

## State 7 Constitutional Convention Fact Sheet 2

### **CAN the COMMONWEALTH UNMAKE A NEW STATE?**

There are two ways for a new state to come into existence in the Australian Federation.

One is for a referendum of all Australian electors living in the existing States. This would require a majority of electors in a majority of States to agree to admit a new State under s.128 of the Australian Constitution.

The other is for the Commonwealth Parliament to pass a new law under the power given to the Parliament under s.121 of the Australian Constitution.

S.121 states:

*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.*

Because a new state has never been created in Australia there is a question about whether the Commonwealth could reserve more powers over a new State than it has over the Original States.

Some people have asked whether the Commonwealth would have the power to abolish a new state established under s. 121.

While s.121 gives the Commonwealth the power to decide the terms and conditions upon which a new State is established, once a State has been established there is no evident power for the Commonwealth to then interfere with or abolish the new state any more than it has the power to do that to an Original State.

Chapter V of the Australian Constitution outlines the preservation of state constitutions the relationship between Commonwealth law and State law.

There remains a question as to whether the Northern Territory must bring into existence a new State Constitution ahead of it being established as a new State in order for s.106 of the Constitution to apply.

S.106 states: *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.*

That is why a People's Convention will take place in April 2012 to develop a new Northern Territory State Constitution.

Find out more at [www.ntstate7.com.au](http://www.ntstate7.com.au)

Convention Facts #2 July 2011

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**Northern Territory Office of Statehood**

Toll free: 1800 237 909 Email: [statehood@nt.gov.au](mailto:statehood@nt.gov.au)

Phone: (08) 8946 1437 Fax: (08) 8946 1419  
GPO Box 3721, Darwin NT 0801

