

**Charles Darwin University Symposium
STATEHOOD AND A BILL OF RIGHTS?**

10 May 2007

**HISTORY OF STATEHOOD AND POLITICAL RIGHTS IN THE
NORTHERN TERRITORY**

I wish to acknowledge the Larrakia on whose traditional lands we meet today.

In 1901 all Territorians, subjects under the protection of the Crown, as part of South Australia, had the same status, rights and responsibilities as all the citizens of the new nation of Australia.

From as early as 1902 however, South Australia held discussions with the Commonwealth with a view to handing the area known as the Northern Territory of South Australia to the Commonwealth to administer.

Any State may do the like; NSW did it with Jervis Bay and the ACT to facilitate the creation of a national capital, but there has not been a rush for the States to rid themselves of their land in more recent times.

In the context of individual political rights, freedoms and responsibilities, an audit of our history since Federation is useful as a starting point for Territorians considering firstly, whether they want Statehood and secondly, whether a Bill of Rights should or should not be part of any moves toward development of a new State constitution.

I would argue that the first must not be controlled by the second.

Statehood must stand alone.

The third option of course could be similar to the ACT in creating a legislated charter of rights, independent of Statehood.

On 1st January 1911 the NT was transferred to the Commonwealth.

Territorians immediately lost important political rights!

Aboriginal Territorians had already lost the right to vote in Commonwealth elections in 1902 via Commonwealth legislation called the Franchise Act which banned 'non – whites' from voting.

After 1911 the Territory was run by an Administrator appointed by the Commonwealth executive; a public servant answerable to the Commonwealth.

The status of the Administrator, remains as before, although he or she now acts on advice of the Northern Territory executive on Territory matters. However, the Administrator's assent to Territory legislation may be nullified by the Commonwealth Parliament.

In the years following Commonwealth administration, Territorians became increasingly unhappy with unrepresentative government from afar.

Harold Nelson was active in the so called Darwin Rebellion in 1918 which saw the end of the administration of Gilruth in 1919.

Mr Nelson had been gaoled for not paying taxes. He had taken up the theme popular during the American Revolution of 'no taxation without representation'.

In 1922, in a belated and less than committed response to the demands of our citizens, we were allowed by the Commonwealth Parliament to send one representative to that Parliament.

Our so called representative however, had neither the right to speak in parliament, nor any right to vote on any bills. He had observer status only.

It is a nice irony that our first Member of the House of Representatives was the formerly imprisoned activist, Harold Nelson.

I think it is also a nice irony that a current member of the Statehood Steering Committee is one Harry Nelson Jagamarra, a community leader from Yuendumu.

In 1936 our single representative in Canberra was given the right to speak in parliament but only vote on motions for disallowance of NT ordinances made by the Governor General. It was not until 1959 this vote was extended to all matters specific to the Northern Territory—a restriction applying to no other representative.

Think about this from a rights perspective; imagine the outrage if residents of Tasmania or Western Australia were expected to send representatives along to a national assembly with no voice on national affairs, in a parliament created to serve the national interest!

1947 saw the election of the first six elected members to a Northern Territory Legislative Council.

Control was maintained by Canberra as the six elected members were always able to be outvoted by the seven Commonwealth appointed members in the Council of thirteen!

1948 saw the passage of Commonwealth law making all people in Australia at the time, Australian citizens, rather than British subjects.

This citizenship law however, did not mean Aboriginal Australians gained the right to vote. This was not achieved until legislation enacted in 1962.

Territorians still remained unequal 'citizens' in their level of representation.

By 1968 our sole Commonwealth parliamentary representative was allowed to speak and vote as other members of the federal parliament – But there was still no constitutional guarantee that the Northern Territory would retain representation in the

Commonwealth Parliament - a constitutional right accorded to all States.

Even by 1974 the Commonwealth was not really letting go - the first fully elected Legislative Assembly with 19 members, replacing the Legislative Council, had very limited powers.

In 1975, the year the then Prime Minister Malcolm Fraser said the NT would be a State within five years, the Territory was allowed two Senators in federal Parliament.

Some States challenged the right of Territories to have senators.

Our Territory senators are not constitutionally guaranteed. The High Court determined Territory senators could exist so long as the Commonwealth Parliament legislated for them to exist!

1978 The Northern Territory was granted Self Government under an ordinary Act of the Commonwealth Parliament. Some powers of the States under the Australian Constitution were retained by (and remain with) the Commonwealth, such as ownership of uranium and control over land rights, industrial laws and some national parks.

The 27th May this year is the 40th anniversary of the 1967 referendum when Australians voted to amend the Australian Constitution to permit Aboriginal peoples living in Australia to be counted in the census for the first time! The change also allowed

for the Commonwealth to make laws specifically for Aboriginal peoples.

Yet how many people realise that not one voter resident in the Northern Territory had the right to vote at that referendum?

In 1977 citizens in the rest of Australia voted to allow residents in the Territories the right to vote at referenda. It was not until 1984 that we had the chance to exercise that right.

But, we are still not counted with the required count of the States, we are only counted in the general pool, and our voice remains weak and marginal.

Ten years ago last March the Commonwealth overrode the Territory's "Rights of the Terminally Ill Act". It had gained the assent of the Administrator and the Supreme Court had upheld its validity.

The Territory's euthanasia law was passed by duly elected representatives, representatives whom electors could have voted out should this law not please them; but it was overridden by the passage of a private members Bill introduced by a Member of the Commonwealth Parliament representing the seat of Menzies in Victoria. There was some debate about both democratic rights and human rights and some members appeared conscious of the inadvisability of overriding this legislation on democratic grounds.

Nevertheless, overridden it was, and Statehood was firmly on the agenda.

However, in 1998, only a year later, the people of the Northern Territory voted by 51.3% against Statehood with the circumstances prevailing at the time.

The referendum had been preceded by a short, unpopular “constitutional convention” comprising a large majority of government appointed members.

Territorians had little opportunity to understand the ramifications of the new draft constitution which differed significantly from the Sessional Committee draft of 1996, developed after ten years of consultation across the Territory.

The Land Councils declared their opposition to Statehood until the process included Aboriginal interests.

The referendum was held in conjunction with a Commonwealth general election – a factor known to confuse some voters.

The referendum asked a multi faceted question which was -

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?

The question assumed support for the proposed constitution, support for the convention process, and support for the parliament's endorsement of the process, support for Statehood when the terms and conditions which the Commonwealth is empowered to impose, were absolute unknowns.

Today there are continuing discussions around Australia based on the premise that States are not particularly efficient or effective and that some revised form of regional governance may best meet the needs of a modern Australia.

So why do we continue to move towards Statehood?

Statehood is available to us now via the Australian constitution.

It is the only way we can become equal players in any future debate about changes to the federal system.

Our marginal political voice at the federal level will be increased by gaining fair representation in the Senate.

We will become partners in a truly democratic system whereby the Commonwealth parliament in which, with Statehood, we will have a guaranteed voice will not override the will of our State parliament making valid laws about valid State issues.

The Statehood Steering Committee takes a view that the treatment of residents of the Northern Territory was and remains undemocratic.

Putting aside the many philosophical question marks over what is democracy, if we agree that there is a basic democratic right to a form of representation that is more or less equal, then Territorians remain excluded.

The will of the democratically elected Northern Territory parliament should not be overridden by the Commonwealth, a parliament which does not represent Territorians in Territory matters.

Democracy surely is about the preservation of the right of people being represented in as similar a manner as possible to all other peoples under a single constitutional guarantee.

In May 2003 our Chief Minister reported “I have spoken to the Prime Minister this week and he has agreed to support our new campaign for Statehood”

In 2005 the Parliament appointed the Statehood Steering Committee, a group of residents from a wide range of backgrounds and regions, with a charter to educate the broader NT community about Statehood issues and advise the parliament, through the Standing Committee on Legal and Constitutional Affairs, on the best ways to advance Statehood.

Apart from modest sitting fees for formal meetings, all work of members is voluntary.

We understand the establishment and work of the Committee has the support of all members of Parliament.

Whilst all committee members are committed to our admission as a future State there is an agreement that personal party politics will not enter our debates.

We operate under no set timeframe. It is up to the people to indicate if and when they wish to make the next move.

This week we have released a detailed Community Discussion Paper entitled “Constitutional Paths to Statehood”. Building on the community education and discussion we have been engaged in for the past two years, public input to this landmark paper will inform the rest of our work.

Do we want to be a State?

What are our aspirations for the future?

Where sectional aspirations differ, are there compromises which may offer positives for all?

Do we want to be one people or do we want to maintain separate structures to protect sectional interests?

Can we develop a constitution that will meet our needs for generations to come?

Do we need a Bill of Rights?

The Indigenous Constitutional Strategy developed in 1998 by the Land Councils indicates a desire for protection of a wide range of indigenous and human rights in a future NT constitution with effective mechanisms in that constitution to properly protect those rights.

Do we not want to really concentrate on achieving the best possible structures to underpin peace, order and good government?

If we concentrate on Statehood as being the product of all the best practice gleaned from observing the existing States and relevant jurisdictions in other countries, then we can move toward inclusive and full democracy for our people.

To achieve this we recognize that the process towards Statehood must also be inclusive – from our education and discussion phases through to an eventual constitutional convention and Statehood referendum.

The Statehood Steering Committee is anticipating responses to the Discussion Paper in the next six months. We are now developing a Key Issues Summary document for publication as well as promoting the Paper to individuals groups and communities around the Territory.

The Governments both have a role to play in the Statehood process.

The Territory Minister for Statehood and his Opposition counterpart met early this year with the Commonwealth Attorney General to discuss moves toward Statehood. The Attorney expressed little enthusiasm until it can be demonstrated that Territorians want “IT”.

But what is “IT” they may want?

S.121 of the Constitution is clear that the terms and conditions of admission as a new State are a matter for the Commonwealth. The Commonwealth has told us to tell them the terms and conditions we think are appropriate. As part of an exercise aimed at determining this we will be seeking further public discussion via a second discussion paper planned for next year.

IF we are to be a State...

Do we want to have representation equal to the original States?

What does equal mean in the context of the House of Representatives?

Is it realistic to expect equal Senate representation immediately?

Should we be guaranteed eventual equal senate representation on a staged basis?

If so, what should trigger the stages? Population? Time? GDP?

Does equality mean we have to be the same?

Given our demography and the Commonwealth's special responsibilities for Aboriginal Australians can we make different arrangements with the Commonwealth to achieve better outcomes on the ground?

I would like to leave you with the gist of what Maurie Ryan, one of our committee members, said during a meeting of the Central Land Council we attended two weeks ago.

“You have got to understand that we are all second class citizens in the Territory, black and white, and it is only by working together to achieve Statehood that we can gain equality, have our rights recognised and a get a stronger voice in Canberra.”