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THE NORTHERN TERRITORY OF AUSTRALIA

Copy No. .....

CONFIDENTIAL

CABINET DECISION

No. 4764

Submission No.: 4074

Title: NT GOVERNMENT POSITION ON STATEHOOD ISSUES

Cabinet approved the following objectives in respect of Statehood for the Northern Territory -

(a) the attainment of a status which provides constitutional equality with other States, and its people having the same constitutional rights, privileges, entitlements and responsibilities as the people of the existing States;

(b) political representation in both Houses of the Federal Parliament which will result in the people of the Territory enjoying the same political consideration as the people of the States; and

(c) the secure settlement of financial arrangements with the Commonwealth as similar as possible to those which apply to the States particularly in respect of loan raising and revenue sharing.

T.C. LOVEGROVE,
A/Secretary to Cabinet.

12 August 1986

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THE NORTHERN TERRITORY OF AUSTRALIA

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SUBMISSION No: 4074

FOR CABINET

Title:	N.T. Government position on Statehood issues.
Minister	The Hon. S. Hatton - Chief Minister.
Purpose:	To determine the N.T. Government's objectives in respect of Statehood for the Northern Territory and identify issues for further consideration.
Relation to existing policy:	N.T. Government intention to continue to progress constitutional development towards Statehood for the N.T.
Timing/ legislative priority:	To enable substantive statement to be made to the Legislative Assembly during the August Sittings.
Announcement of decision, tabling, etc:	Press Release/Conference to follow the statement in the Assembly. Attachments identifying issues may be tabled as part of the Ministerial statement.
Action required before announcement:	Ratification of the N.T. Government's position and Statehood issues which are identified. Preparation of tabling statement.
Staffing implications, numbers and costs, etc:	No staffing implications for this exercise.
Total cost:	Nil.

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Department/Authority.....NORTHERN TERRITORY TREASURY.....

COMMENT ON CABINET SUBMISSION No.

TITLE: .....N.T. GOVERNMENT POSITION ON STATEHOOD ISSUES.....

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COMMENTS:

Treasury supports the aspects of the submission relating to finance subject to one modification agreed with other members of the Statehood Committee. This involves insertion of the word "secure" before "financial arrangements" in Objective 3.

SIGNED: R C MADDEN

DESIGNATION: UNDER TREASURER

DATE: 11 August 1986

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Department/Authority ..... LAW .....

COMMENT ON CABINET SUBMISSION No.

TITLE: ..... COMMENTS FROM LAW ON STATEHOOD CABINET SUBMISSION .....

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COMMENTS:

The Department of Law has been involved closely in the preparation of this submission through its membership of the Statehood Committee. Law fully supports this submission.

Clyde Croft.

SIGNED: CLYDE CROFT

DESIGNATION: SECRETARY

DATE: 5th August, 1986

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A. B. CAUDELL, Government Printer of the Northern Territory

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CONFIDENTIAL

Department/Authority ..... DEPARTMENT OF HEALTH .....

COMMENT ON CABINET SUBMISSION No.

TITLE: ..... N.T. GOVERNMENT POSITION ON STATEHOOD ISSUES .....

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COMMENTS:

The Submission is fully supported. It is essential that the people of the Northern Territory have the same constitutional rights as the people of the existing States.

SIGNED

DESIGNATION SECRETARY FOR HEALTH

DATE 31-7-85

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ISSUE

1. This submission seeks Cabinet approval for the Northern Territory's positions on Statehood issues which have been identified as needing intergovernment negotiation in the bid for N.T. Statehood. It also invites comment on the rationale developed in support of these positions.

BACKGROUND

2. At the opening of the third session of the fourth Assembly on 17 June, 1986, His Honour the Administrator, in outlining the balance of the Government's legislative programme for the ensuing period reaffirmed his Government's bid for Statehood. He said:-

> "My Government aspires to further constitutional development with the ultimate objective of achieving full and equal status for Territorians with other Australians at the earliest opportunity".

3. In his address in reply the Chief Minister also targeted constitutional equality with other Australians as being the raison d'etre for N.T. Statehood when he said:-

> "Statehood alone will ensure that we have the same rights, privileges, responsibilities and entitlements as other Australians".

4. He also set the new tone for the bid for Statehood as being the need to do it properly from the start rather than doing it with undue haste when he said"-

> "I do not believe we should set up any timetable for Statehood. The issues are complex, and the cooperation and goodwill of governments around Australia will be required. However, we will work steadily and consistently towards the achievement of this goal". He also undertook to consult "all people of the Northern Territory" on this matter.

5. In summary the aspirations for N.T. Statehood have been reaffirmed in the Administrator's most recent address to the Legislative Assembly and the Chief Minister has stressed the necessity for the development of a sound and consistent basis for intergovernment negotiations and for public information programmes.

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CONSIDERATIONS OF THE ISSUES

6. The ultimate objective for constitutional development for the Northern Territory is the attainment of Statehood on terms resulting in equality with other States and with its people having the same constitutional rights, privileges, entitlements and responsibilities as the people of the existing States.

7 Statehood is seen as providing:-

(a) Constitutional equality with the States and elimination of all forms of constitutional discrimination. One result of this will be control of land within its boundaries equal to that of the States including ownership of all mineral and energy resources in the same manner as the States.

(b) Political representation in both houses of the Federal Parliament which will result in the people of the Territory enjoying the same political consideration as the people of the States.

(c) Financial arrangements with the Commonwealth as advantageous as those which apply to the States particularly in respect of loan and revenue raising.

8. The simple objective of the Northern Territory is to ensure that those people who have chosen to live in or visit the Northern Territory become equal to other Australians, enjoying the same rights and responsibilities as their fellow Australians.

9. It is not generally realised that the Northern Territory does not enjoy many of guaranteed rights which the Australian Constitution provides to the people in the States of Australia. Even those rights granted by way of Commonwealth legislation including the N.T. Self-Government Act lack the degree of security which would be bestowed by constitutional recognition. In fact, they are protected only by the tenuous thread of convention and could be withdrawn without reference to the Northern Territory or Australian electorate. Whilst in the normal course of events this is not likely, in extreme circumstances it is a distinct possibility.

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10. Issues such as financial arrangements, ownership of uranium, discriminatory land rights laws, control of land within the boundaries of the Northern Territory, control of National Parks in the Northern Territory and commonwealth parliamentary representation, have been quickly identified as issues which will have to be negotiated with Commonwealth and State Governments before Statehood may be achieved. A number of other Statehood issues which have had less emotional overtones and therefore have been less obvious have now been identified. Up to this time the Territory's positions on all these issues, whilst having some direction have lacked a clear, well argued and approved statement in support of that position.

OPTIONS

12. The Government has already decided to commence its bid for Statehood.

13. Cabinet Submission 3847 "Options for a Grant of Statehood" has been considered by Cabinet. By C.D. 4507 Cabinet directed the Special Minister for Constitutional Development to seek the reaction to an Options Paper and report back to Cabinet.

14. The recommendations in this Cabinet Submission are put forward on the basis that the route to Statehood will be via Section 121 of the Australian Constitution and therefore the N.T. Government will need a firm position on a number of issues which will feature in the "Terms and Conditions" which the Commonwealth Parliament might set.

15. In the event that an alternative constitutional route is followed a predetermined N.T. position on these issues will still be invaluable and necessary.

16. Options on individual recommendations may need to be considered separately when a negotiating stance is being developed in more detail.

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PUBLIC IMPACT

17. It is becoming increasingly obvious that the N.T. electorate would welcome a clear and concise statement on the issues of Statehood and the N.T. Governments position on these issues to enable it to also consider those issues.

18. Public reaction is likely to vary in respect of particular issues and they will no doubt spark off public debate.

19. The outcome however will be that the public will be better informed and will be better able to provide government with a clear indication of its wishes on this matter.

FINANCIAL IMPLICATIONS

20. There are no financial considerations in respect of this submission. It merely seeks to identify issues and establish a Cabinet position on these issues so that a Ministerial Statement may be made to the Assembly and the parameters set for intergovernment discussions.

EMPLOYMENT AND STAFF CONSIDERATIONS

21. Same comments as in paragraph 16.

COMMONWEALTH STATE AND LOCAL GOVERNMENT CONSIDERATIONS

22. Negotiations with Commonwealth and State Governments will be necessary. The contents of this submission if accepted will enable the N.T. to undertake those negotiations from a well established and well understood position.

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COORDINATION AND CONSULTATION

23. All Departments and Statutory Authorities, through their Ministers, have been invited to identify Statehood issues in which they have a functional responsibility and to provide position papers on these issues.

24. Attachments 1, 2, 3 and 4 followed consideration of these responses and further submissions by particular departments.

LEGISLATION

25. None as part of this submission.

PUBLICITY

26. Wide publicity resulting from the Ministerial Statement and tabling of any relevant papers in the Legislative Assembly would be an advantage.

27. A Press Statement and Press Conference is recommended.

28. This should be followed by the release to the public of clear and concise literature on relevant Statehood issues.

TIMING

29. For a statement in the Legislative Assembly at the Sittings commencing on 19 August, 1986.

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RECOMMENDATIONS

30. It is recommended that Cabinet approve the following objectives in respect of Statehood for the N.T:-

(a) The attainment of a status which provides constitutional equality with other States, and its people having the same constitutional rights, privileges, entitlements and responsibilities as the people of the existing States. (See Attachments 1 and 2).

(b) Political representation in both houses of the Federal Parliament which will result in the people of the Territory enjoying the same political consideration as the people of the States. (See Attachment 3).

(c) The settlement of financial arrangements with the Commonwealth as similar as possible to those which apply to the States particularly in respect of loan raising and revenue sharing. (See Attachment 4).

In summary, the recommended objectives are constitutional, political and financial equality which will ensure that those people who have chosen to live in or visit the Northern Territory become equal to other Australians, enjoying the same rights and responsibilities as their fellow Australians.

S. HATTON

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NORTHERN TERRITORY CONSTITUTIONAL DISADVANTAGES

[Summary of a paper prepared by Graham Nicholson - June,1986]

The attached paper lists and explains the disadvantages of the Northern Territory as compared to the States.

The disadvantages are of two main types -

(a) those where the status or treatment of the Territory is inferior to the States, and

(b) those where the Commonwealth retains legal capacity to alter current equal treatment with the States to the disadvantage of the Territory.

Briefly the Territory's disadvantages are as follows -

1. Senate - no constitutional guarantee of any Senate representation; inequality in number of Territory senators (2 rather than 12 for the States); Territory senators hold office for only half the term of State senators (3 years rather than 6 years); the Territory's right to fill casual vacancies is regulated by the Commonwealth Electoral Act rather than the Australian Constitution, which applies to the States and cannot be amended by the Commonwealth.

2. House of Representatives - no constitutional guarantee of any House of Representatives seats, unlike the States which have a constitutionally guaranteed minimum number of Representatives and additional seats according to population.

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3. Legislative Powers - States are guaranteed broad residual powers under the Constitution, which gives specific powers to the Commonwealth. Territory has only limited, specified, legislative powers under Northern Territory (Self-Government) Act, which may be amended by the Commonwealth.

4. Constitutional rights - certain rights entrenched in the Constitution only benefit State, not Territory, residents -

- no discrimination in Commonwealth tax laws between States, or parts
- Commonwealth acquisition of property on just terms
- no 'tacking' of tax bills to other proposed Commonwealth legislation
- free trade between the States (section 92)
- no Commonwealth trade, commerce or revenue law preference to one State or part over others, or parts
- freedom of religion
- no discrimination in Commonwealth laws generally between States
- full faith and credit (reciprocal recognition) given to the laws and judicial proceedings of each State
- protection by the Commonwealth against invasion and domestic violence

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- territorial integrity (Ashmore and Cartier Islands were removed from the Northern Territory without any consultation).

- protection against any alteration of the constitution which would adversely affect State representation or territorial integrity without the approval of a majority of electors in that State.

5. Courts - no constitutional recognition of existence of Territory Supreme Court or right of appeal to the High Court. Also no automatic original jurisdiction in the High Court for disputes between Territory and State residents - as there is for disputes between residents of different States.

6. Financial - Territory is not a direct party to the Financial Agreement, nor a member of the Loan Council. All borrowing is subject to Commonwealth Treasurer's approval. The financial relationship between the Commonwealth and the Territory is based only on a non-statutory memorandum of understanding.

7. Referenda - Territory is not counted for the purpose of determining whether a majority of States is gained for a referendum proposal (as is required for alteration of the Constitution).

8. Offshore Settlement - Territory powers and title to adjacent territorial sea appear less secure than those of the States, being based only on Commonwealth legislation.

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9. Continued existence of the States - guaranteed by the Constitution. This is not the case with any Territory.

10. Statute of Westminster 1931 - express provision is made indicating that the provisions of this Act (which was to clarify some aspects of Commonwealth legislative power) do not affect the authority of the States. No provision is made for territories.

11. Australia Act 1986 - removed the 'colonial' status of the States. The Act provides the States with -

- extra territorial powers
- the ability to entrench their constitutions
- direct links with the Crown
- a governor with full executive powers; there no longer being any power for intervention by the UK Government, disallowance or reservation of bills.

The Australia Act will extend to new states.

12. Northern Territory (Self-Government) Act 1978 Establishes the Territory as a self governing territory but unlike the States -

- does not allow the Territory to alter its own constitution
- allows for reservation of bills to, and disallowance by, the Governor-General (on the advice of the Commonwealth Government)

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- the calling of elections and prorogation of parliament may be subject to instructions from the Commonwealth

- the Administrator [Governor] is appointed, and his appointment may be terminated, by the Commonwealth. Unlike State Governors he may also be instructed or advised by the Commonwealth

- executive authority of the Territory is limited and may be varied by the Commonwealth.

13. Industrial laws - States have broad industrial powers subject only to Commonwealth power in respect of disputes extending beyond the limit of any one state. The Territory has no industrial powers - Commonwealth legislation operates exclusively.

14. Commonwealth Acquisitions - Commonwealth has no constitutional power to acquire property in the States other than for Commonwealth purposes and on just terms. Territory residents do not enjoy this constitutional protection.

15. Uranium - Commonwealth does not own uranium deposits in the States or control its mining. Commonwealth has full ownership and control in the Territory.

16. Aboriginal Land Rights - Commonwealth has not legislated for land rights in the States. It may only be able to do so on payment of just

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compensation for acquisition of property. The Commonwealth does not pay the Territory compensation for any Territory land granted as Aboriginal land under its Aboriginal Land Rights (Northern Territory) Act. Territory laws only apply on Aboriginal land as far as consistent with the Commonwealth Act.

17. National Parks - Commonwealth does not own or control national parks in the States and it is doubtful whether it has constitutional power to do so except under international treaties and in some other, limited, circumstances. Commonwealth power is unlimited in this respect in the Territory. Territory laws only apply in Commonwealth national parks as far as consistent with Commonwealth law.

18. Family Law and Trade Practices - Commonwealth legislation has far wider application in the Territory in the absence of constitutional limitations which restrict its application in the States.

C.E. CROFT

28th July, 1986

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NORTHERN TERRITORY CONSTITUTIONAL DISADVANTAGES

The following is a list of what may be regarded as areas of constitutional disadvantage incurred by the Northern Territory as compared to the States as at the time of writing. The word "constitutional" in this sense is taken to have a broad meaning, although it includes those areas of disadvantage directly arising under the Commonwealth Constitution. This list attempts to be comprehensive, although there is no guarantee that it is exhaustive. Further research may be required on particular areas that have been identified in order to adequately assess the nature and extent of the disadvantage and its implications. Queries or requests for further information may be addressed to the writer at the Department of Law, Darwin.

Disadvantages arising by reference to the Commonwealth Constitution

The Commonwealth Constitution, read with the Imperial Commonwealth of Australia Constitution Act, is the fundamental constitutional document establishing the Australian federal system. It also contains the authority for the creation and maintenance of Commonwealth territories. The disadvantages arising from it for territories are as follows -

1. Senate

The States, as Original States, have a guaranteed minimum number of senators of six each plus a

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guarantee of equality in number between them. At present they have 12 senators each.

The Northern Territory has no such guarantee and presently only has two senators. This representation is given by the Commonwealth Electoral Act and is not constitutionally guaranteed.

It should be noted that the above State guarantees would not apply to the Northern Territory as a new State unless the Constitution was amended by referendum to so provide. This is because the constitutional guarantees only apply to Original States. The number of senators for a new State would be a matter for negotiation.

State senators hold office under the Constitution for a fixed term of six years on a rotational three year basis (subject to a double dissolution). Territory senators have a term of office corresponding with that of the House of Representatives (three years or less).

A State Governor has specified constitutional functions with respect to the senators from that State - the issue of writs for elections, the filling of casual vacancies when the State Parliament is not in session, the certification of senators elected or chosen.

The Administrator has equivalent functions for casual vacancies, but only because of the Commonwealth Electoral Act.

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A State Parliament has specified constitutional functions with respect to senators from that State - the making of laws as to time and place of election of senators, the filling of casual vacancies.

The Legislative Assembly has equivalent functions for casual vacancies, but only because of the Commonwealth Electoral Act.

State senators must be directly chosen by the people of the State, have a constitutionally guaranteed vote and have all the constitutional rights and privileges of senators. Territory senators have similar rights and privileges, but only by virtue of the Commonwealth Electoral Act.

2. House of Representatives

The States, as Original States, have a guaranteed minimum number of five members of this House. Any increase beyond this is constitutionally guaranteed in accordance with a population quota per State.

The Northern Territory has no such guarantees and presently only has one member of this House. This representation is given by virtue of the Commonwealth Electoral Act and is not constitutionally guaranteed.

It should be noted that the above State guarantees would not apply to the Northern Territory as a new State unless the Constitution was amended by

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referendum to so provide. This is because the constitutional guarantees only apply to Original States. The number of members of this House for a new State would be a matter for negotiation, although there is some legal uncertainty as to whether that number of members would be limited in accordance with the population quota.

State members of this House must be directly chosen by the people of the States and they have all the constitutional rights and privileges of members. Territory members have similar rights and privileges, but only by virtue of the Commonwealth Electoral Act.

3. Legislative Powers

The federal legislative powers of the Commonwealth Parliament are restricted to specific subject matters detailed in the Commonwealth Constitution, and despite the expansive judicial interpretation generally given to these matters, there remains a substantial area beyond Commonwealth legislative control as to which the State Parliaments have residual legislative powers.

The legislative powers of the Commonwealth Parliament as to territories are plenary and unlimited as to subject matter. There is an untested argument that there may be some limitation on these powers in relation to a self-governing territory, but this argument offers little, if any, protection.

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Specific areas constitutionally excluded from Commonwealth legislative control in relation to States by express mention include -

(a) fisheries within territorial limits;
(b) State banking;
(c) State insurance;
(d) conciliation and arbitration of industrial disputes within the limits of a State;
(e) the State constitution;
(f) taxes on State property.

Limitations also arise from various express constitutional rights, discussed below.

4. Constitutional rights

The Commonwealth Constitution does not contain a comprehensive bill of rights, but does constitutionally entrench certain rights, most of which are not, or probably are not, applicable to a territory. They probably are applicable to a new State. These comprise -

(a) no discrimination in Commonwealth taxation laws between States or parts of States;

(b) Commonwealth laws for the acquisition of property in a State to be on just terms (Note: a similar guarantee is contained in the Northern Territory (Self-Government) Act, but being an ordinary Act it is not constitutionally entrenched);

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(c) Commonwealth laws imposing taxation to deal only with the imposition of taxation, and other than customs and excise, only one subject of taxation;

(d) trial on indictment for an offence against a law of the Commonwealth shall be by jury;

(e) trade, commerce and intercourse among the States to be absolutely free (Note: a similar guarantee as between the Northern Territory and the States is contained in the Northern Territory (Self-Government) Act, but being an ordinary Act, is not constitutionally entrenched);

(f) Commonwealth is not by any law or regulation of trade, commerce or revenue to give any preference to one State or part thereof over another State or part thereof;

(g) Commonwealth not to make any law for establishing any religion, or imposing any religious observance or for prohibiting the free exercise of any religion, and no religious test to be required as a qualification for any office or public trust under the Commonwealth (Note: there is some argument as to whether this provision also applies to territories);

(h) residents in any State not to be subject in any other State to any disability or discrimination;

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(i) full faith and credit to be given throughout the Commonwealth to the laws, public Acts and records and judicial proceedings of every State (Note: a similar legislative provision applies to territories but is not constitutionally entrenched);

(j) Commonwealth to protect each State against invasion and, on application of State Government, against domestic violence;

(k) no increase, diminution or other alteration of the limits of a State without the consent of the Parliament of the State;

(l) no alteration of the Constitution by referendum diminishing the proportionate representation of any State in either House of Parliament or the minimum number of representatives of a State in the House of Representatives or increasing diminishing or otherwise altering the limits of the State or in any manner affecting the Constitution in relation thereto unless a majority of the electors of the State approve the same.

5. Courts

Although State courts are not established by the Commonwealth Constitution, the existence of the Supreme Court of each of the States is recognized therein, and the right of appeal from that Court to the High Court is guaranteed.

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The Supreme Court of the Northern Territory has no such constitutional status, although its existence is recognized in some Commonwealth legislation, including by way of a right of appeal to the High Court.

The Commonwealth Constitution provides that the High Court has automatic original jurisdiction in all matters between States or between residents of different States or between a State and a resident of another State. No equivalent jurisdiction arises in the case of a territory.

6. Financial Matters

Under section 105A of the Commonwealth Constitution, inserted in 1929, the Commonwealth has entered into a Financial Agreement with the States in respect of their public debts. This includes the establishment of a Loan Council to control governmental and semi-governmental borrowings.

Territories are not direct parties to the Financial Agreement and are not members of the Loan Council.

7. Referenda

Under the Commonwealth Constitution, a referendum to alter that Constitution must be carried by a

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majority of electors in a majority of States plus a majority of electors overall.

As a result of the 1977 Referendum, the electors of a territory in respect of which there is in force a Commonwealth law allowing its representation in the House of Representatives, may now vote in referenda, and are counted in the overall majority. However that territory is not counted in the majority of electors in a majority of States, as a territory is not a State.

8. Offshore Settlement

Following the decision of the High Court in the Seas and Submerged Lands Act case that the States had no proprietary rights beyond low water mark, the Commonwealth Parliament legislated to give the States specific powers and title to the adjacent territorial sea. This legislation was enacted in part pursuant to the request of the State Parliaments under a particular provision of the Constitution.

The Commonwealth Parliament legislated to place the Northern Territory in substantially the same position offshore as the States, except that it did not and could not rely on this provision in the Constitution. Constitutionally, it may be that the States are in a more secure position than the Territory should the Commonwealth seek to unilaterally vary the settlement, although this remains a matter of some uncertainty.

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9. Continued existence of the States

Although the High Court has rejected any doctrine of the reserved powers of the States or the immunity of the States and their instrumentalities from Commonwealth legislative attack, it has accepted that the Constitution recognizes that the States will continue to exist as part of the indissoluble federal system and that the Commonwealth cannot do anything that prejudices this existence or interferes with any of the vital functions of the States.

No such doctrine exists in the case of territories, even if they are self-governing. It may be unlikely that the Commonwealth would terminate the status of the Self-governing Northern Territory or substantially impair its vital functions, but constitutionally it may be possible.

Disadvantages arising from the Statute of Westminster

The Imperial Statute of Westminster of 1931, as adopted in Australia in 1942 and as amended by the Australia Act 1986, is part of the fundamental constitutional documents of Australia.

That Statute grants certain powers to the Commonwealth Parliament, and provides that nothing in the Statute is deemed to authorize that Parliament to make laws on any matter within the authority of the States, not being a

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matter within the authority of that Parliament or the Government of the Commonwealth.

No similar guarantee exists in the case of a territory.

Disadvantages arising from the Australia Act

The Australia Act 1986 is also now part of the fundamental constitutional documents of Australia. It gives rise to certain disadvantages for a territory as follows -

1. Extra territorial powers

The Australia Act gives the Parliaments of the States full power to make laws that have extra-territorial operation.

No similar power may exist in the Legislative Assembly of the Northern Territory, although it can legislate with effect beyond the limits of the Northern Territory providing the law has a sufficient connection or nexus with the Northern Territory.

2. Entrenchment

The Australia Act requires that legislation of a State Parliament respecting the constitution, powers and procedure of that Parliament must be made in such manner and form as may be required by a law of that Parliament, thus enabling the States to entrench certain aspects of their legislation.

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A similar power does not exist in the case of the Legislative Assembly of the Northern Territory.

3. Links with the Crown

Under the Australia Act, the Governor of each State is the representative of Her Majesty and is appointed and the appointment terminated by Her Majesty on the advice of the State Premier.

In the Northern Territory there is a difference of views in the High Court as to whether the Administrator is the representative of the Crown in the Territory, although the Northern Territory (Self-Government) Act extends his duties, powers, functions and authorities to the exercise of the prerogatives of the Crown. The Administrator is appointed and dismissed by the Governor-General (see below) and their is no legal obligation to seek the advice thereon of the Chief Minister. There are no direct links between the Northern Territory and the Sovereign.

4. Royal Powers

Under the Australia Act, all powers and functions of Her Majesty in respect of a State are exercisable only by the Governor of the State, except where Her Majesty exercises them when personally present in the State or where she appoints the Governor or terminates his appointment.

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There is no equivalent provision in the case of the Administrator of the Northern Territory. He only has such powers as are conferred on him from time to time by Commonwealth or Territory laws. The Northern Territory (Self-Government) Act renders him subject to the directions of the relevant Commonwealth Minister in non-transferred matters and gives the Governor-General on the advice of the Commonwealth Government power to terminate his appointment without cause (see below).

5. Disallowance

Under the Australia Act, a State Act of Parliament, once assented to by the Governor, is not subject to disallowance by Her Majesty nor can its operation be suspended.

A law passed by the Legislative Assembly of the Northern Territory and assented to by the Administrator is liable to disallowance by the Governor-General (Northern Territory (Self-Government) Act - see below).

6. Reservation

Under the Australia Act a State Act of Parliament cannot be subject to any obligation to withhold assent by the Governor nor is it subject to reservation to Her Majesty.

A law passed by the Legislative Assembly of the Northern Territory is liable to reservation to the

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Governor-General in the case of non transferred matters (see below).

Repeal or amendment of the Statute of Westminster and Australia Act

The Australia Act provides that it and the Statute of Westminster can only be repealed or amended by an Act of the Commonwealth Parliament passed at the request or with the concurrence of the Parliaments of all the States. The request or concurrence of the Northern Territory or its legislature is not required.

Note:- the Australia Act will by definition extend to any new State.

Disadvantages arising by reference to the Northern Territory (Self-Government) Act 1978 and other Commonwealth Acts

The Northern Territory (Self-Government) Act, enacted by the Commonwealth Parliament pursuant to section 122 of the Commonwealth Constitution, and pursuant to which the Northern Territory Government is established as a separate body politic under the Crown, itself gives rise to certain disadvantages applicable to the Northern Territory as follows -

1. Commonwealth Act

The constitutions of the States are in the main contained in State Acts and are amenable to alteration by the State Parliaments in accordance with the procedures therein laid down. They are

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substantially protected by the Commonwealth Constitution.

The constitutional basis of the self-governing Northern Territory is found in a Commonwealth Act, the Northern Territory (Self-Government) Act, and apart from a few matters detailed in that Act on which the Legislative Assembly can legislate, alteration of the Act is beyond the constitutional capacity of the Northern Territory legislature. It may even be beyond that legislature's capacity to take any preliminary legal steps to alter that Act or the Northern Territory's constitutional status.

2. Reservation

As noted above in relation to the Australia Act, State Acts are no longer liable to reservation to the Sovereign but must be dealt with by the Governor of the State.

Under the Northern Territory (Self-Government) Act, the Administrator has a discretion to reserve any proposed law for the Governor-General's pleasure if that proposed law deals in whole or part with non-transferred matters. Where a proposed law is so reserved the Governor-General, on the advice of the Commonwealth Government, may assent or withhold assent, in whole or part, or return the proposed law with recommended amendments, which must be considered by the Legislative Assembly.

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3. Disallowance

As noted above in relation to the Australia Act, State Acts are no longer subject to disallowance by the Sovereign.

Under the Northern Territory (Self-Government) Act, the Governor-General on the advice of the Commonwealth Government may disallow any Territory law or part of a law assented to by the Administrator within 6 months after assent. This applies whether the law deals with transferred or non-transferred matters. The Governor-General may in the alternative recommend amendments to that law, in which event the 6 months period is extended until 6 months after the date of the recommendation. There may be a developing convention that these powers will not be exercised in the case of wholly transferred matters, but at law this is not the case.

4. Legislative Assembly

State Parliaments are established and their composition determined by the State constitutions and other State legislation.

The Legislative Assembly is established, and its composition is largely determined, by the Northern Territory (Self-Government) Act. This means that the Northern Territory is limited to a unicameral legislature with single member electorates with a maximum permissable variation in the number of electors per electoral division of 20% either way

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and with a maximum 4 year term of office. Further, the Act specifies that persons qualified to vote for the election of a member of the House of Representatives are qualified to vote for members of the Legislative Assembly. The Act also exhaustively prescribes the qualifications for members.

Some room is left for the Legislative Assembly to pass laws on certain matters relating to the Legislative Assembly, for example, the number of members to be elected, electoral requirements etc, but otherwise the matter is beyond Territory legislative control.

5. Calling of Elections and Prorogation

Elections for State Parliaments are called and State Parliaments are dissolved or prorogued pursuant to provisions in State constitutions and State laws.

The Northern Territory (Self-Government) Act gives the Administrator power to issue writs for the election of members of the Legislative Assembly. A general election is held on a date determined by the Administrator, providing it is not more than 4 years after the first meeting of the Legislative Assembly since the last general election. The Administrator may appoint times for holding sessions of the Legislative Assembly and may from time to time prorogue it. There is no express statutory power to dissolve the Legislative

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Assembly, but this can be achieved by issuing writs for a general election.

In the exercise of all of these powers, the Administrator is legally subject to any instructions of the relevant Commonwealth Minister. It may be that there is a developing convention that these powers will not be exercised except after obtaining the advice of the Chief Minister or the Territory Government, but at law this is not the case.

6. Administrator

As noted above, State Governors are appointed and their appointments may be terminated by Her Majesty on the advice of the State Premier. State Governors cannot be instructed or advised by the Commonwealth.

The Administrator of the Northern Territory is appointed by, and his appointment may be terminated by the Governor-General on the advice of the Commonwealth Government. There may be a developing convention that the Chief Minister or the Territory Government should be consulted in advance in relation to the exercise of these powers, but at law this is not the case.

In relation to non-transferred matters, the Administrator is subject to the instructions of the relevant Commonwealth Minister. The Administrator holds office in accordance with the tenor of his Commonwealth Commission.

Northern Territory Archives Service, NTRS 2575/P1, Volume 229, Decision 4764

7. Executive Authority

The executive authority of the States, exercised through the State Governor and Ministers of the Crown in right of the State, is generally expressed in undefined terms not limited to specific subject matters, and subject only to any limitations contained in the Letters Patent constituting the office of Governor and the Constitution and laws of the Commonwealth and of the State.

The executive authority of the Northern Territory, exercised through the Administrator and Ministers of the Territory, is apparently limited to matters specified in the Northern Territory (Self-Government) Regulations. Although these matters may now be extensive, encompassing most State-type matters, there are two express exceptions (rights in respect of Aboriginal land and the mining of uranium) and there may be other unexpressed exceptions not included in the detailed list.

It is not possible for the Commonwealth to affect the executive powers of a State except pursuant to a Commonwealth statute that is validly made under some federal head of legislative power.

The Commonwealth has wide powers to affect the executive power of the Northern Territory Government, either by way of a Commonwealth statute under its plenary grant of legislative power for territories or by way of amendment of the Northern Territory (Self-Government)

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Regulations. There may be a developing convention that the Commonwealth should not derogate from the Northern Territory's grant of executive power, but this may not be so as a matter of law.

The State Governments can exercise all the Royal prerogative powers appropriate to the State.

The Territory Government is expressly given the power in the Northern Territory (Self-Government) Act to exercise the Royal prerogative powers, at least in respect of transferred matters, although some doubts remain as to whether this includes all the major prerogatives.

8. Borrowing

States have broad powers of borrowing, limited only by the Financial Agreement with the Commonwealth and the provisions of the Commonwealth Constitution.

The Northern Territory (Self-Government) Act requires that all borrowing by the Territory Government or a Territory authority have the Commonwealth Treasurer's approval.

9. Acquisition of Property

States are free to acquire property in the State in accordance with their own laws and are not obliged to pay compensation on just terms.

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The Legislative Assembly of the Territory has no power to make laws with respect to the acquisition of property otherwise than on just terms.

10. Industrial Laws

The States have broad industrial powers, limited only by the effect of any Commonwealth laws as to the conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limit of any one State.

The Commonwealth Conciliation and Arbitration Act has an extended application in the Northern Territory, and apart from some specific but limited instances, the Legislative Assembly has no legislative power in industrial matters. The Territory as a consequence does not have its own industrial arbitration system.

11. Commonwealth Acquisitions

The Commonwealth has no power to acquire property under its federal acquisition power applicable to the States except for Commonwealth purposes and on just terms.

The Commonwealth can acquire property under the territories power for any purpose and constitutionally is not obliged to provide just terms. Immediately following Self-government in 1978, the Commonwealth acquired back the whole of the Alligator Rivers Region, including the minerals, without compensation. That area remains

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in many respects a Commonwealth enclave in the Territory.

12. Uranium

The Commonwealth does not own the uranium deposits in the States nor does it legislatively control its mining. The controls it does have are mainly exercised through its power over exports.

The Commonwealth owns the uranium deposits in the Northern Territory. It has the capacity to control the mining of uranium in the Territory via the Atomic Energy Act and has exercised this on one occasion - Ranger. Commonwealth approval is also required for anything done by the Territory under the Mining Act as to uranium. The Commonwealth receives the royalties for uranium mining in the Territory although it makes a partial reimbursement to the Territory.

13. Aboriginal Land Rights

The Commonwealth has not legislated as to Aboriginal land rights in the States, although there is a view that constitutionally it can do so providing it pays just compensation for any acquisition of property.

The Commonwealth has specifically legislated on this topic for the Northern Territory in the Aboriginal Land Rights (Northern Territory) Act and does not pay the Territory compensation for any Territory land granted as Aboriginal land

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under it. Further, payments equivalent to royalties for minerals on Aboriginal land are applied by the Commonwealth for the benefit of Aboriginal people in accordance with the Act.

Territory laws only run on Aboriginal land in so far as they can do so consistently with this Act, and the Legislative Assembly cannot legislate inconsistently with the Act.

14. National Parks

The Commonwealth does not own or control national parks in the States and constitutionally it is doubtful if it has power to so own or control them other than in the implementation of international treaties to which Australia is a party and possibly in some other limited circumstances.

The Commonwealth has apparently unlimited powers to own and control national parks in the Territory. Pursuant to the National Parks and Wildlife Conservation Act it has established two major national parks in the Territory, Kakadu and Uluru, and vested title to them in the Director of National Parks and Wildlife without payment of compensation to the Territory.

Territory laws only run in these national parks in so far as they can do so consistently with this Act and the Regulations made pursuant thereto.

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15. Other Commonwealth Acts

Several other Commonwealth Acts have an extended application in the Territory beyond that which they are constitutionally capable of having in the States - for example, the Trade Practices Act and the Family Law Act.

Other Disadvantages

1. Financial matters

The financial relationship between the Commonwealth and the States is worked out by a process of joint negotiations and is incorporated in various items of Commonwealth legislation. This creates a degree of certainty for the States and gives them some security to assist in forward financial planning.

The financial relationship between the Commonwealth and the Northern Territory is based on a non-statutory Memorandum of Understanding entered into prior to Self-government and which has no legal status. Subsequent changes have been made from time to time to the arrangement contained in this Memorandum, in most cases (but not all) with the agreement of the Territory. Increasingly the Territory is being brought into line with the States as to financial matters, a fact that may be regarded as having both positive and negative aspects. A number of items of Commonwealth financial legislation now extend to the Territory in a similar way to the States.

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However it may be reasonable to say that the Territory is still not in as a secure position as the States in terms of its financial relationship with the Commonwealth.

2. Ashmore and Cartier Islands

Under the Commonwealth Constitution, it is not possible to increase, diminish or otherwise alter the limits of a State without the consent of the Parliament of that State (see above).

No similar guarantee applies to a territory.

Prior to Self-government in 1978, the territory of Ashmore and Cartier Islands was annexed to and deemed to form part of the Northern Territory and Northern Territory laws were in force on the Islands.

Contemporaneously with the grant of Self-government, the Commonwealth Parliament legislated without consulting the Northern Territory to terminate the status of these Islands as part of the Northern Territory, and to only preserve the effect of Northern Territory laws in force on the Islands up to the grant of Self-government. The Governor-General was given power to make Ordinances for the Islands.

More recently, the Commonwealth Parliament has reapplied current Northern Territory laws to the Islands, subject to certain powers vested in the relevant Commonwealth Minister. The Islands remain a separate territory.

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3. Cocos (Keeling) Islands and Christmas Island territories

It is constitutionally doubtful if a territory can be joined with a State for federal electoral purposes.

Two or more territories can be joined for federal electoral purposes.

Recently, the two separate territories of Cocos (Keeling) Islands and Christmas Island, by an amendment to the relevant Commonwealth legislation, were joined to the Northern Territory for federal electoral purposes. Thus the two Territory senators and the Territory member of the House of Representatives also represent the electors of these Islands.

GRAHAM NICHOLSON
June 1986

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ATTACHMENT 2

CONSTITUTIONAL EQUALITY WITH THE STATES

1. This would need to include:-

(i) Amendment to both Commonwealth and Northern Territory legislation to ensure continuity and recognition of the new constitutional status of the courts, judges and jurisdictions in the new State;

(ii) Amendment to Commonwealth statutes having effect in the Northern Territory which bear upon areas of functional responsibility of the new State;

(iii) Assumption of a responsibility for the provision of legal aid;

(iv) Assumption of a state type responsibility for matters relating to civil liberties;

(v) Assumption of responsibility for industrial relations legislation and administration relevant to a State;

(vi) Full membership with equal rights on all Commonwealth/State intergovernment bodies;

(vii) The recognition of the right of the new State to establish its own university with access to Commonwealth funds for this purpose;

(viii) Recognition of the responsibility of the new State to legislate on consumer affairs matters and police that legislation.

2. A consequence of constitutional equality is control of land by the new State in the same way as other States control their land. This means that there are two general options.

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Firstly, to apply Australia-wide, Commonwealth legislation which currently applies to N.T. land or, secondly, to place Territory land on the same basis as that of the other States. This would require:-

(i) Radical titles to all land similar to that of the States;

(ii) Acquisition of land within the new State, by the Commonwealth, to be broadly on the same terms as that of the States;

(iii) Patriation of the Aboriginal Land Rights (N.T.) Act from the Commonwealth to the new State, or a comparable arrangement such as the repeal of the Act and the concurrent passage of an Act of the new State to cater for those policies encompassed in the repealed Act which are acceptable to the new State. These policies will provide for consideration of the following elements in the patriated or repealed Act:-

* Entrenched provisions;

* Retention of ownership of existing Aboriginal land by Aboriginals;

* Alternative freehold vested in identifiable Aboriginal owners to replace inalienable freehold vested in amorphous land trusts under direct bureaucratic control;

* Transfer of control of Kakadu and Uluru National Parks to the new State by whatever means is most appropriate;

* Consultation with Aboriginals and the Commonwealth on these matters.

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3. Similarly a further consequence of constitutional equality is ownership and control of its minerals and energy resources by the new State in the same way as other States own and control these resources. This would require:-

(i) Action to transfer ownership of Uranium from the Commonwealth to the Northern Territory;

(ii) Transfer of full regulatory responsibilities including monitoring carried out under the Environmental Protection (Alligator Rivers Region) Act 1978;

(iii) Inclusion of the new State in the Commonwealth legislation which established Resource Rent Royalty. (the Petroleum Act). This would be a disadvantage compared with the present arrangement;

(iv) Removal of any threat of discrimination in excise charges;

(v) Control of water within the boundaries of the new State unfettered by discriminatory Commonwealth legislation such as the Aboriginal Land Rights (N.T.) Act.

T. C. LOVEGROVE.

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ATTACHMENT 3

REPRESENTATION: EXECUTIVE SUMMARY

1. This discussion paper assesses the major options available to the Northern Territory Government on representation in the House of Representatives and the Senate.

2. Three options for the House are put forward:

   (A) The 'Original State' entitlement of five;

   (B) Conformity with the population quota; and

   (C) Intermediate representation between one and five.

   Political considerations suggest the adoption of option B is preferable. Initial representation would only be one but a second seat is probable at an early stage.

3. Three options for the Senate are set out:

   (A) Immediate equality of representation (twelve);

   (B) Incremental formula linked to increase of House Seats (two for a long period); and

   (C) Phased increase based on election cycles.

   Option C is preferred as it will produce an immediate enhancement of representation, is not limited to population growth, and will give equality within a reasonable period. Of the permutations analysed, Attachment 7 (four initial Senators increasing by four every second election) is the best compromise position.

4. Recommendations:

   (i) That, for the House of Representatives Option B be adopted.

   (ii) That, for the Senate, Option C be adopted.

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REPRESENTATION OPTIONS : A DISCUSSION PAPER

1.0 The Extreme Options:

1.1 In the ongoing debate on new state representation, two options have been prominent. They are:

(a) The "equal-footing" position i.e. equivalent representation to the original states (12 Senators and 5 M.H.R.s - Tasmania's entitlement). Major advocates have been Paul Everingham and Bob Collins.

(b) The position adopted in the majority report of the Joint Select Committee on Electoral Reform viz number of M.H.R.s in excess of one based upon population, Senate representation in excess of two be tied to H of R numbers (i.e. one additional Senator for every extra two M.H.R.s).

1.2 Judged on the acceptance of the report by members of the ALP, LP and NP (both in the report itself and subsequent parliamentary debate), the submissions to the Committee from the ALP and the LP, and in public utterances of party members, the achievement of the 'equal-footing' option is improbable, to say the least. Whatever are the intrinsic merits of the equality arguments, they are politically unattainable.

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They may be more palatable to the non-Labor parties (on the grounds that a case could be made - albeit marginally - for party advantage in the numbers' game i.e. the likelihood that the CLP would win three of the five H of R seats and one more Senate seat than the ALP) but the probability of succeeding is remote. It should also be noted that the non-Labor parties are wary of what they see as the potentially undisciplined character of the CLP representatives.

1.3 The minimum position of the Joint Select Committee is detrimental to Territory interests both in the short and longer terms. Unless an increase is guaranteed, the whole statehood proposal will be difficult to sell to the Northern Territory electorate. The formula proposed is thoroughly disadvantageous. Based on a 1979 calculation, the Northern Territory would need a population of 2.36m before it achieves equal Senate representation and 708,000 before an extra Senator (assuming odd numbers are accepted!) [See Attachment 1 and also note the qualifying statements, particularly the prospect of the Northern Territory <u>never</u> attaining Senate equality]. Assuming a static population in Australia generally and a continuation of the present growth-rate in the Northern Territory (both highly unrealistic assumptions), the time span for the former figure is 75 years and the latter 43 years!

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A rough calculation for 1986 (using the present electorate quota of c.70,000, 148 M.H.R.s overall and 12 Senators per State) produces similar time spans.

1.4 Given the problems of the extreme options, some intermediate position should be adopted as the Northern Territory's preferred representation stance. There should be two cases presented, one the minimum acceptable and the other the ambit for initial negotiations.

2.0 INTERMEDIATE OPTIONS:

2.1 The House of Representatives:

(a) Remain on the population quota, implying only one M.H.R. until over one and a half quota is met. Based on the current ratio between electoral and population of c.48% (somewhat low given the age distribution profile), the population needed to obtain an extra M.H.R. will be c.210,000 (possibly reached in about 10-12 years).

(b) Increase to two (or three) on establishment of new State. This could perhaps be used as part of an ambit claim to bargain on Senate numbers. Depending on how the constituency boundaries are drawn, it may be possible to demonstrate electoral advantage to the non-Labor parties i.e. the likelihood of securing at least two of the H of R seats.

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But it is probable that the 'democratic' arguments will prevail against this proposal, despite the Tasmanian precedent and the fact that the concession will not disturb the nexus provisions (S.24).

2.2 The Senate:

(a) In the Senate new State representation could be complicated by the nexus clause (that Senate numbers should be as near as practicable, half those of the H of R). Legal opinion is divided on the issue of whether new state representation is affected by S.24. If it is not, the prospect of obtaining more than the existing two Senators is enhanced somewhat.

(b) A claim could be made for 2, 4, 6 or 8 Senators (10, even for an ambit claim, is too high) with a formula accepted to enable equality to be reached in due course. Any formula based upon population or numbers of M.H.R.s should be dispensed with (for reasons outlined in 1.3 above). In addition, a non-population based formula will preserve (in a fashion) the distinction between the electoral systems of the Senate and the H of R i.e. one based on area rather than population. The most appropriate formula is one related to election cycles. Thus, increases should be timed with elections.

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If this is acceptable (and, I believe a sustainable argument could be advanced for such a proposition), then there are several permutations to be considered, depending upon the initial number of Senators provided, the size of the increments, and the electoral cycle agreed upon.

(c) Eight permutations of the 3 variables (without the complications of double dissolutions are attached. (Attachments 2-11). Others can be prepared if necessary.

(d) If the nexus provision is to apply, then there is an additional complication. With two Northern Territory 'State' Senators the effect is small, resulting in only one extra M.H.R.. However, with additional initial representation, the increase is progressively more marked. (See Attachment 12). The case with 4 Northern Territory Senators which will create 6 extra M.H.R.s seems the most reasonable in that the H of R increment is not dramatic and may find favour in those larger States who would be benefited as well as a lower level of resistance in the Australian electorate to additional numbers of politicians. It is interesting to note that, using 1986 relativities, the Northern Territory will almost certainly gain a second M.H.R. with six Senators. Although calculations using population projections for 1991 et seq. can be undertaken, the figures obtained would necessarily be highly speculative.

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Attachment 1.

CALCULATION OF THE ENTITLEMENT OF A NEW STATE BASED ON THE NORTHERN TERRITORY TO REPRESENTATION IN THE COMMONWEALTH PARLIAMENT UNDER THE PROPOSED FORMULAE

Applying the 1979 population statistics the calculation on this basis for the new State would be as follows:

Number of Senators	Number of House of Representatives	Population
2	1	117,000
2	2	236,000
2	3	354,000
2	4	472,000
2	5	590,000
3	6	708,000
3	7	826,000
4	8	944,000
4	9	1,062,000
5	10	1,180,000
5	11	1,298,000
6	12	1,416,000
6	13	1,534,000
7	14	1,652,000
7	15	1,770,000
8	16	1,888,000
8	17	2,006,000
9	18	2,124,000
9	19	2,242,000
10	20	2,360,000

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Thus the Northern Territory would only be eligible to equal Senate representation if it had a population of 2,360,000, a population in excess of every State except N.S.W. and Victoria, and 4 1/2 times as great as Tasmania (not allowing for any increases in the population of those States).

These calculations do not take into account future increases in the average population of the other States. It is possible (but by no means certain) that the population of the Northern Territory will increase proportionately faster than all other States for a continuous period of years. However, because of the very low present population of the Northern Territory, such a proportionate increase is not likely to be felt for many years, and in any event the Northern Territory population is never likely to be as great as W.A. or Queensland. Thus on the above basis, it would be virtually impossible for the Northern Territory to ever get up to 10 senators. It would in fact be unlikely in the foreseeable future to get more than two senators on this basis, and may in fact be permanently destined to have only two senators. To get up to three senators, the new State would have to increase its population **six times over in proportion** to the average population of the other States.

On the other hand, to get one extra member for the House of Representatives, the new State would need to double its population in proportion to the average population of other States - still a very difficult test.

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BASIS: INITIAL NUMBER - 2
INCREASING BY 1 SENATOR EVERY ELECTION

Senate Election Year	Continuing Senators	Senators for Re-election	New Senators	Total Senators to be Elected	Total Number of N.T. Senators
1991	Nil	Nil	2	2	2
1994	1	1	1	2	3
1997	1(2)	2(1)	1	2 or 3	4
2000	2	2	1	3	5
2003	2(3)	3(2)	1	3 or 4	6
2006	3	3	1	4	7
2009	3(4)	4(3)	1	4 or 5	8
2012	4	4	1	5	9
2015	4(5)	5(4)	1	5 or 6	10
2018	5	5	1	6	11
2021	5(6)	6(5)	1	6 or 7	12

Note: .Time span far too long.
.Problem of uneven numbers at two (possibly more) elections.
.Problem of adjustment of H of R (if S.24 applies) each election.
.Problem of determining numbers to be re-elected on five occasions.

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BASIS: *INITIAL NUMBER - 2*
INCREASING BY 2 SENATORS EVERY ELECTION

Senate Election Year	Continuing Senators	Senators for Re-election	New Senators	Total Senators to be Elected	Total Number of N.T. Senators
1991	Nil	Nil	2	2	2
1994	1	1	2	3	4
1997	2	2	2	4	6
2000	3	3	2	5	8
2003	4	4	2	6	10
2006	5	5	2	7	12

Note: .Time span reasonable.
.Problem with odd numbers to be elected in every second election.
.Problem with need to adjust relativities (if S.24 applies) every election.

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BASIS: INITIAL NUMBER - 2
INCREASING BY 2 SENATORS EVERY 2ND ELECTION

Senate Election Year	Continuing Senators	Senators for Re-election	New Senators	Total Senators to be Elected	Total Number of N.T. Senators
1991	Nil	Nil	2	2	2
1994	1	1	Nil	1	2
1997	1	1	2	3	4
2000	2	2	Nil	2	4
2003	2	2	2	4	6
2006	3	3	Nil	3	6
2009	3	3	2	5	8
2012	4	4	Nil	4	8
2015	4	4	2	6	10
2018	5	5	Nil	5	10
2021	5	5	2	7	12

Note: .Time span much too long.
.Problem of odd numbers in six elections.

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BASIS: INITIAL NUMBER - 4
INCREASING BY 1 SENATOR EVERY ELECTION

Senate Election Year	Continuing Senators	Senators for Re-election	New Senators	Total Senators to be Elected	Total Number of N.T. Senators
1991	Nil	Nil	4	4	4
1994	2	2	1	3	5
1997	2(3)	3(2)	1	4 or 3	6
2000	3	3	1	4	7
2003	3(4)	4(3)	1	4 or 5	8
2006	4	4	1	5	9
2009	4(5)	5(4)	1	5 or 6	10
2012	5	5	1	6	11
2015	5(6)	6(5)	1	6 or 7	12

Note: .Time span too long.
.Problem of deciding formula to resolve numbers to be elected every second election.
.Problem of odd numbers in 1994, 2006 (and possibly 2003 and 2015) election.
.Problem of adjustment of relativities (if S.24 applies) every election.

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BASIS: INITIAL NUMBER - 4
INCREASING BY 2 SENATORS EVERY ELECTION

Senate Election Year	Continuing Senators	Senators for Re-election	New Senators	Total Senators to be Elected	Total Number of N.T. Senators
1991	Nil	Nil	4	4	4
1994	2	2	2	4	6
1997	3	3	2	5	8
2000	4	4	2	6	10
2003	5	5	2	7	12

Note: .Acceptable time span.
.Problem in 1997 and 2003 elections with uneven number.
.Problem with need to adjust relativities (if S.24 applies) every election.

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BASIS: INITIAL NUMBER - 4
INCREASING BY 4 SENATORS EVERY 2ND ELECTION

Senate Election Year	Continuing Senators	Senators for Re-election	New Senators	Total Senators to be Elected	Total Number of N.T. Senators
1991	Nil	Nil	4	4	4
1994	2	2	Nil	2	4
1997	2	2	4	6	8
2000	4	4	Nil	4	8
2003	4	4	4	8	12

Note: .Time span highly acceptable.
.Advantage of even numbers at each election.
.Advantage of only three adjustments to H of R (if S.24 applies).

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BASIS: INITIAL NUMBER - 6
INCREASING BY 1 SENATOR EVERY ELECTION

Senate Election Year	Continuing Senators	Senators for Re-election	New Senators	Total Senators to be Elected	Total Number of N.T. Senators
1991	Nil	Nil	6	6	6
1994	3	3	1	4	7
1997	3(4)	4(3)	1	4 or 5	8
2000	4	4	1	5	9
2003	4(5)	5(4)	1	5 or 6	10
2006	5	5	1	6	11
2009	5(6)	6(5)	1	6 or 7	12

Note: .Time span a little long but in reasonable bounds.
.Problem with odd numbers in elections.
.Problem of deciding numbers of continuing/re-elected Senators.
.Problem with need to adjust relativities (if S.24 applies) every election.

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BASIS: INITIAL NUMBER - 6
INCREASING BY 2 SENATORS EVERY ELECTION

Senate Election Year	Continuing Senators	Senators for Re-election	New Senators	Total Senators to be Elected	Total Number of N.T. Senators
1991	Nil	Nil	6	6	6
1994	3	3	2	5	8
1997	4	4	2	6	10
2000	5	5	2	7	12

Note: .Highly acceptable time span.
.Problem of uneven numbers in 1994, 2000 elections.
.Problem of adjustment to H of R. (if S.24 applies) each election.

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BASIS: INITIAL NUMBER - 3
INCREASING BY 1 SENATORS EVERY ELECTION

Senate Election Year	Continuing Senators	Senators for Re-election	New Senators	Total Senators to be Elected	Total Number of N.T. Senators
1991	Nil	Nil	3	3	3
1994	1(2)	2(1)	1	2 or 3	4
1997	2	2	1	3	5
2000	2(3)	3(2)	1	3 or 4	6
2003	3	3	1	4	7
2006	3(4)	4(3)	1	4 or 5	8
2009	4	4	1	5	9
2012	4(5)	5(4)	1	5 or 6	10
2015	5	5	1	6	11
2018	5(6)	6(5)	1	6 or 7	12

Note: .Time span too long.
.Problem of odd numbers in possibly all elections.
.Problem with need to adjust relativities (if S.24 applies) every election.

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BASIS: INITIAL NUMBER - 5
INCREASING BY 1 SENATORS EVERY ELECTION

Senate Election Year	Continuing Senators	Senators for Re-election	New Senators	Total Senators to be Elected	Total Number of N.T. Senators
1991	Nil	Nil	5	5	5
1994	2(3)	3(2)	1	3 or 4	6
1997	3	3	1	4	7
2000	3(4)	4(3)	1	4 or 5	8
2003	4	4	1	5	9
2006	4(5)	5(4)	1	5 or 6	10
2009	5	5	1	6	11
2012	5(6)	6(5)	1	6 or 7	12

Note: .Time span too long.
.Problem of odd numbers in possibly all election.
.Problem with need to adjust relativities (if S.24 applies) every election.

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EFFECT OF N.T. 'STATE' SENATORS ON HOUSE OF REPRESENTATIVES IF S.24 IS APPLIED
(using 1986 quota relativities)

State	Existing		With 2 NT Senators		With 4 NT Senators		With 6 NT Senators		With 8 NT Senators	
N.S.W.	51.34	51	52.25	52 (+1)	53.68	54 (+3)	55.10	55 (+4)	56.51	57 (+6)
VIC	38.65	39	39.33	39	40.42	40 (+1)	41.48	41 (+2)	42.54	43 (+4)
QLD	23.88	24	24.30	24	24.97	25 (+1)	25.63	26 (+2)	26.29	26 (+2)
W.A.	13.20	13	13.43	13	13.80	14 (+1)	14.16	14 (+1)	14.53	15 (+2)
S.A.	12.78	13	13.01	13	13.37	13	13.71	14 (+1)	14.07	14 (+1)
TAS	4.15	5	4.22	5	4.34	5	4.45	5	4.56	5
N.T.	-	1	1.38	1	1.42	1	1.46	1	1.49	1
ACT*	-	2	-	2	-	2	-	2	-	2
	Q:106,630		Q:104,780		Q:101,974		Q: 99,359		Q: 96,875	
	148		149 (+1)		154 (+6)		158 (+10)		163 (+15)	

*ACT may be granted an extra M.H.R.

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ADDENDUM TO REPRESENTATION OPTIONS : A DISCUSSION PAPER

TIME-FRAMES FOR QUOTA ACHIEVEMENT

A series of calculations, using ABS population projections, was undertaken in order to estimate time spans for the achievement of two quota levels (5 quotas and 24 quotas). The first represents the minimum original state entitlement and the second the attainment of 12 Senators if the formula suggested by the Joint Select Committee on Electoral Reform is imposed.

The calculations are unrealistic to the extent that the 1986 quota size (i.e. 106,000) is used throughout. Obviously, with population growth nationally, the quota will increase, thus extending the time span required. Secondly, growth rates included in or imputed from the ABS projection series have been used. As they would be expected to be reduced gradually through time, the time spans indicated are very conservative.

1. Using imputed composite growth rates (1984-2021) for Series A and D (the lowest and highest rates), the periods are:

   (a) For 5 Quotas:

   (i) 2.07% growth rate, base population 143.8K= 64 years (i.e. 2049).

   (ii) 2.64% growth rate, base population 143.8K= 50 years (i.e. 2035).

   (b) For 24 Quotas:

   (i) 2.07% growth rate, base population 143.8K= 141 years (i.e. 2126).

   (ii) 2.64% growth rate, base population 143.8K= 110 years (i.e. 2095).

2. Using the 2021 estimates of population (based on above growth rates) and using ABS rates for 2001-21, the periods are:

   (a) For 5 Quotas:

   (i) 1.69% growth rate, base population 300.1K= 70 years (i.e. 2055).

   (ii) 2.15% growth rate, base population 367.6K= 58 years (i.e. 2043).

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(b) <u>For 24 Quotas</u>:

(i) 1.69% growth rate, base population 300.1K= 137 years (i.e. 2122).

(ii) 2.15% growth rate, base population 367.6K= 127 years (i.e. 2112).

A.J. HEATLEY
July 9, 1986

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ATTACHMENT 4

NOT AVAILABLE FROM DEPT. OF TREASURY AS AT 8/8/86.