



## The Role of a Speaker in Determining the Opposition

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The Hon. Kezia Purick MLA, Speaker of the Legislative Assembly of the Northern Territory

*The minority in the House of Commons is composed for the most part of members of a single party who are in general opposition to the Government and hope to supplant it at the next election through becoming a majority. **Party Politics: The Growth of Parties** Sir Ivor Jennings, Cambridge University Press 1961.*

*If the official Opposition is not clear by virtue of numbers, it is for the Speaker to decide which group shall be so called, and who will be recognised by the Chair as the leader of the Opposition. **House of Representatives Practice** 7<sup>th</sup> Edition page 79.*

*As Speaker I am entrusted with the responsibility of ensuring the orderly conduct of business in the House. To do this I must now determine, in light of the tie situation and the point of order raised, which party shall form the official opposition. **House of Commons Debates** (Canada) February 27 1996.*

*At the opening of this Assembly, His Honour the Administrator of the Northern Territory said "The results of the recent election have established the first official Opposition in the Assembly. The presence of an official Opposition in this House is welcome as the Westminster system of government can only be fully effective under the scrutiny of and by constructive argument from a viable Opposition".*

*... I am sorry to have to say ....The Majority Party has showed itself to be openly resentful towards the presence of an Opposition. The behaviour of some of its members including the Majority Leader, has been churlish if not downright childish. It is quite clear that having cut their teeth in an Assembly where there was no recognisable Opposition, they are now reluctant to adapt to the present composition of this House. **Member for Sanderson,** Ms June D'Rozario Northern Territory Legislative Assembly Debates 6 December 1977.*

*I do not intend to get caught up in a political fight over the resources or recognition of Opposition in the Assembly. That is a matter for the Government in terms of resourcing and the Assembly in terms of status. **Statement by Speaker,** the Hon. Kezia Purick MLA Northern Territory Legislative Assembly Debates 30 October 2018.*

## Preamble

This paper looks at recent events in the Northern Territory concerning public debate and discussion about who forms the Opposition in the Legislative Assembly. A debate which has been based on conjecture and hypothetical assumptions because essentially, the question does not arise as there is not an equality of numbers of Members representing different political parties in existence who are unable to form government.

The 13<sup>th</sup> Northern Territory Legislative Assembly (like the 12<sup>th</sup>) has changed its composition since the election. This has resulted in the growth of independents.

As at 2019 there are 15 (Labor) Government Members, seven independents, two (Country Liberal Party – CLP) Opposition Members and (uniquely) one Labor non caucus Member in the 25 Member Assembly.

During late 2018 and continuing into this year there was a surge of interest in the concept of a coalition of independents and a possible claim on the resources provided (by the Northern Territory Government, not by the Speaker) to the Opposition in the Assembly. The matter had been dormant for two years after being examined in the immediate post 2016 election analysis.

As the Speaker of the Legislative Assembly I have consistently made it very clear that I do not agree with any proposal that the Speaker should have a role in anointing an 'official' Opposition.

In coming to this conclusion I have considered a great deal of advice, been very well informed and I have not made the decision lightly.

## The Canadian Precedents

Canada appears to be particularly fertile ground for calling on Speakers to resolve who is considered to be the Opposition.

The House of Representatives Practice gives a nod to these precedents. The Clerk of the House, Mr David Elder, advised the Clerk of the Northern Territory Assembly in November 2018 about the provenance of the extract at the beginning of this paper:

*My staff have had a good look into this and could not find any example of this having arisen in the Australian federal context.*

*However they did note the situation did arise in the Canadian Commons whose Procedure & Practice (O'Brien & Bosc) similarly provides: 'Should an equality of seats among the largest opposition parties occur, the Speaker may be called upon to decide which party should be designated as the Official Opposition'. In 1996 when a tie occurred between the two largest opposition parties mid-parliament, the Speaker ruled that incumbency was the determining factor and that the status quo should be maintained<sup>1</sup>.*

An informative article by Professor Nelson Michaud outlines the various Canadian precedents in some detail<sup>2</sup>.

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<sup>1</sup> Reproduced with the permission of both Clerks.

<sup>2</sup> *Designating the Official Opposition in a Westminster Parliamentary System*. Nelson Pichard, The Journal of Legislative Studies Vol 6 No 1 Winter 2000 pp69-90 at page 75 onwards.

In British Columbia in 1937 the recognised Opposition's party lost a seat after a by-election resulting in another party becoming numerically superior in the House. The Speaker determined that 'for the sake of convenience' the 'official' Opposition would not change.

In Saskatchewan in 1977 an equality of numbers in opposition resulted in a (legislatively required) equality of resources shared amongst the two parties.

In Alberta in 1983 the Speaker stated that in the case of equality of numbers, party status must be taken into account. In that case the Speaker even took notice of the election results as well. This was unusual in that other Canadian precedents only considered what is happening inside the House and not the numerical quantity of votes that got them there. It is understood that this approach was contra a previous Speaker's ruling from the same province in 1952.

In New Brunswick in 1994 the Speaker there decided that taking note of election results was an 'exception to a general rule'. Madam Speaker extended her consideration not to just the official opposition but also to the Leader of the Opposition, this was directly counter to the Alberta Speaker's specifying it was not his duty to specify the Leader of the Opposition.

The outcome in New Brunswick was the Speaker's ruling meant that equality of numbers, which had come about as a consequence of by-elections and resignations during a term of the Assembly, on its own was not enough to replace the then recognised (numerically equal) 'official' Opposition.

In the (Canadian) House of Commons in 1996 the 'continuity principle' enunciated in New Brunswick two years earlier prevailed when there became an equality of numbers of two parties in opposition, the party (Bloc Quebecois) started off in opposition and prevailed over the reinvigorated Reform Party which later achieved equal numbers on the floor of the House.

The interesting argument there was that because Arthur Beauchene's Rules and Forms of the House of Commons of Canada states that the political party which has the right to be called 'Official Opposition' is the largest minority group which is prepared, in the event of the resignation of the Government to assume office, then a kind of "government in waiting" principle should be applied. Mr Speaker did not agree.

The Reform party argued the separatist Bloc Quebecois was not a "government in waiting" since it would not run candidates outside Quebec and its members were committed to the secession of Quebec and breaking up the confederation of Canada.

The problem with some of these arguments is that they neglect to remember that in most cases a new government is formed after an election and not by some osmosis from Opposition or pre-anointment by a Speaker as the next in line<sup>3</sup>.

In The Yukon in 1996 the Speaker extended the notion of incumbency to having formerly been in Government being a satisfactory test. This situation arose directly after a general election rather than during a parliamentary term like the other Canadian examples. Speaker Robert Bruce of the Yukon described his decision making with reference to the House of Commons precedent when he wrote in the following year:

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<sup>3</sup> See the Speaker's complete explanation at: <https://www.ourcommons.ca/DocumentViewer/en/35-2/house/sitting-1/hansard#16>

*It is the Chair's judgment that that spirit and intent is best satisfied by selecting an opposition party caucus which formed the government prior to an election to be the Official Opposition over an opposition party caucus that was a third party in the House prior to the election<sup>4</sup>.*

How do any of these examples relate to the existing situation in the Northern Territory?

Well, in my view they don't, but that hasn't stopped conjecture and debate.

It is also worth noting that access to the resources made available to the recognised Opposition is perhaps what motivates the debate.

The Yukon Speaker also said: *This decision is made in respect to the proceedings in this Chamber. Decision on matters such as caucus funding and space allocations are made in another forum.*

This is of interest because that 'other forum' in the Northern Territory is a gift of the Government. The Government decides the quantum of resources allocated to the Opposition as well as to any other groups. The Remuneration Tribunal Determination each year makes it clear that this is at the discretion of the Government.

For instance, during the 12<sup>th</sup> Assembly, in 2015 the Government declined to provide any additional resources to the three Palmer United Party Members of the Assembly (all defectors from Government ranks).

In the existing 13<sup>th</sup> Assembly the grouping of seven independents (after many requests for more resources) have benefited from a funding allocation which allows the Department of the Legislative Assembly to employ two temporary researchers to serve them all (funding expires on 30 June next year and the general election is in August next year).

The assumption in the Northern Territory is that the allocation of the Government's funds for Opposition will follow the decision made by the electorate as to who is in Opposition. The idea that the Speaker might 'choose' an Opposition could effectively mean that the Speaker would direct the flow of the Government's funds.

### **The Northern Territory Experience**

The matter of who forms Opposition was the subject of detailed advice from both the Clerk to the Speaker and advice sought by Government from the Solicitor-General of the Northern Territory. These advices were disseminated to Members on 30 August 2016, a few days after the general election.

They covered off on matters such as the definitions of an 'opposition' in various well regarded sources such as the Encyclopedia of Parliament<sup>5</sup> and Erskine May's Parliamentary Practice<sup>6</sup> as well as examining *the Northern Territory (Self Government) Act 1978*, the Standing Orders (of a number of parliaments) and the Remuneration Tribunal Determination and looking in other places where there may have been references to 'opposition'. Those advices were informative and they appeared to settle the matter for the time being.

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<sup>4</sup> *Recognition of Official Opposition* Robert Bruce, Canadian Parliamentary Review Spring 1997 page 38.

<sup>5</sup> Wilding and Laundry 1961 Edition page 428

<sup>6</sup> Erskine May (Sir Malcolm Jack) - Twenty Fourth Edition page 49

In October 2018 the matter arose again with a series of Questions on Notice from the Member for Araluen (independent) to the Government, media requests to the Speaker and sometime later, an attempt by three independent Members who approached the Speaker advising they had formed an 'alliance' to claim Opposition.

At the first sitting of the 13<sup>th</sup> Assembly on 18 October 2016 there was no dispute or conjecture about the Opposition<sup>7</sup>.

The declaration of the polls had confirmed there was a cohort of two Members from a single political party to form Opposition and no objection was (or has yet been) raised by way of substantive motion in the Assembly.

### **Recognition of an Opposition in the Legislative Assembly**

*The Opposition is the party or group which has the greatest number of non-government Members in the House of Representatives<sup>8</sup>.*

*Rulings and interpretation of these Standing Orders is the responsibility of the Speaker or Member presiding in the Chair, guided by previous rulings and the practices of the Assembly and, if required, the most recent edition of the House of Representatives Practice<sup>9</sup>.*

These authorities are the basis for how the Opposition has come into existence in the Legislative Assembly of the Northern Territory.

The 2016 advices contain consideration as to whether it would be possible for a grouping of individual independent Members of the Assembly to form and be recognised as an Opposition.

The Solicitor-General (advice tabled in the Assembly), specifically advised:

*Advice has been sought in relation to the formation of the Opposition by a "coalition" of Independent Members if more seats in the Legislative Assembly are held by Independent Members than by Country Liberal Party (CLP) Members.*

*...in my view the Opposition cannot be formed by a coalition of Independent Members of the Assembly<sup>10</sup>.*

While questions have been asked of the Government at Question Time about the resourcing of independent Members, no Member of the Assembly has sought a decision of the Assembly as a whole in order to change the Assembly's adoption of the practice of recognising the party or group with the greatest number of non-government Members becoming the Opposition.

The House of Representatives Practice advises that *the concept of 'alternative Government' is very relevant in Australia. Every Opposition can realistically hope, eventually to form government...*<sup>11</sup>

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<sup>7</sup> The NTEC results were declared on Monday 12 September 2016

<sup>8</sup> Seventh Edition at page 79.

<sup>9</sup> Standing Order 1: *General Rule about Application and Interpretation*, Legislative Assembly of the Northern Territory.

<sup>10</sup> Paragraph 29 of Solicitor General's advice at Annexure 2. Tabled in the Assembly.

<sup>11</sup> Seventh Edition at page 79.

Does this 'hope' extend to individual Independent Members? I don't think so. An unplanned for opportunity to be part of a government by being coopted into a ministry to support a minority government is a different matter.

### **Questions from the Member for Araluen to Speaker**

On Friday 26 October 2018 in the context of active media coverage I sent an email to all Members of the Legislative Assembly as follows:

*Dear Honourable Members*

*It has come to my attention through comments from Members on local radio and questions from media outlets that there is a deal of misunderstanding (and perhaps some politicking going on) in terms of the role of the Speaker and the status of 'Opposition' in the Legislative Assembly.*

*Let me make it abundantly clear - The Speaker has no individual role in determining what constitutes an 'Opposition' in the Legislative Assembly.*

*The attached advice from the Clerk dated 30 August 2016 was provided by email to all Members just after the Territory election in 2016.*

*It should be understood from this advice that the Clerk also has absolutely no role in determining the status of an 'Opposition'. Clearly some Members may have a poor memory or did not read this previous email message.*

*It is the Assembly itself which will make a determination if and when it comes to that.*

*See particularly page 6 of the attached concerning a brief reference to a situation where two (non-government) political parties have equal numbers in the Assembly. To follow that thread, you can look at page 77 of the ACT Legislative Assembly's Companion to Standing Orders document here:*

*[https://www.parliament.act.gov.au/data/assets/pdf\\_file/0009/399528/companion.pdf](https://www.parliament.act.gov.au/data/assets/pdf_file/0009/399528/companion.pdf)*

*I have no doubt this advice to Members will end up with some media outlets and so be it, I have no issue with my comments being broadcast far and wide.*

*Regards*

The Member for Araluen (a former CLP Deputy Chief Minister in the 12<sup>th</sup> Assembly) replied to me and copied in all Members as well as the Clerk on two occasions the following day.

The Member asked:

- 1. Are you saying the Assembly decided in 2016 who was to be Opposition?*
- 2. If not, then who exactly did make that decision to give Opposition status to the two members of the CLP?*
- 3. If it was not you "individually", then what other individual or group of individuals made that decision?*

I replied that I continue to take the view that the status of Opposition in the 13<sup>th</sup> Legislative Assembly is consistent with the established precedent that the party with the largest numerical representation after the Government is the Opposition.

It is also my view that the Assembly is not required to take specific action or adopt any specific position when it is known that numerically there is a party or grouping of Members which can be identified as the Opposition. By doing nothing more than following recognised

practice the Assembly, in effect, decided that the two CLP Members in the Assembly were the Opposition.

I tabled my considered response to these questions in the Assembly the following week.

In the case of the 2016 election there was some initial doubt as to whether there would be more than one Member of the Assembly from the CLP, (this is what generated the first advices from the Clerk and the Solicitor-General in August 2016) however upon the declaration of the polls there were two CLP MLAs.

Further to her first email, the Member for Araluen emailed me and all Members the following questions:

4. *The document you have attached by the Clerk, refers to an attached letter from the NT Solicitor General providing advice on this issue. Is it possible for this letter from the Solicitor General to be provided to all honourable members?*
5. *You have referred us to the ACT Standing Orders. Did you consider over the past 2 years, developing a Companion to the Standing Orders of the NT Legislative Assembly, like that of the ACT Legislative Assembly?*

The Solicitor-General's 2016 advice was sent to all Members in 2016 and has been tabled in the Assembly.

A 'companion guide' in the Northern Territory would not assist in any contemplation of the status of Opposition here as there is no equivalent Standing Order in the Northern Territory to the ACT Standing Order about a method for the Assembly choosing an Opposition leader.

The reference to the ACT Standing Orders was provided to Members to assist Northern Territory Members understand what might be available should a second party or group of Members come into existence to challenge the existing CLP Opposition status.

### **Media and other Member Commentary**

A discussion between some Members of the Assembly on Darwin radio station MIX FM as well as two other emails sent to me on Friday 26 October 2018 from a reporter at the ABC in Darwin asserted some form of collusion on the part of the Speaker in 'determining' the Opposition.

The radio interview included the following comments from the Member for Blain (an independent but also a former 12<sup>th</sup> Assembly Chief Minister):

*We fear insider trading because the two existing parties and the Speaker appear to have a vested interest in keeping things the way they are...*

*If we leave it to insider considerations and advice from a Speaker you are going to have, I think, things stay exactly the same way because they are motivated to keep them the same way.*

The next week in the Assembly I called upon the Member for Blain to ask him to withdraw the comments and to apologise for reflecting upon the Chair<sup>12</sup> which he did.

The ABC's journalist wrote to me asserting:

*I am working on a story today about the possibility of independent members Terry Mills and Robyn Lambley attempting to form Opposition. As you are aware, it wasn't the*

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<sup>12</sup> See generally the House of Representatives Practice Seventh Edition page 202.

*Government that gave the two-member CLP official Opposition status, it was you and the clerk.*

This assertion is factually incorrect. Neither the Speaker nor the Clerk have the power to 'give' status to an Opposition.

He continued:

*According to a respected constitutional law expert, it is the Speaker who selects the Opposition and questions have also been raised over why the Solicitor General was even called in for a matter that is supposed to be dealt with by the rules governing the Legislative Assembly, which is the Clerk's responsibility.*

It is not known who the expert referred to is.

In the context of conversations between the Clerk and noted constitutional law scholar Professor George Williams, Professor Williams wrote to the Clerk on 7 February 2019 in the following terms:

*Dear Michael*

*... I am thinking about whether to do one of my columns in The Australian on the subject.*

*I did end up doing a short interview today for ABC radio before I received the below. I made the point of how existing conventions are ill adapted for the current situation, and that **I saw this is as a matter for Parliament to resolve, rather than the speaker.***

*I noted though that it was not clear Parliament would be able to do so, especially given the need for government members not to determine who becomes the opposition. In light of this, I suggested that the conventions may need to evolve and that Parliament may need to be informed by further independent advice so as to bring a non-partisan perspective to the resolution of this question<sup>13</sup>.*

The article in [The Australian](#)<sup>14</sup> provides some more information on those views. I have emphasised the pertinent part above with regard to my role as Speaker.

While the procedure in the ACT Assembly provides for a deadlock in that jurisdiction where there is an equality of numbers in opposition parties. The matter has never been determined in the Northern Territory.

The [House of Representative's Practice](#) reference is to a situation where the Speaker might be required to recognise who is the Leader of the Opposition where there are two parties in opposition with the precise same number of Members<sup>15</sup>.

In his email to me the ABC's journalist further stated:

*The 2016 decision has also been called into question because of the rushed handling of it. You gave the keys to the fourth floor offices to Higgins and the CLP before anyone else could make an argument for Opposition and the Government then followed suit and gave them the Opposition resourcing. That's just a fact.*

The 2016 advices were received by James Oaten at the ABC in Darwin who reported on the matter extensively at the time. (Mr Oaten was not the reporter making these new assertions).

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<sup>13</sup> Reproduced with permission of Professor Williams.

<sup>14</sup> *Territory's Arm Wrestle is Unique* 18 February 2019.

<sup>15</sup> [House of Representatives Practice](#) Seventh Edition at page 79



The allegation of a 'rushed handling' is incorrect and the remainder of the commentary is not 'a fact'.

The poll was declared on 12 September 2016. The Chamber seating plan was settled by the Speaker after the declaration of the poll. It was an orderly process. The Assembly holds no record of 'anyone else' seeking to 'make an argument for Opposition'.

### **Written Questions and the Government's Response**

The role of the Speaker in 'determining' Opposition became somewhat murky when the Chief Minister's answer to Written Question 447 was published.

The answer was provided to the Member for Araluen without consultation with or reference to me about its content.

It is understood the answer is partially based upon further advice the Government received from the Solicitor-General. After seeking a copy of that advice it became clear to me that the Solicitor-General's advice was not considered in full in the Government's Answer 447.

Answer 447 is an answer provided by the Chief Minister and as is well known, Ministers may answer questions how they see fit.

If I had written the response I would probably have written:

*The Speaker in the Northern Territory has consistently advised she will not make an arbitrary decision if there is an equality of numbers. It will be a matter for the Assembly itself.*

### **Question and Answer 447**

The Member for Araluen to the Chief Minister:

1. *Given that the CLP Opposition currently have only two members, how would the Opposition be determined in the case whereby another two cross bench form a political party (compliant with the requirements of the NT Electoral Commission) and make a bid for Opposition status?*
2. *Given the Remuneration Tribunal Determination refers to a single 'Opposition', would the Chief Minister give consideration to making an interim Determination (as available under the Act) to recognise a second party of opposition and adjust the allocated resources in equal shares accordingly?*
3. *Given the Assembly Members and Statutory Officers (Remuneration and other Entitlements) Act provides in the regulations the Tribunal cannot allocate certain resources to Opposition and Independents will the Government step in if there is an equality of numbers in two political parties on the opposition bench to the Government?*
4. *If there were two political parties, both with 2 cross bench Members of Parliament in the NT Parliament, who and how would the Opposition status be determined?*
5. *Has the Government sought an update from the Solicitor General with regards to her 2016 advice on who constitutes the opposition in the case outlined above?*
6. *Is the status Opposition status simply about a political party having more Members on the floor of the NT Parliament?*

7. *How is it determined that a political party or a coalition of political parties, can “form an alternative government” and thereby be considered as an Opposition?*
8. *What role or say does the NT Government have in determining what political party or coalition of political parties forms Opposition?*
9. *Has the Government sought any advice from the Speaker and/or the Clerk of the Legislative Assembly on the matter of who forms Opposition if there is an equality of Members in two parties that do not form the Government?*
10. *Is there any precedent for the Opposition status of a Parliament to be shared by two parties of the same size?*
11. *Are there any circumstances in which Opposition status could be shared by two political parties?*
12. *If so, how would that work?*
13. *Given that the CLP Opposition currently have only two members, how would the Opposition be determined in the case whereby another three cross bench form a political party (compliant with the requirements of the NT Electoral Commission) and make a bid for Opposition status?*
14. *Could you describe the circumstances that would trigger a change in Opposition, given the current Opposition consists of 2 Members of the NT Legislative Assembly?*
15. *Who would determine a change in Opposition?*
16. *What is the process for changing Opposition?*
17. *If two political parties formed a coalition of more than three Members of the Legislative Assembly, in the current Parliament with the CLP Opposition of two, could they form the Opposition?*
18. *How would a coalition of two political party be recognised as a potential Opposition in the NT Parliament?*
19. *What requirements are needed to qualify as a coalition in order to be considered as an Opposition in the NT Parliament?*
20. *In the case where no political party has more than one member representing them on the cross benches of the NT Parliament, how is Opposition formed?*
21. *In the case where there are no political parties represented in the cross bench (all cross benches are Independent Members of Parliament), and therefore there is no political party to form an “alternative Government” or claim Opposition status in the NT Parliament, what would happen?*
22. *What is recognised as a coalition in the NT Parliament?*
23. *Can a group or alliance of two or more Independent Members of Parliament (not a political party) with common policies, form Opposition?*
24. *What is the Parliamentary process for determining a change of Opposition? What happens?*

## **Answer - Overarching Response**

*Under Westminster convention and practice, the 'Opposition' is defined as the political party (or 'coalition Opposition' of parties), which has the greatest number of non-Government Members in the Legislative Assembly.*

*It is not possible for two separate Opposition parties to exist, or share the function of Opposition status, while remaining distinct in their individual Party' status. For similar reasons, it is not possible for two Independent members to share the function of Opposition.*

*A coalition of parties forming the official Opposition could be demonstrated by some blurring of the distinction between the parties, comprising clear evidence of their ongoing joint commitment and capacity to function as the official Opposition.*

*While there is no 'bright-line' test of the requirements for a coalition of parties to be afforded the status of Opposition, a coalition Opposition would need to demonstrate a public commitment to act co-operatively based on aligned ideologies and that it could effectively perform the functions of the Opposition. Evidence of this commitment could be, for example, a written agreement pledging to always act collectively and with detail regarding the agreed positions on likely policy issues.*

*If the official Opposition party (or coalition Opposition) is not clear by virtue of numbers, it would be a matter for the Speaker of the Northern Territory Legislative Assembly to decide which group will be recognised as the official Opposition, and who will be recognised as the Chair as the Leader of the Opposition.*

1. *Refer to the Overarching Response.*
2. *There can only be one party recognised as the official Opposition, therefore, consideration of a second party of Opposition, and subsequently the resourcing of such a body, is a fallacious concept.*
3. *Refer to Question 2 above, and the Overarching Response.*
4. *Refer to Overarching Response.*
5. *Yes.*
6. *Yes – refer to Overarching Response.*
7. *Refer to Overarching Response.*
8. *None – refer to Overarching Response.*
9. *No.*
10. – 19. *Refer to Overarching Response.*
20. *In the event there was no non-Government party with more than one Member, there would be no official Opposition. In that situation, it would be more appropriate that all non-Government Members (both Independent and those endorsed by a minority party) would act in opposition to Government, instead of there being an official Opposition. This was the case in the first Assembly of the Northern Territory.*
21. *Refer to Question 20 above.*
22. -24. *Refer to Overarching Response.*

Not satisfied with the Government's response and the subsequent and repeated repudiation by me of the purported role of the Speaker which the Government outlined in the response entitled *Overarching Response* above, the Member for Araluen again asked the Government further written questions.

The Government's answer to these questions (451) was: *Refer to Written Question 447 for answers.*

On 19 December the Member for Araluen asked Written Question 479: *Can a group, alliance or coalition of two or more Independent Members of Parliament (not a political party) with common policies, form Opposition?*

The Government responded: *The responses to Written Questions 447 and 451 provide the answer to this question.*

Finally (so far), on 28 February this year, the Member for Araluen asked question 538 on the same topic with 20 parts to the question<sup>16</sup>, the Chief Minister's novel answer was:

*The extensive advice you have already received answers these questions. I encourage you to focus your energies on the concerns of Territorians, rather than continually focusing on yourself.*

### **TRY Time**

On Wednesday 6 February the NT News reported under the front page headline *T.R.Y. Time: Terry, Robyn and Yingiya move to seize Opposition from CLP*<sup>17</sup> that the three independent Members had met with me to ask me to "formalise the arrangement which would see the two member CLP stripped of the resource and privileges of the Opposition".

Needless to say, at my meeting with the three Members on the previous day I reiterated my by then oft stated position that I do not see it as the role of the Speaker to do any such thing. When they cited the Chief Minister's 'overarching response' to Question 447 I advised they would have to take that up with him.

I was particularly interested in the reporting the next day which stated: "The opposition-in-waiting would operate as a collation of independents and follows advice from the NT Solicitor-General that a coalition of non-government members could act as the official opposition if those members had demonstrated a public commitment to act cooperatively based on aligned ideologies".

"However that advice related to coalitions of political parties not independents."

Yes - That's a pretty big "however..."

After meeting with the independents on 5 February I wrote to them to advise:

*It is understood that you seek Speaker's intervention into the existing arrangements concerning which Members of the Legislative Assembly form the recognised Opposition.*

*As you have been advised previously, by convention, the grouping of Members from the recognised political party with the most Members who cannot form Government are considered the Opposition in the Assembly.*

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<sup>16</sup> See: [https://parliament.nt.gov.au/data/assets/pdf\\_file/0004/665653/Aqst-538-Lambley-Opposition-Status.pdf](https://parliament.nt.gov.au/data/assets/pdf_file/0004/665653/Aqst-538-Lambley-Opposition-Status.pdf)

<sup>17</sup> Reporter: Hayley Sorenson

*That convention does not reflect any decision made by the Speaker. For procedural purposes, the Speaker is required to know which Member is Leader of the Opposition but otherwise has no interest in the matter.*

*It is open to you as Members to challenge the above stated convention and seek to formalise other arrangements with the agreement of the majority of the Members of the Legislative Assembly.....*

*At our meeting on the 5<sup>th</sup> of February you referenced the Chief Minister's answer to Written Question 447 submitted by the Member for Araluen.*

*That answer asserts the Speaker has a role in the determination of who forms the Opposition in some circumstances. The Chief Minister's response to that question on notice is a matter for him.*

*I do not agree that the Speaker in the Northern Territory Legislative Assembly should have the described role. I will not perform that role. I have consistently said I will not do so.*

*Should one of you wish to move a motion in the Assembly for the Assembly to consider whether the Assembly recognises your grouping of independent Members as the Opposition and one of you as the Leader of the Opposition that course is open to you.*

## **Conclusion**

It remains my view that the Speaker should have no direct role in deciding who forms Opposition in the Northern Territory Legislative Assembly.

*In Party Politics: The Growth of Parties* Sir Ivor Jennings wrote in 1961 that: *The minority in the House of Commons is composed for the most part of members of a single party who are in general opposition to the Government and hope to supplant it at the next election through becoming a majority*<sup>18</sup>.

While his work mentions the few independents who come to the fore from time to time it does not contemplate a coalition of independents supplanting parties.

Acknowledging some unique legislatures such as that of Nunavut where there are no political parties and the government is formed by a vote on the floor of the Assembly, the experience in Australia has uniformly been that parties exist and parties either alone or in coalition form governments and if they exist in opposition they are recognised as the Opposition.

In the Northern Territory there was not always an opposition that could be recognised even when the Assembly had two non-government members who were elected as independents. While occasionally styled as 'in opposition' they were not recognised and resourced in such a manner (1974-77)

I continue to take the very well established approach that the Speaker's role is to serve the Assembly itself.

The Speaker remains in the service of the Assembly and is accountable to its membership for so long as the Assembly determines (in my case) that I should hold the position. To choose a different particular grouping to become the Opposition when there is, by

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<sup>18</sup> At page 2.

convention and past practice, an already recognised grouping in existence would be, in my view, an abuse of my trusted and impartial position.

I therefore leave it as a matter for the Assembly itself.