tr>
<td>Casuarina</td>
<td>1616</td>
<td>1552</td>
</tr>
<tr>
<td>Driver</td>
<td>1816</td>
<td>1412</td>
</tr>
<tr>
<td>Durack</td>
<td>677</td>
<td>337</td>
</tr>
<tr>
<td>Gillen</td>
<td>1313</td>
<td>1277</td>
</tr>
<tr>
<td>Gray</td>
<td>1024</td>
<td>971</td>
</tr>
<tr>
<td>Howard Springs</td>
<td>1318</td>
<td>1055</td>
</tr>
<tr>
<td>Humpty Doo</td>
<td>1450</td>
<td>1322</td>
</tr>
<tr>
<td>Karama</td>
<td>1996</td>
<td>1747</td>
</tr>
<tr>
<td>Katherine</td>
<td>903</td>
<td>891</td>
</tr>
<tr>
<td>Larapinta</td>
<td>730</td>
<td>645</td>
</tr>
<tr>
<td>Larrakeyah</td>
<td>960</td>
<td>512</td>
</tr>
<tr>
<td>Leanyer</td>
<td>1214</td>
<td>1010</td>
</tr>
<tr>
<td>Ludmilla</td>
<td>952</td>
<td>943</td>
</tr>
<tr>
<td>Nakara</td>
<td>1244</td>
<td>1238</td>
</tr>
<tr>
<td>Nightcliff</td>
<td>1938</td>
<td>1816</td>
</tr>
<tr>
<td>Parap</td>
<td>1590</td>
<td>1366</td>
</tr>
<tr>
<td>Pine Creek</td>
<td>99</td>
<td>93</td>
</tr>
<tr>
<td>Stuart Park</td>
<td>798</td>
<td>672</td>
</tr>
<tr>
<td>Tindal</td>
<td>193</td>
<td>127</td>
</tr>
<tr>
<td>Wanguri</td>
<td>1089</td>
<td>973</td>
</tr>
<tr>
<td>Woodroffe</td>
<td>482</td>
<td>393</td>
</tr>
<tr>
<td>Yirara</td>
<td>354</td>
<td>306</td>
</tr>
<tr>
<td>Yulara</td>
<td>211</td>
<td>145</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>33822</strong></td>
<td><strong>32114</strong></td>
</tr>
</tbody>
</table>

Source: Northern Territory Electoral Office, Referendum polling results 1998
THE STATES-MEN: HATTON AND STONE

6.0. INTERVIEW WITH STEVE HATTON

6.1. Introduction

Steve Hatton is the person who, more than any other, over-sighted the bulk of the statehood preparation tasks, even when he was installed as Chief Minister of the Northern Territory in 1986, and beyond. In fact, it was Hatton alone who headed the three constitutional committees in succession, which from 1996 was rendered almost superfluous until after the failed referendum, when the new Standing Committee was charged with investigating and reporting on the failure, and how any future exercise could be re-run, successfully. Hatton signified his retirement from the CLP seat of Nightcliff in 2001, but has indicated that statehood is an unfinished mission with him, regardless of party politics. In any consideration of the statehood exercise, apart from its pejorative aspects, it is Hatton's name which is associated with the early statehood processes. It must be remembered that he placed his political career in jeopardy by standing up for the processes which had been developed under his stewardship.

His tenure as chief minister was unremarkable, although he is widely regarded as the most successful Aboriginal Affairs minister, in that he established a workable rapport with indigenous people. He was prepared to make important concessions, which were ultimately unacceptable to his colleagues. And he paid the price. He was unceremoniously replaced by cabinet with new Chief Minister, Marshall Perron, who in turn, eventually handed the reins of government over to Shane Stone. It was said of Hatton that he was not a 'team-player'. As will be seen, his background (like many other CLP parliamentarians is more like a Labor Party, working-class profile) is far from that which might be expected of a Conservative party leader. In many ways, Hatton was the right choice for leading the Northern Territory to statehood because he abjured the temptation of providing his own solutions, and was meticulous in obtaining as much objective information as was possible. The statehood committees consulted widely, particularly in the regional Aboriginal communities. But in the end, it was not with Hatton that the indigenous people had problems: they were looking beyond him at the Chief Minister, Shane Stone and the Northern Territory CLP government. But Hatton was having problems with the government too. He and his committee were frustrated by being depleted of the means to carry out the
committee recommendations, particularly in disseminating information and education; and it will be seen that his views were often enlightened, definite, and just as often at odds with his Cabinet colleagues. It will never be known whether he would have delivered statehood and seen it through to success, or not, but the mantle of ‘father’ of statehood sits well with him, even though the first bid was unsuccessful. But he may just as well have been the pretender in that respect.

The following interview attempts to weigh Hatton's contribution and his impact on the statehood bid. In doing so, it goes along way to disclose how close it came to providing a model for success under his leadership. This examination is done mainly through an Oral History interview with Hatton during the Northern Wet of 2000 - 2001. It also demonstrates the depth of feeling and blame Hatton places squarely at the feet not only of Shane Stone, but of the contemporaneous Northern Territory Ministry for the failure to stand-up for statehood, a lasting sentiment which is expressed in the most forthright manner. The question and answer mode, told in the first person, personal, is transcribed from taped interviews with the candidate in Hatton's electorate office.6

6.1.2. Antecedents.
I'm a bastard child to start with. We were not a rich family. My dad was a storeman. I was the eldest of eight kids. My father's side's ancestry is a bit of a mystery to me. My mother's side was a mixture of German-Irish and English. I was born in 1948 in Sydney. They separated when I was three or four and I was pushed around from one relative to another. I was 10 years of age before we moved into a war-service home in Campbelltown. We had moved from Parramatta where we had lived for five or six years in my grandmother's house. Things were pretty tough. We were a long way short of a rich family; we could be described as a poor working-class family. Dad worked in two or three jobs to keep the family together. I started working part-time in the last year of primary school at a hardware shop. I worked in there until the third year of high school and then I worked at Woolworths. I didn't have holidays at school from the age of 12 until I had been working for two years.

6.1.3. Under questioning
Q Was there any religious influence in your life?

The Germans had come out here in 1856, escaping the Protestant persecution of the Catholics. My great grandmother was Irish Catholic had come from Ireland to escape the potato famine and she married the eldest son of my great, great grandparents and from there my grandmother came up a Catholic of course from a large family. But she ended up marrying a Protestant and getting kicked out of the church. My mother was brought up Protestant, and so my mother was rather eclectic in her religion and let me choose initially going to a Baptist Sunday school for a long period of time, which was the closest Church. I went to the Church of England for a while, which was my mother's religion. Eventually, at 13 years of age I became a Methodist and got involved with the Methodist church very heavily. It was a very heavily religious influence on me. Of my own making I adopted the church.

Q. What about your vocational development?

A. Obviously I was going to school. Sport was very important to me, more important than studies, but I managed to do fairly well at school, despite working at the rest of the things and my sport. I finished school and my only objective obligation was to get a job. I was very lucky to be allowed to continue to do my matriculation. My family needed me to go to work. It nearly bankrupted them through high school. So I spent the first years working, helping the family out of financial trouble. And I happened to get a cadetship which took me to university at night. I did a commerce degree at the University of New South Wales. It took me seven years. I graduated at the end of 1972.

I actually moved to Gove in 1973. I didn't actually do my graduation ceremony until 1974. This was because I had been working for Nabalco from 1970. I was due to transfer to [the work] site and through one thing or another I didn't actually apply for the degree until 1973, and they gave it to me in '74. I guess I thought I know the work, and my family convinced me that I should really go and get it approved.

Q. What was the driving force to go on with your education?

A. I just want to make a better life for myself. I had thought I had no chance of going to university. It so happens that I did one of those vocational guidance tests at the CES. And they said these are the areas that you have
an aptitude in, and one of them is a cadet traineeship at a company called James Hardie asbestos factory. But then I had to go to university for it. I thought this is not too bad. And once I was [made] a trainee personnel officer, I started my Commerce degree. I Majored in Industrial Relations. I had to work the first year. The deal was in those days you have to pay your first year (there was no free University in those days). You paid for your first university year, and if you passed, they would pay each university year fee in advance providing you kept passing. If you failed, you had to pay the next year yourself. So I worked 12 months to save up my Uni fees at the start of 66.

Q. What were the greatest influences on you during your formative years?

A. I think Boy Scouts, church and sport. I was very heavily involved in the church. I withdrew from the church because of the hypocrisy. There was a very strict Methodist minister, and he was always pressing this on to us, and he said no spinking (sic), no smoking, no drinking, no dancing, all these sort of rules. I came to the church membership which is like confirmation. I went to the elders and said "look I really want to be a member of the church, but I can't in all conscience swear to abide by those rules and I can't swear to abide by those rules- I don't agree with the rules on dancing. I don't smoke or drink (and I didn't in those days), but I can't guarantee I never will. I can't take an oath on something I cannot or might not honour." And they waived the rules for me. And I started thinking "well if that's how strong they are to you"... I started losing respect for them. They're more interested in getting their church membership up. I thought 'Maybe their principles are wrong.' Billy Graham had an influence on me. Billy Graham's Crusade. And the boy scouts turned me around.

Q. When did you first become interested in politics and politics in the Northern Territory?

A. I became interested in politics very early in my life, in fact I worked in my first election campaign in 1963 in Campbelltown, so I've been working elections since then. I became interested in the Northern Territory purely because I got married in 1969 and got a job. I wanted to work in a remote area mine, and the job I got was with Nabalco which brought me to the Northern Territory. I moved up here in 1973. And it really came to a head in
1974, when they had a national constitutional referendum and of course Northern Territory people couldn't vote in it. That was the referendum that gave Northern Territory people the capacity to vote (in referenda). I don't say the "right", because it's not the strict constitutional right to do that, but the fact that I was denied the right to vote on the Australian Constitution simply because I moved to the Northern Territory, my sensibilities suffered chronically and I started exploring the details a lot more, and that led to many of the actions I have taken since.

Q. Did that lead to Conservative politics?

A. Generally. I worked for the Liberals' Jeff Bate's campaign in Campbelltown in 1963. It was at university that I joined Gordon Barton's Australia Party, but I couldn't cop the Socialist policies after studying economics, political science and Labor, I just couldn't accept their philosophy, but I wasn't ready to abandon my workers class family to embrace the big business party, but what I saw as a teenager as the trade democratic movement. It took me a few years to realise that what might be super democracy did not always amount to total practicality.

By the time I got to Gove I was getting out of that party and I went off politics for a while. Until Gough Whitlam! Until I got out of Gove in 1975 and saw what Gough Whitlam had done to Australia. I came to Darwin after (Cyclone) Tracy, and we had virtually no newspapers, radio, television and we virtually missed the Whitlam disaster completely. There was a stark contrast when I left Australia to when I came back to Australia, and I regarded Gove as somewhere quite separate. Here, with the total dominance of the public service and no government really here, I got actively involved. By now I was also the Director of the Chamber of Commerce and Industry. So I actually joined the CLP three or four days after the dismissal of Whitlam in 1975 to fight against Whitlam. And I've been a member of the party ever since.

Q. And what about statehood? Did you ever consider in 1975 that the Northern Territory should become a State? Was it some other status you considered?

A. I still have vivid memories of Malcolm Fraser in a truck outside Brown's Mart in 1975 where the old War Memorial Cenotaph used to be. Standing apart, saying that he would grant statehood within five years for the Northern Territory and he was absolutely committed to that cause. That was during
the election campaign. That was five years, but it was the Northern Territory which said we would really have to go through a trial period of learning how to govern before we took the step to statehood. The trouble is, we've never taken the step!

**Q. How was Malcolm Fraser's remarks received?**

**A.** Oh, very much in favour. People were sick and tired of being ruled by what was effectively a colonial Raj from Canberra. Where the head of the public service was the head of the community. Where your status in the town depended on your rank in the public service. It was a public service town, and private enterprise was the bottom rung. That's why there has been such an anti-public service attitude by many of the old people remembering those bad old days.

**Q. But was the sentiment more towards self-government?**

**A.** No, they wanted statehood. He was offering statehood. Goff Letts and the others said "well that's a great ambition". Goff has always been an advocate of statehood, but they had got to have the logical interim process: set up the body politic; set up the courts, the public services, the Treasury. Learn how to do it, and take the constitutional step. And I guess we all thought it would take four or five years, or six years, and then we take the final step. But it never occurred.

**Q. You became chief minister in 1986. At that stage did you have ambitions for statehood -- self-government having been achieved?**
A. Absolutely. We had started the campaign within the CLP for Statehood in 1985, under Ian Tuxworth. We actually held a statehood convention at the old Darwin hotel convention centre. Somewhere around I've probably got an old T-shirt of the day. And we launched the campaign for statehood. Shortly after that they put together a constitutional session… what was then called the Sessional Committee on constitutional development. Jim Robertson was made chairman of it, to work towards statehood. And Jim sadly resigned from politics in February - March 1986. After that I got involved with the committee, a couple of months later. I became Chief Minister, and I took over as chairman of that committee.

Q. Jim Robertson continued for a while as a special minister for State didn't he?

A. He resigned from Territory politics in February -- March 86. In 85 -- 86, that's when he had that role of pushing the cause. And he would have continued in the role had he stayed in politics. I was absolutely committed to it (statehood); I had been before my election. That and economic development were the two driving issues in Territory politics

Q. So you were committed to it and when you became to be in charge how did you proceed with the quest, and under what conditions?

A. Well at that stage, everybody in the CLP wanted statehood. To Ian Tuxworth's credit he started it in 1985. When I became chief minister and took over formal responsibility for it, I started a full-on government campaign towards statehood with the select committee, and by 1987 we had produced a draft constitution; and we had produced a series of documents and discussion papers; on land matters on statehood; constitutional disadvantages; national parks, on statehood; other land matters and land rights. Also uranium and uranium resources. With the discussion papers coming out, by 87 we were well down the road. I was continuously pushing marketing campaigns. I'm not sure about now, when Dennis Burke became chief minister, at the old flying Eagle logo, that was still in the Chief Minister's office window at Alice Springs, and right up to the last 12 months it was still there. Marshall (Perron) dropped the whole campaign. I actually had the logo on the side of my car whilst I was Chief Minister. I was using every avenue I could to lift up the public profile, remembering that we were arguing to get statehood by 1988, the By-Centenary. But it didn't happen that year, and
after I 'got rolled' as Chief Minister, it entered a different phase again.

Q. After the time another Chief Minister took over, what do you think were the most important things you had instituted to that time?

A. I think just lifting the awareness of statehood, research. I always knew, even then, that we had a Federal Labor government in power, and that is an important dynamic to keep in mind. They did not believe in new states. Even Hawke said to me, "Why do you want statehood? It's just such a stupid idea." They were always against it. We were also battling for the railway and a whole array of fights on other things. We were getting no support and no responses from the Federal government at all. In 1989, Marshall tried this full self-government strategy. I don't think he has still got the letter he wrote to them in 1989. They simply did not answer you. It was like punching a sponge. There was just nothing coming back. The way they played it, if they ignored it would eventually go away. Needed perseverance. I became increasingly of the view that if we were ever get statehood it would need an irresistible force to go against the immovable object.

And to me the irresistible force was a clear mandated statement of the people. That was a gut feeling but more recent research has indicated that that is the case. And look at America which is a good benchmark of process, that's exactly what they've had to do in America continuously. And they have done it by drafting a constitution, getting people to vote for it, and when they realise they can't have it until they become a State. That creates the propaganda force and the public legitimacy of the campaign. And that's why we put so much work in the research of what should be put in the constitution, trying to involve the people in it. It was all because at the end of the day, you need that political punch to break through the antipathy or disinterest of the federal central government where it is now.

Q. And when you handed over to Perron [when it was taken off me, yes. I can't say I openly handed over- it is a numbers game, politics] when that happened, how did you continue that role?

A. I approached Marshall and requested that I be allowed to continue as chairman of the Select Committee on Constitutional Development, and he agreed that I did it, but only on condition [that] I didn't talk about statehood, and only talked about constitutional matters. So: the Select Committee on
statehood issues to keep it surviving, I wasn't allowed to talk about statehood, only to talk about the constitution. And we worked really hard on that.

Q. Do you think that was wise of him to say that at the time?

A. From my perspective, no. But knowing that he just thought the timing was wrong and I don't think he had a commitment to it, I just take his political judgment on it. I wouldn't have done it; even now I wouldn't have done it, but that's the way it was. I was going to take whatever avenue it took to keep it alive.

We actually did a lot of work from May 88 through to 91, to the point where we had done other work and researched enough. We'd been around 60 or 70 communities in the Northern Territory taking evidence and recording it in this document, the material we had. We knew what the issues were that needed to be addressed, and we were in the process of finalising the public education campaign, the public awareness campaign on constitutional matters. We were aiming at the 91-92 budget, to get the budget to do it (we were then spending a quarter of a million dollars a year on the Select Committee, then there was the Sessional Committee, now there is the Standing committee). As it has turned out, in the seed cuts in 1991 we both had our budget halved down to $125,000 and no money provided for public education.

Q. Those cuts were important weren't they?

A. Yes, it stopped the public process completely. We didn't even have a travel vote. We couldn't even go out and talk to the people, except to a Rotary Club meeting. And make speeches in places like that, because we had no money to do it. So we went into a research mode, and produced some, I think, very important discussion papers, option papers and recommendations. It wasn't until the C.L.P. in Central Council in Tennant Creek, I think it was in 94, when one of the branches, from Jabiru, asked what's going on with statehood, because I'd been talking and keeping it alive, trying to pretend the government had not dropped the issue cold. I got up and gave a 20-minute burst on where we were at and what we were going to do. And the whole Party were really keen to push ahead with it at Central Council. I think Marshall realised that the timing was right. His attitude shifted
and the support and resources became available. We became very, very active through 94-95 in the grasping and finalising the drafting of what would eventually become the report that came out in 96.

Q. Were the periods you had in mind appropriate to the…

A. Milestones! I have always been anxious to get the outcome in a quicker time frame but I still believed even then, I tabled that report in December 95, having tabled six months before that two drafts of what we were proposing as a draft constitution. And getting no feedback used to drive me absolutely batty. We finally tabled that in late 95. The Select Committee report to Parliament -- 1.4 million words or whatever it was, which was a composite of every word we had ever put together. That's where the Select Committee report ended up in Parliament. But Parliament noted it with minimal comment.

Q. What were some of the features of that draft?

A. A lot of persons who were around in those early years...a lot of people who were around then had a belief and a commitment that the Territory was headed towards statehood. There was never a question in peoples' mind that it was just a staging post. Goff Letts put an enormous amount of work in, it was sad when he lost his seat in 1977; it may have been a different kettle of fish if he hadn't lost his seat.

Q. So that can be stated fairly definitely from you that statehood was another stage from self-government.

A. Self government was a stage to statehood: there is no doubt about that. The promise in '75 was statehood. We opted to take self-government as a staging post. We got a really good financial deal, and some of the people thought "we don't want to risk that financial deal by becoming a state just yet'. But by '88 that had gone. The last reason for not taking that step. We knew in 85 that was happening for the whole formal push for statehood. We were trying for '88. It was one of those magical date years- the bi-centenary of Australia. We missed that date.

Q. A bit like 2001?

A. Well, we were aiming for that date. We would make the seventh state on
the Centenary of Federation.

If they had picked up our report in '95; picked it up and torn it to pieces and done something with it...we had five years to work-through the making of a constitution; to negotiate with the Commonwealth a whole array of things; we could quite comfortably have achieved the 2001 deadline. It was our committee's -if you like- timetable. It was eighteen months too late when we tabled it. It was looked at in the light of the disastrous process of the statehood convention. You [have] got to look at it. You have got to remember that what happened in '98 was a breach of twelve years of promises we had made to Territorians; that the politicians would hand-over to the people. We'd do the 'homework', and then it would go to the people. That was always the understanding with the people of the Territory. And that's what we didn't do.

Q. What in particular was not done that you thought should be done?

A. We should have...and I have spelled-it out more recently... we should have had an elected Convention. We should have had a public education campaign leading-up to that Convention, so that people became more aware of the issues when they were voting for candidates.

Q. That's a fully elected Convention you're talking about?

A. Yes! We recommended at least a majority elected to the Convention. There was an argument that to make sure that minority interest groups, the elderly or Aboriginal groups, would not be excluded. That's why we said that maybe, some partially nominated groups might be included. Our recommendation was 50 elected, 25 appointed. Alaska and Hawaii had conventions of 75 people, and both of them sat for about 75 to 100 days. I think they both sat for 75 days. And they both had...after the delegates were elected a series of seminars and programs.

The Alaskan, Hawaiian experience, they all had their own staff provided. They took decisions not to meet the delegates. They took their own time. They sat for 75 days, starting, and they worked through and produced a document because there was a high level of public comment on all the debates that were occurring there. And the procedures they were using meant that anybody who raised an issue, it couldn't just be dropped, and had to be talked-through properly [in an] effective use of committee stages to get
detail and get submissions from other people. When the document finally came out, in both cases, it was taken directly to the people as it was, and was passed by a large majority by the population.

**Q.** Is there any indication of what the indigenous population has alluded to in those two cases?

**A.** In Alaska, it's pretty much the same as in the Northern Territory, 25-30% of the population. The population of Hawaii, there is no majority group. There's a very large Japanese population; there's white Americans, or ‘Anglos’, and indigenous Hawaiians. And they all form large blocks, so it's multi-racial, both Alaska and Hawaii have that same multi-ethnic, multi-racial and indigenous mix similar to the Northern Territory, which made it very interesting and another good reason for comparison. It's also why they found some 'Yank' solutions into their constitutions to address the reality of the environment they lived in. We seem to think we can ignore that in 1998, I think, to our loss.

**Q.** Well, we have the similarity where we both live in a federation of states.

**A.** Of course. Australia was formed by creating an American, the United States style of federation within a Westminster parliamentary system. So the United States is a natural research location on a federation model, because that's what Australia is based on. And they've gone through the process of creating new states. Why wouldn't you go and see what are dynamics of what worked and didn't work there. You'd go there rather than go to Africa or Europe or anywhere else. That's the model on which Australia is based. You wouldn't even go to Canada, because that's the reverse model to the US.

**Q.** Puerto Rico is still trying to gain its statehood, but a lot of it depends on what Washington's point of view is rather than their own:

**A.** It always does. There's a book, if you read the tabling statement I made, and I included a photocopy of a book called "With An Understanding Heart", which is the history of constitution-making in the movement to statehood group in Hawaii. There's an awful lot of important reading in there. And how they went about it. And you can see when you read that why it worked. And you know that's a very similar process to Alaska. Alaska had tried the other way of going straight to the federal parliament (Congress) negotiating a
statehood in advance, and failed previously. And Hawaii had tried that and had failed previously. So only the propaganda force of a popularly mandated constitution that eventually gave them the weapons that led to them getting statehood. As did fifteen of the prior States that came into existence.

Q. Yes, that took some time didn't it, for each of those states, that is the last two?

A. Absolutely. In Hawaii, they formally started their campaign in the early 1930's-'33,'34. And it took until 1959. And in Alaska was a similar process until about '58. The Alaskans were made a state first, because they were regarded as Democrat, and Lyndon Johnson and the conservative southern Democrats didn't want a Republican state coming in because the Hawaiians tend to vote Republican. So they wanted Alaska in before they let Hawaii in, for that reason. All those federal politics of Congress were playing a role in it, as they do in Australia. But that manoeuvring, it's all laid-out there in a book like "With An Understanding Heart". In my view anyway, when you're studying constitutional matters you ought to take that stuff up anyway as required reading. Because there's a lot of lessons in there that we can learn from.

Q. I'm still puzzled with the CLP's role of having the ownership of statehood, at least the statehood debates which have gone on from time to time, and it's puzzling to me why the Party itself didn't push beyond the first constitution-in other words, to ask questions and to push in branches.

A. Well, they did after the failure in '98. They started pressing and pushing.

Q. But that was more in anger and frustration wasn't it?

A. Yes. They trusted their leadership. And they found their trust badly placed. That's what led to the anger and frustration.

Q. We have to get back to that leadership, don't we? Because you were left in limbo it seems to me, with no committee really coordinating.

A. Where we fell into a hole after the referendum vote, the Standing Committee was created. I was made Chairman of that and was sent-out to find-out why we had failed and how do we do it again.

Q. Yes, but there was a survey taken, if you recall.
A. ....by that committee.

Q. Was it commissioned? There was a survey taken...

A. No that survey, we commissioned. You mean, the public opinion poll survey? We commissioned that. That's why we were able to reach that ........concord and report to parliament in '99.

Q. Yes, I've read much of that and there's some questions I've got about it. And one of them is: that it seemed to me to be an amorphous-bunch of individuals, rather than a sampling poll. Did you find that or not?

A. No it wasn't. It was actually quite structured sampling. And they actually quoted in that report the standard deviations and accuracy within 3-5%. Those were the figures. What was really fascinating about it, was the results and outcomes and it was done on a mix of male-female, age grouping, and regional distribution, including Aboriginal communities (as far as it could be done), the qualifications were included in it. What was fascinating that the outcomes of that were identical to what we had picked-up in our public consultation. Separately and at the same time.

6.1.4. Hatton on Stone

In the *ABC Television* program dedicated to the Northern Territory’s statehood failure, *Lateline*, ‘Grand Plans’, reporter Murray McLaughlin, commenting on the rise and fall of Shane Stone following the defeat, turned to your (Hatton’s) response:

Government Advertisement jingle: “It's our right to be equal with Australians country-wide; it's our right to demand things, that right cannot be denied; it's our right to choose our future without having our hands tied; it's our right to call for statehood with full Territorian pride ...” Murray McLaughlin: “But half a million dollars spent by the government to promote the case for statehood could not sway the majority of the 95,000 Territorians who voted on October 3.7

Steve Hatton: “People were saying to me, we want statehood but not at any price, we want it done properly, we want to have a say.”8

Q: To what extent was there a feeling that the Chief Minister had, to be crude about it, hi-jacked the process?

8 *Op.Cit. Ibid*
Steve Hatton: I think there was feeling in the community about that, it's fairly clear the comments that have been coming in particularly since that time; the very strong view in the minds of the community.

Q: *That the Chief Minister had hi-jacked the process?*

Steve Hatton: Yes, one of the campaign slogans at the time was, we want statehood, not *Stonehood.*

6.1.5. Conclusion

Hatton emerges from the exercise as one of the few persons who can point to his successes for guiding statehood in a direction which met the approval of many commentators, except for his parliamentary colleagues, and certainly not Stone. As reported by Heatley in the *Australian Journal of Politics and History* (AJP&H), even his political opponents were fulsome in praise. Former Labor Premier of Victoria, Mrs Joan Kirner was one. The Chief Minister was the recipient of the praise but there was little doubt as to the real recipients, that was the Sessional Committee, and that was run by Hatton:

The Territory government's push for Statehood received a big boost when on 30 June its efforts to recognise aborigines in a new constitution were praised by the Centenary of Federation Advisory Committee. The committee chairperson, Joan Kirner congratulated the Chief Minister on the work of the Legislative Assembly's Sessional Committee on Constitutional Development. Perron had told the committee that the Territory government wanted Statehood by the year 2001 and the Sessional Committee was looking closely at how Aboriginal law, language and culture could be reviewed, how sacred sites could be protected and whether the constitution could protect land granted under the Land Rights Act.

There is no doubt in the mind of Hatton where blame lay for the failure of the first bid. Shane Stone! He was fixated on that! But the question remains: was it just Stone? Because statehood failed, he was pilloried; but there were many other causes, hence, this inquiry.

Nonetheless, Hatton's evidence in this interview provides clues, and direct evidence of what happened at vital points. But again, because the result was negative, he was certainly not the Father of the first bid for statehood because it simply did not

---


occur, but he might be said to be the Pretender, because the sum of his effort was rejected in the process before the electorate in turn rejected the changed version, and in considering the double negative outcome, his role and stance is seemingly vindicated by the people. Whenever the first statehood bid is mentioned, Steve Hatton’s name comes to mind, and he can hold his head high!
6.2. SHANE STONE BIOGRAPHY

6.2.1. Antecedents

Shane Leslie Stone was born in Bendigo, Victoria in 1950. He was educated at the Catholic CBC and De La Salle Colleges and Wodonga High School near Albury. He obtained his Bachelor of Laws (LLB) degree at Melbourne University, and an Arts degree (BA) at ANU. He also obtained a Graduate Diploma in Education Administration (Adel) and Diploma of Teaching. (RCAE). His other titles include TPTC, FAIM, FACE, FAICD and QC (which he conferred upon himself in 1997, when Attorney General of the Northern Territory). He was a former Deputy Warden (Director of Studies) at International House, University of Melbourne. He held senior Administrative positions with the Institute of Catholic Education State College, Victoria. He was for a time a primary school teacher, and he was also a Lieutenant Commander in the Royal Australian Navy Reserve. He married Josephine in 1977. They have two children and live in Darwin.

Stone's law career began as an Articled Clerk to Hon. Sir Edward Woodward, OBE. He was admitted to the Victorian Supreme Court in 1982 and is a member of the New South Wales and Tasmanian Supreme Courts. He moved to the Northern Territory and practised law in Alice Springs and Darwin. He joined the CLP and unsuccessfully contested a House of Assembly Seat in Alice Springs. Moving to Darwin, he was elected as Member of the Legislative Assembly Seat of Port Darwin in 1990. Soon thereafter he was promoted to the Ministry and was Minister for the Trade development Zone, Education and Training, the latter in which he oversighed the education budget cuts, which restructured the Education Department. He was also Minister for Public Employment and Minister responsible for the Northern Territory University. He was also responsible for the Office of the Public Service Commissioner and Equal Opportunities from 1990, and for the Menzies School of Health Research. He was Executive Chairman of APAC Group of Companies (Darwin); and a Board member of Australian Children's Television Foundation. In 1993-1995, he was Minister for Ethnic Affairs.

In 1995, he took on the portfolio of Northern Territory Resources and Development, Industries and Development, and Asian Relations and Trade, where he made many overseas contacts in South-East Asia. He is a former leader of Government Business in the Legislative Assembly.
During 1995 he had become Chief Minister on the retirement of Marshall Perron. He then held portfolios of the Arts and Museums (1995-1996), Police, Fire and Emergency Services (1995-1997), Constitutional Development (1996-1997), and Public Employment 1997. In 1997 he reshuffled his own portfolios to include Defence Support (1997-1999); changed Constitutional Affairs to Statehood (1997-1999) and was Minister for Tourism (1998-1999). His extraordinary workload also included responsibility for Young Territorians (1997-1999) and Womens' Policy (1997-1999). He was Northern Territory Attorney-General from 1997-1999 and previously from 1992-1993. He resigned as Chief Minister in 1999 and sat on the backbench, having been succeeded by Hon. Denis Burke as Chief Minister. He retired from the CLP-held Seat of Port Darwin in 2000, sparking a by-election that turned into a vote on the issue of mandatory sentencing. He had introduced the concept of mandatory sentencing as Chief Minister. The CLP’s Sue Carter won the by-election and the government claimed a mandate for the continuation of mandatory sentencing. Stone was then appointed Federal President of the Liberal Party of Australia. His term expired in early 2005. He lists his hobbies as: gardening, diving and Alpine skiing.6

6 Who's Who in Australia 2001 Information Australia Group Pty Ltd, Melbourne, 1685 (http://www.infoaust.com)
APPENDIX 7

INTERVIEW: LABOR LEADER MRS MAGGIE HICKEY

Preamble:

Q. Please describe your position and role in the Territory Labor Party and the Constitutional and Legal Affairs Committee.

A. As well as being the leader of the Labor party, I was also the Deputy Chair of that Sessional Committee.

Q. When did you become Leader of the Labor Party?


The Labor Party's attitude to statehood

Q: In the 1980’s and earlier, it was Labor's policy to put self-government first and statehood could wait until it was certain there was no financial loss to the Territory. Indeed Labor leader Jon Isaacs campaigned against it on the grounds that there would be a financial penalty. What was the catalyst for change? Could you give me a brief outline of Labor's attitude?

A. My memory of the party's attitude, official and unofficial, was that statehood is an important issue for the Northern Territory viz its status to other states and the Commonwealth. And I don't think that condition changed- certainly there were other issues and other priorities. That was adopted by Ede, particularly Ede, perhaps more than Terry Smith, who was acutely aware of the problem that had to be overcome in regard to Aboriginal involvement. And he had an enduring interest in that. Bob Collins was leader prior to my time. We did not make any statements in relation to statehood, because we had the fear that it had the potential to be hijacked by party interests. And also because we knew that, whether or not we agreed with the stance taken by the CLP. But statehood was one of those icons that we aspired to. We certainly did not want to be seen as negative in that regard. I was always involved with the committee and certainly my deputy John Bailey was always a strong advocate of statehood.

Charge: The CLP owns statehood

Your question whether I think the CLP owned statehood. I think that was true, certainly prior to the referendum and prior to the convention. I don't think now that the CLP wants to own statehood. They are leaving it as a

---

7 Interview conducted at home of candidate, at Karama, Build-up, 2001.
sleeping issue for the moment because of the huge problems that were Stone-related.

**NSW lukewarm attitude to NT statehood**

As to the question whether we would have promoted statehood after the 1997 elections or let it run its course. No we would have promoted statehood. Yet I must say that it required some effort and persuasion to convince my colleagues at the party conference prior to the ‘97 elections, that all states should be supportive of statehood, and probably the one who was least supportive of that call was Carr. And I went to see him and I talked to him about the problems of Aboriginal people, because that was his problem. He said that given the CLP stance on Land Rights for instance that statehood could hardly bring any discernible benefits and that meant that some measure of control and some measure of oversight on the part of the federal government of whatever colour, whatever political pursuit, would be valuable. However, my view was of him, that provided that Aboriginal people came into the equation, that provided we stuck to the agenda and to the principles that were enshrined in the constitutional committee's recommendations, all should be well. There were other priorities of course, but one of the things we thought we could do, given the bid for statehood if we were to achieve government and if our party was in government federally and that was to do an audit on the Northern Territory, to see how valuable the Self Government Act had been. Because what Stone subsequently wanted to do was really run an agenda which gave us the Self Government Act as the mechanism for a state. We didn't think that was good enough. And what we wanted to see was what benefits had accrued. Not just to the top end of the town but to other people as well. So I think that covers that question.

**John Bailey**

**Q.** *When you became leader, did you appoint John Bailey as the deputy leader.*

**A.** Yes I did.
Q. And when the Legal and Constitutional Sessional committee was formed, did you appoint him there.

A. He was there first. I went into the C & L committee as deputy leader, but I suspect he was still there, but not as deputy. He stayed on the committee, but not as deputy.

Committee’s importance

Q. There were three committees—the Select, Sessional and now, the Standing committee. What do you think was the single most important work done by the Sessional committee when you were a member?

A. To develop a model for a constitution.

Q. I believe the most important time was the tabling on the 25th November 1997 of the Sessional committee’s report of the final draft of the constitution with its recommendations, which was met by virtual silence. What do you think of this episode?

A. And then subsequent to that we had the Chief Minister’s announcement of what form the constitutional convention would take.

Silence from parliament after tabling Report

Q. But before that, I want to know what you thought of that silence, neither accepting rejecting, nor even debating the report.

A. Well we very worried by just what the Chief Minister had in mind, and we knew that it was driven principally by him. Steve Hatton and indeed members of the committee had displayed good faith, and we had our hearts in the committee, and the matters had been resolved on a consensus basis. What had been presented to the House was the view of us all on the committee. And for all of that work to suddenly come to a halt and for the committee itself to be denied that dialogue was very, very concerning.

Q. When did that occur? After the educational budget cut was announced?

A. Oh yes! And we knew that Rick Grey and Graham Nicholson, the constitutional lawyer, had not been consulted, and we could see by that, that we knew, we were going to get something entirely different.

Committee effectively in limbo

Q. Was there anything, any remark that you recall, any comment, in the corridors, about the Sessional committee’s report?

A. Only that we were getting no timetable. And no instructions. Our committee was in limbo. And I think that’s all you could say about it. I
suppose its exclusion. We were being excluded and it wasn't just the Opposition members. It was everybody. The whole of that committee - CLP, ALP.

**Overwhelming need for education**

Q. **Was there any other work done by that committee which might have contributed to or enhanced a real statehood, including the recommendation of a major education campaign? Was that part of the recommendation of the committee?**

A. We certainly wanted to have another go at the education issue. Chips Mackinolty wanted to get out and do a run through the Aboriginal communities. There was certainly a need for education with the Aborigines. One of the difficulties was to arrange meetings between ourselves and the Land Councils. We did understand that there was great suspicion. And there was some reluctance.

Q. **Was there really? Because the committee itself wanted to consult. It had that intention (yes) and it had the people on the ground to do that, there were good intentions by the committee. But the suspicions may not have been of the committee by the communities, but of (CM) Stone.**

A. Yes, Stone. It was also at the record of the Country Liberal Party with its attitude about the Land Rights Act. And because we had been a one-party state, a one party Territory essentially, we tried to persuade people by saying: 'Look, the CLP are in government now. But they won't always be in government. The Labor party or some other party might be. It will be eventually changed.' But from their point of view - 26 years of CLP rule, they saw no reason why it would change. They feared that as the CLP, which would be the party going into statehood and staying there, they saw no advantage for themselves.

**View of Stone's takeover**

Q. **How did you view Shane Stone’s handling of statehood, and when in your view, did he take over from Hatton?**

A. Answering the last part first, he made his decision before the final report. And I think the CLP had done their polling, and saw that statehood was an issue that people were supportive of, especially in the urban community. And this was going to be a winner for HIM. And he wanted to control that for himself. So I think he took over the mechanics straight after the presentation of the final report, leading up into the convention.

Q. **Are you saying he actually had a hand in that report.**
A. No he knew from previous documentation and Steve wore his heart on his sleeve about statehood and was open about what was in the report and how he wanted to handle it. He made a very good Aboriginal Affairs minister because he had that rapport with the communities. And that was totally alien to Stone's way.

Q. The first part of that question about Stone's handling, of statehood.

A. I was frankly amazed that, I mean he always used the rhetoric of arrogance, and he lost the plot. A smart lawyer but he misread the community. He really thought he was going to take the ball. I think it really revealed the contempt in which he held the electorate. He thought they would swallow this and you could see it from the time he started the convention up. Now, at the time that that happened, the Labor Party was still unsure that he would win through that argument despite all, because after all he looked at the level of support for statehood and it was extremely high. It was probably something like 80%. And who would have thought that people who were rusted-on CLP supporters would turn their backs on that.

Parliament, including ministers in atmosphere of fear

Q. Apart from Hatton, there were the government ministers of course, did any one of them comment on the report either in the parliamentary sessions or in corridors or elsewhere? This is prior to the referendum I'm referring to.

A. Yes, there was that gap. They were looking for his approval and they weren't about to go against him. I think because he had such a powerful voice in this and he was convinced of its rightness. It wasn't an issue they were going to fight him on.

Q. Hatton has said there was a climate of fear amongst government ministers which was palpable. (Yes) That they feared for their jobs. (MMM) That it wasn't only amongst his parliamentary colleagues but that he intimidated the Opposition as well.

A. Absolutely. In his best days, you felt he did. You had to fight very hard against that feeling of being cowed by him. I remember at the time when Clare became leader, the CLP got some courage up and kicked him out of the Chief Ministership. And she said well aren't I lucky. That was one thing she was dreading; becoming leader of the Opposition and having to combat Stone.

Labor in quandary

Q. Did the Opposition protest against Stone?
A. Well, we did, very loud and clear in terms of process. And the courts, and we were quite heavily involved with the courts and groups who were talking about a better system and a proper system there, people like McNab and so on. Although ultimately of course they thought they held the high moral ground and that we should have opposed Stone’s model at all costs. The difficulty with that at the political level frankly was that we knew of course that people were in favour of statehood and we knew it would be to our political cost if we opposed it wholesale. At least we felt it would. And we felt that it would make us the issue rather than statehood. And we didn't want that to happen. What we wanted to say was ‘Look, we agree with statehood although we aren't not keen on Stone's model'. And I must say what we're talking about now are questions for the referendum- and I have to tell you there was a lot of heart searching in that because the majority of people wanted to oppose that- and that is of course what Labor people did.

Q. Did Labor get to see the polling prior to the referendum?
A. We knew what it was like because we had done some of our own polling.

Other Sessional Committee issues

Q. Were there any other defining moments in the committee, like when the budget was cut, and if so what were they?
A. My feeling then was that the committee was about to be hijacked, and the whole committee was about to be hijacked, that the whole process was about to be hijacked. And despite the fact that Hatton and others in a movement were hoping to persuade the Chief Minister that he was going down the wrong path that he would listen. Of course he didn't. There were some other moments that were interesting, I suppose the issue of the argument of the bill of rights, that was probably the thing that would have caused most dissention between Labor and the CLP. Interestingly the other thing would have been the Preamble in the constitution, and the issue of Aboriginal prior ownership. I think Steve... a lot of it was really his authorship. And his faith in that which pushed it through. And of course, that wasn't liked either.

Q. When you saw how Stone was handling the question, did Labor consider taking an adverse position, for instance, just opposing it?
A. Oh yes, indeed in Caucus, because we had Aboriginal members who had constituents and whose supporters were saying this is totally wrong. We want you to vote against it. And it was really us holding a hard political line
which said we don't want to make us (Labor) the issue, we want this to be the smallest possible issue, we had other things on our agenda. Like winning an election. Or at least not being decimated at an election.

Labor leadership issues

Q. I have asked specific questions about your role about the constitutional committee and as (Party) leader in the Legislative Assembly, as alternative leader but as I have discerned, you were involved in a leadership contest with Deputy leader, John Bailey. What specific comments have you got (on that) and the issue which sparked it?

A. Well, there were two groups of people who opposed the referendum questions. One was the Aboriginal community. And their supporters on the basis that they didn't trust Stone. I suspect frankly there would have had to be a much better education and marketing strategy even if someone else had been Chief Minister because of that deep-seated suspicion of the CLP, so that was one group. And the other group, of course was the non-Aboriginal group who were CLP voters and non-CLP voters, who said 'look you're asking us when did we stop beating our wives' basically. You are asking us a loaded question. Even if they knew nothing about the constitutional committee or its work, or heard anything about it, I think the questions were ones they felt they were unable to support. They wanted statehood but not at any price.

Aboriginal Convention resolutions

Q. I refer now to comments from the Standing Committee on the Kalkaringi Aboriginal Convention. And to the Batchelor meeting which presented a series of resolutions, requiring a plain word agreement with government on Aboriginal matters before the Aboriginal nation would even consider recommending a 'yes' vote in the future. This was regarding Aboriginal law and sources of law. Given that, and the magnitude of these demands, so to speak, what was Labor's attitude to them?

A. We needed to negotiate on those and indeed we did that in the months following the Kalkaringi agreement, and what we have put together with Aboriginal leadership in our consultations, and this is work that Peter Toyne and John Ah Kit and others have done, is a Framework Agreement, that takes us beyond just a consideration of statehood. The agreement takes us into an area of how we as a government would handle questions of Native Title, of land rights, of health and education issues, along with all those other
things. So that is obviously something I can't go into detail with at the moment, but it will be there before the election.

Q. Why did the Aboriginal community believe that their rights would be jeopardised in issues particularly affecting Aboriginal law when it was actually recommended by the committee?

A. I don't think it really mattered much. The Sessional committee of course had provided some assurances. But as far as they were concerned, it was Stone that they were dealing with, and they didn't trust him.

**No unanimity on entrenching land rights**

Q. Was there unanimity of view in the committee that the fundamental land rights question should be entrenched in the constitution?

A. No. It wasn't unanimous. And we had some difficulties on our side, I have to say. Patriation of the *Land Rights Act* to the Northern Territory at statehood. Some of us-I-and Bailey probably, would have argued that it was a reasonable thing to do, you're either a grown-up state or you're not. But there were others, perhaps not on the committee side, but in the party, saying that the reality is that we are likely to have a CLP government in power and how can we trust them. They'll water-down the Land Rights Act. And no matter what constitutional or legal fences you put up, that suspicion was the perception.

Q. There was actually reason for that suspicion. Marshall Perron had actually said that if the Land Rights Act were patriated the Aboriginal people would have the opportunity to alter or amend- now read that as the CLP. It wasn't the Aboriginal people, because there was only one party in power at the time and it wasn't the Aboriginal people.

A. Yes. I guess that's right. So there were some very real problems with it.

Q. This is important, because where I came from in the party, many people in the CLP- and this is one I know about -certainly promoted strongly by the 'Fifth Floor', had it that the Aboriginal Conventions sought a separate state. Indeed, the call for self-government could have been interpreted as such and was useful propaganda in the views of those who opposed Aboriginal self-determination. Do you think it was divisive, or 2) controversial and 3) did you or your colleagues think it was the opening shots of a separate campaign for a separate Aboriginal political party? If so how do you think it so?

A. A bit of all three, some of the authors meant one thing and some meant another. It was a bit controversial. Some people thought that a separate
state and a separate party should be aspired to in the Northern Territory. I think the more level headed of the Aboriginal leadership, including the rank and file of the Aboriginal people, were not interested in a separate state. They know the reality. It certainly was portrayed as very divisive. And we in the backrooms argued strongly that other language should be employed. It certainly wasn't language we would have employed in the Labor Party.

Q. **It was certainly very useful to the CLP!**

A. Oooh, yes indeed! And look at the numbers let's face it-25% of the population within their power structures, I mean, come-on; and some of the hotheads were incredibly divided and couldn't organise themselves out of a paper bag.

**Land Councils influential in conventions**

Q. **To what extent do you think the Land Councils, even ATSIC did lead Aboriginal opinion if at all? There was a response when the Aboriginal delegation walked out of the constitutional convention.**

A. Yes, I think the Land Councils do certainly lead Aboriginal opinion. Within those forums, the Land Councils did lead Aboriginal opinion.

Q. **What impact do you think that had on statehood as a whole, because there was an impact. I wondered if the Aboriginal people just blindly followed their own people.**

A. I think in this particular case, the Aboriginal leadership's arguments had resonance. The Aboriginal people, by and large are pretty conservative themselves. By nature, they don't like changes. They don't like radicalism. But there was a strong view that they could not trust the CLP and that was what it came down to. At the end of the day, no matter what the constitution would say, that's the big hurdle they came to.

Q. **Galanwuy Yunapingu was responsible for organising the conventions…**

A. Yes and his staff at the Land Councils certainly helped him to organise the conventions.

**Relations with Aboriginal Conventions**

Q. **What did you think of those Conventions?**

A. Well I attended a part of both, not all the proceedings. I actually found them very good social events- people got together; and people were taking them very seriously- the speakers. People were much more comfortable in their own environment and so they were able to listen in a much more relaxed way. The authorship of what came out of that reflected accurately
what came out of that from what I saw and picked-up. Of course, ultimately, the last word is going to be the person who is writing that information.

Q. *I was thinking in a personal sense, what Labor’s relationship was with the conventions*…

A. It was interesting. We had very poor relations for instance with Tracker Tilmouth over the pre-selection for the Senate. And that relationship was very fractured- certainly with me and him. Often you’ll find that. The leadership of the Labor Party; like any lobbying pressure group. The Land Councils wanted us to make very strong statements in their favour. And we had to say on many occasions, we’re here for all Territorians and we can't accommodate you. But there was certainly a renewing of relationships.

Q. *Would you agree that any future bid must contain a proportional representation of Aboriginal people, and the entrenchment of indigenous rights and other recognitions in the constitution?*

A. Yes, I think it's important if your aim is to bring along a good proportion of Aboriginal people and to get a good vote on convention. I think that's where Shane Stone went wrong. He thought he could do without the Aboriginal vote. He thought he would get the mainstream vote and that he could live without the 25% who may not vote with him. We know if you don't have people's hearts and minds, you aren't going to succeed. The other thing, we knew was that while Stone was running his race in the Territory, it was quite another matter with his colleagues in Canberra what he was trying to do. Well, we knew from our talks in the corridors with small ‘l’ liberals, they were aghast at what was going on. They didn't like it at all.

**Handling statehood at Tennant Creek**

Q. *Now, your electorate of Tennant Creek. How did you handle statehood there?*

A. I barely talked to people about it. That's the interesting thing. When I went out and talked for the federal election, we were always accused of running an anti statehood campaign, you know, that we spoke out of both sides of our mouths. We certainly supported statehood, that we supported the convention, that we supported the referendum, but that we were quietly going around undermining statehood and working against it. And to vote against it. By the time I went around my electorate, and I'm pretty close to my electorate, representatives of the Land Councils and others had been talking to the people about the constitution and statehood for the NT and so when this came up, they were saying we’re going to vote for Warren
(Snowdon), but we're not going to vote for statehood. I didn't have to say anything; absolutely nothing. I wouldn't say that's true of all my colleagues. I voted at McLaren Creek, a little Aboriginal community of 25 voters, I could say with my hand over my heart that I would have been the only voter there who voted for statehood. And I did vote for statehood. I would have been the only one. They had made up their minds about it. It was a very simple matter for them. I know it's a pun but it was black and white for them. They said this isn't for us, this is 'white fellas' business and we don't trust the CLP.  

Leaders' contributions to statehood

Q. In terms of leadership and power, what contributions have Labor leaders made to statehood?

A. Territory Labor leaders have had to do a job of persuasion, to talk long and hard to our federal colleagues, as they were indifferent to statehood; they were more than indifferent. They were critical and dismissive of the concept. This was because of the way the CLP ran the Territory. We had to say to them, look it doesn't matter who is in power, what we want is a constitution to run the Northern Territory regardless of who is in power. To get this across, and so I think we did that, and whilst some were dragged kicking and screaming to it, at least they gave us that support. And they gave us such support federally.

Q. So you're talking about the states leaders?

A. Yes. And federal leadership areas.

Q. Did you ever speak to Keating about that?

A. No. Beazley was in power when I was leader. (power as in Leader of the federal ALP). It was a grudging acceptance at best. They also had little faith in the local Labor Party's ability ever to be in office. And they felt what they were doing was granting gifts to the CLP. And look at who would take the kudos attaching to statehood in the short term, and that was the difficulty. We had to fight very hard on that issue. Whereas we believed if done properly, it would provide more empowerment for Aboriginal people, better security for them, etc, and a better opportunity at a party political level for us to get there.

Q. And what about the local leaders?

A. In Labor, I can't comment much on Smith, but Ede was the only other leader I knew before I became leader. He supported it but there were other

---

8 Interview, Karama, Build-up, 2001. Tape, end side "A", begin side "B", in possession of candidate.
priorities with him such as getting into office. And at the time, we were still on the tail-end of Land Rights, and there were land rights issues unresolved at the time Ede was Leader.

Theories of government

Q. What theory of government do you support? Pluralist? Corporatist, Elitist?

A. I suppose the Labor Party regarded itself as more Pluralist as a system, but we regarded the CLP as having no particular philosophy except getting there. It was populist. We often called them 'agrarian socialists'. I hated that (expression) but a remarkable contradiction at times, they put-through some honourable policies at times, social policy, along with some deplorable measures at times.

Q. This is an example of where things change in the midst of a campaign where there is opportunity to heed this pluralist input to government- which didn't take note of it- like someone who says 'now I will lead you, follow me and I'll bring you to paradise'. The electorate rejected that. But it is interesting because the pluralist view virtually applies at the ballot box.

A. Especially where people wake-up to the fact that they were being led by the nose. Had Stone been a little subtler about it, maybe given a bit, like the framing of the constitutional question, he might have got there. And then he could have worked his wiles on how and when and where it was going to happen. And I think it's true, people did think, 'we're going to have a say on this.' And of course they were able to have a say without affecting government. They were able to give him a kick.

Political, social and economic effects of bid

Q. In your opinion, what were the political, social and economic effects of the statehood bid failing?

A. The political effect was that Stone went down the gurgler. In economic terms, there wasn't much change. There wasn't much change because there wasn't an economic change hanging off statehood, we still remain a mendicant state and we still need 80 cents in the dollar from Canberra until such time as we can develop more an economic and resource base of our own.

Q. What about Investment? Was Investment turned away?

A. People talked about that issue. Would it enhance our ability to attract business and investment and so forth; and a lot of this was contingent on the
issue of our Southeast Asian neighbours and how they would feel. Would they view us as having more clout as a state in the federation than we would as a territory? This was advanced by some social proponents that countries like Indonesia, for instance, that our status as a part of Australia would be enhanced if we were seen as a place like NSW, WA and so on.

Q. We were involved in BIMP EAGA and Stone had a lot to do with it.
A. Yes he did and you would have to say Stone was very good. Mind you the observations of one of my colleagues who went overseas with him on a trip to America he said he (Stone) performed admirably and was an extremely good ambassador for the Northern Territory. We used to see him as the bumptious, arrogant sort of person, not at all so when he was with other people and actually providing a very creditable and very good face for the Northern Territory.

Effects of being a state
Q. Would things have changed - the economics change by being a State?
A. The real power brokers and the people at the top in industry would know that whether we were called the Northern Territory or whether we were called a state, certainly at the beginning of the process, it was not going to make a discernible difference. We would have been a state, much like Tasmania, I suppose, with a small economic base, and still fairly heavily dependent on Canberra; but yes I would say the ability to have our own legislation and to have the removal of the threat to have it held over our heads- unless it was a Franklin dam issue, but I don't think it (statehood) was an economic issue.

Senate representation
Q. Was the argument about Senate representation still alive at that time?
A. It wasn't unnoticed. People like Graham (Nicholson) and John Bailey and so on, people were arguing over that issue, but certainly there was that view out in voter land asking did that mean we were going to have twelve Senators or a Senator on every street corner in Darwin; weren't we over-represented anywhere and 'blah blah blah!'

Q. Do you think people were worried about too much representation? (Oh indeed yes) Rather than being under-represented?
A. Oh yes! Those who were critical of statehood. It was interesting that those who saw us in the scenario that we were secretly anti-statehood, but
most of us, probably from both sides, went about putting-out fires about those very sorts of things. No we weren't looking for twelve senators, but we were looking at it in terms of population and relative to that. But of course that was another issue for our colleagues in the states, because they were worried that if we became a state with even two senators, eventually and gradually, we would be putting up our hands for more. And more for us meant less for them. We would either have to share it or there would be an increase, and an increase meant that there would be shared power, and the Senate is the ultimate number crunching area for party political activities.

Social consequences
A. And the social consequences of the statehood effort, well I don't think there were social effects but I suppose there were interesting political effects. After all, Carrie Altamura ran as a candidate, and well we basically got a new group of people who were drawn from the left and the right merging together for an effort to put up a point of view about particular issues.

Q. It was a defining moment for a number of political aficionados wasn't it?
A. Yes.

Q. Because the CLP purported to cover a 'broad church'.
A. Yes it was.

Media reaction to statehood
Q. How do you think the media reacted to the statehood effort?
A. The constant turn-over of media people in the Northern Territory- many of them are very young, and the constant re-education process that had to be gone through with the media people, to provide them with a history of statehood and the critical issues there; and of course they didn't want to read through twelve volumes of background; they just wanted everything in bite-size pieces, and I think often they focussed on things as those of us involved would regard as peripheral. Trying to think of some examples. Things like twelve Senators and what did people think of that, which weren't really at issue for the Territory. The general lack of understanding, the depth of understanding of the media was an issue because they it meant that they weren't providing an avenue for informed debate in the media. Editorials were full of hype about 'won't it be great to be a state', without actually
saying what that meant, or bringing in other irrelevancies.

Q. *The Northern Territory News was the most influential, according to the survey, of the printed media, but television also carried the message. Do you think that got across?*

A. The Northern Territory News, once they made up their mind and said 'we're not keen on this', once they'd got their view on the matter, I think they were the most influential. Obviously, there were all the statehood adverts, I think they were a huge overkill, and I think people switched off them. The evidence is there, isn't it?

Q. *The jingle was there.*

A. The jingle was OK; the jingle was alright. They say if you've got nothing to say, sing it. So maybe that's what happened.

Q. *But the media is important. In Hawaii great effort was spent on educating and getting on-side the media moguls and people who were influential. Maybe that might be a good idea and might have been a good idea at the time.*

A. Maybe, but of course that's the other issue that had they been educated by the constitutional committee that process would have been better.

### Sessional Committee deprived of budget funding

Q. *What would have happened by the way if you had got a good budget?*

A. Yes. There would have been a broad-scale advertising campaign. And the thing about it was that there would have been stories attached to it, the media would have been interested in it. Not only the advertising or the process *per se*, but the picture.

Q. *At the time the budget was cut, there were lots of other programs and budgets cut too. It was a type of spring-cleaning process. And so, was it reasonable or was it unreasonable that statehood was cut along with the other areas of government?*

A. Well, no it wasn't (reasonable) if you're making a serious bid for statehood. And you're either going to do it or you're not, and it was clearly not a priority in terms of the budget for Mr Stone.

### The Contrary Case

Q. *The Labor Party was at one stage opposed to statehood. So what is the contrary case- not having statehood?*

A. I think it needs to be made clear that the Labor Party was never opposed to having statehood *per se*, they said let's have it, but let's have it in time. There are other things we need to do first. And that was turned into that very
simplistic message that the Labor Party doesn't want statehood We had a bipartisan committee that was working very hard on trying to maintain bi-partisanship for the state of the Territory and we had a Chief Minister who wanted division because it suited his political purpose to portray the Labor Party as anti-statehood. We didn't want to make ourselves the enemies: we wanted to make ourselves the smallest possible target. And despite the fact that we totally disagreed with what he was doing and the way he was going about it we were determined we were not going to be drawn into that. The contrary case for not having statehood, is well, we would remain as we are. But I suppose after a quarter of a century of self-government, we must be looking at the next step along the way. And we must reflect on the progress we have made so far. I think that one of the most important things in the process from now on. We must reflect on what we have done from self-government and how we have performed. What the outcomes have been, what we've done well and what we've done poorly and how we can make it better. So that is reflected in the constitution, or if it's not in the constitution that it's the underwriting of the constitution that we say we haven't done very well in developing our industry-base or we haven't done very well at improving the health of Territorians, whatever aspect of it is we want to look at, so that we make an honest assessment of whatever we want to look at and an audit of how we've gone and then move forward from that.

1988 financial parity deprives statehood of life-force

Q. Now I put it to you that in 1988 when the CGC brought in relativities in the Territory's favour- that was the Territories parity with the states in the HFE (Horizontal Fiscal Equalisation) so that at that stage the NT was paid like the states with relativity for remoteness and so on- that it took-out much of the steam of why we should become a state?

A. Could be. I suppose and I imagine it probably did because yes, the dollars are coming in. And that that was another argument that people were advancing to say, well, why do we need statehood? We're doing quite nicely as we are. I think there is another argument there that people who come into the Territory for a short time advance, and they don't often say it to you, but you can see it in the voting patterns, for instance that many people will vote Labor at the federal level and CLP at the Territory level. And the polling that we've done, some of the research work that Brian Ede did often, we win in the federal seat but we can never win government in the Northern Territory, was
that people were concerned for their long term benefit; for their pensions, for their health, for foreign policy, for where they were going to go back to because they weren't going to stay in the Northern Territory, and therefore they would vote for a party that would provide them with social benefits at a federal level, but that they were in the Territory to make money and they wanted to get-on and so they would go with the party that gave them the best opportunities for that- and maybe, that's what they saw in the other argument- (horses for courses) Yes. If we were to stay as we are now, and I don't think we can, because things are moving on- the railway's coming, oil and gas maybe, and along with the rights that come from statehood, come responsibilities as well. And I think its time we took those responsibilities on; and that's sitting at the same table with our colleagues and assuming the same responsibilities

Q. There's a problem with that, isn't there, to get over? Those who look at the public interest will see that point. Those who are sitting around a dinner table will see that the public interest is to have dinner on the table. And possibly they think that there's not much that statehood can do to assist that.

A. Yes, I think the 'hip-pocket' is a very strong motivator.

Q. Maybe in the over-riding legislation, possibly the Euthanasia case, people are in favour of statehood?

A. A lot of people advanced that view after the Andrews intervention that if we had been a state this wouldn't have happened to us. And therefore maybe we should become a state.
Q. What sunk statehood? (Raucous laughter and undecipherable comment)

A. There was the history. Two groups opposed statehood. Too many people opposed statehood, Aboriginal people for historical as well as contemporary reasons; a distrust of the CLP (handling of it) and anything they brought forward and a feeling that statehood would give them enhanced powers rather than share power; the other group; and the second matter, the pinnacle, the referendum question. 'Now that we have agreed to the constitution...'. And that was the big issue because people said, 'but we haven't agreed to a constitution. We haven't voted on it; we don't like it. It was a question like 'when did you stop beating your wife?' Because it agreed to a principle that said 'if you ask us the question, do you want statehood, we will say yes. But you're asking us a loaded question.

Other consequences

Q. Was there any other consequence of the failure? Any other major issue arising?

A. No, but one of the good things that came out of it was the Kalkaringi statement. And Aboriginal people did debate the issues in their own terms and in their own forums, and whilst you have a statement from that which seems hard line, instead of being a passive audience for it, they said what they wanted. Like any ambit claim, this was a beginning for us and we've gone on from there.

Contrasts: Hawaii and Alaska

Q. Have you had a chance to compare and contrast overseas process like Hawaii and Alaska?

A. Hawaii failed before. That should be an object lesson to us that you don't give up because of one person or one set of circumstances.

Q. What do you think of bringing in experts to help with drafting?

A. We should use expertise and experience from other places, but I agree with you very strongly that it should be taken out of the hands of politicians. In the same way that we on the committee all rejected the notion of Citizen Initiated Referendum (CIR) and the reason of course for that is that it takes power away from politicians. From that position we say we are 'beasts' that have been elected to represent and we know what's best; especially if you're in executive government.

Q. In Hawaii, they did that; they had their own convention, and conference, their own vote, before the major convention and referendum. Moreover, they had a lot of
time; they had funds and got the newspapers on side. They had experts helping people. In Alaska the delegates were taken off to Anchorage university campus. And some people here are suggesting it should never be held at Parliament House again—maybe some other place like Bachelor or NTU or some place like that, over a greater period of time.

A. Yes, we said that too, there should be more time and they should go away and talk to their constituent groups.

Role of Hatton and Bailey

Q. Referring to the past, not to the future, Steve Hatton was influential?

A. You have to accept that in the process of the constitutional committee, Hatton was very influential, and had a strong leadership role, and because he also had people like John Bailey and Wes Lanhupuy and people like that, who were sufficiently interested to make a study of those things themselves, and taking away the party political aspects of it, really did agree about those principles. If you're looking at ways of taking people with you, and what's the best way to do that but to look at other models and see if they work. You have to look at also, having got their constitutions, how well they're working. How effective is government after that? If it doesn't serve the people, that’s another issue.

Q. Steve Hatton and John Bailey have obviously got a great regard, even affection for one another, and if statehood hadn't happened, I doubt if that would ever have happened.

A. Yes, Mind you, they had their bingles. Steve used to get so wild with Bailey that he would go out on the balcony and smoke furiously then come back in. Bailey has an ability to wind us all up, I'm afraid.)

How much democracy was present?

Q. In terms of democracy, how would you say that it was or was not present? And would you agree that it started well as intended by the committee, but that changed?

A. I think the committee bent over backwards to ensure that a fair democratic process was present by the fact that the government was to some extent embarrassed by the fact that what was proposed in the convention was a model that was far more democratic in scope than the Legislative Assembly and the composition thereof. Democracy was not what was wanted by the CLP. What was wanted was a particular outcome. It was an outcome that was wanted in conjunction with an event—an election, and
was time-factored. The business of trying to get a long-lead time so that people understood the processes and were involved with it was not an issue because the polls said it would be successful, so let's do it. And let's do it so we get the outcome we want.

Confusion with Federal Republic referendum

Q. Was there a problem with the almost simultaneous federal referendum?

A. Some Aboriginal people in my electorate had some problems with it. The American republic was confusing. (Example of Aboriginal man given). The two concepts were confused as being placed together—the republic and statehood.

Q. We have had about 4 successful amendments to our constitution from many more attempts. Look at American amendments, 25 so far. About 5 have been since the 1950's.

A. Rhetorical question. Not answered.

Organisational model for bid

Q. What do you think of the organisational models?

A. Looking historically at the Select (Sessional) and Standing committees, one of the barriers to the successful conclusion for the statehood bid was that there was too much detail and not enough education along the way; that we produced many papers that were easily readable—certainly not in Aboriginal communities and probably not even in non English-speaking background people and probably not the majority. (Example given of lawyer colleague no longer in Parliament who abjured detailed constitutionalism). The parliament also had that same view. There were not too many people in parliament, even on our side, who took too much of an interest in the detail.

Q. So do you think an all-parliamentary committee was the best model available at the time?

A. We could have done more and allayed the Stone intervention had we had a committee that had a broader reach. Or had sub-committee representation through the community, because I think it became an elite group, although we went out and we consulted, we didn’t have people outside our group on the committee. So we couldn’t say to Gallarrwuy Yunupingu for instance, to organise a group within his own constituency to come in and talk about their point of view.
APPENDIX 8

OVERSEAS: STATES OF SUCCESS

8.0.  Alaska  407
8.1.  Introduction  407
  8.1.1.  Education  410
  8.1.2.  Constitutional Convention  410
  8.1.3.  Constitutional Convention  411
  8.1.4.  Delegates Election and Divisions  412
  8.1.5.  Convention Site  413
  8.1.6.  ...on Information and Assistance  413
  8.1.7.  ...on Information and Assistance  414
  8.1.8.  ...on the referendum  414
  8.1.9.  The Alaskan Experience  415
  8.1.10.  The Tennessee Plan: lobbying at federal level  417
  8.1.11  Preparatory Studies  417
  8.1.12  The Historical Struggle for Alaska’s Statehood  420

8.1.  Introduction

Precedents and authority for creating federal states not only existed at the time of
the Northern Territory statehood bid, but were also contained in materials available
from overseas sources, considered by the Sessional Committee. In the main, these
were the experiences of Hawaii and Alaska; and it must be said at once that their
respective statehood processes resulted in achieving statehood, in different ways
and times, but by utilising modified paradigms of process. Hawaii took two attempts
to succeed, even after it first gained its “conditional” statehood. It is important to note
that point, particularly by those who believe voting ‘no’ means ‘not ever again’. No
less important is that of Alaska’s bid, which also succeeded, through careful
preparation by the whole constituency. The Alaskan Constitutional Convention
drafted Alaska’s constitution in its entirety. Bearing in mind other instances of
statehood creation in federal systems overseas, these two American examples
highlight options available in the Northern Territory statehood bid. The lessons
overseas should have been observed more closely. That is not to say that all
methods adopted by either American contender should have been imported. There
was widespread political interference in Hawaii’s 1958 effort. These problems can surface in copying from one federation to another.

In contrasting the methods of Northern Territory statehood creation with means used in Papua New Guinea, Bayne cautioned that: “There could well be a tendency, on the part of those with long experience in the Territory, to seek to reproduce the process followed in some other jurisdiction. The experience of the states provides an obvious model, but the Socio-economic complexion of the [Northern] Territory is very different from that of the states, and different even from the condition in the Australian colonies in the 1890s”. Professor McWhinney cautioned about borrowing constitutional systems [Rule 11], (in Chapters 1 and 7).

Nonetheless, guidance from abroad, which might have been adapted for local use, was not heeded in the Northern Territory’s statehood bid, although there were materials available brimming with ideas. There are lessons here for the future. One of these materials includes Hawaii’s example of employing the device of a private citizens statehood group to inject the perceptions of democratic process, and if there is one thing that was lacking in the Northern Territory, it was an independent body democratically elected to craft a constitution. There are other examples of the pursuit of statehood in federal systems, including Nunavut, Puerto Rico (unsuccessful, thus far); and by contrast, India, Nigeria, and others. These efforts range across a spectrum of constitutionalism (see Chapter 1), and include the antithesis of such process; such as by normal governance establishing new states.

Returning for a moment to the point about the lessons, particularly of Hawaii, not being observed and adapted, it is submitted, one of the most important features is that of a citizens statehood committee running the preliminary Constitutional Conference. Once the Legal and Constitutional Development Committees were set up in the Northern Territory and charged with the specific task of developing a draft constitution, the die was cast, and the Hawaii experience could not be used - at

---

9 The successful constitutional convention in Hawaii for instance was preceded by an election campaign in a contested party-political arena, with delegate candidates including many politicians, already members of the legislature, running for office in this way.
13 See later this Appendix (8). Nigeria and India simply create states by legislative enactment as a feature of governance, whereby the processes of consultation, involvement and self-participation is minimal. Inuit (Nunavut) was little better.
least not by that committee. Any other group set up for the purpose of developing a draft constitution in a Constitutional Convention (or Conference would have been in direct competition with the government body; and would have drawn inevitable criticism as a result.\textsuperscript{14} The government strictures prevails because of its authority.

The dilemma, however, goes further. The Sessional Committee drafted a Constitution, but the Constitutional Convention was specifically urged by the Chief Minister, to consider drafting a Constitution from that Final Draft Constitution. It applied itself to fashioning a different model. In the Hawaiian example, there was no contradiction, and yet there was intense drafting activity. The civic organization, which undertook the mounting of the Constitutional Conference organised the task of drafting the final Constitution at the Hawaiian Constitutional Conference. The task was made easier by preliminary activities all directed toward that event. In this area lies an example of one of several causes for the Northern Territory Statehood effort failing. Put another way, the chances of success would have been enormously enhanced had the Northern Territory Constitutional Convention either drafted the constitution itself, or determined the options of the Sessional Committee, and approved that draft constitution.\textsuperscript{15} It is necessary to summarise the major errors in this introduction, to understand what could have been in the Northern Territory. Of course, it was possible for the Northern Territory Revised Draft Constitution to be passed by the electors at the October referendum: it was very close, but it lacked the cohesion and the approach which the American Pacific state adopted.

In United States political history, there is freedom to resort to the constitutional convention as a means for both the creation and the reform of a constitution. There is a vast body of literature on the subject covering most of the American states, but rather than traverse this territory, it is more useful to describe briefly the experience in Alaska. A return to the views of Earl and Wendy James helps to set-up the example. On an earlier occasion, 27 September 1989, Earl James addressed the Sessional Committee in Darwin on behalf of himself and his wife to present their prior joint submission. He recounted their travel to Alaska where they consulted with a number of people who had been involved in the struggle for statehood.\textsuperscript{16} Earl James said that Vic Fischer’s \textit{Alaska’s Constitutional Convention} and Robert

\textsuperscript{14} The Aboriginal communities of the Northern Territory held their own constitutional conventions after the government sanctioned constitutional convention.

\textsuperscript{15} See the claim made by me in Chapter 7 of the incongruity of the two functions.

\textsuperscript{16} They returned with a number of books describing that struggle and these were presented to the Chairman of the Sessional Committee, and are held in the parliamentary library. James urged members of this committee to consult them.
Frederick’s *Alaska’s Quest for Statehood 1867 -1959* are particularly appropriate literary guides in the present circumstances.\(^{17}\)

In the written submission of Earl and Wendy James, at that time, they made a number of suggestions for the prosecution of the Northern Territory’s case for statehood based on what they had learned from the Alaskan experience. Speaking to the committee, Earl James said ‘Unfortunately most of them are even more necessary now in view of the partisan attitudes of many in the community. So I intend to reiterate on some of them’.\(^{18}\) “Let me tell you about a few other tactics used by Alaskans which could well be emulated by those responsible here. The Governor of Alaska enlisted the help of a committee of 100 outstanding Americans to endorse and advance the cause of statehood at the national level. Of this Robert Frederick says: "The list was a 'who's who' of accomplishments and excellence. So many friends of statehood came forward in the crusade,"\(^ {19}\) James said:"I put it to you that a similar committee would be of immense benefit to this Territory's cause in view of the present attitude of the people in the South. This is a task for the Chief Minister."\(^ {20}\)

According to the James' submission, derived from their Alaska experience, primarily there are three essential elements of any successful strategy for a statehood struggle, and Earl James insisted that it will be a struggle, both here in the Territory, in the southern states and in Canberra. Those elements are: firstly, the need for appropriate education of the public; secondly the need for a constitutional convention that will be accepted by the public; and thirdly the need for appropriate questions at any referendum.

### 8.1.2. Education

The James’ submission listed the following to the Sessional Committee in 1989:\(^ {21}\)

“We believe Territorians (and Australians generally) will support the call for statehood. All that is required is an appropriate education program. [No such program eventuated!] There is no doubt in our minds that the present program of informing Territorians (and of other Australians is totally inadequate). [It still is!]

---


\(^{18}\) Ibid.


\(^{21}\) Earl James additional, oral comments to the committee are indicated in square brackets.
There is a desperate need for a dedicated campaign of information exchange using every medium possible co-ordinated by a professional organisation over a short period of time leading up to a Territory wide plebiscite. [There still is!] To gain public support it is essential in our view to first tie-in the support of the media, and especially the support of prominent newspapers, both here and in the southern states. [To this, let me now add the electronic media - television and the Internet. From none of the media has there been any real support to date.]\textsuperscript{22}

In essence, James’ claimed that what was needed was a massive public relations program, "but those responsible for promoting the cause of statehood so far have failed drastically. They have failed in educating the people. They have failed to inform Territorians adequately. They failed to use the appropriate professional resources and they failed to get the support of the media. It must not happen again. The need to implement those recommendations is now doubly important".\textsuperscript{23}

\subsection{8.1.3. Constitutional Convention}

In the James’ submission on the constitutional convention, they noted that: ‘In opposing the Sessional Committee’s recommendations, the convention was wholly appointed and it suffered from a tight timetable. And of course, the questions put to the referendum would have been inappropriate in the light of the partisanship shown during the Convention’s deliberations.” There is no doubt in our minds that the Territory must now hold another convention and that the convention should consist totally of elected delegates except for ex-officio members such as the Chief Minister. It should address the options for a (model) constitution put forward by the Sessional Committee (and only those options) and delegates should be given sufficient time to study those options before being thrust into premature debate. They should be given an extended period to consider the options and to arrive at a conclusion. They should be given the assistance of appropriate advisers, and Territorians should then be given the right to accept or reject the result of their deliberations.”\textsuperscript{24}

James’ noted that the Sessional Committee recommended a convention consisting of at least 75 per cent elected delegates. James’ agreed with the recommendation of the committee. They believed that representation on a constitutional convention should be a mixture of elected and nominated delegates so as to obtain a better spread of the views of professionals, lobby groups and politicians. In Alaska’s

\textsuperscript{22} Earl and Wendy James, written answers to my questions about their views. In my possession. \textit{Op.Cit, Ibid.}
\textsuperscript{23} \textit{Ibid.}
\textsuperscript{24} \textit{Ibid.}
experience 12.5% of the delegates were elected by the territory as a whole, and in
the Northern Territory's case, a similar percentage of places could have been held
by nominated members. James said: “Unfortunately the committee's
recommendations were not heeded, and if they are not heeded a second time, we
will have a second disaster”.25

“The advantages of a wholly elected convention is now self-evident’ Earl James
said. ‘The wasted effort of last year’s Convention and its result has assured this. It
was a costly and time-consuming exercise which should not be repeated. The
people of the Territory have declared that they will accept nothing less than an
elected convention. In our earlier submission we said: ‘the real disadvantage of a
nominated convention is that it would lack legitimacy and would certainly be
criticised as unrepresentative.’ This is exactly the results that has been obtained”.26

James turned to the form of convention by the Alaskans. He said that the Act under
which the Alaskan constitutional convention came into being contained three
important matters affecting the composition of the convention, its procedures and
the acceptance of its results by the public.

8.1.4. Delegates Election and Divisions

James’ said, “The Alaskans believed, correctly, that the composition of a convention
would have a profound effect on the constitution itself. The result of our referendum
shows how manifestly true was this belief. The existing Alaskan electoral system
had invariably led to active representation from large urban centres. This was seen
as a disincentive to the acceptance of the convention by the people. Whilst the
electoral system was completely different to that of the Northern Territory, the
problems here are the same. The Alaskan enabling legislation overcame the
problem by creating three levels of election for delegates. They were:

1. Seven delegates elected at large from the whole of the territory as one
district.

2. 33 delegates elected from the existing electoral districts.

25 Ibid
26 Op.Cit, Ibid.
3. The creation, for the sole purpose of the elections of convention delegates, of 15 new single-delegates electoral districts (none of which had any significant relationship of population to densities)."27

"To quote from Fischer: ‘this produced a Legislative body that was the most representative group of popularly elected officials in Alaska. This factor added to the good feeling about the work of the convention during its progress and to the ultimate acceptance of the constitution by the voters.' And that is what we must aim for here, the ultimate acceptance of the constitution by the people of the Territory."28

James added: “It should now be obvious that the events of the recent past have crystallised in the minds of most Territorians a further desire for a fully elected convention, one in which professionals, lobby groups and politicians take their chances along with the rest. It is now the only way to go; but whatever the decision, the election of delegates should be carried out in a manner which will ensure that rural interests (especially Aboriginal interests) are seen to get an equitable representation."29

What a pity, statehood authorities did not take particular note of this interested Northern Territory community voice.

8.1.5. Convention Site

The Alaskan convention, unlike the Northern Territory's, was not held in that territory's Legislative buildings, nor even in the capital city. Juneau is the Alaskan capital and the site of the legislature, and it had the necessary facilities. Fischer explained: "... it had the unsavoury reputation that often goes with politics, special interest lobbying, heavy drinking and the like. To overcome such perceived odium, the Act provided for the convention to be held on the University of Alaska campus in Fairbanks. This had the effect of providing the necessary isolation and academic atmosphere without the interference of political lobbyists, nearby drinking houses and other commercial distractions. The campus location put delegates in the midst

27 Earl and Wendy James, written answers to my questions about their views. In my possession. Earl James urged the Sessional committee to consider equitable representation. He said that there is no doubt that the majority of delegates at least should be popularly elected and provision should be made for appropriate representation by rural communities. For example a strong case can be made for the cause of rural-dwelling aboriginals who make up 15% of our population. Should they be eligible for 15% of the delegates? James said: ‘Personally, I think they should. These are things this Committee must take into consideration when it makes its recommendations to the Legislative Assembly. The Alaskan experience may help you to come to some conclusions.' I am undecided, although prima facie, the proposition makes sense; but what about identification matters. It could become too complex.


29 Ibid.
of a community directly interested in their work and it proved highly conducive to achieving a sense of objectivity and detachment.”

Earl James amplified this notion by relating it to the Northern Territory: “We believe the next convention here in the Territory should not be held in the full atmosphere of the Legislative Assembly building for the same reason that the Alaskan convention was not held in Juneau. I do not suggest that it should be held in Tennant Creek or Jabiru, but a site independent of politics should be found, perhaps even the Batchelor education facilities. The cultural links with our indigenous population of such a site would lend credence to be exercised in their eyes. Such a campus locale would isolate the delegates from outside pressures and the remote locale would promote a feeling of camaraderie among the delegates.”

8.1.6. Convention Timing

Earl James again, on timing: “The Alaskan legislation placed a limit of 75 calendar days on the life of their convention with an option to extend if necessary. This seems to me to be a far more realistic time frame than the two weeks allocated to our last farcical performance. Alaskan delegates were given two months to prepare after they would be elected. Ours seemed to have been given barely two weeks. Alaskans even had two weeks Christmas holidays during their convention. Our convention had all the appearances of unseemly haste. This should not happen again.”

8.1.7. ...on Information and Assistance

“Delegates to any future convention, James’ said, “must be given sufficient information prior to the events to enable them to understand the issues. They must also be given sufficient time to study that information and to do their own research in order that they may make informed decisions. Then they must be given adequate time to deliberate the issues”.

8.1.8. … on the referendum

Earl James departed from the lessons of the Alaskan experience for a moment to give a home-town view on what he believed was the Northern Territory’s greatest

---

31 Earl and Wendy James, written answers to my questions about their views. In my possession. I believe the Batchelor education campus is a good suggested site, if suitably enhanced with accommodation, meeting, conference support, and plenary session large-hall facilities, which could be re-used and incorporated into the existing infrastructure, mainly for Indigenous and rural education purposes.
32 Earl and Wendy James, written answers to my questions about their views. In my possession.
33 Op.Cit, Ibid.
statehood error: "The biggest mistake made by those responsible for setting the question at last year's referendum was assuming that the people of the Territory would automatically accept the constitution put before them simply because it had been agreed to by the Legislative Assembly. Indeed the question itself was worded in such a way that implied that consideration of the subject was too complicated for the ordinary man. The Sessional Committee recommended that the convention's report be debated by the Legislative Assembly and referred back to the convention on any matter of contention, but the committee did not suggest that it was the Parliament's duty to adopt it. The committee clearly gave that right to the people of the Territory, and that is the way it should be. The next referendum should implement the Sessional Committee's recommendation."34 This contention of Earl James accords with the fundamental flaw in process expounded in Chapter 4 herein. Mistakes accumulated because of a new course being set.

Earl James stressed the need for cultivation of the media. He cited Frederick's notation that by the early 1950's three of the Alaskan Territory's newspapers were pressing for statehood. And this: "Colonel Carol Glynis, in an objective study titled Alaska's Press and the Battle for Statehood concluded that statehood was attained because Alaska's newspaper publishers provided the stimulus and kept the public aroused until the battle was won."35 He asserted that those people responsible in the Northern Territory must now convince our newspapers and television stations to do the same. He said: "What those quotations do not tell us is that the Alaskan cause was also taken up by such influential newspapers in southern US states as the Washington Post, the Chicago Tribune, the Seattle Post, and the Nashville Banner. It is essential that Australia's newspaper media magnates be convinced of our need. How often is statehood mentioned in any of the media these days? Only when there is a conflict of some kind! Even then, do they promote the cause or do they exacerbate the conflict? The media needs to be convinced of the legitimacy of the case and urged to be pro-active in its cause."36

---

34 Earl and Wendy James, written answers to my questions about their views. In my possession. Earl James summarized the most important points: 1. Be flexible and capable of extension if it is seen that the year 2001 is not achievable. 2. Convince Canberra and the rest of Australia that the result of our referendum was an aberration which will be overcome and one which will convince them that we are ready for statehood and deserve to get it. 3. Provide for a massive public relations campaign to educate Territorians on the need for statehood and the measures that are being taken to right the perceived wrongs of last year's Convention and Referendum. All these three issues remain to be addressed.

35 Frederick, R.A, Monograph, (1985), 'Alaska's Quest for Statehood 1867-1959', Anchorage Silver Anniversary Task Force, Anchorage, Op.Cit. In this respect it was enthusiastically aided by the media. By the early 1950's three of the Territory's newspapers were pressing for statehood. While most Alaskan papers covered the campaign, The Times, The Chronicle and the News Miner ... actually championed statehood.

36 Ibid.
8.1.9. The Alaskan Experience

Alaska was admitted as a new State on 2 January 1959, but the constitution approved by the Act of Congress had been adopted by a constitutional convention in February 1956 (and had been ratified by the electors of Alaska shortly thereafter). The preparation of the constitution was a critical step in the transition to statehood. Statehood had been first proposed in 1916. The first determined moves occurred in the late 1940s when the legislature of Alaska established an Alaska Statehood Committee 'as a bipartisan non-governmental body to promote the Statehood calls, assist the delegates in Congress, undertake necessary research, and otherwise plan and prepare for statehood, including preparation of studies for a constitutional convention'. Initially, it was decided to attempt to persuade 'Washington' by a representation to Congressional hearings to pass an enabling motion. Frustration in this quarter led to acceptance of a motion, opposed initially on the grounds that it would cause delay, that Alaska should draft its own constitution as a means of demonstrating its readiness for statehood. In 1955, the legislature passed the law for the holding of a constitutional convention.

The convention's broad mandate was "to take all measures necessary or proper in preparation for the admission of Alaska as a State of the Union". Some of the main features of the Alaskan constitutional convention and how it operated should be noted. The scheme of electorates for convention delegates departed deliberately from that which governs the election of members of the legislature. An election on the pattern of the latter "would have effectively prevented representation of all but a few of the largest communities and would not have committed territory-wide selection of any delegates."

The larger communities were urban in nature. One device was to allow for the election of a number at large from the whole territory considered as an electorate. According to Fischer 'the result was by far the most representative assembly ever elected in Alaska. It was a diverse body in terms most of the regions and communities represented and of the occupational backgrounds of the delegates.'

---

41 Fischer , 1975, Supra, 14 - 16.
42 Fischer,1975, Supra, 18.
There was however, only one non-white ethnic Alaskan elected. The elections were conducted on a non partisan basis, and the voluntary organisations which had worked for statehood were well represented.

The convention was allowed by the law which created it seventy-five days in which to complete its task, with a two-week recess. But the planning also allowed for time to publicise the coming of the convention, to hire research consultants and have them prepare papers for the convention delegates and the public. The convention completed its task in the time allowed. Most of the work of formulating proposals for the text of the constitution was done in committees, and the drafting was the responsibility of a committee. Individual delegates could nevertheless put proposals to the convention. The work of the convention was in public, and hearings were held at which members of the public could put their views. These procedures generated considerable interest in the work of the convention. In the final result, only one of the 55 delegates dissented from the vote taken to adopt the constitution. Adoption was then followed by a ratification campaign, and the constitution was ratified by a 2 to 1 margin (17,477 to 8,180).

The Alaskans found an ally in the US Federal Cabinet in Secretary of State Fred Seaton. Of this Frederick says: "From the moment of his joining the [Federal] administration, Seaton championed the cause. He undoubtedly influenced the President [President Eisenhower] to reverse his earlier unfavourable position."

8.1.10. The Tennessee Plan: lobbying at federal level

The Alaskans sent lobbyists to Washington to lobby their cause. The method of selection of these lobbyists was unique, The constitutional convention elected two "Delegates" to Congress to carry-out the so-called Alaska-Tennessee plan. Frederick puts it this way: "Tennessee and several other states entered the union by collecting Delegates to Congress in advance of actual seating. Since Tennessee was successful with this tactic, Alaskan activists believed it should be considered." The delegates were never officially recognised or seated, but the method of the election was sufficient to give them the notoriety necessary for them to be effective.

---

43 Fischer 1975, Supra, 22.
45 It should be noted that the constitutional convention in Alaska did the drafting of the constitution. See Chapter 6 herein. It can be done by Constitutional committee or the convention, but not the same one by both, or one or the other will be versions and will be changed radically; precisely the situation which occurred in the Northern Territory.
48 Op. Cit. Ibid.
Should the Northern Territory consider a similar ploy to convince federal parliamentarians of the validity of the case? Similar examples could possibly be included in an education campaign, and should be well-funded.49

8.1.11. Preparatory Studies

Although, ironically, nowhere near the scale of committee preparation of the Northern Territory constitutional committees, there were studies conducted in Alaska, even prior to the conventions. As soon as the Alaskan voters had approved the drafting of their first constitution, those who had been involved in developing an Alaska state Constitution began a series of efforts to provide assistance for future constitution draftsmen and revisers. There was a call for the preparation of materials, which would have supplemented the background information prepared for the delegates and for analytical reports on the conduct of the convention.

The National Municipal League and the Legislative Drafting Research Fund of Colombia University with financial support from the Ford Foundation was able, in the late 1950s and early 1960’s, to go long way to filling the need for additional background assistance. Those interested and concerned with state constitution-making continued to insist that studies of individual conventions were needed, and encouraged the League to sponsor such studies. There was a grant from the Carnegie Corporation of New York in 1967. The Alaska study, one of the first commissioned, is only one of the series written by convention delegates. One delegate’s work, that of Victor Fischer himself, in his various roles in the 49th state before, during and after the convention of 1955 –1956, make the study of particular value.

John E Bebout (consultant to the convention and close observer and participant in the most recent constitutional revision efforts) commented in the Foreword to Fischer’s book: “An era in American history ended at 9: 55 AM, Alaska standard time, February 6, 1956. At that hour the Alaska constitutional convention adjourned after three months toil on a constitution for the fondly conceived state of Alaska. Neither snow nor ice fog at 55 below zero, and all the long-lasting nights had delayed any meeting of the convention, nor diverted the members for a moment from their appointed task. The sense of history and of destiny sat with the 55 delegates throughout the deliberations at Constitutional Hall on the campus of the

49 As the Northern Territory already has federal representation, one or all of the federal representatives (4) could form a lobby in committee, meet and press the Territory’s case. But unfortunately, political adversarial sentiment is sure to get in the way!
University of Alaska College, just a few miles west of Fairbanks. Many factors contributed to this: the number 55, chosen in emulation of the 55-member Philadelphia Convention of 1787; the belief of Alaskans in the limitless future of their vast land and their pride in being the last of the pioneers of the old tradition; the personal dedication evidenced by the members of the convention; and the university setting which was conducive to the remarkable industry and concentration which they devoted to their work.\(^{50}\)

The constitution was literally written by the delegates in convention. It was more truly a "do it yourself" convention on the part of the delegates than any other in modern times - certainly in this century. Bebout wrote: "It is hard to convince audiences in the lower 48 that this is so - they simply don't understand the very high level of sophistication, intellectual confidence, philosophic breadth, and practical experience represented by the 55 delegates, and they can hardly imagine how hard and single-mindedly you Alaskans worked at the job."\(^{51}\)

Bebout says that Consultants were well used, "but more as colleagues than as outside experts. This division of labour was very informal, delegates being as likely to take drafting assignments and to hand them to the consultant. We can make objective comparison of the Alaska delegates with those of other conventions, but I'm sure that any such comparison would be highly favourable to Alaska. Few conventions have so many delegates ready to think philosophically about basic principles, and ought to reflect meaningfully on the real implications of the fact that they should be writing for the future, not for the past."\(^{52}\)

The Foreword of this publication is noteworthy, written by William N Cassella, Junior, Executive Director, National Municipal League. He said that the Convention produced a document that was a rare blend of the classic principles embodied first and best in the US Constitution and of modern or innovative features altogether compatible with those principles which made the Alaska Constitution more distinctly

---

50 Fischer 1975, Op Cit, i-v. Although the contrast between the 'hot summer of 1787 in Philadelphia and the cold winter of 1955-1956 in Fairbanks' are obvious, there are similarities which might make the Alaska Constitutional Convention of special significance to the Northern Territory in the juxtaposition to the saga of American constitution making. Both were characterised by a determination and a dedication to prepare a document of lasting importance, not just one of immediate expediency. The remoteness of Fairbanks was unique for a 20th-century conclave, and its sheer distance from the congested urban scene provided a prospect difficult to achieve in present-day metropolitan civilization. This is true in comparing Australian constitutional conventions in southern cities to Top End isolation. Bebout describes the effect. Fischer 1975, Op Cit, i-v.

51 Op Cit, Ibid. Again, this points-up the difference between the Northern Territory experience.

52 Op. Cit.
appropriate to its time and place than any other state constitution. Cassella hails the qualities and involvement of particular delegates: “The National Municipal League is greatly indebted to John Bebout for his continuing role in all its activities involving state constitutions since the 1940s, but especially for his part in interpreting the Alaska experience to provide help for other states. He insisted that the actual story of the convention should be told by a delegate and that Victor Fischer would be the most appropriate author. The League is most fortunate that Fischer agreed to take this assignment and is proud to add this volume to its constitutional convention series”. Cassella seeks to emphasise the worth of key delegates, more the ‘true-believers’ thus: “Many contributed to this project in a variety of ways, but particular acknowledgement is made the help given by two others who served as convention consultants. Immediately following the convention, Kimbrough Owen, who set the convention committee on the style of drafting, helped develop the original proposal for post-convention studies just before his untimely death in a plane crash only days after the Alaska constitution had been approved by the voters. Emil J. Sadie, who served in Fairbanks throughout the convention, provided continuing assistance to the author of this study and to other League programs on state constitutions until his death in April 1974 as the study was going into final production.”

Included here more as an illustration of lauding the value of supporters’, Cassella also acknowledges the League’s appreciation for the co-operation of the Institute of Social, Economic and Government Research of the University of Alaska which joins in publication of this study and to the Carnegie Foundation of New York for its financial support. But Fischer’s views remain his own, solely the responsibility of the author. The example is clear: acknowledge the backers as an ethical obligation.

8.1.12. The Historical Struggle for Alaska’s Statehood

---

53 Ibid
54 Ibid
55 The account of Alaska’s statehood bid is largely historical, being distilled from official papers and records and from recollections of Convention participants and observers. In putting his story together, Fischer has tried to relate the story as it actually occurred, without evaluating the application of Constitutional revisions since statehood. Much of his study is based upon proceedings, minutes, and documents of the Constitutional Convention. It relied heavily on newspaper stories, as they provided a means of reconstruction from the perspective of the moment. There were two papers written by participants shortly after the Convention ended: Thomas B. Stewart’s “Notes on the Making of the Alaska Constitution” and John E Bebout and Emil J Sady’s “Staging a State Constitutional Convention.” (A paper prepared for the annual meeting of the Southern Political Science Association, Gatlinburg, Tennessee, November 8, 1956, 14 pp), Bebout, was one of the nation’s foremost experts on state constitutions and also a Convention consultant. Fischer, 1975, Op.Cit, v. His name should be kept in mind next time in the Northern Territory. Few if any accounts have been written of the Northern Territory’s own (failed) effort Ibid.
The struggle for an independent state in the federation did not come easy for Alaska, and like the Northern Territory, it did not at first get statehood, without a historical and extended effort. The result was more often in doubt than not. Politics became embroiled. Referenda were repeatedly used in Alaska, to demonstrate public desires and indignation with the status quo. Salmon traps were then as later controlled by major absentee interests. They were not compatible with conservation objectives; they were harsh on Alaskan fishermen who had to compete in boats, and constituted a continuing symbol of outside control, exercised primarily through congressional and complacent bureaucratic influences. From injustices and inequities like this, the drive for statehood began in earnest in 1949. The 1946 referendum had shown the majority of Alaska voters in favour of statehood. Statehood had always been a popular issue. Territorial elections saw a large majority of Democrats elected, most of them pushing for statehood. Alaskans became increasingly united on the statehood issue during the late Forties and the Fifties, but statehood legislation experienced continuing ups and downs in Washington. Alaska’s and Hawaii’s fortunes became intertwined, and power in politics and civil rights became the critical factors in the statehood battle.

With control of Congress possibly at stake nationally, Alaska could tip the balance, especially in the Senate. Based on traditional voting patterns, it was expected that Alaska would ‘go’ Democratic and Hawaii Republican. Many politicians took positions accordingly. More critical perhaps was the expectation that both Alaska and Hawaii would join civil rights forces on legislation dealing with equal rights non-discrimination and other issues of national concern in the US Senate.

President Truman strongly endorsed statehood for both Alaska and Hawaii, but President Eisenhower supported Hawaii, not Alaska, to obtain statehood. In the Congress, there was frenetic activity, but Eisenhower supported Hawaii and took on a clear partisan stance, although the House of Representatives passed a Bill for Alaska statehood. It did not get past the Senate. Senate committee hearings were held in Alaska during 1953 to assess statehood values, and it was amazed by the outpouring of pro-statehood sentiment. Virtually all newspapers in the country’s editorials ostensibly favoured statehood; even cynical isolationists sought to pass resolutions urging positive action by Congress; and the Gallup poll showed an almost three to one sentiment in favour of statehood.56

56 Fischer, 1975, Op.Cit, 8. Politicians decry polls when it suits, but they do take note of them!
As 1955 approached, Alaskans thought they needed something more to convince Congress that they were ready for statehood. They sent a congressional delegation to Washington. Alaskans themselves decided to draft their Constitution through a Constitutional Convention. The only new state constitutions drafted in recent years were those of New Jersey in 1948 and Hawaii in 1950. To help overcome a lack of information, *Operation Statehood* in February 1954 established a Constitutional study committee in Anchorage for both self-education and to inform the public about the issues that would face a Convention.57 Other groups began to spring up, such as the Constitutional Study League in Fairbanks. During the summer of 1954, an Alaska-wide group was formed in Fairbanks to coordinate efforts to prepare the people for a Constitutional Convention. *Operation statehood Constitutional committee* and other study groups and individuals collaborated in initiating pre-convention discussions. Alaska subsequently got its statehood and its example is a multiplicity of lessons of instruction for the Northern Territory, most of them articulated by the James' submissions discussed herein.

---

57 Fischer, 1967, *Op.Cit*, 12. This is a civic or non-government group similar to the ideas formulated in Hawaii, and promoted by the candidate for adoption (as modified for local conditions) in the Northern Territory.
8.2.1. Introduction

‘CONSTITUTION OF THE STATE OF HAWAII’ (as amended to 1968)

PREAMBLE: We, the people of the State of Hawaii, grateful for Divine Guidance, and mindful of our Hawaiian heritage, reaffirm our belief in a government of the people, by the people and for the people, and with an understanding heart towards all peoples of the earth do hereby ordain and establish this constitution for the State of Hawaii.58

By 1979, this Preamble had been amended, extended, and now included the word ‘...compassionate...’ It was amended for good reason: a movement against statehood had begun and there are current legal and legislative moves to return Hawaii’s sovereignty to its people! This constitutional amendment, one of several, occurred as a result of the constitutional convention of 1978. Be this as it may, the fact is that Hawaii did become the 50th state of America.

In 1959, the citizens of Hawaii voted 94% in favor of Statehood. President Eisenhower officially proclaimed that Hawaii was the 50th State (August 21, 1959). The holiday was originally known as Admission Day, but in 2001 the Legislature changed its name to Statehood Day. In recent years, the holiday has gone largely unobserved, except as a paid holiday for state employees. But the admission of Hawaii to Statehood in 1959 was a great victory joyously celebrated following decades of effort by both political parties and all ethnic groups. Schoolchildren

58 Readers should not be confused with the 1968 Constitution Conference/Convention and the earlier 1959 grant of statehood. The status of its statehood was challenged in the US judicial system, and because of flaws in process it still suffers a rocky-road to travel, a lesson for the Northern Territory. If it had got through here, would it have suffered a similar fate? I think so. http://www.hawaii-nation.org/constitution-state.html;
and http://www.ksbe.edu/endowment/hawaiian/hawaii/state/allhicon.html
throughout America know that Hawaii is the 50th state. Hawaii was the last state to be admitted to the Union, which happened in 1959.\textsuperscript{59}

8.2.2. The 1950 Preparations and Failure

Hawaii’s first statehood bid in 1950 had failed. Its second bid in 1959 succeeded. In these attempts, there are some excellent examples of what can be done, and how, and that ought not be done, by Hawaii. Unfortunately, in the island state’s case, there are also elements to be positively avoided, which have fuelled native resentment, like party political manoeuvring, disputes over funding control, voracious legislator-candidates, infighting on a site for the 1968 constitutional conference, allegations of rigging the ballots, and more.\textsuperscript{60}

Bearing the above caveats in mind, the Hawaiian experience begins with its occupation in the 19\textsuperscript{th} century, a struggle for and against its territorial status and the lead-up to its first bid in 1950. Despite the official non-partisanship in character of the elections, in 1950, American Republicans and Democrats took an aggressive interest in electing delegates of their respective parties. Political leaders openly asserted that they were working to elect the majority of their party to the convention. The Republican Party, particularly, was extremely active at the precinct level, organising meetings and holding political rallies to which new Republican candidates were invited. The campaigns of other community groups to support convention candidates who were members of the organisations also led to criticisms that the non-partisanship theme of the campaign was being violated.\textsuperscript{61} Even the Secretary of the Territory of Hawaii appealed for bipartisan-ship, due to the blatant party political nature of electioneering for the convention.\textsuperscript{62}

8.2.3. Issues in Hawaii

So why a constitutional convention in 1968 when the state already existed, with a constitution? The answer, according to Meller, was dissatisfaction, and it was widespread. The constitution irked nearly all Hawaiians. The political parties in particular, wanted to improve their positions. In many ways it was a state with a condition subsequent, which only the US Supreme Court would resolve. It was brought-back to non-state status. The process began again. I believe that this could

\textsuperscript{61} Meller, Norman, 1971, \textit{With an Understanding Heart: Constitution Making in Hawaii}, University of Hawaii, and the National Municipal League, (State Constitution Convention Studies Number Five), New York, 35. Emeritus Professor Meller, in the faculty of political science at the University of Hawaii, died recently at the age of 85.
have occurred in the Northern Territory too, had its referendum passed. In many ways that was the wisdom behind the CLP principle of ‘minimalism’. We can only speculate; but it is logical. The process in Hawaii could have been choked-off by party political pressures, on both occasions. But the delegates to both the 1950 and the 1968 conventions operated under ‘external’ constraints. At the former, everything they did as well as did not do, was subjected to the scrutiny of public opinion, and, more specifically, that of the congressmen on whose key votes statehood depended. The latter process could only alter objectiveness to pander to political viewpoints. At The 1968 convention, delegates were similarly fettered, although the limitations under which they served were internal.63 The convention was called against objections that ‘reapportionment’ was the only urgent constitutional problem facing the state, and this could be handled more quickly and efficiently by the legislature. When they convened, a large contingent of delegates were keen to take to the ‘hustings’ to seek election to the legislature or other office. But altruism prevailed and the prevailing spirit from the pre-convening caucuses onward, was to denigrate efforts at slowing down the thrust of convention business and opening up fundamental matters to careful and considered review.64 Meller writes “Many of the provisions of the Organic Act were directly or by inference incorporated into the 1950 ‘hope chest’ constitution. This helped reinforce the image of Hawaii as safe and mature. Now, two decades later, the opportunity was offered to re-examine the document, and to confirm or reject its contents free of the legal, political and psychological pressures attending statehood. Even if they wanted, the delegates to the 1968 convention were not permitted sufficient time to undertake any fundamental reconsideration. But, then again, Hawaii’s constitution had been both criticized and extravagantly praised, and most of the delegates did not wish to go beyond reasonable constraints.” So the party political opportunities were in a way culturally limited.

8.2.4. A handful of inessential items

A handful of issues on both occasions, some re-emerging again in 1968, flavoured the bids with bland tastes, except for one which comes last in consideration here, the citizens groups; though none were unimportant, and in extrapolation, might have bearing on a second Northern Territory attempt, even as examples of what to avoid. It is difficult otherwise to relate them to the 1998 failure, but the 1968 Hawaiian constitutional convention experience was successful, so they stay. For a start, the

64, Ibid.
major problem of siting the convention in 1968, was, paradoxically, insubstantial, although it was connected to important control devices. In both 1950 and in 1968, the Hawaiian governor exercised almost dictatorial control over the conventions as operational projects. Meller says both conventions operated under the 'frowns' of the respective governors.\textsuperscript{65} Territorial Governor Ingram M Stainbach was said to be "lukewarm" to statehood in 1950, but he, being a politician, was influenced by popular opinion to go along. Governor Burns in the later timeframe, in unequivocal terms, but for reasons 'lost in time', stated his disapproval of having a convention meet in 1968. But once the people had voted affirmatively on the question, his attitude became one of "it's what the people want" and he resigned himself to the inevitability of the convention. At no time did he express interest in the delegates taking on more than 'reapportionment' and debt-ceiling changes, and possibly a few other issues which could be rapidly resolved.\textsuperscript{66}

Insofar as Hawaii’s bid was as much caught-up by siting the 1968 convention as in the process, it seems trite to record the latter, although it was serious as a matter of principle and control. Indeed the siting took-on threatening and divisive tones. The upshot was that a high school gymnasium was used for meetings and conferences, and the Iolani Palace was the grander venue chosen for plenary and major sessions.\textsuperscript{67}

Another issue was in ‘Districting’. Meller tells us that the \textit{Territorial Act}, which called for the convening of the Convention, apportioned 63 delegates among the counties so that 27 were allocated to the neighbour Islands - and the remaining 36 to the city and County of Honolulu. One-third of the delegates were elected at large, running from existing six representative districts, and two-thirds were chosen from smaller groupings of precincts into which each of those districts was divided.\textsuperscript{68} But how did the territorial legislators agree on a magic figure of 63? The following comparative information is included in this dissertation only to demonstrate that ‘same-criteria’ specifications can change due to organic changes, so that in Hawaii, by 1967, the formula for apportionment of delegates used in the 1950 convention appeared to have lost all utility. This occurred notwithstanding the constitutional provision that "unless the legislature shall otherwise provide, there shall be the same number of

\textsuperscript{65} Ibid.
\textsuperscript{66} As I understand it, ‘reapportionment’ is little more than combining electoral redistribution with changes in the electoral system. This appears to be a shallow basis for reconstituting statehood, but points-up prevailing issues, when there is no other pressing matter, such as financial independence, or mendicancy on centralism. Famed US Speaker ‘Tip’ O’Neal is said to have said ‘all politics is local politics’. That axiom was cited by Prime Minister John Howard at a Morning Tea in Darwin, 19 July, 2004, when announcing the abolition of entrance fees to Kakadu National Park.
\textsuperscript{67} McKinley High School gymnasium was utilized for many functions.
\textsuperscript{68} Meller, \textit{Op.Cit. Supra}. 
delegates to the convention who shall be elected from the same areas as nearly as practicable as required for the Hawaii state constitutional convention in 1950”. For a start, the legislature had been enlarged to 76 members, and the number of representative districts had been increased to 18. Will the electoral make-up of the future Northern Territory change from 1998, and could that change outcomes? Almost certainly, is the answer. Of greater import was the weight of representation in both houses, which favoured Oahu’s Honolulu city. And finally when it came to draw the actual lines it would be the Democratic majorities in both houses of the legislature which would be in position to favour the potential candidates.

One of the key decisions was the determination of the number of delegates to be elected at large. In 1950 two-thirds of the delegates were elected from smaller districts composed of combined precincts each formed within one of the six representative districts. In 1968, less than a majority of delegates came from the smaller districts. Hawaii now had 18 representative districts. Even when the possibility existed, Hawaii’s legislators were not anxious to set up smaller delegate districts. As a result, for the 1968 convention, there were 46 delegates at large and only 36 from districts composed of combined precincts within a representative district. As seven at-large districts each elected only one delegate, for the 1968 constitutional convention there were in all 43 single-member districts. The rest of the 39 delegates came from 11 multi-member districts, 33 of them from Oahu. There was a total of 82 delegates, a sensible number. The large number of single-member districts was believed by the House Judiciary Committee to “not only neutralise the advantage enjoyed by the legislators, but also help those less able to afford large scale campaigns.”69 It was felt however, the weight of decisions pushed the scale aiding the incumbent legislator if he wished to run, and to continue him longer in his legislative seat if he did not. To the latter end, the date for convening of the convention was set for July 15, 1968, too late for the convention to complete its working time for a ‘harried spatial election’ as Meller puts it.70 And the two polls—the delegates election and legislators elections—were telescoped into one. This is an interesting scenario, and not likely to gain much favour in the Northern Territory, unless one political party or both major parties see benefit to themselves; but that

---

69 Meller, Op. Cit, Ibid. on a number of occasions the committees considering Convention legislation indicated in their reports that the decisions were designed to facilitate the candidacy of the political newcomer. But did it?

70 Meller, Op. Cit, Ibid. This advantage was seized upon by legislator candidates. All of the hold-over Senators (like Australian half-Senate elections 2004), faced no risk of finding themselves required run again in 1968, cutting in half the four-year terms. When legislators announced their candidacy as delegates, and availed themselves of the campaign organisation inherited from previous election contests in their home territory, it became readily apparent that the size and districting of the 1968 Convention was to their advantage. This was particularly evident when 24 (almost one-third of the entitled legislators) opted for candidacy from single-member districts. The politics certainly drove standing intentions, and the politicians played the system to their advantage, with party campaign organization available.
then begs the question of lessons learnt. This jockeying for political position did not derail the Hawaiian state, as it might be said to have done in the Northern Territory. Why? Well, it was already a state (with a Supreme Court *condition subsequent* over its status) in 1968. The constitution only was in issue. It is submitted this was because of the way the constitutional convention and drafting the constitution was accomplished in 1950. But in terms of accomplishing such drafting of a constitution, there was an equally important precondition to be met. Education! Newspaper comment favoured delaying the convention long enough to allow an educational build-up prior to the election of delegates and, thereafter, a sufficient time to permit the delegates to brief themselves before convention deliberations began. One of the justifications for delaying the primary election was to provide money to pay the cost of advertisements covering the issues, and presenting the qualifications of the candidates. ($100,000 was finally allocated). Meller said it was appropriated "to the office of the Governor, or to the Lieutenant Governor as designated by the Governor, for the arrangement and purchasing of advertising in the general media to cover, on equal and fair basis, the issues involved or likely to be involved in the Convention, and in addition thereto do such things as he may consider necessary to focus the public's attention on the importance of the Constitutional Convention. In addition, $100,000 dollars was appropriated for the Legislative Reference Bureau of the University of Hawaii to hire personnel necessary to update the 1950 manual on state constitutional provisions "and to prepare this in reports for the convention".71

Like the Northern Territory’s penurious funding of education in 1998, the second attempt was in marked contrast with ‘tooling-up’ for Hawaii’s 1950 Constitutional Convention.

8.2.5. Citizens or public relations?

Meller asserts brashly: “There are two classical methods of preparation for a constitutional convention. One consists of instituting a grass-roots, citizen endeavour, designed to acquaint as many voters as possible with the convention and involved in some form of participatory activity, even if only by voting. The other approach seeks to achieve more limited, specific objectives through professional public relations services in a well-financed campaign.”72 With respect, the measures are neither traditional nor exclusive of the other. But each are (in hindsight) ‘a must’ for heading-up to a successful statehood push. The notion for forming citizens

---

groups arose simply as a result of disparate interest groups insisting on a point-of-view in how they saw statehood arising. Meller describes it thus: “Almost a year prior to the convening of the 1968 constitutional convention, the Senate president appointed an Advisory Committee on the Legislative Process to make recommendations on legislative improvement. The speaker of the House concurred in the appointments, for the undertaking the committee study, and proposals would eventually find a way to the constitutional convention floor. The blue ribbon committee was also aware that its function was not limited to non-constitutional matters”.73

Nearer to the elections, groups in the territory (of Hawaii) began advocating specific modifications in the constitution as well as developing defence strategies aimed at deterring amendments of which they disapproved. A Citizens' Committee on Ethics in Government developed a proposal for a constitutional article. The Tax Foundation of Hawaii distributed reports on the principal arguments for or against either annual or biennial budget systems, and other subjects for constitutional revision.74 By far the greatest organised, educational effort however, was conducted by two separate and disparate committees. Because their objectives were identical, they were complementary, not competitive. This is important because no such group engaged in constitutional development in the Northern Territory, only the anti-Stone lobby- group, **Northern Territorians for Democratic Statehood**.

Had the group extended its purview, the outcomes might have impacted in that vital area. First there was the 1968 Governor's Constitutional Convention Public Information Committee. The University of Hawaii drew up an education campaign to spend the appropriated $100,000 available, and federal funding was available. The university advocated a $150,000 mass-media education campaign to promote extensive citizens involvement.75 But the Governor had his own plans and obtained the services of a public relations firm to run an intensive multi-media campaign and he ignored all the other recommendations of the university. His committee was mostly comprised of public servants. Meller enjoyed describing this ‘Gubernatorial shoot-out.’ “In a sharp, short exchange, the Governor aimed for maximum impact: ‘Read these ads, your tax dollars are paying for them.’ Subsequent advertisements were less brusque. The television program often presented community leaders to
sustain interest, and most likely would not have received as many viewers if competing programs had been permitted on other stations. The pre-emption of all TV stations for the same broadcast earned the objection of an editorial likening it to the deprivation of liberty in ‘Big Brother’ fashion.”76 One can, however, have a sneaking admiration for such ‘coordination’. The members were busy men, and with the chairman frequently absent from the state, it proved difficult to hold meetings. Actually the delay was not crucial since the original proposal was for a short and intensive program later in the campaigning.

On March 30, nearly three months before the election, the program got underway. The major thrust was a nine weeks series of half hour television shows, scheduled simultaneously on all-stations and at prime-time, and early each Saturday evening. Co-ordinated with it were advertisements in all major Hawaii newspapers and on a number of radio stations. The TV programs followed a panel discussion format. While the newspaper advertisements presenting the actions for and against (always equally balanced in number), with one or more issues clustered under the nine categories previously identified. The final activity of the committee was putting together a three-colour, eight-page tabloid insert in both Honolulu daily newspapers, reproducing the series of advertisements and supplementing them with pictures, a complete copy of the state constitutions, the names of all convention candidates and the location of all precinct voting places.77 People could not escape the assault to their senses, and the effect was two-fold: the people knew there was an election and a constitutional convention coming, and details of candidates.

The equal, opposite effect was that such campaign infuriated people, and spurred on by outrage, some groups raised their voices in protest, but also proposed their own solutions. One of these groups was a female organization (albeit run by a man). Meller describes what happened next: “Although many men very actively participated, and it was headed by a male, the Citizens' Committee on the Constitutional Convention was primarily a women's undertaking. When in mid-1967 the members of the American Association of University Women, the Junior League of Honolulu, and the League of Women Voters discovered that each organisation was contemplating embarking on some form of citizen-education program for the constitutional convention, they decided to pool efforts and ask other interested organisations to join with them. What they proposed was a large-scale conference

76 Ibid.
approximately six months before the election, which would educate the public on constitutional issues and stimulate individuals to stand as delegates to the convention. For the first luncheon meeting, 54 organisations were contacted and about 40 sent representatives. By the time the group disbanded, its membership had grown to over 250 persons, including representatives from 97 business, church, civic, fraternal, governmental, labour, political party, professional, social and other community organisations."  

To condense a long account, the committee became more professional, more effective, ‘grew’ itself like a snowball, and began to develop policy. Government was obliged to listen to it. Gradually, but definitely, the citizen committee became constitutional-convention-oriented. It turned towards running such an event itself. The key was in its sub-committees. When a sub-committee chairman proved inadequate for his/her assignments, diplomatically the executive group would suggest ways for another to assist in his/her stead.

Administrative decentralisation obtained maximum participation by all volunteers, while at the same time maintaining a competent coordinating group at the centre to provide direction at the centre and to insure that deadlines were met. Within their assigned spheres of interest, the sub-committees had the responsibility to:

1. Provide background information and make it readable by ordinary people;

2. Determine which proposals should be submitted to the constitutional convention and rewrite the language in the legal style suitable for adoption;

3. Promote the entire concept of statehood and provide coordination, material, speakers and advice in aid of discussion by the community;

---

78 In addition to the highly motivated members of the three women’s organisations, the son of the 1950 Convention’s president served as temporary chairman of the committee. A respected person, known for his confidence in community affairs, it was only to be expected that he would be chosen for the permanent chairmanship. When the group elected its other offices at the second meeting, it was more than luck that a representative of the A.A.U.W. became a vice-chairman, another from the Junior League was designated as secretary, and later, the representative from the League of Women Voters was appointed to the key post of public information. Supplementing these officers in comprising a “working committee” were a co-opted controller, treasurer, Constitutional Convention conference coordinator, and the 13 chairman of the 12 sub-committees (the Sub-committee on Continuing Information Effort had two co-chairman). Meller, Ibid.

79 A small executive group, headed by the chairman, carried responsibility for most of the day-to-day decision-making case. Originally a policy group had been proposed was one representative from each interested organisation, but, as the activities of the citizen’s committee evolved, the general luncheon sessions became league "policy" body which ratified proposals brought before it. Ibid.

80 These were the sub-committee activities indicated by their titles: 1. Constitution and the Convention; 2. State-County Relationships; 3. Tax and Finance; 4. Judicial Article; 5. Bill of Rights; 6. Ethics; 7. Cultural Affairs; 8. Health and Welfare; 9. Consolidation and Planning; 10. Elections; 11. Education; 12. Amendments; 13. Initiative; 14. Referendum and Recall; 15. Continuing Informational Effort. The general program objectives were brought to and approved by the “policy” committee, background preparatory work was then allocated to the sub-committees, but full authority to keep everything moving and objectives achieved was assigned to the few extremely dedicated individuals placed at the strategic posts in the executive group. Meller, Op.Cit, 24.

81 Ibid.
4. Be a sounding-board on all requests for information by the public.

5. Be a resource of experts and workers for the secretariat and the sub-committee on Continuing Informational Effort;

6. Develop and furnish programs designed to elucidate issues of public interest; and

7. Select and present the material to be covered at the constitutional conference sponsored by the citizens committee. Note: this was a conference, not the convention.

Each sub-committee was requested to work out a program for public presentation within their expertise, with the media fully employed for this purpose. The committees even had to prepare materials for one-minute "spots " or 'media-grabs', highlighting the issues which would come before the convention. Also short to medium length articles suitable for press release were prepared, giving an objective viewpoint on issues. Lists of names of people "whose opinions are valued in the community", and who would be willing to record announcements for radio and television use were prepared. One could visualize Territory identities being recruited for this purpose. Media releases and speaking engagements arranged by the sub-committees were channelled to outlets and advance information of publications prepared by the sub-committees. Maximum public impact was obtained by use of a central public relations office.

The activity of each chairman was crucial to his/her sub-committee’s success. This required firm direction, but ensuring delegated work made volunteers feel centralised, not marginalised: Meller gives examples of this method:

The Bill of Rights sub-committee will meet... This meeting has been called to allow each and every sub-committee member to review and approve the content to be presented on the 25th [constitutional convention conference ] program.\(^{82}\)

In an enlightened manner, the citizens committee planned to hold a conference for the constitutional convention, in accordance with its original objective; but it was the consensus of representatives attending the early organisational meetings that the committee’s role should be focused more towards citizen education in total, then

\(^{82}\) An example of internal instruction: ‘You are urged to bring to this meeting any provocative questions, all statements pertaining to the Bill of Rights, private or civil, especially those relating to the State of Hawaii or any other material pertinent to the program. Example: public funds should, if needed, be used for private or sectarian school bus transportation.’ After a format is decided upon, this material will be printed in convenient form as handout leaflets. Do you know how we can get 1000 or more leaflets printed free or at cost? All people attending the conference... should receive a copy even if they cannot attend the Bill of Rights sessions. Please check with respective organizations, encouraging them to submit proposals for our January 25th Constitutional Convention conference. All ideas are encouraged. See you Tuesday. Meller, Op.Cit.25.
singly on the conference. So, activities of the citizens committee was in two stages: the first directed towards planning and then running a major conference (the second), and then continuing the educational effort initially conceived to last until the revised draft constitution was presented to the voters for their approval. As Meller observes, and it now becomes a crucial move, this was later shortened to conclude with the convening of the constitutional convention.83

The University of Hawaii developed its proposal for a constitutional convention education program and presented it to the Governor. But because the Governor would only do what was politically astute, it became obvious that the bulk of all money required would have to be raised by the citizens committee's own efforts. By the third meeting of the committee, approximately a month after it got underway, sub-committees had been organised, a suggested planning time-schedule circulated detailing a fully predicted conference, a conference headquarters established with its telephone manned by volunteers. Donations were being collected. The groundwork for an extensive public relations program had been laid by enlisting the co-operation of professional personnel from public relations friends and the press, radio and television. Volunteers were important and many performed tasks parallel to their professional expertise, like arranging programs, laying out copy, preparing materials on the production facilities of some TV stations and duplicating them for broadcast on others, and otherwise furnishing the necessary expertise and technical services.

If readers would like to avail themselves of the detail of the myriad arrangements, it is well to read Understanding Heart84 And it is so recommended. It is not proposed to further revisit that work in detail. It should be obvious by now, that for a constitutional conference, these arrangements and the organizational infrastructure, were more like that of a constitutional convention. This was no mistake by the citizens committee: the Governor ran the election of delegates and for the constitutional convention, the legislature controlled the legislative brief, yet the

83 Meller, Op.Cit, 25. It took on the appearance of one seamless constitutional function, though it was not. It had also gained much support. To provide content as well as glamour to the conference, MPs spread their limited resources on the citizens committee; arrangements were made for five distinguished mainland commentators to participate in the three-day conference, with their costs underwritten separately by the American Judicature Society, the Council on State governments, the Hawaii state foundation on Culture and the Arts, the National and Hawaii American Civil Liberties Union, and the National Municipal League. They served primarily as features speakers at conference luncheons.

84 Meller, N, 1971, With an Understanding Heart: Constitution Making in Hawaii, University of Hawaii, and the National Municipal League, (State Constitution Convention Studies Number Five), New York. The citizens committee worked with the conference centre on the University of Hawaii in making the technical preparations for the constitutional convention. Conference centre personnel aided in planning, laying out promotional material, and, later, setting up the physical facilities at one of the large convention hotels in Waikiki. The program remained the responsibility of the citizens committee.
citizens committee was ‘calling the shots’ even through their conference. So, the citizens committee ‘stole the show’. The more important feature is that the convention and conference became so synonymous and inter-locked that the convention was powerfully affected by the pre-existing work of the conference. The sub-committee system adopted by the citizens group, expostulated during the conference, makes it difficult not to observe that the convention was little more than a rubber-stamp; but hesitation is appropriate because the draft constitution worked-up in this phase by this form of structural process, was subjected to fine-tuning but in essence not changed to some other form. And it is difficult even from the title employed –‘Constitution Convention Conference’ not to view the two events as intrinsically linked- even as a single entity. It came close to that anyway!85

The final activity of the citizens committee was a three-day symposium at the University of Hawaii, held after the delegates were elected. Delegates elected had previously been asked by mail to identify their areas of interest and, to the extent possible, their ideas were highlighted. 75 delegates attended the symposium.86 The symposium featured mainland specialists on Constitutional revision. In addition, delegates had an opportunity to consult with local government officials who shortly would be called on to provide services to the Convention. The committee also arranged for the delegates to meet with the attorneys who were happy to argue Hawaii’s apportionment case before the US Supreme Court.87

Before departing from Hawaii’s conference/convention, a snapshot of the numbers of interested people involved, in becoming directly involved in participatory roles in this procedure should be highlighted. The great burden of mounting the effort fell on over 800 academic, community and political leaders who discussed the pros and cons of the major issues likely to come before the constitutional convention, usually through panel presentations. Still voicing his opposition, yet addressing the opening

85 Meller, Op.Cit, ad seriatum. Measures which were important to the success of the constitutional convention conference included selection of a program chairman charged with overall responsibility for the three-day conference. The working committee, and members of the inner executive group, collated program segments from the various sub-committees and constructed a cohesive agenda designed to attract a kaleidoscope of people interested in the constitutional convention. Meller noted that ‘The ability of the conference coordinator was so well demonstrated by his performance in organising the conference that six months later, when chairmen would be designated for the standing committee of the convention, as an elected delegate, he was made to chair the key Committee on Legislative Apportionment and Districting.


87 Meller Op.Cit, 29. A good part of the symposium was devoted to sessions on the experiences of other conventions, and the extent to which they were transferable to Hawaii. They treated the symposium as of material value in helping to overcome the suspicion of the political newcomers. According to the author, although not publicised, one of the major reasons for the citizens committee sponsoring the symposium was to enable the delegates to become familiar with each other. But it was just as important for the electors to know something about the delegates, and before the elections, through cooperation with the print media, the citizens committee managed to provide ‘snapshot’ filler biographies of 360 of the 378 announced candidates.
session of the conference, was Governor John A Burns, who restated that Hawaii's constitution was basically sound and that the constitutional convention was unnecessary. To Democracy was served, and so was constitutionalism, involving the wide participation of Hawaiian people, through (controversial) elections, affecting all parties, many for party political reasons, thus ensuring the widest participation.

8.3. The Inuit's Nunavut

The example of Nunavut is probably in the category of futurism so far as the Northern Territory is concerned, and has little relevance to the 1998 statehood bid, yet if it is a futuristic quest for indigenous peoples of the Northern Territory, is it that far off? By July 2004, the next Territory statehood push had begun. The question relevant to 1998 is whether fear of Aboriginal aspirations which were then heard more as rumours, may have hardened the conservative stance, opposing and fearful of just that same result which enured in Canada. But what about the future of Northern Territory statehood, as seen from the other side, the Indigenous people? The Aboriginal population has passed 33% and may overhaul the proportion of non-Indigenous people in future years. How did the Inuit people handle their majority?

In mentioning the example of Nunavut in statehood terms, it must clearly be understood, that Inuit is not a state-type entity, not even being a province. It is a territory and is called Nunavut. It joins the Yukon and the Northwest Territories as the third of Canada's nominally self-governing territories without provincial status. However, it is a new entity in a Canadian federation and it deserves some exposure here because of similarities in some ways with the Northern Territory. It is a large area, bigger than Alaska and California combined, over 772,000 square-miles. Its climate and weather is harsh, it has its Aboriginal people, but is sparsely populated; although 80% of the population is Inuit. It is isolated and resource-rich. Geographical parallels with the Northern Territory are apparent, apart from temperature and a greater non-Indigenous population in the latter. But the Inuit saw

88 Meller, Op.Cit. Infra, 27. In an odd way, Burns was right, for the wrong reasons! The contrasts and similarities with the Sessional committee's work and the 1998 Darwin constitutional convention controlled by the Government becomes marked at this point, mainly through the degree and extent of changes made. Burns was opposed to statehood; conversely Shane Stone, the CLP Chief Minister, wanted statehood, albeit his own way.

89 In the candidate's view, the fear has been present ever since non-indigenous settlers came to the Northern Territory (including the early settlements), but not only fear of aboriginal people: the Dutch, French, the Chinese, who outnumbered whites on the first railway, even fear of foreign firms; but primarily fear of land claims by empowered indigenous people, whose claim-basis was amplified in antiquity when the first spears were thrown.

90 The predominantly Aboriginal population of Nunavut is a determining feature of the land question. No less is land in the Northern Territory a vexatious issue, as seen in earlier chapters. Native Title potentially covers most of the Northern Territory, but urban areas are said to be "out-of-bounds" to land claims, because nearly all urban land is granted under freehold, leasehold and other estates of title, which extinguishes native title. But not all urban land is so granted. Crown land remains in a plethora of parks, open spaces, coastal areas above high-water mark, and odd land estates. In the candidate's view, it is a matter of time before challenges are made. But what if +50% population becomes of Aboriginal ethnicity? It is so predicted. What is the essential basis of claim?
Nunavut in terms of their own interests, and it invites the question of how much Northern Territory Aborigines see the same spectre, perhaps as a partnership in terms of statehood. Land is the key to both Indigenous peoples.

A brief historical journey of Nunavut is instructive. The Canadian government and leaders of the native Inuit in the central and eastern Arctic reached agreement in 1992 on a massive land settlement that would divide the Northwest Territories. Under the agreement, the 17,000 Inuits in the region would be granted self-government rights over part of the new territory and would become the biggest landowners in North America. The Inuit, who have generally adopted that name to replace the traditional name ‘Eskimos’, also would retain hunting, fishing and other rights in Nunavut. The area was partly administered by federal authorities, and that would represent a fifth of Canada's total land mass. Under the redrawing of the Canadian map, the Inuit would take legal title to 136,000 square miles of disputed land stretching from the Manitoba border to the North Pole. They would also receive nearly $1 billion over 14 years, including interest payments. In return, the Inuit would relinquish title claims to about 80 percent of their ancestral land, including areas believed to contain lucrative oil and gas fields, But they would retain some governing rights in that area. The region covered by the agreement consists mostly of frozen tundra and wilderness islands of the Arctic archipelago. The land claim settlement, the biggest in Canada's history, was announced in Ottawa by the then Native Affairs Minister Thomas Siddon and leaders of the Tengavik Federation of Nunavut, the political organization of Arctic Inuit.

The Inuit leaders said they would conduct a plebiscite in March, 1992, to ratify the boundaries of Nunavut, whose name means "Land of the People" in the Inuit language; and which territory would stretch from the northern reaches of the tree line of the Northwest Territories to the North Pole. The political development of this area is such that is has potential to accede to provincial status. But in ending the Inuit account here it is noted that only two issues are apparent which might impact on the Northern Territory statehood bid: they are the described physical similarities thus rendering comparative developments more conducive to parallels, and the negotiations to have self governing rights transferred: Nunavut is at the stage of territory status. But no overtures have seriously been made for provincial status. Its ‘capital’ is Iqaluit but government administrative machinery is scattered over various centres. Accordingly, this example cannot assist this thesis other than provide contrasting descriptives. But it is always mentioned in the same breath as statehood.
creation, because its emergence as a self-governing (and mendicant) Canadian federation entity. An interesting observation made is that it is considered by some to be an Aboriginal or ethnic claim for self-government autonomy. The parallels with Australia however are far from established in such respect, despite some attempts to do that.91

The two sides agreed to negotiate a political accord creating the territory of Nunavut and establishing the terms of its financing. Nunavut would join the Yukon and the Northwest Territories as the third of Canada's nominally self-governing territories without provincial status. Siddon said the agreement means the end of decades of legal wrangling over all of Canada's Arctic and sub-Arctic wilderness north of the 60th Parallel, which separates the Northwest Territories from Manitoba and other western provinces. He termed it "a giant step forward" in relations between the federal government and aboriginals. "It is a new partnership between the Inuit of the eastern Arctic and the people of Canada... It establishes certainty over title and territory in the region," Siddon said, adding that he hoped the accord would be ratified by Parliament by the middle of next year. Although Siddon said on Canadian television that the agreement would result in a "stronger, more unified Canada, both socially and economically," the accord also appeared to hold the potential for achieving one of the goals of several leftist groups that advocate transforming Canada into three separate nations - French-speaking Quebec, the aboriginal community and the rest of English-speaking Canada.92

8.4. Creating Indian and Nigerian federal states

The reasons these instances are raised here at all, and not, say those of Germany, also a federation of states and Switzerland (see chapter 10), or even Malaysia for that matter, is that, these two examples are legacies of the former British Empire in

---

91 ‘Dreaming in Black and White: An Australian Northern Policy – Comments on Towards the Development of A Northern Australia Social Justice Strategy’, Final Report, Darwin 1994 by Peter Jull (The Northern Review #12/13 (Summer/Winter 1994): 207-219). The paper by Jull compares and contrasts northern development policy between the Northern Territory as part of regional development, and Inuit, as he calls it. Despite reading his paper carefully, no useful extrapolations can be made which would shed light on the current topic. Jull’s style is densely discursive, unsettling, and cynical; his theme is subjectively based in socio-economic and philosophical criticisms of a northern policy ‘report’, couched in colourful, but structurally barren language. Otherwise it is an interesting read.

92 Gary S.Trujillo, gst@gnosys.svle.ma.us Somerville,Mass., http://nativenet.uthscsa.edu/archive/nl/9201/0107.html Before embarking on the relationship of the Inuit people of the Northwest Territories in Canada and the Northern Territory. The candidate wishes to advise that, as in this case, generally, some of the more informative research information reveals insufficient, inadequate and incorrect acknowledgment accreditation of the sources. Accordingly, that which can be acknowledged is given, however it may be, but in this burgeoning internet universe of information, authors should properly acquaint themselves with better details of their identity and website publication. In this article an answer to school students inquiries by a ‘net master’–only two proper objects of intellectual property are supplied: the author's name and the website address. Website authors should understand their rights (and obligations of others concerning their work) and become better acquainted with the genre, otherwise risk losing their property to usurpers and plagiarists. It is a fault underscored by authoritative application in this media usage of internet sources. This is an increasing problem.
which federal systems of states have become accepted as desirable institutions of governance; and also that the creation of new states in these federations took place late in the 20th century when it might be supposed that the processes of creation are as important as the actual statehood itself. But they could have been dismissed as irrelevant to this exercise if it had not been also suggested by at least one Northern Territory Member of the Australian Parliament, reflecting views of others in that place, that the Northern Territory could be created ‘by the stroke of a pen’ by the Australian Parliament under existing constitutional powers. Indeed this course is possible, but hardly likely, unless some emergency occurs.

It is possible to create states by strokes of the pen and little else. Indeed the world’s largest democracy has done so in recent times. It is questionable whether constitutionalism is practical in such circumstances, and if that is so, is there a fall-back position which purports to validate such measures? It probably depends on the circumstances. Indian constitutionalists may ‘huff’ at such suggestions and point to appropriate constitutional processes. If that is valid criteria, what of the special circumstances of Northern Territory’s bid; and the little likelihood of the great majority of the Indigenous population agreeing with any form of predominantly non-indigenous concepts? Why should Canberra not push ahead and just sign-in statehood? The reasons and responses may well be the same or similar to the situation pertaining in India when the government arbitrarily acted to create new states: both processes met with opposition.

On August 11, 2000, an Indian media report was published with the heading ‘Decks Cleared for creating two more states’. The decision to include Udham Singh Nagar and Hardwar in Uttarakhand remained a contentious issue and some lawmakers, led by Bahujan Samaj Party (BSP) leader Mayawati, called for a referendum on the subject.

93 David Tollner, CLP Member for Solomon in the House of Representatives proposed this course during 2004. It is legally, read literally, possible; but a solution quickly dismissed by commentators. (See Tollner’s cited in Chapter 7 herein).
94 The candidate does not even attempt to answer the question, which can remain rhetorical. If by now the point to constitutionalism in statehood creation has not been established here as a necessary feature of legitimate statehood processes, then it is too late!
95 Residents of Udham Singh Nagar protested the inclusion of their district in the newly created Uttrakhand state in New Delhi, on July 28. Udham Singh Nagar has a large population of Sikhs. And the residents there want the district to remain part of Uttrakhand.
96 Sahi, Ajit, India Abroad August 11, 2000, India.
8.4.2. ....Nigeria

Earlier, in 1967, General Gowan, the President of Nigeria made a broadcast to announce the division of Nigeria into 12 states. Nigeria is a populous federation, but historically, it has not experienced any strong tradition of democratic rule, and even less observation of constitutionalism in forming new states. In a long, self-serving monologue, General Gowan said:

   It is my fervent hope that the existing regional Authorities will co-operate fully to ensure the smoothest possible establishment of the new states. It is also my hope that the need to use force to support any new state will not arise. I am, however, ready to protect any citizens of this country who are subject to intimidation or violence in the course of establishment of these new states.

In India, the statehood process was ameliorated somewhat: “…two more states (were created) in the country out of Uttar Pradesh and Bihar, with the Lok Sabha passing by a voice vote two state reorganization Bills in as many days. On Aug. 1, the lower house, or Lok Sabha, passed the Uttar Pradesh State Reorganization Bill 2000, to create Uttaranchal, comprising the hilly areas in the north-west of the country’s most populous state. The next day saw the Lok Sabha passing another Bill to create the country’s 28th state, Jharkhand, comprising 18 southern districts of Bihar. The introduction of these two Bills closely followed the passage of another Bill in the Lok Sabha on July 31, for the creation of Chhattisgarh, comprising the tribal areas in the south-east of Madhya Pradesh.” The Union government had taken an unprecedented step of creating a new division in the Planning Commission to dwell on the financial implications for the residual Bihar state. The division was the first of its kind employed by independent India in reorganizing states.

Insofar as Nigeria is concerned, the twelve states were to be established by decree. The concessions were laughable if not tinged with tyranny. In India the chief concern was not the process by which the states were being formed, but the political

97 Nowa Omoigui, 2000, © 2000 Segun Toyin Dawodu, P. O. BOX 8843, ALBANY, NY 12208-8843, USA.
98 Ibid.
100 Ibid.
101 Op. Cit. Ibid. Gowan proclaimed “To this end, therefore, I am promulgating a Decree which will divide the Federal republic into Twelve States. .. I must emphasize at once that the Decree will provide for a States Delimitation Commission which will ensure that any divisions or towns not satisfied with the states in which they are initially grouped will obtain redress. But in this moment of serious National Emergency the co-operation of all concerned is absolutely essential in order to avoid any unpleasant consequenc... I wish also to emphasize that an Administrative Council will be established at the capitals of the existing regions, which will be available to the new states to ensure the smoothest possible administrative transition in the establishment of the new states.”
power struggle which immediately ensued. In Nigeria, the civil war with ‘the eastern district (Biafra) was the given cause of military emergency. Gowan recited a truncated history of demand for states as justification for creation by edict. His broadcast continued:

The country has a long history of well-articulated demands for states. The fears of minorities were explained in great detail and set-out in the report of the Willink Commission appointed by the British in 1958. More recently there has been extensive discussion in Regional Consultative Committees and Leaders-of-Thought Conferences. Resolutions have been adopted demanding the creation of states in the North and in Lagos. Petitions from minority areas in the East which have been subjected to violent intimidation by the Eastern Military Government have been widely publicized. While the present circumstances regrettably do not allow for consultations through plebiscites, I am satisfied that the creation of new states as the only possible basis for stability and equality is the overwhelming desire of vast majority of Nigerians.102

Really?

8.5. Conclusion

The overseas experience of American federal state creation demonstrates the gap between the onerous processes which are required by constitutionalism in federal democracies, and the easier exigencies of state creation by signing them into existence with little more. That gap is highlighted by these examples. The degree of impatience with the former may well be irritating to some and inviting, but the bottom-line is that the ‘hard-yards’ are required for good purpose, and have at the heart of things the well-being of all stakeholders, major and minor, so that they have ownership in the creation merely by playing the roles of having a say. Somewhere in between the two extremes, perhaps erring towards the more enlightened end, lies the Northern Territory’s failed example. The case contrast demonstrates the high level of constitutionalism required for qualitative success in state creation. The two sets of federal experience apparent, are not differentiated in this thesis. But it is possible to do that.

102 *Ibid*. The type of federation was titled ‘Decree No. 8 or Confederation of Loose Association’.
APPENDIX 9
INTERVIEW WITH (FORMER NT SENATOR) GRANT TAMBLING

9. Non-stop responses to questions

A. My father came to the Northern Territory in 1926 as an itinerant school teacher between Darwin and Katherine. He had a very colourful and very bold community life. Met my Mum, she came to the Territory in 1938 and married somewhere about ‘41 and I was born in ‘43 during the war years. We came back to the Territory after the second world war and so I was raised through all my education right through to matriculation in Darwin in the 1940s and 50s. And as I said, Dad was a very community-type person in education community based activities. I think I went off for my own career reasons to Sydney at one stage and returned with a girlfriend in 1967/68.

I was a life insurance representative doing very well and successfully, and I was very involved in art-type organizations which in turn led me into local government in 1972.

I would have been 29 at the particular period, and I had a couple of years on the Darwin City Council, which was really great. In ’73/74 a number of MLAs were agitating forces towards self-government and for the first fully elective Legislative Assembly to be elected in October ’74. That was when, (Goff) Letts in cross-party lines, approached a number of us to get involved, and Letts took up those of us that had a right-wing lean and put us all in as part of his team for the 1974 election of the Legislative Assembly. So I grew out of community-based commercial activities and family influences, basically a protestant in a religious sense and quite active, in to that 1974 Assembly. But it was the first fully elected Legislative Assembly of the Northern Territory, created by Gough Whitlam & Co. And then of course, the CLP had a field day, took 17 of the 19 seats.

Dawn Lawrie and Ron Whithnall were the two independents and no Labor. Two months later of course, probably before, and certainly in my case, before we even made our first speech in parliament, Cyclone Tracy wiped
the floor and wiped-out the Darwin Community, and altered very dramatically a lot of the activities that were so necessary in setting up the Legislative Assembly.

Just prior to that in the Federal Parliament, Sam Calder and a number of his other colleagues had been instrumental in putting together the Joint Parliamentary Committee on constitutional development of the Northern Territory to take that fully elective Assembly into self-government mode. So we all built on that. 1975 was preoccupied by two things, all the initial trauma of the Darwin Reconstruction Commission, for which I was the nominated Assembly member, and then of course the Federal Election of 1975 which saw the demise of Whitlam, and Fraser coming into power- and Bernie Kilgariff transferring across to the Senate as the First CLP Senator.

So ‘75 was a very much reconstruction year, but in ’76, constitutional development issues resurfaced. Goff Letts had a passion. By that time, I had become the deputy leader of the Northern Territory Country Liberal Party in the Legislative Assembly, with the Finance portfolio; and Letts and I basically negotiated self-government. We went to a lot conferences with various Commonwealth Ministers of the day, who were by that stage of course all Liberal: (Minister for Territories) Aderman, Anthony, Viner, (Sir John) Carrick; and we had a very famous meeting- I think in ’76 or ’77 in Brisbane, in which we set-out the basic terms for transfer of powers. And we in effect undertook the first things. Letts and myself and a number of other executive members lost our seats in the ’77 election. I lost very narrowly in Fannie Bay.

Q. That was the worst election result for the contempraneous CLP?

A. Very much – Probably.

Q. Apart from the last one?[2001]

A. Yes, apart from the last one. Probably, because they (CLP) had 100% base on which to go from. They had 17 of the 19 seats. So the ’77 election when the Labor Party picked up five or six seats (I would have to check that

---

103 Other Northern Territory responsibilities: “I was Treasurer for the first Northern Territory budget which was a very small budget for Housing Commission I think and a few other things of about $50,000,000. So all of that happened. And then we went through the stages of ’77 in the lead to an election, there was a redistribution. There was probably a return to a bit more normality with the Labor Party flexing its muscles; and Jon Isaacs the then leader of the ALP postured very strongly on the financial costs of self-government at that particular time.”
number) that was certainly a change. What was unfortunate was that the campaign took out the leadership and that then transferred across to Everingham and he took it forward in '78 into the complete self-government package. So you tracked through that question that was my involvement in the Northern Territory Parliament.¹⁰⁴

It was probably more my business partners that convinced me in the early seventies and then Goff Letts and I had an objection to socialism per se. And the performance of the Whitlam Government did not impress me through '72 to '74, so I think they just consolidated my view.¹⁰⁵ And then we had the camaraderie of the CLP team where you had Letts, (Les) McFarlane, Kilgariff as the sort of senior ‘sits’; and then fourteen or fifteen of us young ones in our late twenties-early thirties that were pulled-in. We were probably more influenced by Goff Letts than anyone else about what was conservative politics at that time.

The other issues that were running through the Territory as well as self-government and the reconstruction following the Cyclone was the issue of Aboriginal land rights. It was legislation that had been initiated by the Whitlam government and then picked up by Fraser and Viner and instituted in identical terms which at that time we saw as being contrary to Territory interest and certainly infringing on the rights of pastoralists and the resources sector, including the mining community. And we led some pretty strong delegations and debates to Canberra to try and get common sense into that legislation.

We did not achieve too many amendments and in effect Northern Territory self-government and the bedding down of the Aboriginal Land Rights Act (NT) happened in parallel in that time in the 1970s. As I said I lost the 77 election and went back into commerce for a few years and then resurfaced in 1980 at the retirement of Sam Calder from the House of Representatives.

¹⁰⁴ What were your value and belief systems? "Very much probably bordering on charismatic Christian. I have always been a main-road Christian in the Uniting Church tradition but I was probably flirting with the church at that time. I was very much a bit of a prude I suppose in some ways, compared to the Northern Territory average, but by the same token, my interests were all in the art and culture areas of the Northern Territory and I have been a founder of Browns Mart. Nan Giesse and I were initially involved in the setting up of the then Arts Council of Australia Northern Territory Division. I was president of the North Australian Eisteddfod Council bringing together Aborigines from throughout the Territory for corroborees, that was all prior to '72, so my values were probably conventional, young, married, reasonably successful".

¹⁰⁵ Tambling's take on ideology: "I had been initially attracted to politics by Gough Whitlam himself when I was in Sydney. I'd sat at his feet at some Labor Party meetings and was impressed by the charisma of the man, however, when I returned to a partnership with others as a key representative they soon whacked my ears and brought me back to the more right-winged liberal-type set of values which were probably that. My parents were probably very middle of road public servants that would have voted on both sides of the fence."
picked up the position where he was and won the seat in 1980; and I had nearly three years in the Federal Parliament, the last term of the Fraser government.106 We had a special arrangement whereby technically one representative, Bernie Kilgariff sat with the Liberals, and the other person sat with the Nationals.107

In 1987 when Bernie Kilgariff retired from the Senate I got CLP pre-selection for the Senate, went off to the Senate and the rest was history. From ‘87 through to 2001, in fourteen years I was in the Federal Parliament, I rose to the rank of Deputy Leader in the Senate for the National Party for the first couple of years when I was Party Whip. I then became a shadow minister for about six years.108

I held several positions when the coalition was returned to Federal power.109

But firstly putting that in context, you asked why did I go to the senate. (The response is placed in footnote).110

When I first went into the Senate in ‘88/’89, you might recall Charles Perkins was the then Secretary of the Department of Aboriginal Affairs and the DAA was hopelessly and dreadfully run and I led a major campaign in the Senate

---

106 Tambling’s first view of The Senate: “I was pretty naïve and young and rash and I lost that election in 1983 when Hawke became the Prime Minister. There was a national swing on that inevitably meant the Northern Territory seat would go because of its tight margin and the Aboriginal type issues that surfaced. So I had that period in 1980/’83 in the Federal Parliament sitting at the feet of Malcolm Fraser, Ian Sinclair and the sort of mixings of (National Party leader, Doug) Anthony. I joined up with the National Party as Sam Calder had done in the Federal Parliament.”

107 Tambling recalls: “My predilection probably should have been in hindsight that I should have gone with the Liberals because of my personality: I was probably more a small l Liberal than a big N National but I bedded down my career for all sorts of reasons both in ‘80/’83 and subsequently when I went for the Senate, I stuck with the Nationals as the CLP rep in that area. I think it worked very well in the longer term but I was probably the most socially-oriented member of the National Party than in the whole seventeen years I was in the Federal Parliament.”

108 His portfolios: “I held various portfolios: they are on my CV, and formulated a lot of policies including Northern Territory Constitutional development that were the backbone for the policies of ‘96 when the coalition was returned to Federal power. And then for the following five and half years in the Howard Government I was a parliamentary secretary, which in effect was is a Deputy Minister and the role actually changed halfway through and we were sworn in as Minister when I became the parliamentary secretary for health in 1998.”

109 Power and his fall from grace: “...for the following 5 ½ years in the Howard government, I was a parliamentary secretary - which in effect is a Deputy Minister - the role actually changed half way through, and we were sworn in as Ministers when I became the parliamentary secretary for Health in 1998. I held positions of parliamentary secretary for transport and regional development in ‘96 and then subsequently the parliamentary secretary for Social Security with the responsibility for introducing to Australia, Centrelink, and setting that up; and then in ‘98, I became the parliamentary secretary with Age Care with primary responsibility for food, medicines and drugs- National. So that was my ministerial career. As I said, three years in the House of Representatives, lost in 83, and I went back into ‘civvy street’, had a News Agency. I was Deputy Chairmen, appointed Deputy Chairman by the Northern Territory Government of the then Northern Territory Town Planning Authority which gave me the ability for the following three years to move around the Territory because there were I think eight different Town Planning Authorities around the Northern Territory which met regularly, so I moved around, kept all my contacts.”

110 The pull of power and opportunities: “I think having caught the passion of politics and the exercise of power in both the Assembly and the House of Representatives, I was not able to divorce myself from the issues and I still thought there was more to do. I had certainly fallen in love with the Federal scene in my Lower House term. And believe that I would be able to make a contribution. It was unfortunate that I had about seven years in opposition when I first got back into the Senate so my contribution was more in putting policies together and agitating against the then Labor government and I probably made my mark as a parliamentarian in the questioning of the effectiveness of expenditures of Aboriginal affairs.”
Estimates Committee, which exposed some pretty awful expenditure patterns, and subsequently ATSIC was formed.\footnote{111}

Ten years or a generation later we are now talking about changing that again but at the time Aboriginal affairs consumed a lot of the attention of the Federal members, so my passion for being there - I had caught the bug.\footnote{112}

In the 1980s and the early 1990s various members of the Country Liberal Party attended conferences and annual conferences of the Liberal and National Parties down south, which always put together their policy statements. Inevitably every year, we had motions going forward which were always carried, usually unanimously on the issue of statehood for the Northern Territory, on the railway for the Northern Territory, on Aboriginal land rights and on a commitment to uranium mining.\footnote{113} I think we had tremendous support and traction on the policies of the Liberals and the Nationals federally and it came to a commitment in 1996, particularly on the issue of statehood. If you look at John Howard’s statements, he made various speeches, I think he made one in early 96 at the Casino in Darwin where he gave an absolute commitment to the state. So I think that actually was a very important aspect of influencing the Federal Parliamentarians through their political parties.\footnote{114} You ask also the question about what did I consider my role to be with statehood. I did not feel it was the exclusivity of anybody. Certainly Steve Hatton led the push in my view in the Northern Territory because he always had the issue of taking the issue from the Assembly’s point of view, whether he was Chief Minister or subsequently when he chaired the constitutional development committee. But the Chief Ministers of the day and the Party Presidents of the day always did it and I was always the agent-general if you like, operating in Canberra in that particular area.

\textbf{Q. Did you set yourself up for that or did someone in the Party help you with that or did you decide that position?}

111 Aboriginal and Torres Strait Islander Commission (ATSIC). The wheel has turned again, and by May 2004, ATSIC itself was disbanded, as mentioned earlier.

112 Vested interests: "I always believed that politicians came from various backgrounds. You were either vested interest on either the union or the legal side of the issue or you were in there because of community involvement or private enterprise. I probably ended up being an amalgam of three although I was not very subjected to any real vested interest pressures, although they are always exerted, as you are in politics."

113 Influencing the federal coalition: "I think each of those were very important, and particularly in 1996 the year that the Howard government was elected that, if you like pressure of politics, the CLP influenced its Federal political party colleagues. I have always been at those conferences as one of the lead players, but there were always Chief Ministers there, there were always party presidents and other members from the Northern Territory."

114 He laments: "Sadly since 1998 it has almost gone off the agenda and I do not even know if the representatives that go to the Liberal and National Party conferences these days get heard let alone get motions passed or put through."
A. I think I had become an expert, if you like, in the area of constitutional development because of the interest I took way back in 1974 when the JPC Committee at that time and then what we did in the assembly. The fact that I and Goff Letts negotiated the self-government and financial agreement always gave me a reason to then want to get the full constitutional cloak put on. So it was always an issue on my agenda in Canberra. In the later years in Canberra 2000 and 2001 I used to produce a sheet of the activities that we were doing in Canberra at any one time and there were usually about 250 to 350 policy issues floating around. Statehood inevitably was always up the top.

You ask the question about the role of the Territory governing political party and if you like, the Canberra nexus. I would have to acknowledge that the whole ball really got its initial imprimatur from Whitlam by creating a fully elective Legislative Assembly or parliament of the Northern Territory. ‘78 was back to the Coalition’s turn to throw the ball to the Northern Territory to create self-government, but from then on I would argue that the Labor Party really did not associate other than as a cynic or as a constitutional questioner or critic of the role leading to statehood per se, and that was largely to a certain degree (because) the Aboriginal influences were much greater within the Labor party and had some serious questioning of statehood issues- and I think we will address that a bit later. Therefore, the Labor party neither nationally nor within the Territory really wanted to lead at all with regard to statehood. The CLP since its formation in 1973/74 has always been unequivocally committed to full statehood of the Northern Territory- argued about detail at times but essentially has always been committed. When you’ve got the synergy that the Liberal and National party coalition in Canberra picked up our pressures whether it was Malcolm Fraser in the very early days, with some exciting commitments that could never be achieved, or whether subsequently it was the leadership of people like Ian Sinclair or Tim Fisher or to a certain extent John Howard that always meant that it was not questioned; that there was an inevitability for statehood in the Territory. I would argue very strongly that it was conservative politics that has been prepared to do it.

Since the change of government in the Northern Territory in 2001, the Labor

---

115 JPC, acronym for Joint Parliamentary Committee, not to be confused with Joint Working Committee (JWC).
Party has now obviously seen that there is merit, but that is for them to work out where they now go in the future. Of course they are dealing with the conservative government in Canberra that is committed to statehood. It would be an interesting debate and discussion if there was a Federal Labor government again as to whether the matter would be progressed. I think this brings us to the point of gauging the community reaction. Obviously we will come to this when we talk about 1998, about the changing role in the community of getting the community to accept, because ‘98 in effect chopped off the situation because the popular poll did not support the move that so many of us ...

I call that the baby ‘still born’.

Yes. There were so many pressures and we need to talk about that and I presume you will hit me with some questions about ‘98, but in talking about the synergy between political parties, I think any Northern Territory party that does not look towards advancing its own maturity will always have a casualty, so I think there is an exciting role.

The other issue that you get in Canberra and we were very fortunate right through the ‘80s and the ‘90s is that the leadership, because it had been associated with the 1970 change to self-government, the leadership always supported the thrust forward for statehood. However there was always a major argument with other members of parliament, the backbenches, because the Northern Territory right through this whole period had at this stage only one member in the House of Representatives and two Senators, whereas you had 76 Senators and at that time 148 members in the House of Reps. I always found them very, very hard to deal with because they always felt we were over-supported financially and in issues we were always given more than our fair share’s worth. There was always a lot of criticism at the backbench level as to why.

Q. Didn’t they understand the concept of relativity?

A. No. Every MHR is always focussed on his own electorate, so you had a 147 out of 148 against you at all times except for those Ministers committed at the top because they always saw it, and there was always degree of cynicism. And that is why, by having the leadership and the party political organisations on our side, we were able to take the issue forward. I think if
we had relied even on the majority support of other MHRs, particularly, and
some Senators, we would never have got it up.

The best comparison I can give you on that was the constitutional discussion
that took place around euthanasia where Northern Territory rights were really
the issue, but we were ‘snowed’, and that one became even more apparent
because across party political minds where there was a social conscious
vote- and there was a huge number who did not approve of the Northern
Territory’s right to progress - (we) were not able to hold in the support that
we had on statehood as opposed to state rights. And I think it was at that
debate Bob Collins and I both argued very strongly in the Senate-
and we did much better in the Senate than they did in the House of Reps where
Andrews basically had persuasion. And when you do the numbers
comparisons you can see this what I call backbench cynicism about the
Northern Territory being over-supplied, over-governed and over-influential;
but again we had big projects, we had big defence projects always backing
us up, we had big Aboriginal issues always backing us up. And right through
that period we had a debate on uranium. That has gone off the agenda now
but essentially in the ‘80s and the ‘90s it was always something that other
people had other causes to fight for in the Northern Territory, so it was very
demanding that you always promote it. And I was very lucky as both the
House of Reps member and a Senator that I always had the support of CLP
Chief Ministers backing me up with delegations from the Northern Territory
Parliament and public servants, keeping the issues of funding and
constitutional issues in front of all members. We entertained extravagantly in
the Northern Territory, our Federal members, to keep them on side.

The Commonwealth Public Service has always been a strange creature with
regard to the issue of statehood. It has only ever been advanced by political
leadership. The public servants tend always to have the big cheque book,
know that they are spending two billion dollars per annum today on the
Northern Territory government and its projects and two billion dollars of its
own money in Northern Territory projects. So there is about four billion
dollars or 80% of the GDP of the Northern Territory (which) is actually
Canberra money. The public servants see themselves as always trying to
influence, cajole, play with the influence on those issues, and they don’t
particularly get too fussed about the politicians along the way. And I have
always seen that we have had to play-up the cheque-book politics as opposed to the constitutional issues which we have won by political advancement through either parliamentary committees or through damn good political leadership. And I think that is still an issue to be addressed.116

You ask the question about Shane Stone’s handling of statehood. I feel that in 1998 the Chief Minister then Shane Stone, was operating on a numbering political fronts, some of them very successfully, particularly his international trade agenda and other issues relating to the administration of the Northern Territory government. But this in turn took him out of the Northern Territory continually through that year and it was at the time when it was important that the selling of the statehood referendum needed an anchor in the water, a real consistency of argument and it appeared eye-popping in my view that Stone, when he reappeared each time, seemed to have a different perspective, a different argument, and it was not the questions the community were asking. And whilst he was naturally trying to be influential, the degree of confusion and inconsistency crept into the arguments that I think the community got very confused.

This leads me to the issue that I believe happened in the 1990s with regard to what I call the generational change that has now happened in the Northern Territory. Up until the 1990s the majority of the non-Aboriginal residents of the Territory were usually one generation only of a family that were here. The transient rate was very high and the people that were here usually had young children.

In the 1990’s with the success of the Northern Territory University and with the demography of the population increase, we reached a stage where two, three and sometimes four generations of the same family were a much more

116 Who did what: "If you look at the personalities that were involved in the issues, you had Ted Robertson and Bernie Kilgariff, we had Bob Collins and Grant Tambling as the successive Senators that always played very strong roles on the Territory and straight right across party lines and in the House of Representatives, other than for the brief period of John Reeves who did not have the time to play much of role. You had Tambling, you then had Everingham who certainly played a strong and hard role in the time he was in the House of Representatives. You had Snowden who has tended to push the cause of the Left in Aboriginal affairs and has been a cynic of statehood. Donadas certainly played a good hard, strong and partnership role. Of the present members, I would argue that Trish Crossin probably plays a pretty 'straight bat' and a hard role in addressing the issues of the Northern Territory in that particular area, but it is incumbent on Tollner and Scullion to pick-up if you like where Donadas and myself left off. I have not seen any activity since the 2001 activity that gives me any area of thinking there is either courage, or the persistency that was always inherent in what we did through the '80s and '90s, particularly leading up to the '98 particular poll in Canberra as opposed to what happened in the electorate. So, unless we have that heavy-breathing, heavy-pressure exerted in Canberra, we will swiftly lose the very important impetus that is so necessary to maintain the ball rolling. Because when the decision comes eventually, it is still going to be an act of the Federal parliament that is going to implement statehood. It is going to be a lot of constitutional preparedness to take very hard decisions in the area of Aboriginal affairs to influence perhaps a future Labor government that this is the important area to play. "
significant part of the general population. I haven't done the demography on
it. Someone needs to probably talk to the Bureau of Stats about it, but I
believe there were many more over-18 year-olds voting who were either
second or third generational Territorians. Therefore what I was saying before
about the inconsistency and the confusion of the issues and the debate were
such that families were talking about it and cross-influencing various
traditional voting patterns; and where you may have had the traditional CLP
conservative type voter, the more academic, more cynical, more questioning
aspect became a very significant factor in the voting intentions that year of
the white urban community. I say white meaning non-Aboriginal. So you
had a very different set of pressures that were not disciplined. The Chief
Minister was not disciplining because he was flipping in and out of the
Community and I think the debate and the plot got lost.

You ask the question about whether Canberra had a view on this aspect. I
don't think they did have a view *per se*; they were quite happy to leave it to
the Territory in the anticipation and expectation that statehood was going to
succeed because that had been the way the issue had been running for
quite some time. The other factor that of course influenced it was a very
disciplined vote in the Aboriginal constituency. The Land Councils certainly
had a land rights issue because that has always been an under- current right
through the state of debate where they are not yet convinced that statehood
would preserve their rights under the *Aboriginal Land Rights Act (NT)*,
particularly if it was patriated to the Territory, so they were always opposed
to it and they certainly ran a very significant campaign in '98 which in turn
was fuelled by the Federal Parliaments contest for the House of
Representatives between Dondas and Snowdon. Snowdon had been
defeated by Dondas in '96. And in '98 Snowdon was determined to return.
And the only way he could do that was by very carefully mustering the vote
in Aboriginal communities. So his troupers, which were largely the Land
Council people and other Aboriginal interest groups and influences, were out
there working hard to have Snowdon return, which they successfully
achieved. It meant that you had the people with the same philosophical
agenda questioning statehood, so the proportion of the Aboriginal community
that voted against statehood was very, very high. I don't know the actual
stats but it would be very, very high. So there was no movement in
Aboriginal vote to a moderate view that it is more general in the community,
and then you have, what I call the slippage in the urban vote that was very much... they could not read the debate properly, they were not convinced properly.

Q. Because of the factors that you mentioned about transients versus generational factors?

A. Because of those issues. The then issues I think that were secondary to it that you raise about the Convention and the media that was attributed to that, I think were quite incidental because again to me, they were part of... Whether who was nominated to the committee, who was there, whether they represented the committee they way the media portrayed it throughout that year, was really just adding to the inconsistency and the confusion which then left the community bereft of wanting to give it sufficient - we had to achieve I think it was something like 60% or 65% of the urban vote as a yes vote in order to win 51% because of the liability of the very heavy vote in the Aboriginal community that we knew was never going to be there.

There was only a bare majority in the urban vote.

It was only a bare majority where it ought to have been well and truly over 60%. I think my Federal colleagues were looking for and expecting that high vote because we had certainly noted the support.

Q. The polls had indicated that too, hadn't they?

A. The polls had indicated it and I think the rhetoric of those of us that were supporting it including me were absolutely surprised at the slippage. So I think that the slippage happened because of lack of leadership on holding the debate to a reasonably good understood type agenda.

Q. What about the referendum question itself?

A. Well there was certainly the debate about the wording on the referendum question, how it was to be phrased. And again I think the general community lost the focus of what it was about. The academics, the intelligentsia, the lawyer groups were all hassling and it wasn't in language that could be understood in the Pine Creek or the Karama pub and therefore people were not wedded as they were in the '70s to taking the issue through to self-government. There was the added complication of the referendum issue. So all of these things were causing a co-mixing, which only 'scrambled the
egg’. But I think there was far too much to swallow in the electorate where people could put things in boxes, understand them and make three separate decisions. It was far easier to say no to Dondas, no to the referendum and no to the statehood.

You ask about the attitude of the Labor Party to Territory Statehood and I presume you mean the Federal Labor party. Well of course putting that into the context of pre ’98 in effect both were in opposition Federally and in the Northern Territory. It was not therefore an agenda issue that I would say had any priority with the Federal Labor party at all. And it was not being pushed in my view by the Northern Territory Labor. So it was very seldom in my experience an issue that taxed the minds of the Labor Party federally. And I am not aware that the national conference actually has any agenda items hanging over like we have, the Liberal National parties had in all those conferences of the ’80s and the ’90s that led to the support policy position determined in 1996 which is still the policy of the Coalition federally. And that essentially is that if the Territorians want statehood, they can have it.

Now you asked the question that if the referendum had passed would there have been conditions of the Federal Parliament. That would essentially depend on not the majority but depending where the vote went in the Senate. If the Labor Party and the coalition parties could lean in support, it would be irrelevant and it would just go on. But if for any reason the Labor Party still have blatant or reserved type issues particularly on Aboriginal land issues, then you could almost assume that the Democrats, the Greens and the Independents may all lean that way. (Senator) Harrigan tends to take a very strong position supporting Aboriginal causes and Aboriginal issues whereas Harris from One Nation you probably could agree that it would depend on the Queensland position today and I think probably doesn’t matter, but in trying be prophetic, given that the Senate may well be influenced by Labor left, Democrat left, Greens left, then you could have conditions being imposed by the Australian Senate at that particular time. If I am being really politically realistic at the moment, I believe that if there was a double dissolution at the moment we would probably end up with the conservatives holding the balance of power in both houses and therefore it would be an irrelevancy and would be the best thing that could happen –for statehood to have coalition days. However, you can’t always assume the
current political climate will prevail and if the Democrats ever return to some position of muscle or the Greens start picking up that particular central point then we might have to negotiate carefully with the Greens. And it will be very interesting to watch both the next Federal election. So I was saying a lot of hypotheticals relating to balance of power issues in the Senate. You have always got to assume that you have the support of whoever is the government of the day in the House of Representatives.

You ask the question whether there were any Members of Parliament who are prepared to either oppose the grant of statehood or impose conditions. No, I do not know that there was anyone running causes on this particular issue. You would always have to ask the question whether the issue of euthanasia might resurface in the debate. That was passionately held in the Federal parliament although I do not think anyone wants to particularly raise that in either Federal parliaments. It has been very interesting that no state government has ever sought to legislate that again.\(^{117}\)

Q. Can I put it to you that before any statehood attempt is made, any of the formal processes, that someone representing the Territory in Canberra should ascertain, what, if any, of that patriation should be encompassed, as organic law in the constitution perhaps in a certain rights sense.

A. I think to a certain extent that issue is currently being addressed by Minister Ruddock and by the Attorney General in the review that is still going-on of the report that was undertaken by Reeves QC into the Aboriginal Land Rights (NT) Act. Those changes to the current Federal Act had not been agreed at this particular point in time. Fundamentally they are as important as settling the issue of a constitution for the Northern Territory in order to achieve future statehood. No matter how you look at what statehood will be, unless land administration black or white, Aboriginal Land rights or conventional land tenure can be picked up, can we afford to have a different system of administration in the Northern Territory from that existing between the Commonwealth and the States and the subsequent legislation of course, federally of Native Title.

---

\(^{117}\) Hypothetical on euthanasia: "It would be very interesting - I will throw a hypothetical at you here at the moment is that if the euthanasia bill was reintroduced into the Northern Territory parliament at the moment would it pass? Because nobody really knows that at vote the freewill voting intentions of the 25 members there at the moment and it might not even get up, so whilst on state's rights side of the debate we might argue very strongly for it. I do not know that euthanasia issue will be. There will always be a degree of questioning about the likes of Aboriginal people because of the 1967 Federal Referendum because it gives certain responsibilities to the Federal Parliament and therefore any constitution of Northern Territory for statehood, however it is devised, brought about, implemented in the future, is going to have to address that issue fundamentally and not leave in the ether of the issue of whether the Aboriginal Land Rights Act (NT) is patriated for the Northern Territory or not. "
So there is still a long way to go in addressing that constitutional debate. And I think what is currently happening about the *Aboriginal Land Rights (NT) Act* - because I think the constitution of the Northern Territory at the moment is in effect, the *Northern Territory Self-Government Act* and the *Aboriginal Land Rights (NT) Act*. Unless you read the two in parallel you cannot really reach a definition of what our current status is. So any future statehood for the Northern Territory must put it up.\(^{118}\)

You ask about the fact that the Prime Minister is such a staunch supporter of statehood and if this is likely to change in the future whether or not it is Labor in power or a coalition. I think the key issue to be addressed is forward selling of the issue of Northern Territory Development and constitutional development whether it is statehood or whatever. It is no different to the arguments in 1937 to Payne and Fletcher. We have enjoyed a decade or so of very significant support from the Canberra leadership and to a certain extent that was there in the Hawke/Keating government and the fact that Bob Collins was a strong muscle man in the particular period our causes and issues were advanced. And I would argue that in the Howard Government, I certainly have had degree of persuasion up until 2001, in that five year period. And we have certainly enjoyed tremendous support from people like Ian Sinclair, Tim Fisher, John Howard himself, and in effect people like Michael Wooldridge and others in the leadership. They inevitably will all be out of the picture in the next few years -and the emerging leadership, if you could go through the current list of the Federal cabinet and the Ministry. There is a lot of work to be done ensuring that we will get the same degree of psychological and muscle pressure that we have had in the past decade.

Certainly in the Labor party we have even more work to do and therefore it would be incumbent on the Chief Minister, Clare Martin and Senator Crossin to ensure that extreme pressure and work; and in effect I would be looking at motions at their National Convention to ensure that if there is ever a change federally to an ALP regime that we have them supporting our causes or it will take a decade or so to rebuild the momentum by another generation of

\(^{118}\) A 1937 Report still valid on land tenure: I draw your attention to the 1937 report by Payne and Fletcher in the land tenure. There is some very interesting debate and argument in that report in a totally different generation, nearly 70 years ago, but there is some very interesting debates in that report about how land tenure affects the governance of a particular region or in that case the Northern Territory as it was then constituted. So I think yes it is an issue and we have still got a long way to go. \(^{a}\)
leaders in the Territory.119

Tambling expanded on the task ahead, and because it completes his idea of future priorities, it is entertained from an extensive oral interview, in footnotes, as it takes the thesis no further on its relevant query.120

The easy argument in favour of statehood of course is always to be equal with your cousins interstate who live in the Australian states. I think the far more relevant argument for Northern Territory is to make the Northern Territory be seen as something progressive.121 So to me it is this constant push of progression that is what we have to sell in order to make statehood relevant to all the people of the Northern Territory. It is a multi layered and level area of salesmanship that is required. For example to sell this progression in indigenous or Aboriginal communities is a very different task

119 The task ahead: "You ask the question in terms of Statehood, what do you think the Federal Parliament could it do to make it a more attractive to Territorians, and to the states, and should we get a special funding. Well coincidentally Chief Minister Martin is currently arguing very significant infrastructure and taxation arrangements with regard to the oil and gas projects offshore and they are very significant projects that would inevitably involve billions of dollars and therefore the pressure has to be exerted in that particular area but it is not going to happen by only two members in the House of Representatives. (Snowdon, Lingiari, and Töller in Solomon) that got 146 other opponents in the House of Representatives across party lines. We have got to sell the Territory as being a very significant asset to the rest of Australia. Strategically we are in Defence and that is well known. Whether it is Pine Gap in Alice Springs or the very significant bases in Tindal in the Top End and with the uncertainty of Defence issues in Indonesia and in the Middle East we have got to rebuild some certain bridges. I think we should revisit importantly whether or not we should incorporate Cocos and Christmas Island in the Northern Territory. They are in effect Australia's aircraft carriers in the Indian Ocean and are very important long-term strategically. There are very big projects going-on on Christmas Island in the way of detention centres and space bases where there is expenditure of hundreds of millions of dollars and it might well be in our interest to incorporate those to the Territory. They are not part of the community of interest in the Northern Territory but in economic terms they could be important. It is very easy to sell the Northern Territory as being uniquely different geographically and for tourist reasons and for Defence and strategic reasons but it is hard to sell the necessary financial recurrent funding that is so necessary to provide essential health and education services across massive distances and to a largely illiterate and significant liability in health areas in Aboriginal Communities. That is a hard one to sell and yet as I said earlier there is two billion dollars worth of Commonwealth spent on those projects currently in the Northern Territory and additionally there is two billion dollars being given under the Commonwealth State agreement between Canberra and the Northern Territory Government."

120 Further requirements: “We have to maintain our level of acceptability for the uniqueness and the differences of the Territory to the rest of Australia. We are 1% of the National population and yet our four billion dollars of expenditure is a big ask on the rest of Australia to put in on two hundred thousand people living in this region. So we have to work increasing the population. That requires a lot of work in the areas of mainly industry support if it is to be self sufficient in the primary industries, fishing, tourism and mining fields and accepting that there is a population growth factor in the Aboriginal communities that is quite outstanding and yet coming along side that is tremendous public health hygiene and education problems or we will end up with 30% or 40% of that community not participating or working the community. So the Territory's future from a political hypothesis does require special funding which then flows through our community. If we are going to link that to statehood we have to again repeat the exercise that Paul Everingham did so successfully around about 79 through to 83, where he gave us a pride to be a Territorian and at the same time sold the special emphasis of what the Territory was nationally. We need a program of publicity that is not focussed on my view on statehood but on the uniqueness of the Territory and what it has got to offer the rest of the country nationally."

121 "The issue of statehood is really only a matter of being included as Australians. It doesn't matter whether we live on Norfolk Island or in a Shire near Broken Hill, we all accept that we are Australians. That is its uniqueness of for example a Norfolk Islander or a Miner at Broken Hill that makes them feel something that is very special. In the Northern Territory we have always had a checkered history of stop and start development. We have now reached a very important population base from which the growth is inevitable but it is the pace of change that we want to influence and we can only influence that by selling constantly to ourselves, our own home community and also to the wider Australian Community that we are progressive and we cannot have the progression until the statehood imprimatur or rubber stamp is placed on us. So it does have to be community driven but at the same time, because of the leadership echelon or small group is very small it has to be comprised of the same people. So we need to have a sales team that comprises the business community, the influential community and social agencies and the political leadership working in a partnership. Naturally the funding of anything has to come from Government coffers, there is no way that private enterprise ventures alone, even with substantive grants from mining or community bases organisations, they will not achieve anything like what we have got to do."

and series of arguments that have to be presented to those individual entities as opposed to what you have to do in a very settled community like, Katherine, Tenant Creek or even Alice Springs and then if you come to Darwin and Palmerston, the definition of the community again is quite diverse. There is now luckily an increasingly settled urban population but equally there are a large number and a significant proportion, probably about a third of the Darwin and Palmerston is still transient. Therefore together, synergy of a majority of about 70% in order to make it a successful vote next time we do a referendum, you have got to work on all those different levels, the National community, you have got to work on the Indigenous community, you have got to work on the smaller urban centres of the Northern Territory and you have got to work very significantly with special campaign in Darwin and Palmerston and unless you get a majority vote and preferably a high vote in all those areas, you will not get a successful vote. But I believe it is achievable if it is strategically targeted and is a coalition that gets all interested parties involved.122

122 A positive attitude: Tambling:"As I said earlier if we can do it for East Timor, we can do it for the Northern Territory."