



# RESEARCH NOTE

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## Practical Mechanism for the Northern Territory Achieving Statehood

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### History

At Federation, the Northern Territory was physically and legally part of South Australia. South Australia then surrendered the land to the Commonwealth by enacting the *Northern Territory Surrender Act 1907*. The Commonwealth subsequently accepted the land and passed the *Northern Territory Acceptance Act 1910*. Once this had been done, section 111 of the Federal Constitution provided that the land in the Northern Territory became "subject to the exclusive jurisdiction of the Commonwealth".

The Commonwealth exercised control over the Northern Territory from 1910 until 1978. At that time the Northern Territory was given a form of self-government with the Commonwealth enacting the *Northern Territory (Self-Government) Act 1978*.

### Perceived Problems with the Current Form of Self-Government

The Northern Territory only has a *de facto* form of self-government under the *Northern Territory (Self-Government) Act 1978*. The Commonwealth retains the power to repeal the *Northern Territory*

*(Self-Government) Act 1978* and resume control of the Territory. Also, because the legislation is Commonwealth legislation, it is not open to the Northern Territory to amend its own Constitution.

The *Northern Territory (Self-Government) Act 1978* provides the Northern Territory Legislative Assembly with certain powers. However, where no express power is given then the Legislative Assembly can not acquire the power without the Commonwealth's consent. Even where the Legislative Assembly enacts legislation under an existing and legitimate head of power, section 8 of the *Northern Territory (Self-Government) Act 1978* enables the Governor-General to withhold assent to that legislation.

It could be argued that the Northern Territory lacks permanence in the sense that the States have constitutionally guaranteed permanence. If the Commonwealth did resume control over the Territory then it could subdivide the Territory. The Commonwealth has the constitutional power to vary the borders of a Territory, whereas there is no equivalent power to unilaterally alter the territorial boundaries of a State.

Section 122 of the Constitution provides the Commonwealth with a degree of control over the Northern Territory's representation in the Federal Parliament, whereas the States have a constitutionally entrenched right to representation. Section 7 of the Federal Constitution guarantees all original States a minimum of six senators. Section 24 guarantees original States a minimum of five members in the House of Representatives. These minimum levels of representation do not necessarily have to apply to the Northern Territory if it becomes a State. Section 121 of the Constitution allows the Commonwealth to determine the level of representation at the granting of Statehood.

One problem with the Northern Territory's status becomes apparent when examining a federal referendum. The problem is that when deciding whether there is an agreement by a majority of States, the votes of Northern Territory residents are not counted.

## Arguments Against the Northern Territory Achieving Statehood

Environmental groups and Aboriginal communities are among those who have expressed concern about the Northern Territory becoming a State. Environmentalists fear that there will be increased pressure to mine Kakadu. Similarly, prominent Aboriginals have asserted that Statehood would put at risk the interests of the Aboriginal people. They argue that there would no longer be Commonwealth protection for Aboriginal land holders (such as the *Aboriginal Land Rights (Northern Territory) Act*). Mr Pat Dodson (a prominent Aboriginal Spokesperson) has claimed, in an article "Statehood for the NT" (*Aboriginal Law Bulletin*, V2 (39) June 1989 p14-16), that if the Northern Territory became a State then the aboriginal ownership of Uluru and Kakadu would be at risk, as the new government could resume control of the land. Aboriginal peoples may lose the financial assistance that the existing Commonwealth Aboriginal Benefit Trust Account provides to aboriginal communities.

## How Statehood could be achieved

It would be possible to amend, by referendum, the existing Federal Constitution to make the Northern Territory a State. However, perhaps the more practical method would be to utilise the existing constitutional provisions to admit the Northern Territory as

a State. For example, section 121 of the Federal Constitution provides that:

The Parliament may admit to the Commonwealth or establish new States, and may upon such admission or establishment make or impose such terms and conditions, including the extent of representation in either House of the Parliament, as it thinks fit.

The Commonwealth could therefore enact legislation to grant Statehood to the Northern Territory. The legislation could take the form of a new Constitution for the Northern Territory (presumably with the prior approval of the people of the Northern Territory) and could provide that it comes into effect simultaneously with the grant of Statehood.

If the Northern Territory is admitted by Parliament as a new State, then its status should be inviolable and immune from action by the Commonwealth in the same way that existing States are immune. Section 106 of the Federal Constitution ensures this by providing that:

The Constitution of each State of the Commonwealth shall, subject to this Constitution, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State.

As there is nothing in the wording of the above section to limit

its application to original States, it would protect newly admitted States.

## Conclusion

Should the Northern Territory be admitted as a State, it would create Australian legal history by making inaugural use of section 121 of the Constitution. Assuming that the Commonwealth Parliament agrees and the people of the Northern Territory are in favour of becoming a State then it should be possible. Certainly, academic opinion seems to be that there are no insurmountable legal impediments to the Northern Territory achieving Statehood.

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*Views expressed in this Research Note are those of the author and do not necessarily reflect those of the Parliamentary Research Service and are not to be attributed to the Department of the Parliamentary Library. Research Notes provide concise analytical briefings on issues of interest to Senators and Members. As such they may not canvas all of the key issues.*

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