

Northern Territory: 25 years of self-government — challenges for the future — Part 2

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Allow me to begin with a personal explanation and that is that my perspective on both the particular subject I am here to discuss this morning and the overall theme of the conference has changed somewhat dramatically in the past 23 months.

23 months ago yesterday, the first government of the Northern Territory was defeated at the polls and for the first time the CLP — a party created in the years just before self-government and a party that only exists in the Territory — went into Opposition.

From my new perspective you get a completely different view about the threat posed to parliamentary government in liberal democracies like Australia and in particular, the Northern Territory.

Let me admit first up that in government, parliament is often seen as an annoyance, an unfortunate, albeit necessary, interruption to the day-to-day business of governing and I would suggest that any government that follows the Westminster tradition where the executive arm of government is chosen from the members of parliament would have the same view. In our party dominated system, it automatically follows that the government of the day has the numbers on the floor of the parliament and therefore can always get its way in the parliament itself.

This is very true in a unicameral system like the Territory or Queensland, although less so in the ACT where historically the major parties have had difficulty in mustering a majority.

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In those places where there is an upper chamber which is usually chosen by a different method to the lower house, then governments must devote more time to getting their way, and, consequently find parliament an even greater annoyance.

Of course it wasn't meant to be that way. Parliament was supposed to be the supreme governing body not just the rubber stamp to the executive.

However the rise and rise of the political party and the ever increasing power of the executive arm — the Cabinet, the Ministry — has seen parliament relegated to its present role of a chattering chamber.

There are elements of the parliamentary process that still pay lip service to its original role.

There is a Question Time — here in the Territory it is one hour a day for questions without notice; there are ways for the Opposition to put forward its issues and views through censure motions and matters of public importance and once every 12 sitting days there is a General Business Day when non-government business takes precedence. But even then the government of the day can use its numbers to negate or even turn on its head anything put forward by non-government members.

The present Territory Government — just like its predecessor — will defeat any Bill put forward by the Opposition even if it basically agrees with the sentiments. It reacts this way to preserve the perception it wants the electorate to have that the other side is negative, never positive and is bereft of ideas.

Politics is more important than parliament.

However, every now and then a wise government — particularly one with a small majority on the floor of the parliament — will accede to a suggestion, Bill or motion put forward by any independent members.

Again that is for political reasons rather than a recognition that the Bill or motion is especially deserving of support.

The other area where parliament does occasionally work as it was intended is during the debate of Bills in the committee stages when amendments offered by non-government members can sometimes make it into the legislation.

But it is still the exception rather than the rule.

So what role does parliament then play in our system of government?

Is it a case that we would be all better off if we considered the election of parliament to be the selection process for the election of the Cabinet and then let that body get on with its job?

Limiting myself to my own experience in this Chamber, and being one of only two people in the history of the Territory to have been both Chief Minister and Leader of the Opposition, I still firmly believe that parliament has a vital role to play in our democracy. It is no longer a governing role, rather it is one of scrutiny, review and in that memorable phrase of Don Chipp — trying to keep the bastards honest.

In government even though you saw parliament as an interruption, you had to prepare for Question Time, you had to have the set pieces such as Ministerial Statements on developments and or policy, you had to be on top of legislation, its introduction and passage that you were personally responsible for, and you had to be ready to defend your government and yourself against any attack from the Opposition.

In Opposition, parliament is even more important because it is a key opportunity to attract attention from the media and through them to the general public. It is the opportunity — albeit limited — to put the Opposition's view forward. And it is the opportunity to question, challenge, criticise and expose any weaknesses of the government and the Ministry.

However part of the Opposition's frustration I mentioned earlier comes from the general apathy of the public to what goes on in parliament and the declining interest of the media.

Any student of parliaments would know that most legislation goes through parliament with little friction and general support. Such is not the stuff of media interest. The small percent of legislation that does attract controversy can be managed so that the debate occurs at unfavourable times for the media. Equally, the government machines feeding the media have grown in parallel with the growth in executive government. A government media release or press conference about what the government will do, has done, or is doing will neatly wrap up the story without any subsequent need to cover the parliamentary debate.

This is particularly so in a small jurisdiction like the Territory where the media is small and under constant pressure just to fill their newspaper, or TV and radio bulletins.

So while I believe parliament is still important, its role in the processes of government has changed dramatically.

If it were not for the constitutional and legal aspects of its role in the enacting of legislation it would have little to do with governing.

Parliamentary government is not so much under threat as extinct — but parliamentary democracy is alive and well and can be further enhanced.

I will expand on that further as I address the particular subject of this session: Northern Territory 25 years of Self-Government — Challenges for the Future.

Without doubt the biggest challenge for the future in the context of this conference is the attainment of statehood for the Territory.

The Chief Minister has suggested a timetable of five years to achieve this with education programs, referendums and constitutional conventions all being part of the process.

Looking back briefly to the referendum on statehood in 1998, it won support in Darwin and Palmerston, outer Darwin and in Katherine. But it was only a narrow victory — about 52 per cent. And that margin could not overcome the huge no vote recorded by the mobile polling booths in the remote areas, where almost 75 per cent of the 13,000 voters rejected statehood. The final result across the Territory was 48 per cent voted Yes and 51.9 per cent voted No. Apart from the obvious that indigenous Territorians overwhelmingly rejected statehood, there are two other general comments that can be made.

1. The history of referendums in Australia has shown that unless the proposition has bi-partisan support and there is no organised opposition it will fail; and,
2. The more education/information you supply particularly in the course of the campaign the less chance you have of success.

On the first point, the total proposition did not have bi-partisan support. Labor at best ran a 'Yes we agree with statehood, but . . .' campaign or they ran dead. Some would suggest that at least some of Labor ran a whispering No campaign.

And there was also a well-organised effort by disparate individuals and groups who chose for a variety of reasons to campaign for a No vote. And this included the two powerful mainland Land Councils. This served to create doubts in the minds of Territorians and when in doubt vote for no change. Australians have traditionally taken this option in most of the referenda put to them over the history of our country.

The second point is best demonstrated by some polling that was being conducted during the course of the referendum campaign. Early on there was a small percent who cited a lack of knowledge as a reason for voting No or being undecided.

As the campaign progressed and everyone received the formal Yes argument and a copy of the proposed constitution, the percent who cited lack of knowledge constantly rose. It was a case of the more information they were given the more they realised how much they did not know — and the more the doubts grew.

Any future referendum on statehood will face these same three problems. The key dilemma is that many of those presently opposed to statehood want to know what

sort of a state they are getting i.e. what the constitution of the state will be, before they give their approval.

Yet providing them with a draft constitution may only increase their doubts, not assure them, because of the very nature of its necessarily legalistic language.

I believe that the constitution put before Territorians in 1998 would have served the state of the Northern Territory well. It was not overly prescriptive and did not lock in concepts and ideas of the 1990s that may not be appropriate 20, 50 or 100 years down the track, and I would hope that whatever doubts were expressed about how the draft constitution was prepared, the actual document is not totally discarded but rather is used as a basic text for any new draft. And on that point, I would add that somehow or other the partisan politics that politicians, political parties and other vested interests constantly engage in needs to be put to one side in the interests of future Territorians.

We also should be wary of re-writing the history of the process of constitutional development.

Previous constitutional development committees of this chamber did consult widely and sought input from all walks of life. The Constitutional Convention, for whatever its faults, did include delegates from all walks of life.

However, much of the criticism — misplaced criticism in my view — of the last draft constitution was that it was a creature of the then CLP Government.

Much of it too was engendered by an Opposition who had no experience of government and were not confident they would ever attain the treasury benches. Their view then was that any constitution must have as its primary purpose the ways and means to restrain and restrict a CLP Government. It will be interesting to see how their views may have changed now that they have attained government.

It was my view that a constitution should not be some huge document that covers every last detail of the governance of the state of the Northern Territory.

It was my view then, and remains my view, that succumbing to founding fathers syndrome would be the worst legacy we could leave to future generations of Territorians.

We in 2003 — just as in 1998 — are not the font of all wisdom. We should not fetter future Territorians with our political whims and desires, but leave them as much as possible with the ability to govern themselves as they see fit. That is the challenge — to produce a constitution that achieves that — and secondly to produce a simple and straightforward document that is accessible to ordinary Territorians so that they can support it.

A further challenge is to engage the people in the process. It is naive to believe that constitutional development will happen via a groundswell of popular opinion. People — probably rightly so — are generally apathetic about politics and constitutional development. We here today are the exceptions. So the process will have to be given impetus by the government if it is to happen at all.

A place to begin is in our schools where there is a captive audience.

If the timetable for statehood is five years, then most of the Territorians in our secondary colleges today will be voters by then. And given the demographics of the Territory they will make up a sizeable proportion of the electorate. Initiating an education program that is aimed at getting them involved in constitutional development is the obvious first step.

Another step to take is having a plebiscite on the threshold question of whether Territorians want a state or not. It should be made quite clear that that is all that is being asked, and the kind of state is something to be still worked out and voted on. It would be far better to have that question out of the way before we get down to the details of the framework and structure of the state.

I mentioned above the need to keep ordinary politics out of the process of constitutional development and that is not limited to the politics of CLP versus Labor. Any re-reading of the Kalkaringi Statement or the resolutions of the Indigenous Constitutional Convention in Batchelor in 1998, show that the politics of that time drove many of the aspirations and resolutions rather than constitutional development. But having said that, and, as I noted earlier, the overwhelming rejection of statehood in remote communities at the 1998 referendum, the process needs to be fairly and fully explained at each step to ensure the full engagement of the indigenous peoples of the Territory.

A crucial part of that engagement takes us back to part of the theme of your seminar and that is 'Contemporary challenges to Liberal Democracies'. How much of the traditional ways, laws and governance of the indigenous peoples of Australia fit under the heading of a liberal democracy? It is a challenge that must be met in the Territory where about 28 per cent of the population is indigenous. A very large proportion of them live largely according to their own traditions and laws in communities remote both geographically and in many other ways to the urban centres in which most other Australians live. Here land rights, native title, customary law are not just debating points or the concern of a tiny minority. They are, they have been, and they will continue to be vital matters to the body politic of the Territory, far in excess of anywhere else in Australia.

In the Draft Constitution we tried to meet this challenge in several different ways, but particularly in the Declaration of Statehood, in the Preamble and in two specific sections. One related to the 'rights in respect of language, social, cultural and

religious matters' and the other was on Customary Law. I believe is worth quoting in full the latter section: It was headed Customary Law and said:

1. Aboriginal customary law is recognised as a source of law in the State to be enacted as the written law of the State (within 5 years of the commencement date or such further period as Parliament determines) by the Parliament passing laws in substantial accordance with the results of negotiations and consultations between the State government and the representatives of the traditional Aboriginal structures of law and governance of the Aboriginal peoples of the Northern Territory providing for the harmonisation of the customary law with other laws in force in the State, including the common law.
2. Without limiting the generality of the matters that shall be negotiated mentioned in subsection (1), an Act may provide for –
 - (a) recognition of traditional Aboriginal structures of law and governance;
 - (b) delegation of powers and functions to the appropriate bodies under those structures in relation to the administration and enforcement of law and order in accordance with customary law;
 - (c) co-operative arrangements between institutions and officers of the State (including judicial institutions) and traditional Aboriginal structures of law and governance; and
 - (d) such other arrangements, including matters of Aboriginal governance, 'as are agreed between the negotiating parties.'

It is interesting to note that the period of five years was put in at the insistence of the Rev Dr Djiniyini Gondarra because he believed it would take at least that long, if not longer to achieve anything. It is also interesting to note the referendum was five years ago next October. What may have been achieved by now if we had been successful then?

Any new constitution, any future constitutional development in the Territory must address this challenge and it will be a real challenge to accommodate customary law in what is described as a liberal democracy.

It becomes a question of definition. Is it a liberal democracy because it democratically accommodates different ways of governance and laws according to the various traditions of its peoples? Or is it a liberal democracy because all of its ways of governance and laws are liberal? If we were to meet and successfully overcome all these challenges, then allow me to gaze further into the crystal ball and look at the State of the Northern Territory. Of course the major challenge for the future as far as I am concerned is getting rid of the present government — but I won't burden you with the politics of that. However, what I would like and hope to see is a parliament that through its processes acts as a true house of review and scrutiny of the executive government's actions.

Barring the circumstances of a minority government reliant on the support of independents, I do not believe we will see any parliament in our system of government become the supreme governing body as such. We should therefore adapt to the way history has shaped parliamentary democracy and create mechanisms and processes that enhance its review and scrutiny role.

One way to achieve this is to change the emphasis. Parliament should no longer be a stage for government Ministers to pronounce and postulate, but rather be a place where Ministers attend to answer to the representatives of the people — be they opposition members, independent members or backbenchers from the governing party. Such changes would see more prominence given to question time, more opportunities to debate, question and review Government policy statements, more interrogation of legislation rather than political posturing on only controversial Bills. On that latter point, perhaps the committee system needs to be re-visited so that legislation is examined in the less formal process of a committee with the relevant Minister and the policy advisors from the public service available to be questioned.

While I still see this chamber and the Ministry formed from its numbers as the paramount government of our state, I believe we have the opportunity to create a tier of government in the regions that is more than the historical version of local government. A tier of government that will address the desires of those who do not live in the major urban area of Darwin for a more adequate level of self-determination and involvement in day-to-day governance than presently exists. This is possible, and can be attained within the one body politic known as the State of the Northern Territory.

Finally, can I say that the Northern Territory has a great future. We have the resources, we have the people, we have the opportunities. Whatever challenges we do face in the future we can face them together as Territorians, as the seventh state of the Commonwealth of Australia, which is after all one of the longest continuing liberal democracies in the world. ▲