



The Council of Territory Cooperation in the 11th Assembly - An Experiment in Parliamentary Committee Oversight in the Northern Territory

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The Origins of the Council of Territory Cooperation

The Legislative Assembly of the Northern Territory is an Assembly of 25 Members now in its twelfth iteration.

During the 11th Assembly (which commenced with a majority government in August 2008, but featured a minority government from June 2009 until the general election in August 2012) the Legislative Assembly was host to a new committee with a high profile and significant role in keeping the then Government in office with the support of a non party aligned Member.

The creation of the committee eventuated after a former Cabinet Minister, Hon Marion Scrymgour, resigned from the Labor Government on 5 June 2009 and moved to the cross-bench joining the Member for Nelson, an independent Member of some years standing.

As a consequence, the Government's numbers shifted from a majority 13 to a minority 12 in the 25 Member Assembly, however Ms Scrymgour undertook to support the annual Appropriation Bills and stated she would not support a Motion of no Confidence in the Government, which if successful, would trigger an Extraordinary General Election under the *Electoral Act*, which sets four year fixed terms in the Northern Territory.

On 4 August 2009, another Government Minister (Hon Alison Anderson) resigned and moved to the cross bench². The parliamentary numbers had thus shifted to 11 Labor Members, 11 Country Liberal Members and three independent Members.

Later the same day (4 August), Ms Scrymgour rejoined the Government giving it 12 Members again.

The two remaining independents along with the Opposition subsequently wrote to the Speaker to seek a sitting of the Assembly to debate a Motion of No Confidence.

Both the Government and Opposition sought the support of the independent Members in order to either form or retain government.

¹ BA LLB LLM. Clerk of the Legislative Assembly of the Northern Territory.

² Alison Anderson was also a Minister in the 12th Assembly Country Liberal Ministry from August 2012 until 9 September 2013.

In the lead up to the vote on the Motion of No Confidence, the Member for Nelson secured an agreement with the then Chief Minister to implement a new body to be called the *Council of Territory Cooperation*.

The Agreement

The establishment of the Council of Territory Cooperation was outlined in the annexure to the agreement between the Member and the Chief Minister tabled on the 14th of August 2009 under the heading *Change Political Culture*.

The agreement contained stated aims as follows:

- *Provide for stable government for the people of the Northern Territory*
- *Enhance parliamentary democracy and to ensure an accountable and transparent government, public service and Parliament*
- *Provide for Mr Wood³ to be consulted in areas of government policy and also issues where he has specific interest⁴.*

The agreement went on to state that the proposed Council of Territory Cooperation was to be comprised of two Government, two Opposition and at least one Independent Member of the Assembly. At the time it was envisaged that the Council was not to be a Committee of the Assembly, rather it was to be established by statute⁵.

The Council was conceived by the Member for Nelson to have significant status and investigative powers and to operate under a new cooperative model of governing which would cut across party lines and bring all Members together in a collegiate fashion to debate and decide on matters of public policy and provide enhanced public scrutiny and accountability.

After Government consideration the Member for Nelson and the Government settled on the proposal being implemented as a Sessional Committee of the Assembly.

While the dynamics of the discussions leading to this outcome are not known by the author, it is surmised that the model was the most suitable for the Government as a vehicle for keeping its commitment without establishing a statutory body which would have Opposition Members on it with investigative powers probing into Government departments.

The Council of Territory Cooperation (CTC) was very active for its three years of operation. Its success in terms of scrutiny and a model of participation and outcomes is subject to some differing views which are canvassed later in this paper.

While this paper looks at the CTC from the perspective of scrutiny and oversight, it also examines the perspective of the administration of Committees in a parliamentary environment and the effectiveness of the model.

The main aim of the agreement and the rationale behind the creation of the CTC is to be found in the following words:

³ The Member for Nelson, Gerry Wood MLA.

⁴ Parliamentary Agreement, Tabled Paper No 458, Laid Upon the Table on 14 August 2009.

⁵ As described in the paper *Motion of No Confidence and Related Events – August 2009* presented by Ian McNeill to the 41st Conference of Presiding officers and Clerks in July 2010 at page 7.

The approach and mechanisms of governance in the Northern Territory are often overly Party political and adversarial in nature. There should be enhanced recognition of the contribution that can be made by al MLAs and those from the broader Territory community..⁶

The CTC was established by Terms of Reference tabled in the Legislative Assembly on 12 October 2009.

The Committee's terms of reference required: *That the Committee shall be provided with all necessary staff, facilities and resources and shall be empowered, with the approval of the Speaker to appoint persons with specialist knowledge for the purposes of the committee⁷*

In establishing the Committee secretariat, the Department of the Legislative Assembly consulted the Member for Nelson and the Government to provide staffing and resource requirements. The details of these arrangements are also considered below.

During his tabling statement in the Assembly on the CTC's Final Report on 1 May 2012, the Chair said the Council had *opened up new ground* and achieved *something other committees have not* in respect of *openness and transparency in government*.

Establishing the CTC

The Committee System in the Legislative Assembly of the Northern Territory is managed by a Clerk Assistant and supported by a committee secretary, a senior research officer and two administrative assistants.

These officers were (in the 11th Assembly) responsible for the operation and support of the Standing Committee on Legal and Constitutional Affairs, the Estimates and Government Owned Corporations Scrutiny Committee, the Select Committee on Youth Suicides, the Sessional Committee on the Environment and the Public Accounts Committee.

While the CTC was a Sessional Committee of the Assembly in every other way, its administration evolved to give it a separate and distinct administrative status separate to the ordinary administration of Assembly Committees⁸.

This reflected the nature of the agreement and its unusual relationship with the Department of the Legislative Assembly.

While purportedly promoting accountability and scrutiny, the mechanism to allow the Committee to exist was arguably a compromise as it blurred the separation of Assembly administration from the Executive due to a requirement that the Department of the Chief Minister demand the Clerk of the Assembly, as the Chief Executive of the Department administering the Committee, provide monthly reports to the Government on the expenditure and operations of the CTC.

This unique arrangement, and the Government's use of the Assembly as the vehicle to host the 'Council' which was by any other name a committee, resulted in the creation of what became in essence, a second and competing committee system, which, had it flourished beyond the 11th Assembly may have lead to a wholesale rethink of the existing Committee System in the Territory Assembly.

⁶ Parliamentary Record 11th Assembly No 7 10-20 August 2009 p3332.

⁷ Clause 18.

⁸ Arising from Recommendation 20 of the First Report where the CTC sought 'The Government' provide a secretariat and resources.

The CTC began with a broad remit and self referencing powers, and as it undertook its program of work it travelled more extensively, acquired more areas of study and held more hearings, requiring more resources.

The result of the evolution of the CTC meant that its Chair attained a role which was in some ways more akin to a Minister with a roving cross portfolio brief than a Committee Chair, particularly as the Government opened up more to the CTC once the Opposition Members had departed.

After commencing operations within the existing Assembly Committee System, just two months of work demonstrated the urgent need for more dedicated resources. The Department of the Legislative Assembly made a submission to the Government during November 2009 to seek budget supplementation to establish and support the separate CTC secretariat.

At approximately \$600 000 per annum, the wide ranging nature of the CTCs remit meant that the budget for this one committee exceeded that of the entire Committee Secretariat of the Assembly.

The budget included a separate Secretary to the CTC who was engaged at a senior contract level.

The level of this officer was determined by the Government to reflect the status of the CTC as an important symbol of the ongoing commitment of the Government to the agreement between the Chief Minister and the Member for Nelson. This decision meant that the CTC would become an extraordinary entity rather than a normal part of the Committee System.

This was because the creation of the position at such a senior level meant that the Committee secretary was unable to fall within the existing Committee System since the Secretary to the CTC was now established at an executive band higher than the head of the Assembly's Committee System, the Clerk Assistant – Committees.

The outcome was that the Secretary of the CTC reported directly to the Clerk, in a parallel arrangement with the Clerk Assistant – Committees also reporting to the Clerk, who in turn reported to the Government on the administration and expenditure aspects of the CTC.

CTC - Work and Outcomes

It is worthwhile noting that the Member for Nelson had the agreement with the Chief Minister and not with the Government.

The agreement, which was tabled in the Assembly on the 14th of August 2009 made it clear that the Government could rely upon the support of the Member for Supply and Appropriation Bills and No Confidence Motions for so long as the Hon Paul Henderson MLA remained the Chief Minister⁹.

From then until the 2012 election, the Chief Minister was consistently depicted in political cartoons in the NT News in a maid's uniform doing the bidding of the Member for Nelson.

Similar to the recent experience in the Australian Parliament, the Opposition consistently emphasised that minority government was an aberration rather than the opportunity seen by the Member for Nelson, and in the 'winner take all' Westminster system of Government; the Member for Nelson faced early challenges to his attempt to overcome party politics.

He recognised this challenge as follows:

⁹ "This agreement is not with the Labor Party" Parliamentary Record 11th Assembly No 7page 3333.

I am using this unique opportunity to try to change things. If I fail, people will make that judgment, but I am going to try because we need a more inclusive government instead of the division caused by the party political system and so I have agreed to try to change the political culture¹⁰.

The CTC commenced operations with its first meeting on 14 October 2009 attended by the original Members who were:

- Gerry Wood, Member for Nelson (Ind) Chair
- Alison Anderson, Member for Macdonnell (Ind)
- John Elferink, Member for Port Darwin (CLP)
- Michael Gunner, Member for Fannie Bay (ALP)
- Marion Scrymgour, Member for Arafura (ALP)
- Willem Westra Van Holte, Member for Katherine (CLP)

The Committee Chair prefaced his first report by stating the CTC had broken new ground as the Committee did not have a majority of Government Members nor was it chaired by a Government Member¹¹. This paradigm was rather short lived.

The second report was tabled in May 2010 and by the time of the tabling of the Third CTC Report in November 2010 the Opposition Country Liberals Members of the CTC had all resigned.

The Opposition did not return to participate in the CTC itself for the life of the Committee; however there was Opposition Member participation at subcommittee level during 2011 and 2012.

The exit of the Opposition Party from the CTC was arguably a blow to the founding principles of the Committee itself in terms of a new parliamentary model of governance (as opposed to the accepted and surviving Executive model relating to the two other arms of Government in a more distinct relationship). The scrutiny and accountability role of the CTC would no longer benefit from that extended cross-party participation.

By the time the CTC concluded operations on the eve of the 2012 General Election the membership was:

- Gerry Wood, Member for Nelson (Ind) Chair
- Marion Scrymgour, Member for Arafura (ALP)
- Lynne Walker, Member for Nhulunbuy (ALP)

The Council presented a total of four substantive reports, as well as some shorter travel reports, to the Assembly during its three years of existence; under its self-referencing powers it initiated inquiries on:

- Power and Water Corporation (power outages)
- Crime Statistics (domestic violence figures and alleged discrepancies)
- Indigenous Housing (Strategic Indigenous Housing Infrastructure Program – SIHIP)
- Local Government Reform
- 'Working Future' (Government Policy of developing 20 'growth towns')

The CTC subcommittees were:

¹⁰ Page 3333.

¹¹ Council of Territory Cooperation First Report, February 2010 Chair's Forward Page IV.

- Animal Welfare Governance
- Innovation Development and Trade (never convened)

Arguably the blurring of the lines between Assembly and Government roles commenced early in the existence of the CTC.

This was perhaps a legacy of the agreement between the Member for Nelson and the Chief Minister and the CTC itself being a vehicle for exploring policy, exposing challenges and proposing change in a more direct relationship with the Government than through the committee channel to the Assembly.

Recommendation No 21 of the First Report is instructive in that it recommended all CTC Reports be handed directly to Government for immediate advice rather than being tabled and considered by the Assembly then seeking a Government response as has been the more time honoured approach.

The Government did respond more quickly as a result of this imperative, whether this was because of the Government's ongoing need for the support of the Member for Nelson or whether the Government was otherwise compelled or willing to engage on these matters would be a matter of speculation.

The Assembly Committee System meets a Cannibal Committee?

The Northern Territory Legislative Assembly Committee System has had a long history of participation and inquiry over the 12 Assemblies. Most active in terms of hearings and reporting during the 1980s and 1990s with extensive inquiries over that time looking into land management, Territory infrastructure and social development and constitutional development, the 11th Assembly featured the usual Standing Committees as well as the aforementioned committees on the Environment and Youth Suicides.

The creation of the CTC as a *committee for all purposes* lead to the concentration of inquiries being funnelled into this one channel with the one Chair and a team of officers who were tasked to manage the CTCs requirements which no longer had the support of the Opposition.

The pre-eminence of the CTC as the Government's preferred vehicle for committee inquiries came to the fore during proposals to establish new committees put forward by the Opposition.

While it is not unusual for a Government to oppose referencing or establishing inquiries initiated by the Opposition party, in these cases the Government, in consultation with the Chair of the CTC, agreed to the referencing so long as the reference went to the CTC and thus the CTC subcommittees were established.

On 3 May 2011 the Opposition¹² gave Notice of a Motion to appoint a Select Committee on Animal Welfare Governance in response to serious allegations about Northern Territory Government legislation and processes relating to animal welfare and the administration of a cattle station owned by the Charles Darwin University.

During debate on the Motion on the 4th of May, the Minister¹³ moved an amendment to the Motion¹⁴ and the matter was referred to the Council of Territory Cooperation. The

¹² Member for Port Darwin, Shadow Attorney General .

¹³ Minister for Local Government, Regional Development, Indigenous Development, Tourism , Women's Policy and Statehood.

¹⁴ Parliamentary Record 11th Assembly No 19. Minutes of Proceedings Page 673.

amendment was opposed and the Assembly divided, however the motion as amended was agreed to.

The eventual outcome was the reference was provided to the CTC which formed a subcommittee which included two participating Opposition Members as distinct from the CTC itself which no longer had Opposition membership.

On these same dates the Opposition¹⁵ also gave notice of and moved a motion to establish an Innovation, Development and Trade Committee as a permanent Committee of the Assembly.

The motion was negatived. Subsequently the Government agreed to establish another subcommittee of the CTC along these lines with the CTC using its self-referencing power to establish that subcommittee after being knocked back by the Government in the Assembly; however that CTC subcommittee never convened.

It did not convene because of capacity. Arguably if that committee had been established and placed into the general Committee System for administration and support it would have convened and been administered by the Assembly Committee System as usual and reported as per its terms of reference in the normal course of events.

It could be argued that the Government's desire to retain all references with the CTC's sphere of power and influence reflects the usual desire of a government to control outcomes.

In essence, the fact the Opposition had departed from the CTC probably made this even more desirable for Government than permitting references to go to another Committee. However, the Member for Nelson as the Chair might argue that this is perhaps simplistic and too dismissive of the value of the CTC to the Northern Territory during its years of operation.

It cannot be disputed that the CTC caused some discomfort for Government and motivated responses and better processes by shining a light on the challenges facing the Government in the areas under scrutiny, Aboriginal housing and the animal welfare matters in particular

Given the CTC ceased to exist with a change of government in August 2012, it is not possible to determine if the Assembly Committee System and the CTC may have merged into a single system in the 12th Assembly.

The CTC Legacy

The 21 Recommendations detailed in the First Report¹⁶ mainly concerned the SIHIP program including matters of administration, program rollout, housing standards, funding amounts, auditing, ownership, training and employment, local government, roads and land management and the manner in which evidence is given. Interestingly, recommendation No 19 of Report No 1 required public servants to be 'fulsome' in giving their evidence¹⁷.

The Dissenting Report¹⁸ by the Country Liberals Members was ominously entitled *Issues with the Operation of the Council of Territory Cooperation*.

The Dissenting Report complained that there was not sufficient expertise and resource assistance to meet the goals of the Council and the report went on to say that *The very title of CTC for what is little more than a glorified public accounts Committee does little to satisfy*

¹⁵ Member for Braitling.

¹⁶ February 2010.

¹⁷ *Fulsome: Offensive to good taste, especially as being excessive, gross, insincere.* Macquarie Concise Dictionary 2nd Edition page 387.

¹⁸ Page 46 of CTC Report No 1.

criticism¹⁹.

...It has been reduced to a humoured parliamentary committee, humoured by a government that has been able to achieve the support of the Member for Nelson by offering him a Committee that essentially has no real teeth.

While the commentary clearly reflects the disappointment of the then Opposition to have convinced the Member for Nelson to support them to form a Government or go to the polls, the criticism reflects the manner in which the CTC manifested itself.

The Opposition, while perhaps unfairly maligning committees in their reference to a 'glorified' Public Accounts Committee', were reflecting upon the original concept that the CTC would be something much different from a committee. It was to be a model for cross party cooperative governance, not a body making recommendations to the status quo Government.

One of the main concerns expressed by the Opposition was the inability of the CTC to require Ministers to appear before the CTC.

The Second Report of the CTC²⁰ contained 14 recommendations relating to power supply, domestic violence, local government and 'growth towns' and more on housing refurbishments and standards.

Recommendation No 3 requested the Minister for Essential Services and the Treasurer attend a CTC hearing to determine their involvement and level of knowledge about a significant power outage. The Government's response to the recommendation was:

Disagree. The NTG's position regarding the appearance of ministers before the Council has not changed. At the time the Council was established the NTG publically as stated that while the Council will be able to call senior public servants and, in some cases, private citizens involved in the delivery of such programs being considered by the Council, it is not intended that ministers appear before the Council in the interests of keeping politics out of the Council as much as possible, however, ministers would continue to answer the Parliament through Question Time and the Estimates Committee²¹

It took some time for the CTC to find its voice and the Government's willingness to allow invited Ministers to attend and address the CTC, as it matured and the first subcommittee was established, ministerial witnesses did indeed begin to appear before the CTC.

The Third Report of the CTC²² contained 15 further recommendations mainly dealing with public housing matters²³.

Child protection matters were dealt with during 2011 and local government and housing matters continued to take up the CTCs time for the duration of its existence.

The Final Report of the CTC dated May 2012 noted a change in the approach of Government to the CTC and gave the Chair cause to state that the CTC had achieved more than other Committees:

¹⁹ Page 48.

²⁰ May 2010.

²¹ NT Government Response dated June 2010 at page 3.

²² November 2010.

²³ The SIHIP Program was a joint \$672m housing program in 73 remote communities arising from a 2008 COAG initiative.

This report shows the CTC has held over 30 public meetings across the Territory and heard from a very broad range of people. In addition, Ministers have involved themselves in the CTC inquiries, either through giving evidence or by accompanying the CTC to see firsthand its concerns.

Looking at results from other parliamentary committees that travel less and hold fewer public meetings shows how successful the CTC has been in achieving its aims²⁴.

The Member's comments must be taken in context. The CTC was not constrained by budgetary imperatives which may apply to other committees as it was resourced to travel extensively and had a very wide ranging brief. The monthly reports from the Clerk to the Government never resulted in any pushback on budgetary matters.

By the end of its existence, the CTC did achieve a breakthrough in scrutiny and accountability by normalising ministerial appearances at their hearings. Whether Northern Territory Ministers resist future appearances before other committees remains to be seen²⁵.

The legacy of the CTC is now manifested by an ongoing antipathy within the new Government. This is evident in the contribution by the (then) Minister for Health (now the Treasurer) who in a debate in the Assembly on 14 February this year said:

That was the price of being the kingmaker. Practically everything he asked for, he never got, which used to stump me. People would say to me, 'Oh, if we want to get government to do anything, we better talk to Gerry'. Well, Gerry asked for a few things, and I cannot think of a single thing he asked for that he actually got. The swimming pool – oh, he got a secretary that is right. He got an extra secretary and he got his council of love up - a great deal of good that did! That is pretty well it; the secretary and the council of love²⁶.

Conclusion

The CTC as it eventuated was arguably a political orphan which has not had a lingering impact upon the levels of scrutiny and accountability of Government in the Northern Territory.

While the model which evolved to some extent met the CTCs original stated role as a collaborative oversight body, with the absence of willingness and practical cooperation by all Members of the Assembly (as required in the name of the body itself) the CTC has not left a lasting legacy.

While attempting new ways of administering government and practising governance are worthwhile, arguably the Westminster system may be structurally resistant to extensive and deep rooted innovation which requires a concerted effort at continued cooperation when political parties have competing goals. The result of the CTC experiment is perhaps a modest improvement in scrutiny and exposure of the flaws of the Government for the duration of the existence of the CTC.

Interestingly, the 12th Assembly has recently seen a resurgence of committee work with the establishment of a new Committee on the Territory's Energy Future during the August sittings of 2013.

²⁴ Chair's Forward Page IV.

²⁵ Minister's routinely appear before the Estimates Committee, but have been shy of doing so with other committees.

²⁶ Parliamentary Record 12th Assembly No 3 page 1099.

As posited above, the CTC Chair attained a role which was in some ways more akin to a Minister with a roving cross portfolio brief than a Committee Chair, yet fell short in terms of ministerial accountability leaving that to the Government of the day.

Reflecting on the accepted, but often maligned role of the Assembly as a debating chamber in the two party dominated political experience of the Northern Territory, a venue for the contest of ideas and competing policy positions the last word goes to a former Opposition Leader who in the Adjournment Debate on 5 May 2010 expressed very clearly her views on the CTC and the views of the Chair after he made a comment during that debate that: *The Territory might lead the way as a parliament of consensus rather than a parliament of opposition.*

Ms CARNEY (Araluen): Madam Acting Deputy Speaker, I respond to comments made by the Member for Nelson. He lives, in so many ways, in another world. He believes the different sides of politics, the different political parties, should get together and agree on everything. I do not. It is naïve in the extreme to make such a suggestion in any state or territory parliament or the federal parliament.

It is very convenient for the Member for Nelson, who attached himself to this rotten, rancid government to say, let us get together and have a chat...

...Robust debate is a good thing, and the foundation of our democracy and parliamentary system. Why the Member for Nelson is so discomforted by that, I do not know. He seems to have a quaint view about modern day politics; people should discard their fundamental political, deeply held and different beliefs, and get together and have a chat.

The Member for Nelson has a foot in both camps. He should have made a firm decision to go with the party of his choice, to be a member of Cabinet, a member of government. He declined, and he declined to go to an election. Yet, he has the audacity to sit on the sidelines and say: 'Notwithstanding deeply held and fundamental views, political views by both parties, they should all get together and have a chat'. That might be the Member for Nelson's position; it is certainly a very quaint view of modern day politics not shared by me²⁷.

²⁷ Parliamentary Record 11th Assembly No 12 page 5583