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# Working with the Legal Profession to lay the Foundations for Statehood

By Michael Tatham, Chairman Statehood Committee

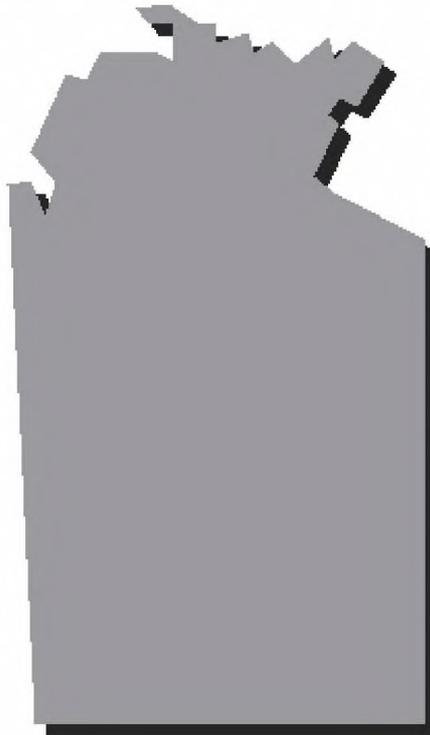
In 2005 the Northern Territory Legislative Assembly established the Statehood Steering Committee, a sub-committee reporting to the Legislative Assembly Standing Committee on Legal and Constitutional Affairs. Whilst relying upon Government for resources, it is a body that is deliberately separate from Government control.

In November 2007, the Statehood Steering Committee approached the Law Society to explore how the Statehood Committee may work with the legal profession to develop a constitutional model for the Northern Territory, if a choice is made to become a State and the Commonwealth permits our admission.

At the 2007 Charles Darwin symposium on Statehood and a Bill of Rights, the Discussion Paper entitled 'Constitutional Paths to Statehood' was released. The meeting with the Law Society's newly formed Legislative Standards Committee asked the Law Society to consider the contents of the Discussion Paper and make a submission.

The Statehood Committee has used the publication of the Discussion Paper to draw together a range of views that reflect over 20 years of previous debate. Its publication demonstrates to everyone who has been part of past Statehood dialogue that their views have not been lost or ignored.

The Discussion Paper includes examination of a range of issues and expectations arising from iconic events such as the well known Kalkaringi and Batchelor Indigenous Constitutional Conventions in 1998, as well as



a copy of the draft constitution developed by previous Legislative Assembly Committees and the Statehood Convention in 1998.

It is important to get these views on the table and to move on to the next stage, where community leaders, such as those in the legal profession, have an important role to play.

The next stage consists of serious consideration of all the constitutional issues, many of which are outlined in the Discussion Paper, and starting to plan for a possible constitutional convention in perhaps 2010.

To date, the Statehood Steering Committee has been visiting schools, community-based organisations and remote communities, staffing information stalls at various shows, conducting occasional information booths in shopping centres, putting together its publications and developing an informative website as well as building relationships

with Territorians to demonstrate the bona fides of the current process.

As stated, the Statehood Steering Committee is not an arm of the Territory Government. It comprises members appointed by the Standing Committee on Legal and Constitutional Affairs after advertising was conducted seeking expressions of interest in early 2005. It has one Labor member (Chair, Malarndirri McCarthy MLA) one Country Liberal member (Mr Terry Mills MLA) and one independent member (Mrs Loraine Braham MLA) as well as a community-based Co-Chair (Mrs Sue Bradley AM) and 15 other members from across the Northern Territory.<sup>1</sup>

The Statehood Committee is attempting to manage the education and information campaign to suit the needs of the community at large. Some communities have been inundated by the Commonwealth Intervention and the looming local government reforms. While the Statehood Committee persists with its community conversation, it is faced with the constant challenge of such competing issues.

Partnerships are constantly being sought to extend the reach and scope of that conversation. The Committee hopes to develop the partnership with the legal profession to assist in refining the scope of a future draft constitution as well as the positions to be recommended to the Territory and Commonwealth Governments for the eventual terms and conditions of Statehood under s.121 of the Australian Constitution.

As we continue to work to build the case for Statehood, some may be thinking recent Commonwealth

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actions such as the Intervention, radioactive waste policies<sup>2</sup>, and centralism in industrial relations policy<sup>3</sup> have built that case already.

As a previous edition of *Balance* outlined<sup>4</sup>, the Commonwealth Intervention into the Northern Territory is a direct takeover of a range of normal state-like responsibilities the Northern Territory had assumed upon Self Government in 1978, and was entitled to consider its sole responsibility in a state-like relationship with the Commonwealth.

Whilst Commonwealth moves to neuter Territory legislation prohibiting the transport and storage of radioactive waste<sup>5</sup> and amend a range of Territory Acts as part of the Intervention are within power, arguably they impact adversely on the underlying principles of the rule of law, because the Commonwealth is eliminating procedural fairness<sup>6</sup> with regard to siting of waste facilities, and as part of the Intervention by prohibiting appeals to the SSAT or AAT in relation to the quarantining of welfare payments in the 73 prescribed Territory communities.

As the former Prime Minister said on 26 June 2007, "why just in the Northern Territory and why only now? Because we can, given our constitutional powers..."<sup>7</sup>

Whilst this statement demonstrates our constitutional vulnerability, history does not appear to support Statehood coming off the back of heavy handed Commonwealth action. Rather, history dictates we (all those who favour constitutional reform, not just the Statehood Committee) need to prepare the foundations in the Territory first.

The 1998 Statehood referendum conducted on behalf of the then Territory Government in the wake of the Commonwealth Parlia-

ment's overturning of the Territory Rights of the *Terminally Ill Act* a year earlier, failed for a number of reasons<sup>8</sup>, however it appears the Commonwealth's intervention in 1997 could not boost the issue over the line.<sup>9</sup>

Relying on being victims of Commonwealth politicking and policy making due to our lack of State sovereignty is not going to be enough.

Getting people to understand the opportunities of Statehood as a community-driven, participatory, constitutional development process is essential to the success of the Statehood campaign.

Whilst there is always the chance of a future Territory Government hijack of the community-driven process, Government would hopefully recall the power of the ballot box. The 1998 no vote was the first clear rejection expressed at the ballot box in response to an approach taken by the then longstanding incumbent Northern Territory Government.

Over the coming two years or so, the Statehood Steering Committee and the Law Society Legislative Standards Committee will work together on laying the all-important foundations for Territorians to be well informed and make a decision on Statehood. The respective Committees also intend to update the legal profession from

time to time with brief informative articles in *Balance* on some of the more technical details of a move to Statehood and the constitutional questions that must be faced along the way.

In the meantime, interested members of the legal profession are encouraged to contact the Legislative Standards Committee through Barbara Bradshaw at the Law Society on 8981 5104 or at [bbradshaw@lawsocnt.asn.au](mailto:bbradshaw@lawsocnt.asn.au), or the Statehood Steering Committee through Michael Tatham on 1800 237 909 or [statehood@nt.gov.au](mailto:statehood@nt.gov.au).

### Footnotes

1. A full list of the members can be seen at [www.statehood.nt.gov.au](http://www.statehood.nt.gov.au)
2. *Commonwealth Radioactive Waste Management Act 2005*
3. *Workplace Relations Amendment (Work Choices) Act 2005*
4. July 2007
5. *Nuclear Waste Transport Storage and Disposal (Prohibition) Act 2004*
6. S.3D No person is entitled to procedural fairness in relation to a (Commonwealth) Minister's Approval
7. Duty of Care Justifies Government Action Sydney Morning Herald 26 June 2007
8. Detailed in the 1999 Report by the Legislative Assembly Standing Committee on Legal and Constitutional Affairs: Appropriate Measures to Facilitate Statehood available on the net at <http://www.statehood.nt.gov.au/links/>
9. The no vote was 51.3%.

## Volunteer Lawyers

Volunteer lawyers are needed for the free Legal Advice Sessions run by Darwin Community Legal Service:

- \* Monday in Palmerston 6.30-7.30pm
- \* Thursday in Darwin 5.30-7pm
- \* Saturday in Casuarina 10-11.45am

Lawyers usually commit to monthly or bi-monthly sessions

Support the community that supports you. Please contact DCLS on 8982 1111.

