

NORTHERN TERRITORY

TOWARDS STATEHOOD



MINISTERIAL STATEMENT

28 August 1986

Towards Statehood

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Ministerial Statement By The Chief Minister On Statehood For The Northern Territory

A year ago in this Assembly, my predecessor as Chief Minister formally announced the Northern Territory's bid for equality within the the Australian Commonwealth. The case then presented was undeniably strong and cogent. It was based on a number of premises.

These were: the Territory's legitimate claim to Statehood as the ultimate constitutional objective; the unacceptable disadvantages of the current constitutional situation; the maturing of the financial arrangements struck at Self-Government in 1978 and the explicit policy of the Federal Government to treat the Territory as a State from 1988.

Developments since then have reinforced the validity of the case and, if anything, have strengthened my Government's resolve to press ahead.

My own commitment to Statehood has never wavered; I remain, as I noted in last years's debate, 'a strong supporter of moves — towards the achievement of full constitutional, political and democratic rights for the citizens of the Northern Territory'. I am sure that this sentiment is shared by all members of this Assembly. My Government's approach to constitutional development for the Northern Territory has already been clearly articulated.

In his address at the opening of the third session of the Assembly, the Administrator noted the continuing aspiration for "full and equal status for Territorians . . . at the earliest opportunity".

Constitutional and political equality, long denied to Territorians and long sought-after, is the keystone and the prime objective of my Government's policy. That theme of equality was expressed quite deliberately in my address-in-reply when I reaffirmed the commitment to Statehood. My words then are worth repeating: 'Statehood is essential if we are to take our place as equal Australians; Statehood alone will ensure that we have the same rights, privileges, responsibilities . . . the same degree of self-determination . . . (as) other Australians'.

Thus, Statehood, however worthy an attainment in its own right, is not simply an end. It is much more significant as a means to ensure that Territorians are no longer second-class citizens.

The Territory has long been preparing to take its place as an equal partner in the Australian Federation; the time has now arrived for it to do so. No longer is the Territory a backwater, it has become a focal point of northern development. The granting of Statehood will more effectively allow Territorians to promote and manage development.

The last year has not been, as some media commentators have suggested, a wasted and barren time. Particularly since the CLP Statehood Conference in November, it has been used productively to set the necessary organisational infrastructure into place, to refine broad objectives and strategy and to produce detailed position papers. We are now confident that the case for Statehood can be pursued vigorously, and with ultimate success.

In organisational terms, a tripartite structure has been provided. The existing Select Committee on Constitutional Development will be centrally concerned with the complex and demanding task of preparing the groundwork for the new State constitution.

Overall administration of the Statehood process will be handled by the Office of Constitutional Development in the Department of the Chief Minister.

The third arm is the Statehood Executive Group. Its role is to advise and assist me as Minister for Constitutional Development, to co-ordinate the total government approach, to provide necessary research and analysis and to support the activities of the Select Committee.

As existing capacity and expertise have been utilised, this system is an effective and economical mobilisation of resources.

Two weeks ago, the Cabinet adopted three broad Statehood objectives. They were based upon a considerable body of specific work undertaken by the Executive Group identifying the dimensions of inequality suffered by Territorians and analysing the current constitutional, legal and political disadvantages. The objectives are:

1. The attainment of a status which provides constitutional equality with other States and (the) people (of the Northern Territory) having the same constitutional rights, privileges, entitlements and responsibilities as the people of the existing States;
2. 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
3. The settlement of secure financial arrangements with the Commonwealth as similar as possible as those which apply to the States particularly in respect of loan raising and revenue sharing.

Although these prescriptions are not new and have already been accepted as reasonable and necessary, their formal adoption does serve as a critical first milestone in what will be a long, complex and arduous journey.

Each broad objective emphasises the commitment to full equality with the existing States. It is the Government's firm intention, insofar as it is constitutionally possible, that equality should apply contemporaneously with the grant of Statehood. No deviation from eventual equal treatment will be tolerated.

We will **not** accept that the new State will be a second-class State (or a 'Claytons State' as some would wish to label it).

The first objective lays claim to constitutional equality with other States. At present, the Territory suffers from grievous disadvantages.

I seek leave to table a paper entitled 'Northern Territory Constitutional Disadvantages' which summarises our constitutional detriments. The list is long, imposing and ominous; it deserves the closest of scrutiny by all Territorians. Noticeably absent in the Territory are the entrenched constitutional rights enjoyed by residents of the States.

In this regard, the capacity of the Commonwealth to saddle the Territory with legislation which it is unable to impose upon the States is particularly vexing. The most notable measure of that type is, of course, The Aboriginal Land Rights Act. With Statehood, land rights would be administered by either a Territory new State law or a federal law relevant to all States. The Territory would not be singled out for discriminatory treatment; it would be protected generally by its partnership with other States and particularly by Sections 51(ii), 92, and 117 of the Constitution. These sections guarantee equal treatment in respect of taxation, trade and legal status of residents.

Moreover, the Territory as a State would gain safeguards against discriminatory land acquisition, made by the Commonwealth without consultation with the people of the Territory. Lack of those safeguards which are available to the States enabled the Commonwealth without compensation to excise or otherwise remove from Territory control the Ashmore-Cartier Islands, Kakadu, Ayers Rock and Aboriginal land. In the States, Section 51(xxxi) of the Constitution requires the Commonwealth to acquire land 'on just terms'.

I do need to remind either this Assembly or the community of the detriment to economic development foisted upon the Territory by such unilateral land acquisition.

Even less acceptable are the limitations contained in that keystone of Self-Government, The Northern Territory (Self-Government) Act.

As an ordinary statute, it can be amended or even repealed, entirely without reference to the Territory. Moreover, the Commonwealth can, by mere regulation, alter the powers and functions of the Territory Government which affect our daily lives such as housing, education and health.

Our Self-Government is not guaranteed by the Australian Constitution as a new State constitution undoubtedly would be. It contains legislative and executive controls on the Northern Territory Government and upon this Assembly.

A further serious constitutional disadvantage, which is well known, is the retention by the Commonwealth of what are essentially State-type functions. Uranium, Aboriginal land and national parks are the prime examples.

Not so well known is the position of the Administrator; unlike State Governors, he is appointed and may be removed by the Commonwealth.

Nor is the Commonwealth's power to determine a fundamental part of our electoral process, specifically those who may vote as Territorians in federal elections. By implication and convention the Constitution protects States from having other areas outside their jurisdiction incorporated into their electorates. This would avoid the cynical manipulation which occurred with the imposition on us of the Cocos and Christmas Island electors. They have no particular common interest with Northern Territorians and the Territory government has no direct relationship with them.

Finally, the experience of the fringe benefits tax provides a dramatic contrast between the competence of the Territory and the States.

Whereas Queensland is able to challenge parts of the tax judicially, the Territory is denied that right by its continuing dependent constitutional position. Statehood would have given the Territory the standing to negotiate on this issue from a position of strength. In this regard, it is interesting to note that the Commonwealth not only can impose a tax upon the public property of the Northern Territory but, as I have already stated, it can also deprive the Territory of property without just compensation. Under the Constitution, the Commonwealth cannot treat the States in such a manner. Even if Queensland is successful in its challenge, the Territory will still have to bear the impost of the fringe benefit tax as it lacks the protection of Section 51(ii) and Section 114 of the Constitution which prohibits Commonwealth taxation of state property.

Those rights (and the others specified in the tabled document) **must** be secured. Ultimately, they can only be guaranteed by the granting of Statehood to the Northern Territory on constitutional conditions equal to other Australian States.

That essentially is our bid for constitutional equality; we want nothing more, nothing less. I seek leave to table a further paper entitled 'Constitutional Equality With The States' which sets out our claims. Of most significance is the demand for local control over land and mineral and energy resources; that involves among other things the transfer of ownership of Uranium, the control of national parks and the patriation of the Northern Territory Land Rights Act.

Control of land is fundamental. The broad position of my Government is set out in a paper prepared by the Department of Law entitled 'Land Matters Upon Statehood' which again I seek leave to table. The new State lays claim to title of **all** land related to State type purposes in the Territory including land presently held by the Commonwealth or Commonwealth authorities.

The transfer of the Lands Rights Act — **to** the responsible people of the Northern Territory who are directly affected by its operation and away **from** those people who are remote from the Territory and for whom the issues are often of mere ideological and academic concern — is imperative.

In the tabled papers, policy options for patriation are outlined and they will form a basis for discussion with all Territorians but particularly Aboriginal Territorians.

Patriated land rights will provide existing ownership guarantees. As a result of full consultation, it might also make provision for alternative tenure arrangements and provide flexibility which will enable traditional owners to have **real** control of their land with the ability to decide whether to exploit its economic potential consistent with their cultural values.

I am sure that this approach will be favourably received.

The second objective refers to representation in the Federal Parliament. As members are aware, this is one of the thorniest problems to be addressed and one which has already provoked considerable, and often heated, debate. It is important that I spell out my Government's approach **in precise terms**.

Let me first deal with the House of Representatives, the 'peoples' chamber. Except for Tasmania which enjoys as an original State an entitlement of five members, representation there is determined by the population quota. State representation is in broad conformity with population size.

Any claim that the Northern Territory should be treated as generously as Tasmania in the very different context of the 1980's, is quite unrealistic. We shall therefore not pursue that course; we shall abide by the constraints of the quota.

However, I hasten to point out that, on becoming a State, the Territory, with its high relative population increase, would soon be entitled to a second member. Remaining a Territory would delay the prospect of gaining an extra member significantly.

Presently, the Territory, because of its smaller ratio of electors to population size — 48 per cent as compared to about 60 per cent in the States — is theoretically under-represented. Having recourse as a **State** to the quota based on population and the advantage of achieving an additional member once half a quota has been achieved will thus be beneficial.

In the case of the Senate, the 'States' house, the Territory is entitled to **equal** representation. No relationship between Senate representation and population size will be accepted.

Since 1901, the principle of equality, regardless of geographic size and numbers of residents, has been fundamental. We see no reason, philosophic or expedient, to warrant breaching that principle in respect of new States.

Our claim to equality is unequivocal, incontestable and will not be compromised.

However, we recognised, as a matter of political reality, that the achievement of immediate parity will not be easy. Although we will pursue that cause as earnestly and persistently as we can, we will not allow it to become an insurmountable obstacle, frustrating the receipt of the other worthwhile advantages of Statehood.

If we are forced to concede immediate equality, we will insist on eventual equality based upon an unadorned and legally-binding formula which includes a reasonable initial representation and a short time-frame to achieve equal numbers.

No fanciful formulae, like the one which requires the Territory to have a population of about 2.5 million before we are allowed equal representation, will be countenanced.

Without Senate equality the Territory will never get the necessary 'clout' in the Federal Parliament to advance the cause of northern development and the means to correct the gross imbalance between the less and the more populated parts of Australia.

The third objective concerns the financial implications of our bid for Statehood. On this question, I will be as blunt as I can. There will be **NO** — I repeat **NO** — financial cost to Territorians. The Commonwealth has clearly indicated its intention to treat the Territory financially as a State in 1988; with or without Statehood, the financial situation after 1988 will be the same.

Our Treasury has carefully reviewed the impact of Statehood and their investigations categorically support that assessment; its considered views are contained in a further paper which I seek leave to table.

Therefore, it makes no earthly sense to be burdened with the financial responsibilities of Statehood without seeking the full range of equivalent rights and the full state-type capacity to develop the Territory and broaden our own revenue base.

If we are to demonstrate that we are willing to and capable of increasing the Territory's level of economic self sufficiency and its financial independence, we must control all legitimate State-type functions.

I should not need to remind the Assembly of the inhibitions placed on the Territory in the mineral royalties area. Uranium provides the best example. The Department of Mines and Energy has calculated that, if our royalty regime had been applied to the two Uranium producers since the Royalty Act came into operation in July 1982, we would have received by the end of 1985 at least an additional \$85 million.

Furthermore, in respect of Ranger, a study undertaken by an A.N.U. research fellow has concluded that the Commonwealth will recover its total expenditures (to the end of 1985) on Ranger/Jabiru during the company's first full year of tax liability. Afterwards, it would collect a significant net contribution of about \$50 million per year. On the other hand, my government will receive almost no net benefit, as expenditure on services and regulation will account for nearly all direct and indirect revenue.

We surely have a legitimate claim for a much greater share of the fruits of our own resources! Nor should the considerable potential revenue denied us by the Territory's inability to control mineral exploration and production on a sizeable proportion of its land be forgotten. Our claim, to "secure financial arrangements as similar as possible as those that apply to the States", will **not** force additional costs on the Territory taxpayer.

Indeed, my Government believes that there are far greater financial risks in remaining a mere Territory than in acquiring Statehood. Statehood would provide us with protection flowing from the constitutional prohibition of preferences and discrimination between States and State residents and also from the prohibition on Commonwealth taxes on State property.

Thus, for example, the Commonwealth could not retrospectively recover monies already paid as has happened in recent times to the Territory as a result of Grants Commission reviews. Significant also would be the benefit to a new State of a constitutional guarantee of freedom of trade and commerce.

Moreover, Statehood will equip the Territory, through full participation in the Premiers Conference, the Financial Agreement, the Loans Council and by the application of constitutional and statutory guarantees in the same way as the States, with the means to protect the financial interests of Territorians.

What needs to be done in the period ahead?

Obviously a first priority is to secure the support of Territorians. That support is imperative if this bid for Statehood is to be successful or even to be persevered with.

Members will no doubt remember the findings of the opinion poll publicised earlier this year which indicated that the level of support for and knowledge of Statehood was not particularly high. However, I am confident that there will be a groundswell of support once the issues are made clear.

An analysis of that poll also shows that the Territory community is confused about the need for and the impact of Statehood, particularly as it will affect financial arrangements. There is a majority conviction that the Territory will be worse off financially under Statehood.

That perception simply is not correct as I have demonstrated earlier in this statement. Nor is the fear, which I have heard expressed by some spokesmen for Aboriginal interests, that Statehood would necessarily be detrimental to Aboriginal land owners.

We recognise that support by Aboriginal territorians is a **key** consideration and we will strive to overcome their concern.

It would be idle to deny that relationships between the Territory Government and the organised voice of Aborigines have sometimes been less than smooth. However, it should also be recognised that, in areas other than those related to land rights, relationships have been, and continue to be, usually strong and productive.

My assurances on land rights included in this statement can only contribute to the diminution of concern and provide a catalyst for fruitful and co-operative discussions on Statehood issues. In the end, we are **all** Territorians and, whatever our heritage, we all will benefit from Statehood.

We, as parliamentarians and representatives of the people of the Northern Territory, all have a responsibility to support this bid for Statehood and actively promote it in the Territory community and throughout Australia.

Our activities will be crucial in determining public attitudes on Statehood; we have a very convincing case but our commitment in presenting it vigorously is essential.

For its part, the Government will be providing over the next few months, full and informative material on the salient issues, comprehensive media exposure and wide-ranging program or direct consultation. In the latter area, the Select Committee will also have an important role to play.

The new State constitution must be developed within the Territory and not imposed from outside by the Commonwealth. Moreover, it must be acceptable to and accepted by the majority of Territorians. To those ends, the constitution-making process will consist of three stages, all of which will involve wide participation by Territorians. First, the Select Committee will prepare a draft constitution which will then, as the second stage, be submitted for ratification to a convention representing a broad cross-section of community interests and opinions. The details of the composition and role of the convention are still to be finalised. Finally, it will be put before the Territory electorate in a referendum. No-one, therefore, should doubt our allegiance to full and open consultation in the formulation of the constitutional centrepiece of our future State. It will be demonstratively the **Northern Territory People's Constitution**.

The task of convincing politicians and political parties operating in Federal and State jurisdictions will, I suspect, be formidable. But I am fortified both by the inherent strength of our case and by positive indications that the people of the States would welcome us as full partners in the Commonwealth.

I am today sending letters to the Prime Minister and State Premiers communicating our intention to proceed with the bid for Statehood and asking for meetings at the earliest possible opportunity.

Soon after, I intend to initiate inter-governmental and inter-party negotiations and a concerted effort to influence opinion interstate in our favour.

As an interim measure, I shall press the Commonwealth as consistently and as hard as I can to amend the Self-Government Act and other relevant legislation, in order to place the Territory in a position of greater similarity to the States in respect of transferred powers and functions. By this phasing-in process, the later transition to Statehood will be eased significantly.

I have been singularly encouraged by the degree of bipartisanship which has so far been demonstrated in this worthy cause and I am grateful for the broad support offered by the Opposition in this Assembly.

In itself, that attests to the validity of the Statehood argument; it will also make the gaining of credibility and acceptability both in the Territory and outside more certain.

Although I would delude myself if I supposed that there will be no differences of opinion and approach, I trust that, as far as possible, bipartisanship can be preserved. To that end, I undertake to keep the Leader of the Opposition fully informed of future developments.

Finally, let me reiterate what I said in June about the timing of Statehood. Of course I believe that it should be achieved as quickly as possible but, because of the complexity of some of the issues and the need for comprehensive consultations and negotiations, I do not wish to set an inflexible timetable.

It is much better to prepare the case well than to move precipitously. But I can assure the Assembly that the momentum we have developed in the recent past will be accelerated. The promotion and winning of Statehood deserve nothing less than total commitment and endeavour from my Government and this Assembly.

Northern Territory Constitutional Disadvantages

Overview

This 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.
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 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;
 - * 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.
 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 provision 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);
- * 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 Law** — 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 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.

Northern Territory Constitutional Disadvantages

The following is a list of what may be regarded as areas of constitutional disadvantages incurred by the Northern Territory as compared to the States as of June 1986. 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 disadvantaged and its implications.

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 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**.

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 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 State 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.

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 with 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);
- (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;
- (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 recognised therein, and the right of appeal from that court to the High Court is guaranteed.

The Supreme Court of the Northern Territory has no such constitutional status, although its existence is recognised 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 the 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 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.

9. **Continued Existence Of The States**

Although the High Court has rejected any doctrine of the reserve 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 the Parliament to make laws on any matter within the authority of the States, not being a 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.

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 there 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.

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 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 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 relations 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.

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 permissible variation in the number of electors per electoral division of 20% either way 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 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 of 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 tenure of his Commonwealth Commission.

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) 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.

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 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 the 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 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.

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.

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.

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.

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 State type responsibility for matters relating to civil liberties;
- (iv) Assumption of responsibility for industrial relations legislation and administration relevant to a State;
- (v) Full membership with equal rights on all Commonwealth/State intergovernment bodies;
- (vi) The recognition of the right of the new State to establish its own University with access to Commonwealth funds for this purpose;
- (vii) 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.

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. This will require wide ranging consultation with the N.T. Aboriginals and with the Commonwealth Government which will need to address in particular, the following elements in the patriated or repealed Act:—
 - * The guaranteed retention of the ownership of existing Aboriginal land by Aboriginals;
 - * The prospect of alternative freehold vested in identifiable Aboriginal owners to replace inalienable freehold vested in 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.

3. Similarly a further consequence of constitutional equality is ownership and control of its minerals and energy resource 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 arrangements;
 - (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.

Land Matters Upon Statehood

The Territory Government's basic position is that a grant of Statehood to the Territory should place the new State in a position of constitutional equality with the existing States. In relation to land, upon a grant of Statehood —

- (a) The radical title to land in the Territory not already vested in the self governing Northern Territory body politic or its authorities, that is, land owned by the Commonwealth or Commonwealth Authorities for State-type purposes, such as in the Alligator Rivers Region plus Uluru and Kakadu National Parks, should be transferred without cost to and become the administrative responsibility of the new State or the appropriate new State statutory authority;
- (b) Any alienated land presently held from the Crown in right of the Commonwealth, including Aboriginal freehold land in the Alligator Rivers Region and any pastoral leases such as Gimbat and Goodparla, should then be held from the Crown in right of the new State;
- (c) Any land leased by the Federal Director of National Parks and Wildlife from Aboriginal owners should become land leased on the same terms by the appropriate new State statutory authority;
- (d) The **Aboriginal Land Rights (Northern Territory) Act** must be patriated to the new State by some agreed method, such that it becomes part of the law of the new State and comes under the administrative responsibility of the new State government;
- (e) This process of patriation of the Act should include appropriate guarantees of Aboriginal ownership;
- (f) The method of patriation of the Act, the ownership guarantees to be provided and all matters concerning Aboriginal land rights in relation to Statehood would be matters for consultation with Territorians, and in particular with Aboriginal Territorians, without preconditions.

The Territory Government is proceeding with the preparation of a detailed Options Paper to assist in this process of consultation on land rights issues. The paper is being prepared by the Office of Constitutional Development within the Chief Minister's Department in conjunction with the Department of Lands and the Department of Law. It will be freely available to the public as soon as it is ready.

The Territory Government will co-operate with traditional Aboriginal owners to ensure that the transition to Statehood is achieved harmoniously and in the best interests of all Territorians, including those Aboriginal owners.

Financial Implications Of Statehood Overview

1. **It is most unlikely that the Territory will lose financially as a consequence of Statehood.**
2. The Commonwealth has consistently argued, since the 1985 Premiers' Conference, that the Territory's financial arrangements will be placed on a basis as identical as possible to those of the States from July 1, 1988. In any case, the arrangements provided in the original Memorandum of Understanding have either matured or been replaced with State-like provisions. Appropriate comparative methodology to assess the Territory's financial needs is to be devised. The Commonwealth will then **inevitably** place the Territory with the States in a single financial assistance pool.
3. **After July 1, 1988, apart from a few transitional arrangements, the Territory will have lost all the advantages provided by its unique status but retained all the disadvantages that go with being a Territory. This conclusion strongly supports a move to Statehood as quickly as possible.**
4. Irrespective of the Territory's constitutional position, the fiscal equalisation process in the longer term will reduce the direct benefit to the Territory's budget of additional revenue earned through the development of the Territory resources. However, the consequent lower per capita assistance from the Commonwealth **will allow the Territory more of the freedom of action available to the States.**
5. For the **foreseeable** future, the Territory will be heavily dependent upon Commonwealth funding and financial policy, much of it discretionary as it affects the Territory. **In these circumstances, Statehood would provide greater security because of the political and constitutional clout of the States as a group.**
6. Statehood would also make it easier for the Territory to deal in domestic and international financial markets.
7. Overall, Statehood should be seen as **a necessary maturing** of the Territory's financial position in which essentially transitional provisions are replaced by a **more secure and defensible system.**

Financial Implications Of Statehood

Background

The financial arrangements between the Northern Territory and the Commonwealth were agreed prior to Self-Government and were set out in the Memorandum of Understanding. That document covered the areas of intergovernmental financial relations which are common between all States, the Northern Territory and the Commonwealth as well as those which are unique to the Territory. The common areas are:

- general revenue payments
- general purpose capital payments
- special purpose payments both capital and recurrent
- semi-government borrowings

At Self-Government these areas were modelled on the arrangements which applied between the States and the Commonwealth and have developed to a point where they have, or will soon become, State-like arrangements.

The various areas which are unique to Commonwealth/Territory financial arrangements are:

- ownership of Uranium
- financial assistance to Aboriginals
- certain provisions in relation to public servants
- NTEC subsidy

Of the former, only general revenue payments and capital payments both general purpose and semi-government borrowings, require some additional resolution while, of the latter, ownership of Uranium and some issues relating to financial assistance to Aboriginals remain outstanding.

A feature of the current arrangements is, however, that while they are similar or are approaching State-like arrangements, there is not the same degree of surety as exists in the States.

Current Status

At the May 1985 Premiers' Conference, the Commonwealth Treasurer announced the Commonwealth's intention that the Territory would become part of the tax sharing pool from 1988 and its needs assessed on the same basis as the States. The Commonwealth Grants Commission's terms of reference for the 1988 review have been drafted on that basis and the Commission has commenced its task with a full series of inspections of State and Territory facilities.

The Commission is required to apply, as far as is possible, the methodology it uses for the States to the Territory's differing and, in some cases, unique needs. It is also required to report on whether special fiscal needs exist in the Territory which are not apparent or differ from those of the States, and which might impair the application of fiscal equalisation if the territory is included in the tax pool after 1988. The Territory will be dependant on the outcome of this review for the level of its general revenue grants whether Statehood comes about or not.

However, in the development of these arrangements two matters which are important to the assured maintenance of an appropriate level of general revenue payments are the level of security which surrounds those payments and continued access to the Commonwealth Grants Commission for assessment of special grant applications.

In the 1984/85 financial year, the Commonwealth reduced the Territory's tax sharing grant by an amount of \$12.6m and in January 1986 it sought a review by the Commonwealth Grants Commission of the levels of financial assistance provided to the Northern Territory in 1983/84 and 1984/85. Both these incidents are unprecedented in intergovernment financial relations. There will be continued opportunity for the Commonwealth to make unilateral adjustments to the Territory's funding similar to that made in 1984/85 while it is not afforded the legislative security provided to the States through the States Grant Act. At present the Territory's funding is provided through the Commonwealth's own Appropriation Acts.

While, the Commonwealth Grants Commission Act 1973 allows for the Commonwealth to seek retrospective reviews of State and Territory funding, it had not done so until January 1986. The Prime Minister has since given an assurance that he would not order such a review of States' funding as appropriate arrangements are in place through the States relativities review processes. The Territory has argued against the appropriateness of such retrospective reviews when financial decisions in respect of previous years have been made and cannot be altered by such a review. The matter is currently being considered by the Commission.

It is essential, if the Territory becomes part of the tax sharing pool after 1988, that these matters relating to the security of its funding are satisfactorily resolved with the Commonwealth. The same situation exists regardless of whether the Territory seeks Statehood.

The matter of continued access to the Commonwealth Grants Commission for special grant assessments is more difficult. While the States retain such a right through the provisions of the Commonwealth Grants Commission Act 1973 they have agreed not to pursue special grants at the 1982 and 1985 Premiers' Conferences for the respective triennia.

It is likely that the Commonwealth would seek to have the Territory provide a similar assurance if it becomes part of the tax pool. However, the Territory may need to argue that continued access to the Commonwealth Grants Commission should be maintained for a minimum period of time until the outstanding methodological issues have been resolved or the special and unique needs of the Territory are overcome to a point where they approach more State like circumstances. Such a position cannot be finalised until after the completion of the Commission's report.

Capital Payments

The Loan Council which comprises the Commonwealth and the States was created by the Financial Agreement of 1927 and is responsible for the determination of the levels of both general purpose capital payments and semi-government borrowings. The Territory is not a member of The Loan Council and although it is represented at its various meetings, the Territory is unable to vote. The 1927 Financial Agreement required unanimous agreement if it is to be amended to allow the Territory membership.

At present the Territory's position differs from the States in that the Territory has large general purpose capital payments relative to its semi-government borrowings. The States' situation is reversed. Such a situation leads to the Territory being affected differently when adjustments are made to the national level of capital payments and borrowings.

The levels of these two programs will vary with the Territory's needs and budgetary circumstances and that development will be little affected by a move towards Statehood.

If the Territory does achieve membership of The Loan Council, its ability to raise additional capital funds will not necessarily be increased. All States and the Commonwealth are required to negotiate their capital programs in The Loan Council. At present the Territory is required to negotiate and seek approval for its program, with large projects being discussed on a project by project basis. This requirement will not be removed if the Territory becomes a State. Accordingly, Statehood will not alter the current restrictions on borrowings which govern the Territory's ability to respond to major new initiatives requiring large capital input.

The Territory has been subject of certain advantages as well as restrictions in its borrowing arrangements. Offshore borrowings have not been possible until 1986/87, while on-shore borrowing has had the benefit of a Commonwealth guarantee. The Commonwealth has indicated that continuation of the guarantee will be reviewed in 1987/88. It is likely to be withdrawn at that time consistent with the Commonwealth's intention of gradually placing the Territory on a State-like basis. These developments are also proceeding independent of the Territory's move towards Statehood.

Uranium

The issues in respect of Uranium are twofold — ownership and restriction on sales. The former ought to be resolved through the achievement of Statehood while the latter will continued to be a limitation on the exploitation of this resource. The current Grants Commission processes compensate the Territory for its current inability to gain revenue from Uranium royalties. However the Territory is in a position where it may be able to take advantage of an above standard revenue effort through the application of its profits based royalty regime. The current reimbursement arrangements do not allow such consideration by the Commonwealth Grants Commission. The change in ownership arrangements and the direct receipt of royalties would reduce the Territory's reliance on Commonwealth funding and would therefore be an advantage. On the other hand, a change in ownership arrangements would release the Commonwealth from the current requirement to contribute to the capital costs associated with infrastructure needed to support Uranium mining.

Financial Assistance To Aboriginals

The Territory is in a unique position in respect of the services it provides to Aboriginal people. By comparison, Aboriginals form a far larger proportion of the Territory's population relative to the States and their needs are relatively greater. It is likely that the level of need will continue to grow at a rate which is greater than the growth in capacity.

The Memorandum states that 'responsibility for policy planning and co-ordination of Aboriginal affairs will remain with the Commonwealth government'. The relative

responsibility of the two governments has been largely resolved while the financial capacity to provide an adequate level of service will be considered by the Commonwealth Grants Commission in the relativities review. The level of services to Aboriginal people will be a very significant issue in the relativities review when these special needs and significant expenditure disabilities faced by the Territory in delivery of services to remote areas is analysed. Matters which require further negotiation are responsibility and associated capacity for outstations and excisions.

Conclusion

It is important to recognise that the Memorandum of Understanding framework established a State-like arrangement in which certain transitional arrangements applied. While particular provisions of the Memorandum were necessary during the initial years of Self-Government, many have now been overtaken by specific changes agreed at Premiers' Conferences. These financial arrangements are inexorably moving to State-like arrangements.

As for future funding, levels for recurrent services will be recommended by the Commonwealth Grants Commission and the Territory can rely on the Commonwealth acceptance of the Commission's recommendations. Capital funds are far more discretionary and are not subject to review and recommendation by an independent body like the Commonwealth Grants Commission. The Territory will still therefore only be able to commit itself to major capital expenditure or participation in major projects with the consent of the Commonwealth. These de-facto restrictions will not be made any less onerous by the achievement of Statehood.