

This is an executive summary of a report on the status/potential of civil liberties and human rights in the Northern Territory. The Board of Civil Liberties Australia determined to evaluate whether it was appropriate to form a distinct CLA group in Darwin. President Dr Kristine Klugman and CEO Bill Rowlings were asked to investigate and report as part of their northern Australia/Indonesia travels in mid-2011. This report stems from a period of six months preparing for the visit to Darwin, and 11 days in Darwin conducting 26 separate interviews, in June 2011.

**Overview:**

Darwin is a frontier town, *“a very challenging environment”*, as one person put it.

The town, like the Northern Territory, is brash, young, enthusiastic. It dislikes authority and over-regulation, which means it should at first glance be ideal civil liberties supporter territory. But “human rights” lacks resonance, we were advised: “fair go” is a better term instead. Darwin and the NT are different from the rest of Australia:

*“People are against any regulation affecting ‘Territory lifestyle,’”* we were told.

The people we met with were intelligent, committed and dedicated. A small community of aware people mostly know each other well. There’s a need, though, for the threads of individual and organisational initiatives to be drawn together, communicated around a series of connections and networks, to achieve best overall leverage.

The good things that are being done by both government and non-government groups need circulating and publicising, within Darwin and the NT, and nationally. CLA is well placed to help in that regard, because the good people with highly-developed social consciences tend to be over-committed, and any networking that leverages more outcomes for the same effort is likely to be welcome.

And it needs remembering that the numbers are small, and therefore so is the talent pool, particularly among political operatives and the public service. With the best will in the world, Darwin and the NT cannot always attract the best people:

*Darwin...It’s become the end of the line, the dustbag of a vacuum cleaner that sucks young refugees from the south and tumbles them around amid the heat and the sweat and the beer until they either settle and find their niche or get spewed back out...*

– author Andrew McMillan<sup>1</sup>

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<sup>1</sup> Andrew McMillan, *Strict Rules*, 2008 Niblock Publishing.

## **The state of the NT...June 2011**

The Speaker of the Northern Territory Legislative Assembly, Jane Aagaard, announced in Darwin in June 2011 that the Territory has re-embarked on a voyage towards statehood, aiming to become 'State 7' (both the name, and the aim, of the process). There will be a "people's convention", with attendees voting on the way ahead. There will be 50 voting delegates from the 75 attending (the 25 extras are 'reserve' voters). They will be elected as part of local government elections on 24 March 2012.

There will be a "constitutional convention" in Darwin from 21-29 April 2013<sup>2</sup>. A second convention will be held in mid-2013 (or, possibly 2014) to agree on a draft constitution. If all proceeds as planned, a motion of the NT Parliament in 2014-15 will call on the Australian parliament to grant statehood under s121 of the Australian constitution...that is, by a simple act of the Australian parliament, not by a national referendum (which would be required if statehood was to be considered under s128 of the constitution). The NT wants the same federal representation as Tasmania has, 12 Senators, 5 MPs.

Civil Liberties Australia expects the NT claim to spark a major constitutional debate on whether/how the Australian parliament can impose special conditions on entry of a new state, or whether a new state must/should/will be admitted under the same conditions as applied when the original states federated.

Is the NT ready to be a state? In analysing the opportunity for a civil liberties organisation in Darwin, the research indicated some clear issues which may need solving before statehood, or certainly require addressing in any transition agreements. They relate to serving the people of the NT, and how the law, 'justice', and human rights/civil liberties now operates in the Territory. In summary, what we found was:

### **1. The NT Public Service is at a low ebb...which may cause cultural problems**

No public service should feel covered and defeated, particularly when it should be positive and upbeat about possibly heading towards a major change of status, such as statehood. But the NT PS is browbeaten by the 'Northern Territory Intervention'.

The Commonwealth of Australia decided to intervene in the governing of the NT (for shorthand, the C of A action is called the 'Northern Territory Intervention,' NTI) in mid-2007. The federal government took over many Aboriginal matters – health, education, sexual mores, policing, alcohol consumption, welfare, etc. This obviously had a major impact on the 30% of the NT's 230,000 people who are Aboriginal.

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<sup>2</sup> An election for the NT Government will come in the middle of this process, in August 2012. Twelve months out, it appears likely the Country Liberal Party will re-take government.

But a so-far unrecognised (so far as we can determine) secondary but major result of the NTI was the huge impact it had on those people in the NT public sector who had been managing and delivering Territory Aboriginal programs. As an example, the then Chief Minister Clare Martin resigned because of how the NTI occurred; there have been other high-profile resignations in the NT for a range of reasons...but no-one appears to have tried to assess how much damage was done, and continues to be done, to the NT Public Service by the NTI.

Management and other public servants in the NT are intensely bitter about what the federal government did under Prime Ministers Howard, Rudd and Gillard. Many senior public servants feel emasculated by the way their work – sometimes ground-breaking work, just starting to have effect – was overthrown as worthless and without merit or prospect by the stroke of a Canberra pen. Some comments we heard were:

*“The Intervention is a bizarre delusion...”*

*“What is happening on the ground is ill-conceived.”*

There is little belief in the NT public service that the NTI by the Australian government continues to be “urgent” and “legitimate”. There is an immense sense of deflation and of years of work being wasted, and a hopelessness as to when the NT administration and public service will regain responsibility for managing all of its people.

The announcement (22 June 2011<sup>3</sup>) by PM Gillard and Indigenous Affairs Minister Jenny Macklin that “The Gillard Government will now start consultation...” does nothing to remedy the damage and the hurt: there has been belated acknowledgement that Aborigines should be consulted more but, as yet, no parts of the federal government have acknowledged the extent of damage their intervention has done/is doing to the NT Public Service.

Many NT public servants had put their hearts and souls into tough, long, extensive consultation and communication two-way with Indigenous communities, and had developed programs that were working. At a stroke, all the positive work the NT public servants had done and were doing in relation to Aboriginal issues was wiped out when the ‘big brother’ Commonwealth stepped in and took over.

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<sup>3</sup> Media Release 22/06/2011: *Delivering a better future for Indigenous people in the Northern Territory*: Joint Media Release by: The Hon Julia Gillard MP, Prime Minister; The Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs; The Hon Warren Snowden MP, Minister For Indigenous Health, Rural and Regional Health & Regional Services Delivery and Member For Lingiari; and Senator Trish Crossin, Senator for the Northern Territory.

## 2. The public service culture, at the individual service level, is less than ideal.

We were surprised at the number of people who told us that, in dealing with the public service, the PS culture can be:

*“bullying”,  
“harassing”,  
“homophobic”,  
“closed”, and  
“not transparent”.*

People reported appeal mechanisms lacking or, where they exist, sometimes paid lip service rather than being properly followed. Of all comments made to us, problems with public service attitude to liberties, rights and plain customer responsiveness were those most raised.

*“There has been five or six years of anti-discrimination legislation...but it has not been followed by the public sector...there are issues with sex, race and disability...”  
(underline added)*

*“The NT Government is bi-polar. It has the right rhetoric, but often does the opposite...”*

In a small jurisdiction like the NT, a few people can have a major influence. It may be that there has been a handful of people in strategic positions who cause this perception. We note that an imminent change in the Public Service Commissioner position would provide the opportunity for a thorough review of how the NT PS operates.

Given the number of comments, we sought information on human rights/civil liberties and customer responsiveness training in the NT Public Service.

When CLA requested an interview with the PS Commissioner, Ken Simpson – explaining the reason for the request was to discuss human rights training/education in the public sector – he referred us to the Anti-Discrimination Commissioner, Eddie Cubillo. While there may have been a communication misunderstanding, when the PS Commissioner’s office thinks that “human rights” treatment of customers equals anti-discrimination, then the extent of the problem in the NT PS is apparent.

From the comments we heard, and our experiences at interviews, the NT Government’s public sector, from Ministerial level to juniors on service counters and delivering in the bush, could benefit from human rights (including civil liberties) education and training. At the top level, the people they provide services for, and the employees they manage, would benefit greatly from changed attitudes.

There is a clear opportunity to address both the PS demoralisation, and the widespread criticism of attitudinal problems within the public sector, by running human rights education/training over the period leading to possible statehood. No similar clear opportunity for such a radical change in attitude is likely for a very long while.

Human rights/civil liberties training in the public sector should be accompanied by an education campaign in schools, communities, aged care institutions and the like.

### **3. The legal system of the NT needs a long-term review from something resembling a cross-party inquiry and/or a standing review body, or a private sector think-tank.**

There is no easy way for citizens to comment on laws, have input to draft laws before they are finalized, or to initiate a review of legal or justice issues.

Unlike other jurisdictions, there does not appear to be appropriate input to parliamentary processes through scrutiny of bills processes. There does not appear to be a workable system, which produces results, for legislation review (despite the existence of a Law Reform Committee (LRC), whose recommendations – we were told – sit unresponded to for periods of years).

Importantly, the LRC is non-statutory, and has no power to initiate inquiries, nor to respond to requests from citizens: even an overwhelming petition to the LRC, signed by 100,000 NT residents, could be ignored by government, and must be by the LRC.

While it is appropriate for the government to control the laws, people should be able to call for formal review of generic instances of injustice, breaches of civil liberties or human rights, and abuses of the law by bureaucrats, ministers or the private sector. In particular, there needs to be a mechanism to initiate reviews in cases or circumstances where existing laws and regulations are being breached in a continuing way, such as in prisons, hospitals or other government institutions especially.

It may be that an appropriate way forward would be to reconstitute the LRC with fresh people under new operating principles, backed by statutory independence. There is also a need for a requirement that the government responds formally, in detail and within a reasonable timeframe (maximum six months is suggested, with implementation of any agreed change within a year) to findings and recommendations of the new body.

The body could be charged with examining and improving all laws affecting NT people and corporations, including statutory authorities and the NT PS, perhaps over a 15/20-year timeframe, and producing a unified, sensible, workable set of inter-operative legislation which is a model for Australia, and which is progressively enacted. The review should consider federal legislation as well as Territory legislation, and seek harmony and

balance in the laws and the justice system within the NT. (It would be ideal if an exercise such as this could be concluded before statehood operated).

In considering how this new body might work, the following suggestions are made:

- a. There may be structural reforms which would benefit the NT justice system:
  - i. The system of reviewing draft legislation would benefit from having a human rights compatibility process formally introduced;
  - ii. a public submissions/comment opportunity should also be introduced for draft legislation/regulations and review of laws, through a parliamentary committee and/or other mechanism;
  - iii. a 'Law Reform Committee' able to generate its own inquiries as well as having matters referred to it by the A-G, might require a chairmanship and composition that rotated at, say, five-years intervals to ensure no one approach became fixed by longevity and/or political affiliation;
  - iv. more use could be made of the academic fraternity in and associated with Charles Darwin University (within the NT and externally), and also of linkages with other institutions and bodies, including by electronic techniques;
  - v. options for involving customary Aboriginal law, and Aborigines, should be explored with a positive frame of mind, as should options for non-lawyers to be more involved;
  - vi. in all these aspects, the option to use more electronic technology could give the NT a leading role in law reform methodology and systems in Australia, and possibly worldwide.

(Just as the skills and experience of learned people – notably Mr Austin Asche AC QC – have been used in the past, the review could provide useful engagement and the opportunity to contribute for recently-retired or soon-to-retire senior legal people.)

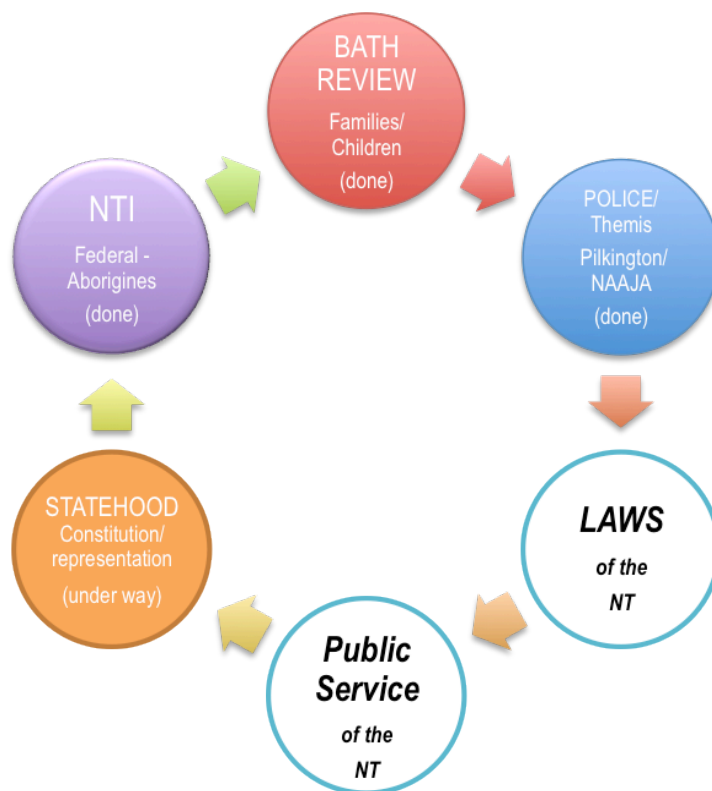
- b. There should be a special inquiry, as soon as possible, into mental health laws, reviews, tribunals, etc. The mental health inquiry should include health, prisons and law people as well as the general public, and it should include review of existing and required facilities, as well as requirements to plead and the right to review a pleading or a sentence in light of changes to mental health structures and rules.
- c. Who can represent an accused leading up to, and in, courts and tribunals should be reviewed, as should funding available for various elements of the legal process, including for example parole or mental health custody review boards.
- d. The question of procedural fairness needs to be addressed across the legal system, including the right to appear/be represented and to receive reports of decisions/cases in which a person is involved.

e. Any draft laws which have potentially significant, or potentially more significant, impact on the Aboriginal people and communities of the NT should go through an additional or simultaneous consultation process involving Aboriginal people.

f. In any review involving prisons, account should be taken of creating more and wider opportunities for meaningful training and education in detention, with a view to qualifications by certificate, diploma or degree as a step towards employment on release; the opportunity for guards to train and develop their qualifications and management skills should also be seriously considered as part of any education and/or training package. Planning needs to allow for funding of 2-3 new facilities where detained people can learn trade skills and receive a certificate, and/or where Aboriginal juveniles in particular can be further educated and trained without entering the established, traditional prison system. The NT could provide a model for Australia.

*“The quality of care in prison is appalling.”* (comment made to CLA)

g. A recent decision to exclude certain statutory agencies from reviewing submissions to Cabinet before they are presented to Cabinet should be reversed.



*The diagram shows recent reviews...and those probably needed to complete the processes under way.*

CLA makes the above comments to stimulate discussion in the NT about where the government and the legal/justice system is headed as statehood approaches.

During our research, people highlighted to us the following matters in relation to laws, regulations and practices as needing attention from civil society before wholesale legal or administrative change surrounding statehood was put in place. We expect CLA's Darwin group would choose to concentrate on these areas in the first instance:

- governance, and propriety of ministerial and public service processes and decision-making, and appeal mechanisms;
- detention and, in particular, juvenile Aboriginal detention;
- alcohol sale, purchase, consumption and transport, and drunkenness;
- reportedly falling literacy in English, leading to justice problems (allied with dire shortages of interpreters for courts);
- property forfeiture, confiscation and seizure (including guidelines for DPP)

*"I can't understand how the DPP could be so cruel,"* was one comment;

- drivers' licences and licensing, plus inspection of vehicles for registration;
- any laws/regulations where the impact is effectively "mandatory" (even if at one or more remove from main sentence);
- land ownership/title issues, including in/around Aboriginal communities;
- carrying/use of ID and similar cards;
- taking customary law into consideration in courts and tribunals;
- equal pay, child working age, and sex workers' registration;
- enduring power of attorney (guardian/medical/etc);
- housing issues;
- equality of rights/entitlements – refugees c.f. Australians; and
- mandatory boating/fishing/etc licences.

The 'ranking', or priority order for these should be managed locally in Darwin and the NT by the local CLA group(s), but with an underpinning of the national initiatives CLA has under way.



#### **4. Leadership needs to come from the government**

The NT Government should institute an internal mechanism to take more account of human rights issues in framing laws, even before they are subjected to compatibility tests or referred to review bodies or public submission/comment. Given the concentration on statehood over the coming years, there is a clear need and responsibility on the government to scope and promote the type of state it is aiming for, and to communicate its aspirations to its public servants and its people.

- a. The attitudes and actions of senior Ministers and officials need to reflect the government's avowed commitment to human rights, civil liberties, a culture of openness and transparency, and the free flow of information. Successive governments have given public commitment to these things, but the actions and words of ministers and senior public servants does not back up the verbal and printed statements.
- b. It may be useful to institute relevant annual awards/prizes throughout the government and the public sector to acknowledge the type of behaviour the government aspires to, and the behaviour it wants its citizens to mirror.
- c. An online publication, with material and positive examples changing at least daily, could demonstrate by reporting positive actions of Ministers how a human rights/civil liberties approach can change the culture of a government.

#### **5. There is no equivalent body to CLA**

CLA is unique in that it encourages a mix of civil society and legal people. The benefits are that people from all walks of life, and from both the public and private sector, can be encouraged to become involved with liberties, rights and freedoms.

In Darwin this year, there has been a flush of new rights/liberties groups interested in getting started, apparently to fill similar needs to those CLA identified, but articulated differently:

*Australian Lawyers for Human Rights:*

As the title says, membership is restricted to lawyers, and the concentration is on legal matters in relation to human rights; the group has just formed (see details in full report). We met with the one available co-convenor, Adrienne Walters, and we have agreed the two organisations will work with the closest cooperation.

*Northern Territory Committee for Human Rights Education:*

The group has very close ties to Charles Darwin University's Law faculty. We met with the group (attending the address by Australian Human Rights Commissioner Elizabeth Branson) and its leader, law lecturer Jeswynn Yogaratnam, and we have agreed to cooperate closely.

**Summary:**

There is considerable potential – and need – for a civil liberties body in Darwin. While we were there, and shortly after, membership of CLA in Darwin reached nine people, which is sufficient for a group to start.

Comment Person A (not a CLA member):

*"We're losing a lot more of our personal freedoms than I'm comfortable with."*

Comment Person B (not a CLA member):

*"It's very much the time to start up a civil liberties group. There are issues other than Aborigines and refugees...housing, appeal mechanisms, mandatory sentencing, juvenile detention."*

**Recommendation:**

**That CLA's Board support and facilitate the formation of a group in Darwin, and encourage the emergence of a local convenor/leader and spokesperson (who may or may not be the same person), leading to having a Director from Darwin on the CLA Board.**

*Darwin...it's where raw meets potential, the last Aussie urban frontier, and both good and bad are over the top. If you're seeking problems, Darwin's the place to look...but they come surrounded by gilded opportunity: you can make what you like in Darwin, including yourself...*

*–Bill Rowlings, July 2011*

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