



## 2009 ASGP Annual Conference

### The Changing face of Parliamentary Opposition: Independents, Parties and Houses

#### An overview of recent Northern Territory events.

ROBYN SMITH<sup>1</sup>

#### Abstract

A mere 12 months (almost to the day) after the 2008 Northern Territory General Election, there was something of a potential constitutional crisis in the 25-member Northern Territory Legislative Assembly.

Pursuant to the recently amended *Northern Territory Electoral Act*<sup>2</sup>, a majority of Members of the Assembly wrote to the Speaker seeking to convene the Assembly to allow the Leader of the Opposition to give Notice of a Motion of No Confidence in the Government.

As events unfolded, it became clear that the fate of the Northern Territory parliament rested with the Independent Member for Nelson, Gerry Wood.

---

<sup>1</sup> Parliamentary Officer with the Legislative Assembly of the Northern Territory.

<sup>2</sup> Other jurisdictions amend their Constitutions; the Northern Territory does not have a constitution, hence the amendment to the *Electoral Act*.

## **2008 General Election**

Chief Minister Paul Henderson put himself to the people of the Northern Territory in an early general election on 9 August 2008.

On election night, the result was not clear and indicated that the Assembly's sole Independent, Gerry Wood, could hold the balance of power.

When he called the election, Henderson's government held 19 seats in the 25-member Legislative Assembly. He lost eight of those and emerged with the barest majority. The result was 13 seats for the ALP, 11 for the Country Liberal Party (CLP) and one held by an Independent. Three ministers lost their seats in an election that came down to a handful of votes in the Darwin suburban seat of Fannie Bay, which had been comfortably held by retiring member and former Chief Minister Clare Martin. It was some days before the Electoral Commission declared Labor's Michael Gunner the winner by 78 votes.

When the ALP's marginally victorious position became apparent, there was media speculation about whether Independent Gerry Wood would assume the role of Speaker. His response was that he 'wouldn't consider it'<sup>3</sup>.

---

<sup>3</sup> *Northern Territory News*, 11 August 2008; p 4.

## Parliamentary Demographics

The ALP was left with four members who were not in the Ministry. Jane Aagaard, the Member for Nightcliff, retained her position as Speaker of the Legislative Assembly. The three newly elected government members became office holders: Michael Gunner (Fannie Bay) was appointed Whip; Lynne Walker (Nhulunbuy) was appointed Deputy Speaker and Chairman of Committees; and Gerry McCarthy (Barkly) was appointed Chairman of the Public Accounts Committee. This arrangement gave rise to the situation of the government having no 'backbenchers' to serve on Parliamentary Committees, although the three office holders named serve on the majority of Committees.

**Table 1: Summary of Parliamentary Demographics – August 2008**

	<b>ALP</b>	<b>CLP</b>	<b>Ind</b>	<b>Total</b>
<b>Members</b>	13	11	01	25
<b>New Members</b>	03	08*	--	11
<b>Women</b>	06	02	--	08
<b>Men</b>	07	09	01	17
<b>Indigenous</b>	04	01	--	05
<b>Bush seats+</b>	07	01 (rural Darwin)	01 (rural Darwin)	09
<b>Urban seats+</b>	06	10	--	16

\* the former CLP Member for MacDonnell (1997-2005) in Central Australia was elected to the urban Darwin seat of Port Darwin; the former CLP Member of the House of Representatives seat of Lingiari Dave Tollner (2001-2007) was elected to the new industrial/urban Darwin seat of Fong Lim. Both are treated as 'new' members for the purposes of these statistics.

+ a 'bush' seat is one that is in a remote region and does not include an urban or town area. 'Urban' seats are those within a town boundary and in Darwin's rural area, which is substantially populated.

## Electoral Reform

Chief Minister Henderson personally accepted responsibility for the ALP's poor performance in the election and immediately moved to redress issues acknowledged as having a negative effect on the government. One criticism throughout the three-week campaign was that he had called the election nine months earlier than was necessary (and did so on the premise of Japanese petroleum company Inpex requiring 'certainty' in government before making a decision to base its LNG operation in the Northern Territory or Western Australia).

Following the first Cabinet meeting on 19 August, the Chief Minister announced that his government would amend the *Electoral Act* to incorporate fixed four-year parliamentary terms in the Northern Territory and acknowledged that the 'low voter turnout was due in part to the early election date'<sup>4</sup>.

The *Electoral Act* was amended in the following terms:

### **24 Extraordinary general election – motion of no confidence**

- (1) The Administrator may issue a writ for a general election before the end of the minimum term if:
  - (a) a motion of no confidence in the Government is passed by the Legislative Assembly (being a motion of which not less than 3 clear days notice has been given in the Legislative Assembly); and
  - (b) during the period of no confidence, the Legislative Assembly has not passed a motion of confidence in the Government.
- (2) After the motion of no confidence is passed, the Legislative Assembly may not be prorogued before the end of the period of no confidence and may not be adjourned for a period extending beyond that period unless a motion of confidence has been passed.

---

<sup>4</sup> Media Release, *Fixed Four Year Terms to be Introduced*, Chief Minister Paul Henderson, 19 August 2008

(3) In this section:

***period of no confidence***, for a motion of no confidence in the Government, means the period starting on the day the motion is passed and ending 8 clear days after it is passed.

## **25 Extraordinary general election – non-passing of appropriation Bill**

(1) The Administrator may issue a writ for a general election before the end of the minimum term if the Legislative Assembly:

- (a) rejects an appropriation Bill; or
- (b) fails to pass an appropriation Bill before the time the Administrator considers the appropriation is required.

(2) In this section:

***appropriation Bill*** means a Bill for an annual Appropriation Act for all Agencies.

## **26 Criteria for deciding whether to issue writs**

In deciding whether a writ for a general election should be issued under this Division, the Administrator must consider whether a viable alternative Government can be formed without a general election and, in so doing, must have regard to any motion passed by the Legislative Assembly expressing confidence in an alternative Government in which a named person would be Chief Minister.

Parliamentary officers had begun to consider the possibilities and implications of these amendments as early as February this year, and sought advice from the Solicitor-General in respect of terms such as ‘clear days’ and ‘fails to pass’.

It was clear that sections 24-26 of the Northern Territory *Electoral Act* were based substantially on section 24B of the NSW *Constitution Act*. The NSW Act has two definition sections (3 and 16), neither of which address terms such as ‘fails to pass’ or ‘three clear days’. Similarly, neither the NSW *Interpretation Act* (1987) nor *Interpretation Amendment Act* (2006) defined the terms in question.

Correspondence between the Clerk and the Solicitor-General seeking clarification of these terms was the first of several during the course of events that unfolded.

## Parliamentary Arrangements

Given the closeness of numbers in the Assembly, the government was forced to consider the mechanics of parliamentary sittings. At the first sitting following the election, Sessional Orders included a 45-minute dinner break. The Government also negotiated with the Opposition for a Pairing arrangement. After some negotiation, which resulted in additional staff and facilities, the Opposition agreed.

By the first General Business Day on 29 October, it was clear that Opposition business would keep the House sitting until 3 or 4am the following day, a highly ceremonial day on which the Assembly would be addressed by the President of Timor Leste, His Excellency Dr Jose Ramos Horta.

On 28 October, Chief Minister Henderson announced reforms to parliamentary arrangements which included:

- three extra sitting days per year;
- starting the parliamentary day at 9am rather than 10am;
- finishing the parliamentary day no later than 10pm; and
- web casting, including video, all parliamentary proceedings<sup>5</sup>.

These reforms were not effective by General Business Day. However, the Assembly sat until 1.30am when the government used its numbers to shut down debate, moved that the Assembly do now adjourn and further moved that the motion be now put, which, inevitably, drew a predictable protest from the Opposition.

---

<sup>5</sup> Prior to this announcement, parliamentary proceedings were available on the Internet by audio feed only and Question Time was broadcast on an FM radio network throughout the Territory.

The media interpreted the Chief Minister's announcement as a response to allegations of late night drunkenness by some members, but it was more a matter of practicality for the efficient functioning of the Assembly, although the government was clearly concerned about the tactics of the Opposition. The Chief Minister, when announcing the reforms, said:

Territorians will be able to witness what we say, witness how we say it and be able to see it [and] hear it. Any misbehaviour is likely to be captured by the video and audio stream and can be rebroadcast. I really hope that it does improve the standards of behaviour<sup>6</sup>.

In fact, video streaming will not commence until the next sitting of the Assembly next month, but the audio is webcast so people can listen to proceedings 'live'.

### **Political dynamics**

On 10 February 2009, the Deputy Chief Minister and Minister for Education Marion Scrymgour suddenly resigned from Cabinet following a Ministerial re-shuffle in which she lost Education but gained a heavy portfolio load. She cited a medical condition as her reason for going to the back bench.

On Tuesday 2 June, she expressed outrage over the government's proposed Indigenous outstation and homeland policy, an area over which she presided whilst in Cabinet. Urgent Caucus meetings were convened and the matter apparently resolved. On Friday 5 June, however, she resigned from the ALP and announced that she would sit as an Independent.

---

<sup>6</sup> *Northern Territory News*, 29 October 2008

The government's already tenuous grip on power had worsened, and the composition of the Legislative Assembly was now ALP - 12, CLP - 11, Independent - 2.

**Table 2: Summary of Parliamentary Demographics – June 2009**

	<b>ALP</b>	<b>CLP</b>	<b>Ind</b>	<b>Total</b>
<b>Members</b>	12*	11	02	25
<b>Women</b>	05	02	01	08
<b>Men</b>	07	09	01	17
<b>Indigenous</b>	03	01	01	05
<b>Bush seats</b>	06	01	02	09
<b>Urban seats</b>	06	10	--	16

\* Speaker has an optional deliberative and a casting vote in the event of a tied vote<sup>7</sup>.

For her part, Scrymgour had given the government an undertaking that she would support the Appropriation Bill and would not support a motion of no confidence in the government – the two scenarios that could trigger an Extraordinary General Election under the amended *Electoral Act*.

Seizing their newfound potential as an alternative government – with the support of the two Independents - on the first sitting day following Scrymgour's move to the cross-bench<sup>8</sup>, the Opposition attempted to censure the Chief Minister for 'lying to Aboriginal people and failing to deliver on a promises to consult them on the government's outstation policy.'

<sup>7</sup> Arising from the *Northern Territory (Self-Government) Act* (Cth).

<sup>8</sup> 9 June 2009



During the course of that debate, Scrymgour was extremely critical of former CLP governments in the matter under debate and informed the Opposition that under no circumstances would they have her support. Having been dealt a full and frank account of the newly Independent Member's mind, when the motion was put, the Opposition did not seek to divide.

On Tuesday 4 August 2009, another Government Minister resigned and went to the cross-bench. This time, Alison Anderson was the Minister concerned, and she said her resignation was in protest to the expense of and lack of progress with the *Closing the Gap* housing initiative<sup>9</sup> in remote Indigenous communities. The Henderson Labor government was both vulnerable and in crisis – and the Assembly was scheduled to sit the following week.

**Table 3: Summary of Parliamentary Demographics – 4 August 2009**

	<b>ALP</b>	<b>CLP</b>	<b>Ind</b>	<b>Total</b>
<b>Members</b>	11	11	03	25
<b>Women</b>	04	02	02	08
<b>Men</b>	07	09	01	17
<b>Indigenous</b>	02	01	02	05
<b>Bush seats</b>	05	01	03	09
<b>Urban seats</b>	06	10	--	16

Now the balance of power rested with the Independents, two of whom were former Ministers in the Labor Government.

<sup>9</sup> Also known as the Strategic Housing and Infrastructure Program or SIHIP.

The Opposition had anticipated this scenario and was well prepared to move a Motion of No Confidence in the Government pursuant to section 24 of the *Electoral Act*, the success of which would result in either a change of Government or an Extraordinary General Election.

The situation changed quickly, with the Government securing the return of Marion Scrymgour, the Minister who resigned in June, on the same day that Anderson declared her independence.

**Table 4: Summary of Parliamentary Demographics – later, 4 August 2009**

	<b>ALP</b>	<b>CLP</b>	<b>Ind</b>	<b>Total</b>
<b>Members</b>	12	11	02	25
<b>Women</b>	05	02	01	08
<b>Men</b>	07	09	01	17
<b>Indigenous</b>	03	01	01	05
<b>Bush seats</b>	06	01	02	09
<b>Urban seats</b>	06	10	--	16

The Opposition, with the support of the two Independents (Wood and Anderson), which represented a majority of Members of the Assembly, wrote to the Speaker seeking to convene the Assembly a day earlier than scheduled, on Monday 10 August, in order to give Notice of a Motion of No Confidence. This was done after which the Assembly was adjourned for the requisite three clear days, to reconvene on Friday 14 August when the Motion was moved, debated and ultimately negatived owing to the support of the Independent Member for Nelson, Gerry Wood, who secured a raft of undertakings from the Government in exchange for his support.

As an aside, parliamentary officers spent the intervening days trying to anticipate the range of possible outcomes in respect of the Motion of No Confidence, and working through the procedural mechanics of each of these. The result was a collection of complex and impressive flow charts!

Wood entered into a 'Parliamentary Agreement'<sup>10</sup> with the Chief Minister. That agreement included Wood's support for the government on Appropriation bills and motions of no confidence as long as Paul Henderson remained Chief Minister in return for a grab-bag of benefits for Wood's electorate of Nelson and some 'parliamentary reforms', one of which was the establishment of a 'Council of Territory Co-operation'.

The 'Council of Territory Co-operation' would be comprised of two Government Members, two Opposition Members and at least one Independent (Wood). In addition, the Council would:

...be empowered to conduct inquiries and make recommendations on matters of public importance which are referred to it by the Legislative Assembly or self-referred.

Current matters of public importance which the Government agrees to support being referred to the Council include: Strategic Indigenous Housing and Infrastructure Program (SIHIP); Local Government Reform; the Planning Scheme and establishment of Weddell; and A working Future (including Homelands Policy)<sup>11</sup>.

---

<sup>10</sup> It was in fact an agreement between two individuals with no parliamentary status at the time it was signed. It was tabled by Wood during debate on the Motion of No Confidence.

<sup>11</sup> 'Political Agreement' between Wood and Henderson, Appendix A, page 1.

Whilst it had been Wood's intention that the Council would be a creature of legislation, potential issues of justiciability pointed to its establishment as a Select Committee to be known as 'the Council of Territory Co-operation' by way of resolution of the Assembly. At the time of writing, however, that matter had not been resolved.

Chief Minister Paul Henderson remains in a tenuous position in which he has to rely on the support of Wood, whom Alison Anderson is urging to withdraw his support. The Opposition remains in a position to move against the Government subject to the circumstances of the day. Under the fixed-term regime, the next General Election in the Northern Territory will be held in August 2012. The fledgling Wood-Henderson agreement has a long time to endure, and certainty is one thing that is not guaranteed in the Northern Territory.

Ends