

## Constitutional Milestones

### and

## A Short History of Government in the Northern Territory

<b>Pre European Settlement</b>	<p>The constitutional history of the Northern Territory has its roots in the long period of occupation by the Aboriginal people of Australia prior to European settlement. The Aboriginal people had their own systems of governance and traditional customary laws.</p> <p>Today, the Aboriginal people still maintain their strong and distinctive cultural heritage, language, systems of governance and customary laws.</p>
<b>1829 to 1849</b>	<p>The first European settlements in the Northern Territory - which did not last long - were established as military bases (Melville Island, 1829; Port Essington, 1849). These settlements were ruled by their commanders whose decisions were based on instructions from senior officers and the Governor in Sydney.</p>
<b>1856</b>	<p>The <i>Constitutional Act</i> of 1856 provided South Australia with an elected parliament to make its laws. In that year, all South Australian men over twenty-one years of age who were British subjects - including Aborigines - were given the right to vote.</p> <p>Also in that year, Victoria was the first colony to introduce secret voting (the secret ballot) in 1856, followed later that year by South Australia. By 1879, it was used for elections in all the other Australian colonies.</p>
<b>1863</b>	<p>In 1863, the Northern Territory was separated from New South Wales to become part of South Australia. However, nobody in the Territory could actually vote until 1882, because there were no arrangements to put their names on the list of voters (the 'electoral roll').</p>
<b>1869</b>	<p>The first European settlers came to live in Darwin, or Palmerston as it was then called.</p>
<b>1874</b>	<p>Local Government begins when the Territory's first local government council (Palmerston District Council) was established. The Palmerston District Council continued until the Darwin Town Council replaced it in 1915.</p>
<b>1884</b>	<p>The South Australian Parliament passed the <i>Northern Territory Representation Act</i>, which made the Territory a single electoral district and allowed the Northern Territory to send two members to the Legislative Assembly and gave representation in the Upper House.</p>
<b>1890</b>	<p>The South Australian Government extended to the white adult residents of the Northern Territory full voting rights.</p>
<b>1895</b>	<p>In 1894, the South Australian Parliament passed the <i>Constitution (Female Suffrage) Act</i> which was enacted in 1895, made South Australia the second place (after New Zealand in 1893) in the world to extend the vote to adult women and the first in the world to gain the right for women to stand for election.</p>
<b>1901</b>	<p>In 1901, the Australian colonies (now the States) joined together to become the Commonwealth of Australia and the first Commonwealth (sometimes</p>

called Federal) Parliament was elected. It was not compulsory for people to enrol as voters or to vote. The only women able to vote were those in South Australia (including the Northern Territory) and Western Australia, where they had voting rights under State laws.

**1902-10**

In 1902, negotiations between the South Australian and Commonwealth Governments began for the transfer of the Northern Territory from South Australia to the Commonwealth. In 1907 the South Australian Parliament passed the *Northern Territory Surrender Act* and in 1910 the Commonwealth Parliament passed the *Northern Territory Acceptance Act*.

**1911**

The responsibility for governing the Northern Territory was transferred from South Australia to the Commonwealth Government. Territorians lost their right to vote in federal elections. There were too few people in the Territory to justify them having their own member in the Commonwealth Parliament and it was not possible for them to be counted among voters in one of the states. Territorians had no say in what happened to them except at the local government level.

**1922**

The people of the Northern Territory were finally allowed to elect one member of the Commonwealth Parliament's House of Representatives, but the Member had no right to actually vote in the parliament only to observe.

**1924**

In 1924, Australia became one of the first countries in the world to introduce compulsory voting for all adults.

**1926**

From 1926 to 1931, the Northern Territory was divided into 'North Australia' (administered from Darwin) and 'Central Australia' (administered from Alice Springs), but the Territory was only entitled to elect one member of the Commonwealth Parliament to represent the whole Territory.

**1929**

In 1929, the Commonwealth Government decided to bring back the right for all adults to vote, but the mayor and members of the Darwin Town Council resigned in protest before it happened. The Council continued with members appointed by the Commonwealth until the Town Council abolished itself in 1937 at its own request. The Commonwealth public service departments took over the local government functions.

**1936**

After 1936, the Northern Territory's Member of the House of Representatives could speak and vote in the parliament, but only on matters that directly concerned the Territory.

**1942 to 1946**

In 1942, during the Second World War, the Territory was placed under military control and the NT Administration was moved to Alice Springs and it wasn't until 1946 when full civil Administration was resumed.

**1947 to 1948**

In 1947, the first seeds of representative democracy were sown in the Northern Territory with the creation of the Legislative Council, which had six elected members and seven official members presided over by the Administrator. The first meeting of the new Legislative Council was held in 1948.

The Council was given the power to make laws and regulations for the peace, order and good government of the Territory, subject to assent by the Administrator or the pleasure of the Governor-General.

The Administrator could also vote during debates (and could vote a second time if the members were evenly divided on an issue). The appointed, or

	<p>official, members were generally senior public servants within Commonwealth government departments. This, of course, meant that decisions relating to the government of the Northern Territory were controlled by the Commonwealth government.</p>
<b>1953 to 1957</b>	<p>A law was passed in 1953 to reintroduce local government in Darwin, but it wasn't until 1957 that the people of the town agreed on how it was to work and the Corporation of the Municipality of Darwin was established.</p> <p>Darwin remained the sole Territory centre with a fully elected local government until 1971.</p> <p>In 1956 the Legislative Council established the Select Committee on Constitutional Reform. That Committee in 1957, tabled its report suggesting constitutional changes – including increase in numbers of elected Council members, and some control over finance and executive government. In 1958, because of the undue government delay in considering the Committee's recommendations, all six elected members of the Legislative Council resigned in protest.</p>
<b>1959</b>	<p>In 1959, the Member for the Northern Territory in Canberra was allowed to vote on any matters to do with the Northern Territory.</p> <p>In addition, membership of the Legislative Council increased to seventeen: eight elected members, six official members and three non-official members. The Administrator's Council comprising the Administrator, two official members and three elected members of the Council was established as an advisory body to the Administrator.</p>
<b>1962</b>	<p>Federal voting rights extended to adult Aboriginal people. Also in that year the Legislative Council petitions the Commonwealth Parliament in the form of a <i>Remonstrance</i> outlining its constitutional grievances with the Commonwealth and seeking greater control over Territory Affairs.</p>
<b>1965</b>	<p>The Administrator, as Presiding Officer, was removed from membership of the Legislative Council and replaced by a member elected from the elected or non-official members.</p>
<b>1967</b>	<p>A National Referendum amended the Australian <i>Constitution</i> to enable the Commonwealth parliament to make laws for Aboriginal people and to count them in the Census.</p>
<b>1968</b>	<p>The composition of the Legislative Council was amended with the non-official seats being abolished and recreated as elected member seats, which meant there were eleven elected and six official members.</p> <p>In the same year, the Member for the Northern Territory was given the same voting rights as other members of the House of Representatives.</p>
<b>1971</b>	<p>The Corporation of the Municipality of Alice Springs (the Alice Springs Town Council, elected by the residents of the town) was established.</p>
<b>1973</b>	<p>The voting age throughout Australia was lowered from twenty-one to eighteen. Also in that year, a Joint Commonwealth Parliamentary Committee on the Northern Territory was established to review constitutional progress and reform in the Territory.</p>
<b>1974-75</b>	<p>The Commonwealth Parliament passed the <i>Senate (Representation of Territories) Act</i> giving the Northern Territory two Senators in the next</p>

general elections and in 1975, the Northern Territory elected two senators with full voting rights to the Senate.

Further in that year the Joint Commonwealth Parliamentary Committee on the Northern Territory's report to the Commonwealth Parliament recommended the first steps in the devolution of executive responsibility. Subsequently the Legislative Council was replaced by a fully elected Legislative Assembly of nineteen members, but with no increase in its powers. However, the Administrator's Council was reconstituted to comprise the Administrator and five elected members.

In 1975, following the devastation of Darwin caused by Cyclone Tracy (Dec, 1974) the Joint Commonwealth Parliamentary Committee on the Northern Territory's second report to the Commonwealth Parliament recommended that there should be no alteration to its first Report and its recommendations - including the call for progressive transfer of functions towards self-government.

**1976**

The Commonwealth Parliament passed the Aboriginal Land Rights (Northern Territory) Act. The Act established the basis upon which the Aboriginal people in the Northern Territory could, for the first time, claim rights to land based on traditional occupation. This Act was the first Australian law, which allowed a claim of title if claimants could provide evidence of their traditional association with land.

Also in that year, Administrator's Council renamed to the Executive Council.

**1977**

Katherine and Tennant Creek both agreed to establish municipal councils in 1977.

Following an Australia-wide referendum in 1977, Territorians were given the right to vote in referendums, with their votes being counted as part of the total national vote, though not as a State vote. (The majority of people in the majority of states must agree on a 'yes' vote to pass a referendum question.)

The Commonwealth Government announces a program to grant Northern Territory responsible self-government from 1 July 1978 with a view to eventual Statehood. The program provided for the establishment of a separate Government of the Northern Territory from 1 July, 1978 with local Ministers and exercising executive control over and responsibility for its own finances.

**1978**

The Territory was granted self-government with the passing of a law - the *Northern Territory (Self-Government) Act 1978* - by the Commonwealth Parliament. Some powers were kept by the Commonwealth (including control over industrial relations, uranium mining, some environment laws, Aboriginal land rights and some national parks), but the important thing, Territorians were now able to make most decisions about how the Territory should be governed through their Legislative Assembly.

Also in 1978, the Northern Territory Government made it possible for community government councils to be set up in small communities and towns, which meant, that even quite small places could make decisions about local matters without having to await approval from Darwin.

<b>1980</b>	On 30 July 1980, the Queen put her seal to a document that changed the office of Mayor of Darwin into that of Lord Mayor.
<b>1982</b>	The passing of legislation and electoral redistribution conducted in 1982 resulted in the number of members of the Legislative Assembly being increased from 19 to 25 and this became effective from the general election of 3 December 1983.
<b>1984</b>	In 1984, enrolment and voting became compulsory for all Aboriginal adults in Commonwealth, Northern Territory and local government elections.
<b>1985</b>	<p>The Palmerston Town Council and the Litchfield Shire Council were established. Since then, many communities have achieved some form of local government.</p> <p>Also in that year, the Northern Territory Government commenced the Statehood for the Northern Territory campaign, which would give citizens of the Northern Territory the same rights as other Australians.</p> <p>To this end, in August 1985, the Legislative Assembly established a bi-partisan Select Committee on Constitutional Development to report and make recommendations on:</p> <ul style="list-style-type: none"> <li>• a Constitution for the new State and the principles upon which it should be drawn;</li> <li>• the method to be adopted to have a draft new state Constitution approved by or on behalf of the people of the Northern Territory; and</li> <li>• the issues, conditions and procedures relating to the entry of the Northern Territory into the Australian Federation as a new State.</li> </ul>
<b>1986</b>	<p>All the Australian States and the Commonwealth Parliaments, and Britain, pass legislation (called Australia Acts) to make Australian law independent of British parliaments and courts. The Australia Acts ended the inclusion into Australian law of British Acts of Parliament and abolished all remaining constitutional provision for appeals from Australian courts to the Privy Council in London. Since then Australian law, which, was built on British foundations, now reflects the decisions of Australia's own legislatures and courts.</p> <p>The Commonwealth's <i>Australia Act</i> was the final one of the seven Acts of the seven Australian parliaments needed for a constitutional change to the whole Federation. The action in changing the Commonwealth legislation affected the Northern Territory because it is a territory under the Commonwealth.</p>
<b>1988</b>	The <i>Memorandum of Understanding</i> between the Commonwealth and Northern Territory Governments that was formalised at Territory Self-Government in 1978, which related to a special Commonwealth and Northern Territory financial arrangement was terminated. As a result of this action, the Northern Territory was funded on the same basis as the other States. Also in that year, the Northern Territory joined with the Commonwealth and States as a member of the Loans Council.
<b>1992</b>	The High Court of Australia hands down its <i>Mabo</i> decision, which recognised the rights of the Meriam people in the Torres Strait, had over their traditional lands. This decision overturned the previous <i>terra nullius</i> theory that Australia was classified as uninhabited before European

settlement.

1993

As a result of the High Court's *Mabo* decision the Commonwealth Parliament passes the *Native Title Act* enabling Indigenous people throughout Australia to claim traditional rights to unalienated Crown land

1994

The Northern Territory Government secures from the Commonwealth Government, following submissions from the Northern Territory to the Council of Australian Governments (COAG), a joint Commonwealth/Northern Territory Statehood Working Group to examine and report on the implications of a grant of statehood to the Northern Territory.

1995

A poll conducted in March 1995, found that Territorians were strongly in support of the proposition to make the Northern Territory Australia's seventh State. Subsequently the Northern Territory Government obtains a commitment from the Prime Minister and the State Premiers (with some reservations by the New South Wales Premier) for the Territory to achieve Statehood by 2001.

1996

The Northern Territory Statehood Working Group, established in 1994, presented its *Final Report* (May 1996) to the Northern Territory and Commonwealth Governments. The Report discussed in detail the issues and options concerning a grant of Statehood to the Northern Territory, although not necessarily favouring proposals put by the Northern Territory.

In October of that year, the Legislative Assembly unanimously passed a resolution, in the form of a *Remonstrance*, to petition the Commonwealth Parliament in connection with the exercise for the first time since self-government of the Commonwealth's power to override the Territory's legislation relating to euthanasia. The *Remonstrance* outlined a series of grievances in regard to the Commonwealth Parliament's intention to override the Territory's euthanasia law that was enacted in 1995, which was called the *Rights of the Terminally Ill Act*.

*Also in November 1996, the Committee on Constitutional Development (which was established in 1985) presented its final report and a draft constitution to the Legislative Assembly recommending that:*

- a new constitution be adopted for the Northern Territory to replace the Northern Territory (Self-Government) Act, to be prepared by Territorians;
- a preferred procedure for adopting a Northern Territory Constitution which included referring the Committee's draft constitution to a Northern Territory Constitutional Convention, with broad representation from across the Northern Territory community and comprising a majority of elected members; and
- the draft Constitution as adopted by that convention to be submitted to a referendum of Northern Territory electors.

In December 1996, the High Court of Australia handed down the *Wik* decision' in regard to the rights of indigenous Australians in respect of Australian lands; in particular, lands over which pastoral leases have been granted. This decision had strong implications for the Northern Territory because of its large pastoral leases and holdings. To date some issues regarding the rights of the indigenous peoples and leaseholders have not

been finalised.

1997

The Commonwealth Parliament exercises its plenary power, under the Australian *Constitution*, in respect of the Territory for the first time since self-government, by enacting the *Euthanasia Laws Act 1997* so as to amend the *Northern Territory (Self-Government) Act 1978* to remove the power of the Northern Territory to make laws in respect to euthanasia and assisted suicide.

This action by the Commonwealth Parliament, was seen by many as being a major interference by the Commonwealth in Northern Territory affairs and a significant setback for progressive constitutional development and Statehood. Only by becoming a State, could the Northern Territory overcome such control by the Commonwealth.

1998

In March/April 1998, a constitutional convention (called the *Statehood Convention*) was convened by the Northern Territory Government. The Convention was held in Darwin and was made up of appointed delegates to consider and report on important issues relating to Statehood for the Northern Territory. The Convention was given four issues to consider:

- Should the Northern Territory become a State?
- What should be the name of the new State of the Northern Territory?
- When should the Northern Territory become a State?
- What should be the form of the Constitution for the new State?

The Convention passed thirty-six resolutions of which six were of note. These were:

- the Northern Territory should become a new State in the Commonwealth of Australia;
- the new State be called the State of the Northern Territory;
- the Northern Territory become a State as soon as possible;
- the recognition of Aboriginal customary law as a source of law in the new constitution;
- the level of Senate representation; and
- a *Declaration of Statehood*.

The Convention also passed another important resolution in regard to the question on Statehood that should be put to Northern Territory voters. The question contained three parts:

- whether the Northern Territory should become a State;
- whether there was support for the name "the State of the Northern Territory"; and
- whether the draft Constitution should be adopted.

In August 1998, the Prime Minister announced in Canberra that the Commonwealth Government supported Statehood for the Northern Territory and set 1 January 2001 as the target date.

Also in that month, the Legislative Assembly passed the *Referendums Act*. The first action under this legislation was to provide for a question on

Statehood to be put to Territory voters. Subsequently, the Legislative Assembly agreed that there would be a single referendum question as follows:

*“Now that a constitution for a State of the Northern Territory has been recommended by the Statehood Convention and endorsed by the Northern Territory Parliament:*

*DO YOU AGREE that we should become a State?”*

On 3 October 1998, the Statehood referendum question, that was agreed by the Legislative Assembly, was rejected by a majority of the Northern Territory voting community in a Territory wide indicative referendum. The result was a No vote with a majority of 51.3%. The negative vote thus halted the Northern Territory's push in becoming Australia's seventh State by 2001.

On 7 October 1998, the Legislative Assembly resolved that the Assembly's Standing Committee on Legal and Constitutional Affairs conduct an inquiry into and report on reasons for the failure of the Northern Territory Referendum of October 1998 and to ascertain support for the Northern Territory gaining Statehood by 2001. That Committee was also required to recommend to the Assembly appropriate means whereby community support for Statehood could be achieved.

**1999**

In April 1999, the Legislative Assembly's Standing Committee on Legal and Constitutional Affairs tables its report to Parliament regarding the failed Northern Territory Statehood referendum. The Committee found, amongst other things, that there was a lack of information on the process of constitution-making and a lack of understanding about Statehood.

Most importantly, the Committee found that there was overwhelming community support for Statehood within the Northern Territory, and that the community wanted the process of constitutional development to continue.

Further, it noted that for an inclusive process to be effective, Aboriginal interests and the protection of their rights had to be seriously addressed, if Statehood was to be achieved.

Subsequently, the Committee recommended, amongst other things, that the constitutional development process recommence, but not before an inclusive and comprehensive community education program on the implications of Statehood had been conducted.

In December 1999, in accordance with the *Commonwealth Electoral Act* 1918, the Commonwealth Electoral Commissioner determined that the Northern Territory would be entitled to two members to be elected to the House of Representatives at the next Commonwealth General Election. This was as a result of population changes between Australian states and territories.

The new *Electorate of Solomon* would comprise Darwin, Palmerston and inner rural areas and the new *Electorate of Lingjari* would comprise the remainder of the Northern Territory, including the Territories of the Cocos (Keeling) Islands and Christmas Island.

**2000-2002**

In February 2001, the Northern Territory Government taking into account the Legislative Assembly's Standing Committee on Legal and

Constitutional Affairs report, informed the Commonwealth Government that was still committed to the achievement of Statehood. However, it was for the people of the Northern Territory to make a decision on the matter.

In August 2001, with the election of a new Government, Statehood was put back on the agenda as part of the new Government's program, but on the basis, that the pursuit of Statehood would only occur after a fully inclusive process of education and consultation. The Government would only proceed to Statehood if and when a Statehood proposal had gained the widespread support of Territorians.

In October 2001, the Legislative Assembly provided additional references to its Standing Committee on Legal and Constitutional Affairs to inquire, consider, make recommendations and report to the Assembly from time to time on any matter concerned with legal or constitutional issues, including any proposed changes to the legal or constitutional relationship between Northern Territory and Commonwealth, including the admission of the Northern Territory as a new state of the Commonwealth.

In February 2002, the Chief Minister rules out any referendum to coincide with the next Territory general election and that the Statehood process has to be community driven.