

Chapter 6

Discussion Paper No. 6

Aboriginal Rights and Issues-Options for Entrenchment



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Sessional Committee on Constitutional Development

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Aboriginal Rights and Issues — Options for Entrenchment

JULY 1993

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A paper issued for public comment by
the Sessional Committee on Constitutional Development

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A. EXECUTIVE SUMMARY

- (a) This paper considers options for possible inclusion of provisions within a Territory or new State constitution pertaining to the recognition of Aboriginal rights and other matters that would facilitate the creation and maintenance in the Territory of a single harmonious, tolerant and united community.
- (b) The Committee stresses that it does not wish at this stage, to advocate any particular view or position as to the constitutional entrenchment of provisions relating to Aboriginal rights. The purpose of this paper is to stimulate debate and invite comments and suggestions by way of submissions to the Committee.
- (c) Particular issues on which comment and suggestions are sought and which are discussed in more detail throughout the paper include:
 - (i) Should the Aboriginal Land Rights (Northern Territory) Act 1976 be patriated and become a Territory or new State law, and if so what form should it take?
 - (ii) What elements if any of the Land Rights Act need to be constitutionally entrenched in order to provide guarantees of Aboriginal land granted?
 - (iii) Should a Territory or new State constitution refer to any customary rights of the Aboriginal people, and if so how should they be dealt within the new constitution?
 - (iv) Should provision be made in a Territory or new State constitution to protect Aboriginal sacred sites and objects?
 - (v) Should a Territory or new State constitution entrench rights of Aboriginal communities in the Territory concerning self-determination and in what manner and form should any such Aboriginal self-determination take?
 - (vi) Should Aboriginal languages, customs, culture and religion be constitutionally recognised in some way?
 - (vii) Should there be special constitutional procedures adopted to recognise matters of concern to Aboriginal people that might be the subject of constitutional entrenchment, and if so what procedures should be used?

B. INTRODUCTION

1. Terms of Reference

On 28 August 1985, the Legislative Assembly of the Northern Territory of Australia by resolution established the Select Committee on Constitutional Development.

Amendments to the Committee's terms of reference were made when the Committee was reconstituted on 28 April 1987. On 30 November 1989, the Legislative Assembly further resolved to amend the terms of reference by changing the Committee's status to a sessional committee. On 4 December 1990 the Committee was again reconstituted with no further change to its terms of reference.

The original resolutions were passed in conjunction with proposals then being developed in the Northern Territory for a grant of Statehood to the Territory within the Australian federal system. The terms of reference include, as a major aspect of the work of the Committee, a consideration of matters connected with a new State constitution. This discussion paper forms part of that consideration and is issued for public comment.

The primary terms of reference of the Sessional Committee are as follows:

- "(1) ... a committee to be known as the Sessional Committee on Constitutional Development, be established to inquire into, report and make recommendations to the Legislative Assembly on:
 - (a) a constitution for the new State and the principles upon which it should be drawn, including:
 - (i) legislative powers;
 - (ii) executive powers;
 - (iii) judicial powers; and
 - (iv) the method to be adopted to have a draft new State constitution approved by or on behalf of the people of the Northern Territory; and
 - (b) the issues, conditions and procedures pertinent to the entry of the Northern Territory into the Federation as a new State; and
 - (c) such other constitutional and legal matters as may be referred to it by:
 - (i) relevant Ministers; or
 - (ii) resolution of the Assembly.
- (2) the Committee undertake a role in promoting the awareness of constitutional issues to the Northern Territory and Australian populations."

2. Membership

The membership of the Committee presently comprises equal numbers of Government and Opposition members and includes one Aboriginal member of the Legislative Assembly from a traditional background.

3. *Discussion and Information Papers*

(a) The Committee has prepared and issued a number of papers arising from its terms of reference and relevant to the subject of this Discussion Paper, as follows:

- * A Discussion Paper on a "Proposed New State Constitution for the Northern Territory" plus an illustrated booklet of the same name.
- * A Discussion Paper on "Representation in a Territory Constitutional Convention".
- * Discussion Paper No. 3 on "Citizens' Initiated Referendums".
- * Discussion Paper No.4 on "Recognition of Aboriginal Customary Law".
- * Discussion Paper No. 5 on "The Merits or Otherwise of Bringing an NT. Constitution into Force Before Statehood".
- * Information Paper No. 1 on "Options for a Grant of Statehood".
- * Information Paper No. 2 on "Entrenchment of a New State Constitution".

(b) The Committee has in these Papers indicated its preliminary views in dealing with a number of Aboriginal matters, not only as to the possible recognition of Aboriginal Customary Law, but also to other Aboriginal matters, and without considering those other matters in any detail.

Thus in its first Discussion Paper, mentioned above, it expressed a preference for a single member electorate system for the new State Parliament, with Aboriginal people participating in the same way as other non-Aboriginal people in the Territory on the basis of one person one vote and with no distinction on the basis of race (@ p31). The Committee in the same Paper in broad terms raised the possibility that, in the absence of Commonwealth land rights legislation applying Australia wide, the Aboriginal Land Rights (Northern Territory) Act 1976 of the Commonwealth could be patriated to and become part of the law of the new State by some agreed method. One option, favoured by the Committee, was to entrench guarantees of Aboriginal ownership in the new State constitution, such that they could only be amended by following specified entrenchment procedures. The Paper raised the possibility of the new constitution going further in its reference to Aboriginal citizens of the new State, to give particular recognition to their place in contemporary society. It suggested there was some merit in recognising the pre-existing circumstances of Aboriginal citizens, including as to their language, social, cultural and religious customs and practices, but made no specific recommendations on this issue. A copy of that Paper @ pp 93-94 is set out in Appendix 1.

(c) In the Committee's illustrated booklet "Proposals for a new State Constitution for the Northern Territory - Have Your Say", the Committee also dealt very briefly with Aboriginal rights.

- (d) In the Committee's Information Paper No. 2 - "Entrenchment of a New State Constitution", the matter of how a new State constitution could be entrenched to prevent easy amendment was discussed. The Committee pointed out that the mechanism of entrenchment might be more important to some sections of the Territory public than others. For example, the Committee was aware that Aboriginal people maintaining traditional lifestyles were particularly concerned about their land, law, language and religion. The Committee stated that entrenchment in a new constitution could provide a legal method of safeguarding these interests and removing them from the control of politicians (@ pp 4-5).
- (e) The Committee in its Discussion Paper No. 4 - "Recognition of Aboriginal Customary Law", examined in some detail the options for recognition of Aboriginal customary law as a source of law as part of the new State constitutional arrangements. A copy of the "Executive Summary" of that Paper is set out in Appendix 2. This present Discussion Paper will not examine the issue of recognition of customary law any further except in so far as it is necessary to do so incidentally.
- (f) Most of the work of the Committee has, so far, been undertaken in conjunction with proposals for a grant of Statehood. However, as pointed out in Discussion Paper No. 5 - "The Merits or Otherwise of Bringing an NT Constitution into Force before Statehood" the proposals for a new constitution for the Northern Territory do not necessarily have to be implemented contemporaneously with such a grant. The options for and against some earlier implementation of a new constitution are considered in that Paper. This includes the question of what guarantees are to be provided if, for example, the Aboriginal Land Rights (Northern Territory) Act was to be patriated (see Item D.2 below).
- (g) Since the issue of Discussion Paper No. 4 - "Recognition of Aboriginal Customary Law", the Committee has come to the conclusion that it should proceed to consider in more detail the options for dealing with a range of other issues relevant to Aboriginal citizens in the context of possible future Territory constitutional development. These issues include not only that of Aboriginal land rights, but also other issues such as self determination. These issues must be properly considered before any further comprehensive constitutional change in the Territory can occur. This Discussion paper seeks to address a number of these other issues and is issued for public comment.
- (h) The Committee does not suggest that this present Paper covers every issue of concern to Aboriginal citizens of the Territory, nor does this Paper purport to comprehensively cover every point that should perhaps be addressed in preparing a new constitution for the Territory. It is issued to stimulate public debate and to invite comment on the matters raised in the Paper or on any other matters that any member of the public may wish to raise with the Committee.

4. Committee Procedure

- (a) The Committee has adopted, as a fundamental aspect of its procedure in actioning its terms of reference, the conduct of a comprehensive program of community

consultations within the Northern Territory on matters that could be dealt within a Territory or new State constitution.

- (b) To this end, the Committee has already held a number of community visits and public hearings at various locations throughout the Territory. Many of these visits were to Territory Aboriginal communities. The Committee has also invited public submissions on its terms of reference and received a large number of both written and oral submissions. These consultations will continue into the future as circumstances permit.
- (c) The Committee has received a range of submissions on matters of concern to Aboriginal people during its community consultations, extending beyond matters of Aboriginal customary law. Such other matters as Aboriginal traditional rights to land and sacred sites have not infrequently been raised.
- (d) There has been a commonly expressed desire by Aboriginal people to legally protect Aboriginal land and sacred sites. To a considerable extent the present law in force in the Territory achieves this, although not in a constitutionally entrenched way. In some matters of concern to Aboriginal people other than land rights and sacred sites, it is not always possible to discern a common view among Aboriginal people within the Territory.

It is hoped that by issuing this Discussion Paper, it will focus comments and clarify views on a range of matters, thus enabling options to be considered for further constitutional development.

- (e) The Committee proceeds on the assumption that it is absolutely essential for Aboriginal people to be involved in the process of further constitutional development in the Territory. The Committee considers that without such involvement, the prospects of achieving major constitutional reform are negligible. Accordingly, the Committee calls upon all Territorians (Aboriginal and non-Aboriginal) to contribute to this present exercise by considering this Paper and by providing the Committee with constructive views and comments. The Committee remains willing, upon request and within the constraints of its budget, to undertake further community visits and consultation in order to explain this Paper, to answer any questions, and to receive submissions and comments.

5. *Object of this Paper*

- (a) The main object of this Paper is to discuss options for possible inclusion of provisions in a Territory or new State constitution that would fairly reflect Aboriginal interests in partnership with other Territorians and which would facilitate the creation and maintenance of a harmonious, tolerant and united community. This is a subject of vital concern to the future of all Territorians.
- (b) A constitutional settlement for the Territory that achieves a balance between the different groups in the Territory will be in the interests of all Territorians and should greatly assist to avoid the racial tension evident in other parts of the world.

- (c) The Committee considers that special constitutional measures for indigenous peoples can be justified within the broad objective of this Paper, but only so far as they are fair and equitable, having regard to the legitimate interests and aspirations of all Territorians and taking into account all relevant resources and constraints.

C. HISTORICAL BACKGROUND AND ISSUES OF RECONCILIATION

- (a) Upon European settlement of Australia, little account was taken of the position and rights of the Aboriginal residents in developing the constitutional framework of the new colonies. This approach was carried over into the framing of the Commonwealth Constitution, which came into effect upon federation in 1901. As a result, Aboriginals were only given recognition in that Constitution in a negative way, for example, by excluding them from being counted in reckoning the numbers of people of the Commonwealth or of a State (former section 127), or by exclusion from Commonwealth legislative power by reference to race (section 51 (xxvi) prior to the 1967 amendment).
- (b) In more recent decades, Aboriginal citizens of Australia have been given a variety of legal rights and entitlements, generally by way of legislative change. The successful 1967 amendments to the Commonwealth Constitution removed the negative features of that document in relation to Aboriginal people and conferred legislative power on the Commonwealth Parliament to make special laws for people of the Aboriginal race. As a result, the Commonwealth Parliament has enacted a range of legislation as to Aboriginal people in the States; but that legislation is neither comprehensive nor (in some cases) of uniform application throughout Australia. To date there has been no constitutional recognition of the place of Aboriginal people, either in the Commonwealth or State constitutions (but see the final report of the Joint Select Committee of the Western Australian Parliament on the Constitution (1991) Vol. 2 @ p.3, which proposes a limited reference to Aboriginal people in the preamble).
- (c) In the Northern Territory, full legislative capacity already existed in the Commonwealth Parliament even before the 1967 referendum. This is because of the status of the Northern Territory as a Commonwealth territory under section 122 of the Constitution, a status that has not changed with the grant of Self-government in 1978.
- (d) The enactment of the Northern Territory (Self-Government) Act 1978 resulted in the conferral of a wide range of executive powers on the new Self-governing Northern Territory through its own Government and Ministers, extending to many matters of concern to Aboriginal people in the Territory. However, most matters relating to Aboriginal land in the Territory have remained a Commonwealth responsibility under the Aboriginal Land Rights (Northern Territory) Act 1976. As that Act is a Commonwealth Act, it is beyond the competence of the Northern Territory Legislative Assembly to alter or affect its operation, although it remains amenable to change by the Commonwealth Parliament under its ordinary processes. Other Commonwealth legislation that is of relevance in this context includes the Racial Discrimination Act 1975, the National Parks and Wildlife Conservation Act 1975 and the Aboriginal and Torres Strait Islander Heritage Protection Act 1984.

- (e) The recent High Court decision in Mabo has recognised that at common law there can be enforceable indigenous rights to land according to the traditional laws and customs of those indigenous people. The same decision recognised that any such common law title was liable to extinguishment by Government, but subject to the operation of Commonwealth legislation such as the Racial Discrimination Act. In the Northern Territory this qualification extends to the just terms requirement in section 50 of the Northern Territory (Self-Government) Act (see Item D 2.3 below).
- (f) There have been various calls for constitutional recognition of the place of Aboriginal people in Australia, but none have yet been implemented. Some of these are mentioned in Discussion Paper No. 4 - "Recognition of Aboriginal Customary Law", under the heading "Proposals for Reconciliation and Self-determination" (pp 11-15), see Appendix 3. It is not necessary for the purposes of this present paper to discuss these proposals in greater detail, as they all relate to the possibility of constitutional change at the national level. They include proposals for an agreement or treaty between Aboriginal and non-Aboriginal Australia as part of the reconciliation process, which may or may not be implemented by constitutional change at the national level.
- (g) The Committee repeats its views expressed in Discussion Paper No. 4 - "Recognition of Aboriginal Customary Law" that it is in the interests of all Territorians to work towards a harmonious, tolerant and united society. There may be considerable merit in the comments of the 1991 Report of the Royal Commission into Aboriginal Deaths in Custody (Vol 5) that reconciliation should be an ongoing process which must have bi-partisan support, and which should not be limited to the concept of a single instrument of agreement (however called). It is clearly not just a matter for the Commonwealth.
- (h) As stated in Item B.5 above, the main objective of this Paper is to discuss options for possible inclusion of provisions in a Territory or new State constitution relevant to matters of concern to the Aboriginal people. Such provisions could, if carefully drawn, facilitate the process of reconciliation and advance the cause of a harmonious, tolerant and united Territory community as part of a partnership between Aboriginal and non-Aboriginal Territorians. This could be done, either as part of the constitutional arrangements specifically adopted for a new State, or as part of any new constitutional arrangements for the Territory to be effected prior to any grant of Statehood.
- (i) In this regard, the Committee notes the June 1989 Submission by the Northern Territory Government to the Commonwealth on "Full Self-Government- the further Transfer of Powers to the Northern Territory" and in particular those aspects of that Submission relevant to Aboriginals. The Committee, which is bi-partisan, does not wish to be seen as endorsing that Submission, but it does suggest that if all or any of the proposals in that Submission are to be implemented prior to any grant of Statehood, there is considerable merit in doing so in conjunction with adoption of a Territory or new State constitution. The Committee has already considered - in its Discussion Paper No. 5 - "The merits of bringing an NT Constitution into force before any grant of Statehood" - guarantees designed to protect the interests of Aboriginal

people in the Territory in respect of any further matters transferred to the responsibility of the Northern Territory could be secured by appropriate entrenchment arrangements in such a new constitution.

- (j) The Committee is firmly of the view that the Territory should remain as one geographical and political entity, irrespective of what constitutional changes may occur in the future. So much is contemplated by the Committee's terms of reference and does not permit a consideration of other options. It is the responsibility of the Committee to frame options and proposals for a Territory or new State constitution that will provide a solid framework for a united Territory community.
- (k) This can only be achieved on a long term basis, the Committee believes, if the constitutional arrangements are fair and reasonable for all Territorians, Aboriginal and non-Aboriginal alike. Given the view previously expressed that no further major constitutional change can occur in the Territory without Aboriginal involvement, it seems inevitable that at least some broad matters of principle relevant to Aboriginal and non-Aboriginal relations and the indigenous rights of Aboriginal people may have to be contained in any Territory or new State constitution. Matters of details may be relegated to ordinary legislation.
- (l) The Committee accepts that whatever the constitutional or legal arrangements, the achievement of reconciliation and harmonious race relations is ultimately dependant upon appropriate individual values and attitudes. There is a limit to what can be achieved by written law.
- (m) In so far as constitutional provision is eventually made on the matters addressed in the Paper, there will be issues of the degree of constitutional entrenchment desirable. This is addressed in Item H below.

D. ABORIGINAL LAND

1. Outline

- (a) The Committee is of the view that ownership of land is of great importance to the Aboriginal inhabitants of the Northern Territory who still retain their traditional links to the land. So much is clear from the Committee's community consultations. The central place of land to Aboriginal traditions and beliefs has been more than adequately documented. Aboriginal identity is defined largely by reference to particular land. The links are first and foremost spiritual in nature. They are still strong in many parts of the Territory.
- (b) The importance of land to indigenous peoples has been demonstrated at an international level. Reference should be made, for example, to ILO Convention No 169 Concerning Indigenous and Tribal Peoples in Independent Countries (1989), and in particular to Part II of that Convention, which deals with indigenous rights to land.
- (c) Aboriginal people already legally own significantly large areas of land in the Territory. Apart from any customary title to land of the indigenous people of the Territory (dealt

with below), most (but not all) Aboriginal land in the Territory is held under Commonwealth legislation.

- (d) The Aboriginal Land Rights (Northern Territory) Act 1976 of the Commonwealth contains comprehensive provisions as to the granting of Aboriginal freehold title to Land Trusts for the benefit of Aboriginal people. Under that Act, a large portion of the Territory is already held as Aboriginal land, and a number of other areas are under claim and may be granted as Aboriginal land.
- (e) The Act is administered on behalf of Aboriginals by Land Councils, and there is currently four such Land Councils, two of them being for the northern half and the central half respectively, and two Island Land Councils.
- (f) There are statutory restrictions on any alienation of Aboriginal land under the Act. In addition, there is a once only Aboriginal veto on mining on that Aboriginal land, although ownership of minerals in the land is reserved to the Crown.
- (g) Land claims under the Act are enquired into by Commissioners appointed by the Governor-General, with the final decision being made by a Commonwealth Minister on the recommendation of a Commissioner. Claims may be made to unalienated Crown land or alienated Crown land held by Aboriginals, provided it is land outside of a town. The basis of a land claim is that there is a local descent group of Aboriginals who have common spiritual affiliations to a site on the land with primary spiritual responsibility for that site and are entitled by tradition to forage over the land (see definition of "*traditional Aboriginal owners*" in section 3 (1) of the Aboriginal Land Rights (Northern Territory) Act 1976).
- (h) Entry onto sacred sites (wherever located in the Territory - see Item E below), or onto Aboriginal land is controlled by the Act, with preservation of traditional Aboriginal rights of access to and use of Aboriginal land. The Northern Territory cannot compulsorily resume Aboriginal land, nor can it prevent or impede a land claim except on the legal grounds that a claim does not legally comply with the Act.
- (i) The Northern Territory receives the royalties for its own minerals (which excludes uranium and similar substances) mined on Aboriginal land, but there is an equivalent payment made to Aboriginal interests by the Commonwealth. In addition, Land Councils negotiate agreements with miners which include monetary payments.
- (j) Complementary Territory legislation provides for claims to Aboriginal living areas on pastoral leases and also for closure of seas to non-Aboriginals where adjoining Aboriginal land and within two kilometres. Other Territory legislation deals with community living areas excised from pastoral leases, protection of sacred sites, entry onto Aboriginal land and closed seas by a system of permits and provisions for wildlife on Aboriginal land or fishing on adjoining waters.
- (k) The statutory provisions as to Aboriginal land are intertwined with the operation of the National Parks and Wildlife Conservation Act 1975 of the Commonwealth in relation

to Kakadu and Uluru National Parks, both of which are established under that Act and which are located, in whole or part, on Aboriginal land under lease for Park purposes.

- (l) The statutory provisions as to Aboriginal land are also intertwined with the operation of the Ranger Uranium Mine under the Atomic Energy Act 1953 of the Commonwealth, which is located on Aboriginal land.
- (m) There are also other Commonwealth Acts of relevance, such as the Environment Protection (Alligator Rivers Region) Act 1978, which would need to be considered in any proposal for patriation of the Aboriginal Land Rights (Northern Territory) Act.
- (n) Other land in the Territory is held by Aboriginal people or organisations pursuant to a variety of arrangements under Territory legislation and may sometimes be called Territory Aboriginal title or land or enhanced Territory title.

2. *Land Rights*

- (a) The Committee is of the view that no lasting constitutional settlement can occur in the Territory without some appropriate recognition of the importance of land to Aboriginal people in the Territory as the indigenous inhabitants. Whether this should occur in the form of constitutional provisions, and if so, the nature of those provisions, are matters for consideration.
- (b) Any successful constitutional settlement in the Territory must balance the particular interests of the Aboriginal people in land with the wider interests of the whole community in land and land use and the proprietary interests of that wider community. The Territory is fortunate in that a great effort has already been made seeking to establish and operate such arrangements through ordinary legislation, being firstly the Aboriginal Land Rights (Northern Territory) Act and secondly a variety of Territory legislation. Whether these efforts have been entirely successful is a matter for judgment.
- (c) The question that arises on any grant of Statehood is whether it is necessary, as part of those new constitutional arrangements, to have specific legislation, whether constitutionally entrenched or otherwise, dealing just with Aboriginal land. On one view, all land in the Territory should be held under the one system of land titles, and not under two parallel systems divided on racial grounds.
- (d) However it has to be recognised that at present there is a dual system in the Northern Territory, and it seems inevitable that the question will have to be addressed, as part of any further constitutional advancement, as to what aspects (if any) of this dual system are to be carried over into a new constitutional setting.
- (e) This raises very difficult and complex considerations which include the developing maturity of Aboriginal communities in the Territory and their right to make their own decisions with respect to their own land, their right to participate more fully in the wider community if they so choose, and yet the desirability of continuing certain protections and guarantees that are designed to maintain Aboriginal culture, customs

and laws and to recognise their unique status as the indigenous inhabitants of this country.

- (f) One option, which is raised for discussion but not advocated by the Committee, is to dispense with the Aboriginal Land Rights (Northern Territory) Act and to absorb all Aboriginal land into ordinary Territory freehold title as part of one system. Presumably certain general guarantees would still apply; for example, no compulsory acquisition of property other than on payment of just compensation. This would still leave unsettled the position of any common law interests under the Mabo doctrine, discussed below.
- (g) Another option is to patriate the Aboriginal Land Rights (Northern Territory) Act in some form to the Territory (new State).
- (h) As mentioned above, the Committee has already raised the possibility in broad terms of the patriation of the Aboriginal Land Rights (Northern Territory) Act to the Territory in the absence of Commonwealth wide land rights legislation, providing it is subject to appropriate guarantees of Aboriginal ownership. The Committee is unaware of any firm proposals by the Commonwealth Government for new Commonwealth legislation applying Australia-wide other than recent suggestions, formulated in terms of broad principles, for legislation to deal with the consequences of the Mabo decision.
- (i) There is no doubt that the Commonwealth has the legislative capacity if it so chooses to patriate the Act to the Territory by some appropriate method, such that it became the responsibility of the Territory and its Parliament.
- (j) The Committee is aware, however, that there are views which oppose any such patriation and which advocate the continuance of present Commonwealth legislation. The view sometimes taken is that Aboriginal title under ordinary Commonwealth legislation is more secure than under Territory legislation.
- (k) The Committee for its part accepts that patriation of the Act should not occur without adequate constitutional guarantees which are sufficient to protect vital Aboriginal interests, as mentioned above. In fact, the protection that could be accorded by such guarantees in a Northern Territory constitution could be more substantial than that under an ordinary Commonwealth Act (see Information Paper No.2 - "Entrenchment of a New State Constitution"). The present regime of Commonwealth legislation is liable to amendment by an ordinary Act of the Commonwealth Parliament.
- (l) Subject to such guarantees, the Committee believes that it is desirable that the Territory as a new State should have the same powers as other State Parliaments (see the Committee's first Discussion Paper on a "Proposed New State Constitution for the Northern Territory" @ p. 9). The Committee does not see any justification for unequal treatment of the Territory in this respect. The Territory is entitled, and should, take its place in the Australian federation on an equal basis with the existing States.

- (m) In the States, the present legislation dealing with Aboriginal rights to land is State legislation.
- (n) The Committee therefore considers that, in the absence of Commonwealth-wide legislation, the law governing the ownership and control of land in the Territory as a new State should be new State legislation, but with appropriate constitutional guarantees. This applies, whether it is contained in a patriated Land Rights Act or in some other legislative arrangement.
- (o) If patriation of the Aboriginal Land Rights (Northern Territory) Act is to take place, the basic options are -
 - (i) To patriate the Act in the form in which it presently exists, with only necessary administrative and transitional changes. The Act would then become a Northern Territory Act on the same terms as before (Note: this was in effect the proposal advocated by the Northern Territory Government in its June 1989 Submission to the Commonwealth); or
 - (ii) To patriate the Act with whatever substantial amendments that may be sought and agreed to by Territorians and accepted by the Commonwealth as part of the total constitutional package.

2.1 Patriation of the Aboriginal Land Rights (Northern Territory) Act in its Present Form

- (a) Under the first of these two options, it would still be necessary to make certain minimal amendments to the Aboriginal Land Rights (Northern Territory) Act to reflect the change in responsibility from the Commonwealth to the Northern Territory (including references to the Governor-General and to Commonwealth Ministers). In addition, transitional provisions would be necessary to preserve existing appointments and actions, such as the tenure of existing Commissioners and the continuation of unfinished land claims.
- (b) The changes from Governor-General and the relevant Commonwealth Minister to Administrator (or new State Governor) and the relevant Territory (new State) Minister may give rise to questions. For example, decisions would need to be made in relation to the existing function of deciding whether or not to implement the recommendation of a land grant by an Aboriginal Land Commissioner (sections 11 and 12), whether or not to establish a new Land Council (section 21), whether or not to consent to an alienation of Aboriginal land (section 19) or to consent to the grant of a mining interest (sections 40 and 45). It may be considered that in some such cases, the Act should be amended in a more substantive way than by a mere substitution. This in effect would be to move to the second option, discussed below.
- (c) If this first option was to be adopted, it would also be necessary to consider what form of constitutional guarantees (if any) should also be adopted and for which provisions of the patriated Act. Such guarantees should include that existing Aboriginal freehold titles under the Act continue in force in

accordance with the Act. This might involve restrictions on the powers of compulsory acquisition of Aboriginal land by Government - sometimes described as "enhanced freehold". As mentioned above, transitional arrangements could also provide for the continuance of existing land claims (but not any claims made after the termination date already contained in the Act).

- (d) There will no doubt be considerable debate as to how much further any such constitutional guarantees upon any patriation should go. At one extreme, it could be argued that the whole Act should be entrenched as part of the new constitution, or at least all those parts of the Act that are transferred to Northern Territory responsibility. This would ensure that none of the Act could be later altered by the Territory or a new State Parliament without observing the special procedures prescribed in the new constitution for its amendment.
- (e) However, this would create considerable inflexibility to meet later changed circumstances and would be contrary to the Committee's basic thinking that only the most fundamental type of provisions should be included in a constitution. Other matters should be relegated to ordinary legislation.
- (f) Another option may be to include the Act, or at least the less fundamental provisions of the Act, in an "Organic Law" rather than in the constitution proper, with a less onerous form of entrenchment, although perhaps being more onerous and therefore offering greater guarantees than for ordinary legislation. A system of Organic Laws is used in Papua New Guinea under its Constitution. An example is the Organic Law on Provincial Government implemented under Part VI A (*Provincial Government and Local Level Government*) of that Constitution to provide for the establishment and management of a system of provincial government. These laws although not part of the Papua New Guinea Constitution have a special constitutional status and require the observance of a special parliamentary procedure for amendment.
- (g) A further option would be to relegate all these less fundamental provisions to ordinary legislation, leaving only the fundamental provisions in the constitution.
- (h) Any solution, other than the entrenchment of the whole Aboriginal Land Rights (Northern Territory) Act in the new constitution, would require an identification of those provisions of fundamental constitutional importance, leaving a residue of those provisions of less importance. Matters that might arguably be in the former category could include (albeit not as an exhaustive list):
 - (i) restrictions on the capacity of Government to prevent valid land claims proceeding to finality;

- (ii) provisions to secure the office of the Aboriginal Land Commissioner;
 - (iii) limitations on the powers of compulsory acquisition by Government of Aboriginal land (but see Items D3 (c) above and D4 (c) (ii) below);
 - (iv) protections in respect of Land Councils;
 - (v) provisions to give Aboriginal owners reasonable control of mining on their land while still recognising Crown ownership;
 - (vi) guarantees of traditional Aboriginal access to and use of Aboriginal land and closed seas and against the abolition of existing entry restrictions.
 - (vii) A guarantee of royalty equivalent payments to Aboriginal interests (this may involve appropriate arrangements with the Commonwealth).
- (i) The Committee makes no firm recommendations at this stage on whether there should be such guarantees and the extent and nature of any guarantees but would welcome comment and suggestions. The question of the degree of entrenchment is further dealt with in Item H below.

2.2 Patriation of Aboriginal Land Rights (Northern Territory) Act with amendments

- (a) If the second of these two basic options was to be adopted, it would be necessary to identify those provisions of the present Act that could or should be amended. This would be a more controversial exercise and would no doubt give rise to problems of achieving a broad consensus among Territorians. However the Committee considers that it should raise all options for consideration in this Paper.
- (b) The Committee does not at this stage wish to propose any specific amendments to the Act (other than those necessary amendments consequent upon patriation and already referred to above under the first option), but invites suggestions and comment from the public.
- (c) Matters that could be considered for further amendment include:
 - (i) Whether all or any of the powers or functions of the Governor-General (Administrator or State Governor on patriation) and/or the relevant Minister need be retained - for

example, the requirement to approve certain forms of alienation of Aboriginal land by a Land Trust (s.19). Arguably this requirement may be seen, in some cases at least, as paternalistic. On the other hand, some controls may still be considered necessary to prevent undesirable transactions, for example, the mortgaging of Aboriginal land;

- (ii) Whether there should be some limited powers of acquisition of Aboriginal land by the Government at reasonable compensation for essential public works - pipelines, public roads, schools, etc, but limited in some way to prevent abuse; for example, to that land which is actually required for those works and only for the period of those works, and perhaps after a public investigation of any alternatives. At present, no such power exists in the Aboriginal Land Rights (Northern Territory) Act (s.67) but such an arrangement has been included in respect of "enhanced Territory freehold";
 - (iii) Whether there should be any change to the mining provisions of Part IV, and designed to facilitate the expansion of mining and exploration on Aboriginal land but on terms acceptable to the Aboriginal owners.
 - (iv) Whether there should be any other changes designed to increase the powers and independence of the traditional owners of Aboriginal land or the Land Trusts, after appropriate consultation with the Aboriginal people directly concerned.
- (d) Whatever amendments might be accepted, there will also be the question of what aspects of the Act in its amended form should be constitutionally guaranteed and in what manner.
- (e) The Committee again stresses that it is not proposing any specific amendments to the Act. It is merely raising the matter for discussion and comment. It seeks the views of both Aboriginal and non-Aboriginal people as to whether they are happy with the Act as it is or whether they would like any changes, and the extent to which the Act in its amended form should be constitutionally guaranteed.

2.3 Customary Title

- (a) As noted above, the High Court in the Mabo case (June, 1992) has held that the common law now recognises as enforceable any customary rights to land according to the traditional laws and customs of the indigenous people if they are still subsisting. That decision applied to the special circumstances of Torres Strait Islanders. Arguably the principles expressed in that case can be applied to the indigenous Aboriginal inhabitants in the Northern Territory in so far as they still have subsisting customary rights to land in the Territory.

- (b) The High Court recognised that such customary rights to land were liable to extinguishment by the Crown by a sufficiently clear intention to do so - for example, by the grant of a freehold title to land. A majority of the High Court stated that such extinguishment did not carry with it a right to compensation, at least in those cases where there was no fiduciary duty owed by the Crown to the former customary owners. At the same time, the High Court made it clear that this was subject to any contrary Commonwealth legislation, such as the Racial Discrimination Act 1975.
- (c) There is a question, yet to be judicially determined, as to whether enforceable customary rights extend beyond title to land and matters necessarily incidental thereto. For example, do they extend to customary rights to hunt and fish.
- (d) In a previous High Court decision in Mabo (No. 1 - 1988), the Court held to be ineffective a recent Queensland statute designed to vest in the Crown in right of Queensland absolute title to the land in the Torres Strait Islands upon their acquisition by Queensland in the 19th Century, free of any customary rights to land, with no compensation payable, on the basis of inconsistency with section 10 of the Racial Discrimination Act.
- (e) These decisions in Mabo have given rise to a query whether State or Territory legislation in force since the commencement of the Racial Discrimination Act, and under which Crown grants have been made that purport to have, or may have, the effect of extinguishing any subsisting customary title to the same land without any right to compensation, are also ineffective for the purpose of those grants.
- (f) In the Northern Territory a query has also arisen as to whether Northern Territory legislation enacted since Self-government on 1 July 1978, and under which Crown grants have been made that purport to have the effect of extinguishing any subsisting customary title to the same land without compensation on just terms, is also invalid and ineffective for the purposes of such grants under section 50 of the Northern Territory (Self-Government) Act 1978. Subsection (1) of section 50 provides that the Legislative Assembly cannot legislate for the acquisition of any property other than on just terms (compare section 51 (xxxix) of the Constitution).
- (g) A variety of claims have been made to land in the Northern Territory and elsewhere on the basis of customary title relying on the Mabo doctrine. At the time of issue of this Discussion Paper, none of these claims have been determined by a court.

- (h) The Legislative Assembly of the Northern Territory recently enacted the Confirmation of Titles to Land (Request) Act. The Act requests the Commonwealth Parliament to enact legislation in the scheduled form, to validate existing land titles in the Territory as well as Commonwealth and Territory legislation (including future legislation) under which those titles were or are granted, with superior effect to any customary title to that land which might not otherwise be extinguished. In so far as the Commonwealth legislation would result in any acquisition of property in the form of customary title, a right to claim compensation on just terms from the Commonwealth is proposed. No legislative action has been taken by the Commonwealth on the request.
- (i) The Legislative Assembly has also recently amended the McArthur River Project Agreement Ratification Act, designed to confirm and regrant the mining titles already issued under that Act, but subject to the payment of compensation on just terms for any resultant acquisition of property. This amendment was introduced at the request of the Commonwealth to enable the McArthur River Mine project to proceed notwithstanding any questions arising from the Mabo decision. The Commonwealth and the Northern Territory have been attempting to negotiate a package of proposals with representatives of the traditional owners of the region at the same time.
- (j) In addition, negotiations have been proceeding at an inter-governmental level in an attempt to resolve the issues arising out of the Mabo decision on a national basis. At the time of issue of this Discussion Paper, no finality in those discussions has been reached.
- (k) It may be that eventually there will have to be some permanent legislative or constitutional resolution on an Australia-wide basis of the legal issues arising from Mabo, perhaps in conjunction with a settlement of a wider range of issues pertinent to some form of reconciliation between the Aboriginal people of Australia and the Australian population as a whole. It also seems that any such resolution would require direct Commonwealth involvement. The Committee believes that it may be beyond the capacity of the Northern Territory and the States to effectively implement any such resolution without such Commonwealth involvement.
- (l) This being so, there is a limit to which the matter of any customary title to land or other customary rights in the Territory can be dealt with in any Territory or new State constitution. The Committee merely notes at this stage that if references are to be made in that new constitution to any customary rights of the Aboriginal people of the Territory, it may be that the content of those references in their final form should await any resolution of the issues on this Australia-wide basis and should reflect the terms of any such resolution.

- (m) The Committee is of the view that any Territory attempt to deal with this matter should, as a matter of principle, attempt to achieve a fair balance between Aboriginal and non-Aboriginal interests in any recognition of customary rights. It should also take into account the varying interests of different Aboriginals and Aboriginal groups, some of whom may be content to exercise their customary rights while others may wish to assert statutory or constitutional rights.
- (n) The Committee is happy to receive submissions on whether the new constitution should refer to any customary rights of the Aboriginal people of the Territory, and if so, the nature and extent of those rights, how they should be dealt with in the new constitution, and the relationship between those rights as so referred to and the rights of other members of the Territory or new State community and with the Territory or new State legislature and government.
- (o) To some extent, these issues have already been raised in Discussion Paper No. 4 - "Recognition of Aboriginal Customary Law"

E. ABORIGINAL SACRED SITES AND OBJECTS

1. Background

- (a) Section 69 of the Aboriginal Land Rights (Northern Territory) Act 1976 prohibits a person from entering or remaining on a sacred site in the Northern Territory except in the performance of functions under that Act or otherwise in accordance with Territory law. Aboriginal persons may enter and remain on such a site in accordance with their tradition. The term "sacred site" is defined in section 3 as meaning a site that is sacred to Aboriginals or is otherwise of significance according to Aboriginal tradition, and includes any land that under Territory law is declared to be sacred to Aboriginals or is of significance according to Aboriginal tradition.
- (b) This provision applies to all land in the Territory, whether or not it is Aboriginal land.
- (c) Section 73 (1) (a) of the Act empowers the Legislative Assembly of the Territory to make laws providing for the protection of, and the prevention of desecration of, sacred sites in the Territory, including on Aboriginal land, including laws regulating or authorising entry on those sites, but so that any such laws provide for the right of Aboriginal access in accordance with tradition and shall take into account the wishes of Aboriginals relating to the extent to which those sites should be protected.
- (d) Under this power the Legislative Assembly has enacted the Northern Territory Aboriginal Sacred Sites Act of 1989. That Act establishes the Aboriginal Areas Protection Authority, comprising a majority of Aboriginal custodians, which can on application register a site. Registration is prima facie evidence that the land is a sacred site. A person may apply to the Authority for an Authority Certificate to carry out

work on any land. There is a right of review to the Territory Minister from the Authority's decision.

- (e) The above provisions do not protect sacred objects that are not part of the land. These can be protected as heritage objects or archaeological objects under the Northern Territory Heritage Conservation Act 1991 (and see the Regulations under that Act). In addition, the common law offers some protection in respect of confidential matters. It remains to be seen whether this protection will be extended by the courts under the Mabo doctrine.
- (f) The Commonwealth may also apply a form of statutory protection to Aboriginal areas and objects throughout Australia, including the Northern Territory, under the Aboriginal and Torres Strait Islander Heritage Protection Act 1984. In addition, rights to sacred objects of literary or artistic merit, including the right to publication and reproduction, can be protected under Commonwealth copyright laws.

2. *Constitutional Protection of Sacred Sites and Objects*

- (a) The Committee recognises that the protection of sacred sites is a matter of great concern to those Aboriginal people in the Territory who still retain traditional lifestyles and beliefs. This is a matter that was frequently pointed out to the Committee during its visits to various Territory communities. The close affinity that Aboriginal people in the Territory have with land is invariably associated with the significance they attach to particular sites on that land as part of their belief structure.
- (b) The protection of sacred sites and objects is intimately connected to Aboriginal religious beliefs. The matter of Aboriginal religion is dealt with in Item G. 3 below.
- (c) If the Aboriginal Land Rights (Northern Territory) Act is patriated and becomes a part of the law of the Northern Territory (or new State), this will include the provisions of sections 69 and 73 (1) (a) of that Act as well as the definition of a "sacred site", outlined above. The question then becomes the extent to which those provisions should be constitutionally entrenched, for example, should the Territory or new State constitution reflect the different customary requirements for entry to sacred sites and sites of significance.
- (d) The Committee invites comments on the extent to which sacred sites in the Territory should be protected by appropriate constitutional means, and the extent to which this can be left to ordinary Territory (new State) legislation.
- (e) Aboriginal sacred objects are not presently dealt with in the Aboriginal Land Rights (Northern Territory) Act, but as noted above, they can come within existing Territory legislation. There is a question whether they should be protected, or be capable of being protected, by some constitutional means beyond ordinary legislation, and if so, the nature of that protection.

- (f) In deciding these matters, the protection already afforded by the Commonwealth through the Aboriginal and Torres Strait Islander Heritage Protection Act and other legislation should be taken into account.

F. SELF-DETERMINATION

1. Background

- (a) The term "self-determination" is now in frequent use in the context of Aboriginal development in Australia. Sometimes the terms "self-management", "self-government" and "sovereignty" are used. They are not, however, terms of precise meaning. In their practical application they raise issues of great complexity. In the context of this Paper, "self-determination" is not used in the full international sense of sovereign independence as a separate nation-state, but in a more limited sense of real measure of autonomy within the existing national framework.
- (b) Historically, the Aboriginal people of Australia acquired a much reduced level of control over their lives once confronted with the full impact of European settlement. There is little doubt that, generally speaking, this loss of control has had an adverse effect on Aboriginal communities and their culture. All Aboriginal people, to a greater or lesser degree, have had to make adjustments to accommodate the effects (good or bad) of modern civilisation. The time within which these adjustments have had to be made has generally been much shorter in the Northern Territory than elsewhere.
- (c) There are now increasing calls for a greater degree of control by Aboriginal people over their own lives. To a considerable extent, this has been reflected in the demands for land rights. However in other respects, increased autonomy has been sought over a range of concerns. The discussion in Australia has centred mainly on the descriptive terminology relating to the socio-political and economic development of Aboriginal people rather than the detailed application of the process on the ground.
- (d) The Report of the Royal Commission into Aboriginal Deaths in Custody has identified "self-determination" - the gaining by Aboriginal people of control over the decision-making processes affecting themselves, and gaining the power to make ultimate decisions wherever possible - a key underlying issue in dealing with the specific problem being addressed by that Commission.
- (e) All Australian Governments have made a commitment in principle to Aboriginal self-determination (see paragraph 4 of the Report of the Commonwealth/State/Territory/Local Government Working Party on "Achieving Co-ordination of Aboriginal and Torres Strait Islander Programs and Services" (August 1991), and the subsequent National Commitment of Australian Governments.
- (f) Some Aboriginal people or groups have interpreted "self-determination" as meaning a form of separate and autonomous development outside of the existing federal system in Australia, although perhaps within the overall framework of the Australian nation. Self determination in this sense has been associated with claims to Aboriginal sovereignty and separate political development based on racial lines. A recent

international example is the establishment of the self-governing territorial government of Nunavut involving the Inuit people in Canada's north. This form of self-determination provides the capacity for the region to effectively govern and manage its own affairs within a larger political (sovereign nation) framework.

- (g) As pointed out in the Committee's Discussion Paper No. 4 - "Recognition of Aboriginal Customary Law" such broader proposals raise issues going beyond this Committee's terms of reference. The Committee is committed by those terms of reference to reporting to the Legislative Assembly on a constitution for the Territory as a new State. It does not have any capacity to consider options that would result in the constitutional and geographical partition of the Territory into two or more parts on racial lines. The other theoretical possibility, that is, that the whole of the Territory should come solely under Aboriginal political control, to the exclusion of all other Australian citizens residing in the Territory, is not one which the Committee suggests it could possibly recommend.
- (h) The task before the Committee is to frame recommendations for a new constitution, applicable to the whole of the Territory, and in which the legitimate interests and aspirations of all Territorians, both Aboriginal and non-Aboriginal, are reflected in a balanced and fair way. The object should be to create a framework for a partnership upon which a harmonious, tolerant and united society for all Territorians can be constructed. This requires that those participating in this exercise should work in constructive ways towards the definition of constitutional rules and principles that will assist in the reconciliation of the diversity of race, colour, attitudes and beliefs that now exists in the Territory, while at the same time providing for self-determination or within the framework of the existing or proposed constitutional structures.
- (i) At an international level, it is now increasingly accepted that the right to self-determination does not necessarily mean a right to independence and to the completely separate development of indigenous people or minorities (see discussion in Item F3 below). That is, the group concerned can be given a real measure of control over its own affairs on a more localised basis, and at the same time be given a right to participate in the wider community on an equal basis with others. Such a measure of control and a right to participate should be capable of being reflected in broad terms at least in the constitutional arrangements governing the total society. As such it can be constitutionally guaranteed.
- (j) The concept of self-determination in this sense involves two considerations. Firstly there is the question of the degree of autonomy to be accorded to particular indigenous communities in order to be able to run their own affairs within those particular communities, while at the same time remaining part of a wider political community. Secondly, there is the question of the degree to which special measures (if any) are to be taken in favour of those indigenous peoples to assist them to more fully participate in the affairs of that wider political community in order to reduce the disadvantages commonly experienced by indigenous peoples and others.

- (k) Once it is accepted that some form of self-determination is a desirable goal in respect of Aboriginal peoples and Aboriginal communities or predominantly Aboriginal communities in the Territory, the question becomes one of how to integrate that goal into the wider framework of a politically unified and self-governing Territory community with its own new constitution. The Committee does not consider that there is any necessary inconsistency in this regard. Forms of internal controls and guarantees should be able to be devised and be made to operate within such a wider framework. However, ultimately much will depend upon the attitudes and goodwill of the persons involved and on a reasonable degree of co-operation between Aboriginal representatives and communities and governments.
- (l) It follows that the Committee is anxious to consider options within which a form of self-determination can be secured to Aboriginal people in the Territory, or in particular parts of the Territory where it is sought, as part of any new constitutional arrangements. The Committee is completely open at this stage to suggestions as to the nature and extent of self-determination and how it is to be achieved and would welcome all comments and views. The Committee is particularly interested in the definition of rules and principles, suitable for inclusion in a new constitution for the Territory, that would assist in securing the desired form of self-determination on an ongoing basis. The comments following under this heading are intended to assist in informed debate and comment from this perspective.
- (m) Some of the possible options may raise matters that are a federal responsibility, beyond the control of a Territory or new State constitution. These are not canvassed in detail in this paper.

2. *Existing Position*

- (a) There are arrangements presently in place in the Northern Territory which are intended to give Aboriginal communities, or predominantly Aboriginal communities, some degree of control over their own affairs in a local context and to encourage their participation in the wider community. The extent to which these arrangements have been successful in this regard is a matter of some contention.
- (b) Central to many of these arrangements are the existing legislative provisions for Aboriginal land rights, discussed in Item D above. These enable the traditional owners or occupiers of Aboriginal land to exercise specific controls over their land once it is granted and to a certain extent while it is under claim. It is not proposed to discuss the specifics of Aboriginal land further in this Item other than in so far as it impacts on community organisation and control. Suffice to note that only a proportion, although a significant proportion, of land in the Territory is Aboriginal land or is under claim as such.
- (c) The extent to which Aboriginal owners of land can utilise any customary title to land under the Mabo doctrine has yet to be fully explored, and it is too early to say to what extent this will impact upon claims for greater Aboriginal control and management of their affairs. It may be significant.

- (d) Controls that can be exercised over specific areas of land by recourse to proprietary rights to that land do not in themselves provide a comprehensive framework in the Territory upon which to construct a form of self-determination. Only part of the Territory is or will become legally recognised as Aboriginal land, and the issues of self-determination extend well beyond rights to land in any event.
- (e) It seems clear that something more is required in terms of a constitutional framework beyond guarantees of Aboriginal land if self-determination is to be assured. In part at least this is dependant upon the availability of appropriate structures for the exercise of Aboriginal autonomy at a more localised level. This requires a consideration of the existing structures available in the Territory and the degree of control which is presently exercised and administered by Aboriginal communities in respect of their own local affairs.
- (f) At a wider Territory level, various arrangements exist for encouraging Aboriginal participation in the community as a whole and for ameliorating their existing disadvantages. This includes a variety of programs and services designed for Aboriginal people and aimed at addressing any inequality. Many of the latter are federally sponsored but others are Territory Government initiatives.
- (g) It is theoretically open to particular Aboriginal communities in the Territory to seek greater local control through the formation of a local government municipality under the Local Government Act. So far, this has not occurred. It is doubtful that this existing form of local government in the Territory is an appropriate structure to implement Aboriginal self-determination.
- (h) The Local Government Act was amended in 1978 to introduce the concept of community government (see Part VIII of that Act). This form of government is not directed specifically at Aboriginal communities, although it has most commonly been utilised by those communities. It requires a minimum of 10 residents of an area outside an ordinary local government municipality to apply to the relevant Territory Minister for the establishment of a community government. A draft scheme is then prepared and advertised, and the Minister is obliged to consult with the residents of the area. The Minister may then approve the draft, with or without amendments.
- (i) The community government scheme operates as a simplified form of local government under an elected council. The functions of a community government are expressed in the scheme and can cover a wide range of matters (see section 270). A community government can also make by-laws on a wide range of matters and can by those by-laws provide for the imposition of fines for breach (see section 292). By-laws are subject to tabling and disallowance action in the Legislative Assembly (Interpretation Act, section 63).
- (j) A list of those communities in the Territory that have adopted this form of government, and the functions covered by each community government scheme, are set out in Appendix 4 to this Paper.

- (k) There has been some debate and difference of views about the extent to which community government has been successful in achieving a degree of autonomy in Aboriginal communities under that scheme.
- (l) In the Committee's first Discussion Paper on a "Proposed new State Constitution for the Northern Territory" (October 1987), the Committee noted the special situation of the Northern Territory, with vast areas not within any local government area. Some areas were covered by community government schemes but most areas were not subject to either. The Committee raised the question of the constitutional entrenchment of local government, but did not consider it in detail.
- (m) A number of Aboriginal communities have chosen to use other mechanisms for the legal organisation of their community. In some cases they have used the mechanism of an incorporated association or trading association under Territory law (see the Associations Incorporation Act). In other cases, they have sought incorporation as an Aboriginal Council or Association under Commonwealth law (Aboriginal Councils and Associations Act 1976). A list of the various communities in the Territory established under Commonwealth legislation, and the manner in which those communities are established, is set out in Appendix 5 to this paper. A comparable list of those Aboriginal bodies incorporated under Northern Territory law is not available, but it is understood the number is significant.
- (n) Some of these communities are located on Aboriginal land or community living areas, while others are not. In the case of some Aboriginal organisations (other than community government), their area of operation can overlap with that of an ordinary local government municipality (for example, the Tangentyere Council Inc. of Alice Springs).
- (o) The Land Councils established under the Aboriginal Land Rights (Northern Territory) Act have functions which relate only to Aboriginal land or land under claim and the entry upon and use of Aboriginal land. These functions may be extended with the approval of the relevant Commonwealth Minister by a law of the Northern Territory (for example, in relation to entry upon closed seas adjoining Aboriginal land - see the Aboriginal Land Act), but it is clearly not intended that Land Councils should exercise the functions of local or regional government in the broader sense. They are not an appropriate vehicle for the implementation of policies of self-determination.
- (p) In addition, under the Aboriginal and Torres Strait Islander Commission Act 1989 of the Commonwealth, not only is the Aboriginal and Torres Strait Islander Commission ("ATSIC") established, but also elected Regional Councils. The boundaries of the regions represented by these Councils do not generally coincide with State and territory borders. It is clear that these Councils are not intended to excise the functions of local or regional government in the broader sense, but have a much more limited role allied to the work of ATSIC. The policies of ATSIC require it to work with all governments while recognising the special responsibility of the Federal Government for Aboriginal people. It has a coordinating and advisory role at a Commonwealth level to ensure Commonwealth activities are integrated with

State/Territory and local government programs and service delivery. ATSIC has the objective in local government to :

- "
- . *increase the participation of Aboriginal and Torres Strait Islanders in local government;*
 - . *increase opportunities for Aboriginal and Torres Strait Islander councils and organisations to access local government funding; and*
 - . *improve equitable services provided by local government to Aborigines and Torres Strait Islanders and their communities."*

- (q) There is no overarching Aboriginal organisation in the Territory designed to bring together and co-ordinate the work of Aboriginal communities and to provide support services to them. Support is given however, by various Commonwealth and Territory Departments and their officers, as well as by various outside agencies, including churches. Aboriginal communities often tend to be overwhelmed by advisers on short term visits.
- (r) Aboriginal communities in the Northern Territory, however established, are publicly funded from a variety of sources for a variety of purposes or programs, including through both Commonwealth and Territory Departments and ATSIC. This includes local government grants. This multiplicity of funding arrangements was criticised in the Report of the Royal Commission into Aboriginal Deaths in Custody. Funding arrangements are complex, but to some extent at least, the complexity results from the need for accountability in the expenditure of public money. There is a National Commitment to improve the outcomes in the delivery of programs and services to Aboriginal people.
- (s) The question of funding raises issues not only as to the extent to which Aboriginal communities are involved in, or consulted on, the decision making processes in the expenditure of funds on those communities. It also raises issues of inter-governmental financial and policy relations, both in a Territory and on a national basis. Aboriginal funding has been the subject of on-going studies at various levels.
- (t) Related issues also arise as to the extent to which the respective Commonwealth, State and Territory governments are or should be involved in the determination of priorities in expenditure and programs, and in the actual provision of services to communities. The National Commitment recognises both the special responsibility of the Commonwealth to Aboriginal people, including by way of provision of funds, as well as the role of State and Territory governments in delivering services to those people.
- (u) There is no doubt that substantial progress has been made in recent years in the material development of many Aboriginal communities, although not necessarily on a uniform basis. Substandard conditions clearly still exist. Public funds have been used for a wide variety of purposes in the provision of resources and programs, but much remains to be done. Many communities continue to be heavily dependant on public

funds, and in particular where they do not have the benefit of income from resource developments.

- (v) No doubt that Aboriginal communities are maturing in their capacity to handle their own community affairs under the impact of other influences and the less mendicant their position, the greater is likely to be their capacity to deal with relevant issues and concerns.
- (w) Mention should be made of other Territory legislation that allows for the exercise of specific powers within communities. A good example is under Part VIII of the Liquor Act. A person may apply to the Liquor Commission to have an area declared to be a restricted area so that no liquor may be brought into it. The Commission must hold a public hearing in or near the area and ascertain the residents' opinions, before it can make a binding declaration. A number of Aboriginal communities have utilised this procedure.
- (x) Several community justice arrangements have been proposed or tried for Aboriginal communities which involve more direct involvement of Aboriginals in the system or consultation with the Aboriginal people concerned. Reference should be made to the Committee's Discussion Paper No. 4 - "Recognition of Aboriginal Customary Law."
- (y) There is the capacity under the Education Act with approval of the Secretary of the Northern Territory Department of Education to operate non-government schools designed primarily for Aboriginal children. The question of separate Aboriginal education in the Territory has been the subject of some contention over the issue of "mainstreaming".
- (z) An accurate assessment of the extent to which Aboriginal communities generally in the Territory, or any particular Aboriginal community, already exercise a level of autonomy on matters affecting those communities or that particular community, would be a very difficult task. It is a matter that depends upon legal provisions (including provisions as to security of title to land), financial and administrative arrangements and practices (including the implementation of special programs designed for Aboriginal people), as well as the personal attitudes of those involved - both Aboriginal and non-Aboriginal.
- (za) At the Territory wide level, there are many programs specifically designed to assist Aboriginal people and which may have an element of Aboriginal participation or control. As noted above, some of these are established under federal programs or have federal funding support. This includes some health services, legal aid services, aged care, alcohol programs, national parks etc. Others are sponsored or supported by the Territory Government. This includes educational services, housing, business support, Territory parks and the like. A document prepared and supplied by the Territory Government outlining its programmes and initiatives as to Aboriginals is at Appendix 6. This document is an extract from a more comprehensive paper and represents the views of the Territory Government. It is included by way of background information only and is not endorsed by the Committee.

- (zb) At a political level, there are no special provisions for Aboriginal representation in the Territory. In the Legislative Assembly of the Northern Territory, Aboriginal voters and candidates participate in the same way as non-Aboriginals. There are no institutionalised arrangements requiring consultation with Aboriginal interests in the development of Territory policies and proposed legislation other than as imposed by the Aboriginal Land Rights (Northern Territory) Act and in complementary Territory legislation to that Act.
- (zc) The Territory Government has recently established within its own structure a separate Government Department to deal with Aboriginal matters (The Office of Aboriginal Development) with its own Minister. There are no mandatory arrangements requiring any special accommodation to be made for Aboriginal participation within the Territory Public Service and Departments, although many Aboriginal or part Aboriginal people are employed in the service of the Territory Government and its authorities. In a few cases, particular categories of employees have been engaged, such as Aboriginal police aides. The Territory Government does not yet have an access and equity policy.
- (zd) It should be noted that it is unlawful under the Racial Discrimination Act of the Commonwealth to deny Aboriginal people a right to equally participate in the affairs of the wider community and to receive the benefits of that wider community. Special measures for the sole purpose of the advancement of Aboriginal people are not unlawful. However there is no obligation to take such special measures.

3. *International Considerations*

- (a) As noted above, there is an international right to self-determination. Such a right is reflected in the United Nations Charter (Article 1.2) and attaches to distinct "peoples". Australia is a party to that Charter. The right is repeated in Article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Australia is a party to both. By virtue of that right, the relevant peoples have the right to freely determine their political status and freely pursue their economic, social and cultural development. State parties have an international obligation to promote the realisation of the right to self-determination.
- (b) The application of this right to former colonised territories has lead to the creation of many new nations in recent decades. The application of this right to minorities and indigenous people located within the borders of existing nation - states has proved to be much more difficult. As noted above, it is now increasingly accepted that the right to self-determination does not necessarily mean a right to independence and to completely separate development of minorities or indigenous people, but can, in some cases, include a more limited right of self-determination within the existing national framework. Whether the Aboriginal people of the Territory or Australia constitute distinct "peoples" for the purpose of the international right is a matter yet to be determined.

- (c) ILO Convention No 169 Concerning Indigenous and Tribal Peoples in Independent Countries, recently adopted by that Organisation in place of an earlier 1957 ILO Convention, does not mention the right to self-determination and puts to one side the wider international law implications of the term "peoples". It does, however, purport to confer specific rights on indigenous peoples within nation-states, and places international obligations on those nation-states to take certain action, including the promotion of full realisation of the social, economic and cultural rights of those peoples. In doing so, the nation-states must among other things consult with those peoples and establish means for the full development of their institutions and initiatives, and in the necessary cases, provide the necessary resources for this purpose. The people have the right to decide their own priorities for the process of development and to exercise control, to the extent possible, over their own economic, social and cultural development. They are also to have the right to equally participate in the wider community.
- (d) A Working Group within the United Nations is proceeding with the drafting of a Declaration of the rights of indigenous peoples, but this has not yet been adopted by the United Nations.
- (e) The International Year for the World's Indigenous People was declared by the United Nations for 1993, with the support of the Australian Government.
- (f) Despite these and other international developments, implementation of any form of self-determination for indigenous people still remains primarily a matter for the nation-state concerned in consultation with those indigenous people within its borders and in accordance with its domestic law. International law has not yet developed to the point where other nation-states have a right of intervention or to take other such action against a particular nation-state where the latter has failed to take what might be considered to be adequate steps for the advancement of its indigenous people. Nevertheless, international obligations do exist, either in relation to indigenous people specifically or as part of general human rights.

4. *Options for the Northern Territory*

- (a) The issue is to be considered, in the context of the development of a new constitution for the Territory, is the available options for securing a real measure of autonomy for Aboriginal communities, assuming this to be the desired goal. This includes the option of some constitutionally secure form of local government (presumably a form of community government), discussed separately below.
- (b) As noted above, the options must be developed within the framework of one Territory (or new State) and must seek to balance the legitimate interests of both Aboriginal and non-Aboriginal citizens. The options should be seen as being part of a social and cultural partnership, designed to facilitate a harmonious, tolerant and united Territory community. As part of that partnership, the options should take into account the unique place of the indigenous inhabitants and their special right and interests arising from that fact. This should include the right to preserve their culture and identity. At the same time, it should be accepted that the non-Aboriginal residents also have an

entitlement to live and work in the Territory and to also regard it as their home. Because non-Aboriginal citizens comprise the majority of the Territory population, the partnership should include a consideration of the need for express protections of the position and rights of the indigenous minority. The question is to what extent (if at all) and in what manner should those protections be entrenched in constitutional guarantees.

- (c) One option would be to constitutionally entrench a general right of Aboriginal communities in the Territory to self-determination expressed in very broad terms, leaving it to the courts to deal with any dispute that may arise. As pointed out above, there is a right to self-determination at International law, although the content of that right short of complete independence (in the case of indigenous people or minorities located within particular nation-states) is uncertain. In terms of an enforceable constitutional right, there may be thought to be clear dangers in entrenching such a broad right, particularly if it included a power in the courts to direct and control Territory or new State Government expenditure and priorities. Such an entrenched right was recently rejected in a Canadian referendum as part of a wider package of amendments to their Constitution.
- (d) Another option may be to have a constitutional preamble, not in itself directly enforceable in the courts, which recites that it is the intention to provide for the maximum practicable level of autonomy for Aboriginal, or predominantly Aboriginal, communities in the Territory in respect of their own affairs, as part of self-determination. Such a preamble may not be legally enforceable, but it would provide a point of reference in the formulation of legislation, policies and programs.
- (e) If a broadly expressed constitutional right to self-determination is not considered to be acceptable, and if a constitutional preamble to the same effect is considered to be too ineffective, the alternative is to consider a range of specific constitutional provisions which together would ensure an effective form of self-determination for Aboriginal communities. In this respect, a number of issues considered in other parts of this Paper are of relevance. Reference should be made in this regard to Item D (Aboriginal Land), Item E (Aboriginal Sacred Sites and Objects) and Item G (Aboriginal Language, Social and Cultural Matters and Religion). Community government options are dealt with below.
- (f) There are a range of other matters likely to be of concern to Aboriginal communities and over which those communities may like a guaranteed measure of control, or at least to be involved in the decision-making as it affects those communities. These matters include -
 - * health and welfare
 - * education
 - * housing
 - * essential services
 - * natural resources
 - * planning and land use

- * administration of justice and law and order
- * the exercise of customary rights and practices
- * environmental concerns
- * local employment and training
- * local arts, crafts, trades, community enterprises and other businesses
- * liquor and gambling
- * access and rights of residency

Each of these is a subject in itself and would require detailed consideration in the context of proposals for self-determination. This list is not intended to be exhaustive.

- (g) One way in which matters such as those in the previous paragraph could be dealt with would be by expressly listing them (or any of them) in the matters within the responsibility of a specific form of government operating in Aboriginal communities in the Territory. However, such a form of devolution would presumably operate concurrently with, and would not exclude the capacity of, the Territory or new State to exercise control over the same matters if it so chose. It would also create a system of some inflexibility, in that responsibility for all those matters, but for no others, would automatically be vested in all those Aboriginal communities having that form of government, whether they wanted that responsibility or not. In some cases those communities may merely wish to be consulted or to have other forms of involvement or input short of total responsibility.
- (h) An alternative to paragraph (g) above would be to confer a discretion on some appropriate entity to vest responsibility for specific matters on specific Aboriginal communities from within a wider list of matters (compare the Local Government Act, section 84 and Schedule 2 to that Act), thus giving some flexibility to meet the needs and wishes of particular communities.
- (i) An even more flexible model would be to design a particular scheme for the government of each Aboriginal community. This is in fact the model used for community government under the Local Government Act, discussed in more detail below. This still involves a measure of Territory or new State control.
- (j) All these models operate within the context of a particular type of local government institution, the legal framework for which is already established by law. It may be that some Aboriginal communities or groups may wish to not only identify the matters for which they are prepared to assume some responsibility and the extent of that responsibility, but also may wish to establish, or at least have input into the development of, their own unique institutions and arrangements, tailored to meet their cultural context.
- (k) This gives rise to a consideration whether the Territory or new State should have a facility whereby it can negotiate legally binding forms of self-determination with and for particular Aboriginal communities, free of any pre-existing legal framework (although subject to the laws of general application). Provisions could be adopted which give such communities a right to instigate such negotiations, perhaps with

provisions for arbitration where agreement cannot be reached within a reasonable time. This would facilitate comprehensive agreements on a community by community basis. This could include matters such as land (including customary title to land) and its administration, institutions and powers of government, funding, facilities and services and other matters referred to in paragraph (f) above. The resultant agreement could be given an appropriate legal status, and could incorporate its own agreed mechanism for amendment. Some provision may be required to protect the rights and interests of any non-Aboriginal people either residing in such communities or having interests, including proprietary interests, in the area concerned. The relationship between any such agreement and Territory laws of general application would need to be determined.

- (l) Some may argue that even this is not enough, and that meaningful self-determination within the Territory cannot be assured unless there is some over-arching Aboriginal organisation to co-ordinate and support individual Aboriginal communities. Whether such a view is correct, and whether the existence of such an organisation should be required by the law or left to Aboriginal voluntary initiative, are matters for consideration.
- (m) Other matters that could be considered in a wider context, are possible Aboriginal seats in the Territory or new State Parliament, a matter previously considered by the Committee but not recommended. There may be other ways in which particular Aboriginal views and interests can be advanced or brought forward within the wider community and the Committee invites comments and suggestions.
- (n) The Committee stresses that it is not advocating any of the above options at this stage, but is merely opening the matter for discussion and debate.

5. *Community Government-Options*

- (a) The Committee, in its first Discussion Paper on a "Proposed New State Constitution for the Northern Territory" (October 1987) made the point that because of the special situation of the Northern Territory, there should be no obligation to have a form of local government (including community government) for all parts of the Territory. Any decision to extend local government was appropriately a matter for the new State in consultation with the local residents.
- (b) On the other hand, arguably there should be a right to apply for a grant of local government (including community government) and to have the application fairly considered. Such a right could be constitutionally entrenched.
- (c) Once local government (including community government) is established in any area, the question arises of whether that form of government should be constitutionally entrenched in some way, such that it cannot be arbitrarily abolished or its powers reduced. The Committee in its first Discussion Paper raised the question of constitutional entrenchment, but pointed out that this must take into account the special situation of the Territory and the associated difficulties of administration.

Subject to these considerations, the Committee said it favoured some constitutional provisions for the recognition of local government in the new State.

- (d) An alternative to entrenchment of the position of local government (including community government) in a new constitution, or perhaps as a supplement to it, would be to provide for an Organic Law - as described in Item D.2.2.1, (f) above - on local and community government, to be made by the new State Parliament after negotiations with Aboriginal and other communities directly involved. Such a law could be made subject to special amendment requirements.
- (e) There may also be grounds for reviewing the present provisions of the Local Government Act as to community government, to minimise Territory or new State governmental controls and oversight and to maximise the powers of community government within its agreed charter and functions. This has been discussed above. Whether such amendments would make community government a more acceptable option for Aboriginal self-determination is a matter for consideration.
- (f) Public comments have already been received by the Committee on the matter of community government and its constitutional entrenchment. Mr Kevin Anderson of the former Northern Territory Community Government Association stated:

"I would say that the introduction of local government into remote communities in the Northern Territory has been one of the greatest initiatives taken by the government of the day in the Northern Territory, supported by the opposition. We believe that it has given people in remote communities an unprecedented opportunity to manage their own affairs and, obviously, our concern with any constitution of a future Northern Territory state is that it should protect the powers which have been devolved through legislation which incorporates remote communities as legitimate partners in the third tier of government. For that reason, our submission states that we would like to see any future constitution enshrine protection clauses of local government generally in the Territory. We do not wish to see any discrimination in terms of the way the community government is treated, as opposed to municipal government. We see them both as legitimate types of local government and do not subscribe to any distinction which sees municipal government as a superior form of 'traditional' local government. We believe that all local governing bodies in the Territory, whether in remote locations or in major municipalities,, are equal under the law. We would like to see that guaranteed in the constitution. Our submission argues for constitutional recognition in accordance with 5 principles, these being:

- . general competence and autonomy for each local government body to act for peace, order and good government in its area;*
- . a secure financial basis;*
- . a proper recognition of the elected member's role;*
- . protection from dismissal of individual local government bodies without public inquiry; and*

- . *due consultation prior to any changes to powers, functions, duties, responsibilities and financial resources."*

- (g) On the other hand, Tangentyere Council Inc. expressed the view that it was not happy with the community government option, as the powers retained by the Territory Government were considered to be unacceptable. In its submission to the Committee, the Council raised concerns about the physical overlap of Aboriginal forms of local government with ordinary forms of municipal local government. It concluded:

"Therefore it is submitted that if the Committee wishes to proceed with formulating a constitutional recognition of local government it should include specific reference to the situation of Aboriginal Town Campers by:

- *ensuring that an Aboriginal local governing body can exist within another local governing body's boundary;*
- *to overcome any doubt about the limitations of the Racial Discrimination Act, specifically allow the Aboriginal local governing bodies to limit membership to Aborigines;*
- *specifically allow aspects of the constitutions of Aboriginal local governing bodies which are drafted according to Aboriginal tradition to override requirements on other local governing bodies for democratic elections where there is a conflict."*

- (h) It would not be possible, by a Territory or new State constitution or by a Territory or new State law, to exclude the operation of the Aboriginal Councils and Associations Act 1976 of the Commonwealth in the Territory. Even if community government was to be given a more secure constitutional position in the Territory, some Aboriginal communities may still prefer to establish or continue their legal organisation under that Act.
- (i) A more secure constitutional position for community government will not of itself necessarily guarantee a much greater degree of local autonomy for Aboriginal communities. However it does provide one framework upon which such greater autonomy can be constructed by other means.
- (j) The Committee would welcome comments on the nature and extent of any constitutional guarantees of local government (including community government) and how these may be best designed to facilitate a real measure of autonomy for Aboriginal communities.
- (k) Where community government is established over an area of Aboriginal land, issues arise as to how the powers and functions of that community government can be reconciled with the powers and functions of the traditional Aboriginal owners and custodians of that land. The Committee would also welcome comment on this issue.

- (l) The Committee also welcome comment on whether there are any alternatives to community government for Aboriginal communities (other than under the Aboriginal Councils and Associations Act). Options include a possible expanded role for the traditional Aboriginal owners and custodians of Aboriginal land, as well as possible new forms of government on a local or regional basis. The latter was recently advocated in the Final Report of the Legislation Review Committee of Queensland relating to the "Management of Aboriginal and Torres Strait Islander Communities" (November 1991).

G. ABORIGINAL LANGUAGE, SOCIAL, CULTURAL AND RELIGIOUS MATTERS

1. Aboriginal Language

- (a) At the time of European settlement of the area now known as the Northern Territory, a considerable number of Aboriginal languages were in common use. Many of these languages have survived today. A significant percentage of the Aboriginal people in the Territory still speak Aboriginal languages, in some cases as their first or second language. Most of these also speak the English language to varying degrees of proficiency. There is no one Aboriginal language which is common to all Aboriginal speakers.
- (b) As noted in Item B3 above, the Committee has previously raised the question whether there should be some constitutional recognition of the pre-existing circumstances of Aboriginal citizens, including as to their languages.
- (c) There is no general legal provision for English to be the official language of Australia or of the Territory, but it is commonly used as such. All governmental and official use is solely, or primarily, in English. A wide variety of other languages are also spoken in addition to English and Aboriginal languages. The Territory in particular is subject to a distinct multi-cultural influence in this regard as a result of immigration from many countries over many decades.
- (d) There is at present no constitutional or statutory recognition of Aboriginal languages anywhere in Australia.
- (e) The International Covenant on Civil and Political Rights, Article 27, to which Australia is a party and which is scheduled to the Human Rights and Equal Opportunity Commission Act 1986 of the Commonwealth, provides that in nation-states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to use their own language (see also ILO Convention No 169, Article 28).
- (f) There is therefore a question as to what, if any, provision should be made in a Territory or new State constitution as to Aboriginal languages in use in the Territory.

- (g) One option may be to recognise, by way of a preamble, the historical position of the Aboriginal people, including the fact that they spoke, and in many cases still speak, their own indigenous languages.
- (h) Another option may be to recognise in the new constitution (proper) a right of the Aboriginal people to use their own indigenous languages within their own communities. If this option was to be adopted, it may also be necessary to consider whether to make English the official language to avoid any dispute as to which language could be used for official purposes, and as a result whether there should be a right to an interpreter in other languages (where it is practicable to provide an interpreter) in certain situations, for example, in a court on a criminal charge.
- (i) There is also the question of whether there should be a right to be educated in a particular language.

2. *Aboriginal Social and Cultural Matters*

- (a) To some extent, Aboriginal social and cultural matters have already been dealt with either elsewhere in this Discussion Paper or in the previous Discussion Paper No. 4 - "Recognition of Aboriginal Customary Law".
- (b) As noted in Item B3 above, the Committee has previously raised the question whether there should be some constitutional recognition of the pre-existing circumstances of Aboriginal citizens, including as to their social and cultural customs and practices.
- (c) There is no doubt that Aboriginal social and cultural customs and practices are quite distinctive when compared to those of the later immigrants to the Territory. There is an international right to the protection of minority cultures (see below) a right that no doubt extends to indigenous cultures. There has been some loss of indigenous culture and some limited degree of admixture of customs and practices between Aboriginal and non-Aboriginal peoples since European settlement under a variety of cross-cultural influences. However, many traditional Aboriginal customs and practices still continue in the Territory, and notwithstanding the impact of non-Aboriginal settlement. The Committee is aware of a keen desire by such Aboriginals still observing traditional lifestyles to maintain their customs and practices as far as is possible in the contemporary situation.
- (d) Some international instruments are relevant in this regard. For example, the Universal Declaration on Human Rights (1948), Article 27, provides that everyone has the right freely to participate in the cultural life of the community. More specifically, Article 27 of the International Covenant on Civil and Political Rights provides that in those nation-states where ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right in community with the other members of their group, to enjoy their own culture (see also ILO Convention No 169, Articles 2, 5, 7, 8).
- (e) The general law in force in the Territory, both common law and statute, already protects Aboriginal customs and practices to some limited extent. For example, the

common law offers some protection to confidential Aboriginal information, copyright and design laws are available to protect certain Aboriginal literary and artistic works and designs, while other legislation protects sacred sites and objects (see Item E above). Some of these matters are a Commonwealth responsibility, beyond the control of the Territory or new State. The granting of Aboriginal land, the support of the Aboriginal outstation homelands movement and other factors have done much to encourage and preserve Aboriginal culture and society. However the dominating influence of European-derived culture and society and the market economy exert a heavy pressure on Aboriginal culture and society.

- (f) The concern in Aboriginal communities living in accordance with traditional lifestyles about the erosion of Aboriginal society, customs and values is an issue that extends far beyond legal and constitutional matters and raises much wider cross-cultural, economic and social issues. There is little doubt that Aboriginal society is in a state of transition and that it is not possible to isolate that society from wider contemporary developments, but the Committee recognises that the Aboriginal communities should have a real say in how that transition occurs. The evidence is that changes that are thrust upon those communities can have very serious effects through damage to their culture and self-identity. To some extent, this transition reflects wider international developments that are impinging on Australia as a whole.
- (g) Questions that arise for consideration include whether a Territory or new State constitution should make any reference to Aboriginal social and cultural customs and practices beyond that discussed elsewhere in this Discussion Paper or Discussion Paper No 4 - "Recognition of Aboriginal Customary Law". If so, should it be by way of a reference in a preamble to the new constitution or as some form of enforceable right in that new constitution. If an enforceable right, it would be necessary to determine the nature of that right and whether it should be subject to any limitations. The Committee is concerned that it might be difficult to precisely define such an enforceable right in a way that could be applied by a court, but it invites comment and suggestions.

3. *Aboriginal Religion*

- (a) There can be no doubt that religious beliefs and practices were a vital and integral part of the traditional social system of Aboriginal people prior to European settlement. For many Aboriginal people in the Territory that still have traditional lifestyles and others, this continues to be the case. Aboriginal religion in its various forms is entitled to respect and recognition in the same way as any other religion in Australia.
- (b) Aboriginal religion is directly associated with land and sacred sites on land and the beliefs associated with that land and those sites. It is also directly connected to matters of culture. The reader is referred to the earlier parts of this Discussion Paper in this regard. In fact, Aboriginal religion permeates all aspects of Aboriginal traditional life. Any guarantee of Aboriginal religion in a new constitution must take this into account.

- (c) At an international level, there is a recognised right to freedom of religion or belief, including the right to change religion or belief, and to manifest a person's religion or belief in teaching, practice, workshop and observance (Universal Declaration of Human Rights, Article 18, International Covenant on Civil and Political Rights, Article 18 which recognises that the freedom is subject only to limitations prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedom of others, and the United Nations Declaration on the Elimination of all forms of Intolerance and of Discrimination Based on Religion or Belief, (1981). In relation to ethnic, religious or linguistic minorities, it is stated that they are not to be denied the right, in community with the other members of their group, to profess and practice their own religion (International Covenant on Civil and Political Rights, Article 27).
- (d) In Australia, there is no guarantee of religious freedom, either at common law or under any constitutional or legislative provisions other than section 46 of the Tasmanian Constitution and the limited provision in section 116 of the Commonwealth Constitution, applicable only to the Commonwealth.
- (e) The Committee has received submissions that there should be a guarantee of religious freedom in a Territory or new State constitution, perhaps along the lines of Article 18 of the International Covenant on Civil and Political Rights. The constitutions of many countries have a guarantee of religious freedom.
- (f) In the alternative, it might be argued that there should be such a guarantee in relation to Aboriginal religion only. This would presumably be in addition to any constitutional provisions that might deal with Aboriginal land, sacred sites and other specific matters of concern to Aboriginal people.
- (g) The Committee has no firm views at this stage on whether there should be a constitutional guarantee of freedom of religion in the Territory. It is, however, tentatively of the view that if there is to be such a guarantee, it should apply to all religions equally. It invites comments and suggestions on the matter generally.
- (h) As noted above, the Committee has, in a previous Discussion Paper, raised the question whether there was some merit in recognising the pre-existing circumstances of Aboriginal citizens in the Territory, including as to their religious customs and practices (see Item B 3 (b) above). Any such recognition could, for example, be contained in the preamble to the new constitution. Alternatively, any constitutional reference to religious customs and practices could be in the form of an enforceable constitutional right. If the latter, then it would be necessary to determine the nature of that right and whether it should be subject to any limitations.

H. OPTIONS FOR ENTRENCHMENT

- (a) Apart from its comments above as to patriation of the Aboriginal Land Rights (Northern Territory) Act, the Committee does not at this stage advocate the constitutional entrenchment of any particular guarantees of Aboriginal rights in the Territory. This is a matter for further discussion and debate. The Committee merely

notes that constitutional entrenchment of such rights is an available option in the development of any new constitution. It is of particular value in a multi-cultural society where otherwise minorities and the indigenous peoples may have real cause for concern that their rights may not be respected by future governments under a system of majority rule.

- (b) There is no constitutional entrenchment of Aboriginal rights in the Northern Territory as present under Territory law. However Aboriginal interests have to some extent been catered for by some items of Commonwealth legislation operating in the Territory with superior force to Territory law. The Aboriginal Land Rights (Northern Territory) Act is the best example of this.
- (c) The difficulty is that any further constitutional development of the Territory is likely to be inconsistent with the continued operation of such existing Commonwealth legislation in State-type matters. It is of the essence of constitutional development that there be a devolution of authority and responsibility. It is not possible for this to occur and at the same time retain the existing controls by or under Commonwealth legislation.
- (d) As pointed out in the Committee's Discussion Paper No. 2 - "Entrenchment of a New State Constitution", the method of constitutional entrenchment can provide a legal method of safeguarding the rights and interests of the Aboriginal people and removing them from the control of politicians (see Item B.3 (c) above). In doing so, it has the potential to facilitate the path to further constitutional development in the Territory by reassuring both the Aboriginal community and the larger national and international community and the obtaining of the necessary acceptance by the Commonwealth Government and Parliament.
- (e) The difficulty is to determine what matters might or should be entrenched and the degree of their entrenchment. The options as to which matters of concern to Aboriginal people might be the subject of entrenchment action have been dealt with in the preceding parts of this Paper. This leaves the question of the degree or method of entrenchment.
- (f) It is not possible to give a single precise answer to this latter question. It very much depends upon the subject matter, the degree of importance placed by those persons concerned with that subject matter, and the social, demographic and political circumstances generally. The best the Committee can do at this stage is to indicate the types of entrenchment that could be considered.
- (g) The two main options are:
 - (i) special procedures or majorities in the Territory or new State legislature; and/or
 - (ii) a referendum of Territory or new State voters.

It is possible to combine both these options.

- (h) The Committee does not support any residual Commonwealth veto or other controls as a means of entrenchment, at least after a grant of Statehood. This would be inconsistent with devolution and the assumption of full State type powers.
- (i) Some State constitutions require special majorities for the amendment of specific parts of their constitutions - for example, Victoria requires an absolute majority of all members of the Parliament and Tasmania requires a two-thirds majority of Parliament for certain amendments to those State constitutions, with no referendum of State voters.
- (j) Other State constitutions contain some provisions which can only be changed by a successful referendum of State voters - for example, NSW, Queensland, South Australia and Western Australia. A variation of this might be to require a special majority of voters at such a referendum.
- (k) At the federal level, under the Constitution (section 128), a national referendum requires a majority of electors in a majority of States, plus a majority Australia-wide.
- (l) At an Aboriginal Conference on the future of Government in the Territory held at Alice Springs in 1989, the "Conference Statement" advocated a restricted franchise on the question of Statehood, requiring voters to have had one grandparent born in the Northern Territory and/or have had a minimum of 10 years residency in the Territory. The Committee does not, however, support such a restrictive franchise for purposes of entrenchment as it considers it anti-democratic, but it invites comment on the possible options as to the franchise.
- (m) It may be possible to devise some other method of entrenchment which ensured that no amendments to constitutional provisions that directly affect Aboriginal rights shall be permitted without the endorsement of a majority of Aboriginal people in the Territory as voters, or in some other way representative of Aboriginal interests.
- (n) There may be other options for methods of entrenchment apart from those described above which could be considered. For example, proposed amendments could be required to be considered and passed by a special constitutional convention in much the same way as the adoption of the new constitution in the first place. The Committee would welcome comments and suggestions on the matter generally.

APPENDICES

APPENDIX 1

Part S - Aboriginal Rights: Extract from the Discussion Paper on a "Proposed New State Constitution for the Northern Territory" dated October 1987.

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**Part: S - Aboriginal Rights: Extract from the Discussion
Paper on a Proposed New State Constitution for the Northern
Territory - dated October 1987.**

1. Comprehensive Commonwealth legislation in the form of the Aboriginal Land Rights (Northern Territory) Act 1976 presently applies in the Northern Territory. In the Option Paper entitled "Land Matters Upon Statehood" dated November 1986, it was advocated that this Act be patriated to and become part of the law of the new State upon the grant of Statehood by some agreed method. That Paper suggests that the process of patriation should include appropriate guarantees of Aboriginal ownership. In the absence of Commonwealth land rights legislation applying Australia-wide, the Select Committee in broad terms endorses this approach.
2. One option, favoured by the Select Committee, is to entrench these guarantees of Aboriginal ownership in the new State constitution, such that they can only be amended by following specified entrenchment procedures. The extent of these guarantees and the degree of entrenchment are matters upon which public comment is invited.
3. There is a question whether the new State constitution should go further in its reference to Aboriginal citizens of the new State. One possibility is to include in the constitution some fundamental principles of a non-enforceable nature in the form of a preamble which would give particular recognition to the place of those citizens in contemporary society (and see Part T, paragraph 8 below).
4. Such a preamble could take many forms. It might, for example, recognise that the new State is now a multi-racial and multi-cultural society in which Aboriginal citizens are fully entitled to participate with other citizens on an equal, non-discriminatory basis under the law. Where special provisions are provided under new State law for any particular class or group citizens, they should only have effect for so long and in so far as they are necessary to redress any continuing lack of equality of opportunity or other disadvantages.
5. In an address by Ms Liddle to the 1986 Law Society Conference on Statehood, she indicated that the new State constitution should go further and recognise not only the current place of Aboriginal citizens in the new State, but also their historical rights, including their traditional ownership of the land the usurpation of those rights by European settlement.
6. There is undoubtedly some merit in recognising the pre-existing circumstances of Aboriginal citizens of the new State, including as to their language, social cultural and religious customs and practices. Having regard to the desirability of maintaining harmonious relationships within the new State, it is preferable that any such recognition should be in the form acceptable to the broader new State community and compatible with its multi-racial, multi-cultural nature and the principles of equality and non-discrimination. The exact form this recognition should take is a matter for discussion.

7. The Select Committee makes no specific recommendation on these proposals but invites public comment.

APPENDIX 2

**Executive Summary:
Extract from the Discussion Paper No.4
"Recognition of Aboriginal Customary Law"
dated August 1992.**

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Executive Summary: Extract from the Discussion Paper No.4
"Recognition of Aboriginal Customary Law" - dated August 1992

A. EXECUTIVE SUMMARY

- (a) This paper considers the question of whether Aboriginal Customary Law should constitutionally be recognised in some way in the Northern Territory and the option for doing this.
- (b) The Committee stresses that it does not wish at this stage to advocate any particular view on the constitutional recognition of Aboriginal customary law. The purpose of this paper is to stimulate debate and invite comments and suggestions.
- (c) Particular issues on which comment and suggestions are sought, and which are discussed in more detail in Item H below, include:
 - (i) Should Aboriginal customary law be legally recognised in the Northern Territory?
 - (ii) Should any such recognition be given constitutional force in a new Northern Territory constitution?
 - (iii) Should the recognition be by way of a non-enforceable preamble to that constitution?
 - (iv) Alternatively, should any such recognition be in the form of an enforceable source of law?
 - (v) If recognised as an enforceable source of law, should there be an exclusion of customary law that is inconsistent with fundamental human rights?
 - (vi) Should any recognition be limited to Aboriginal people who still have a traditional lifestyle?
 - (vii) Should any recognition be limited geographically to areas under the jurisdiction or control of appropriate Aboriginal institutions?
 - (viii) Should any recognition be subject to any overriding Territory statute law? If so, should it be subject to appropriate constitutional guarantees of customary rights?
 - (ix) If customary law is recognised, how should it be applied and enforced? - By the existing general courts, by a new system of Aboriginal courts or by some other flexible scheme designed in consultation with each Aboriginal community? Alternatively should it be left to traditional methods of enforcement?

- (x) Whether or not customary law generally is recognised, should there be some ongoing study to consider further legislative incorporation of selected aspects of customary law by reference, or the adjustment of the general law to take into account selected aspects of customary law?

APPENDIX 3

Proposals for Reconciliation and Self-determination Extract from the Discussion Paper No.4 "Recognition of Aboriginal Customary Law" dated August 1992.

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Proposals for Reconciliation and Self-determination: Extract from the Discussion Paper No.4 "Recognition of Aboriginal Customary Law" - dated August 1992

- (a) The Aboriginal people of the Northern Territory comprise in excess of one quarter of the population of the Territory. While all of these people may not live according to traditional lifestyles, the number that do is still significant in percentage terms. It may be thought desirable that there be some form of recognition of their role within the wider Northern Territory society with a view to establishing and maintaining harmonious relations between Aboriginal and non-Aboriginal people in the Territory as equals.
- (b) Historically, as has been discussed above, relations between Aboriginal and non-Aboriginals have not always been good. The Northern Territory was treated by its first European settlers as if it was uninhabited apart from the few nomadic indigenous peoples. These peoples were frequently regarded as being inferior and their laws and customs were generally ignored. Some of the new immigrants thought them to be a race of people who would generally die out.
- (c) In more recent times, various policies have been devised to seek some form of accommodation with the Aboriginal people, including by way of assimilationist policies (from about 1937) and integrationist policies (from about 1962). These policies tended against any discussion of the possible recognition of customary law.
- (d) A significant change in thinking occurred around the time of the passage of the 1967 national referendum, giving the Commonwealth Parliament concurrent power with the States to enact special laws for the people of any race (Constitution, section 51 (xxvi)). This gave rise to new legislation and a series of programs, federal and State/Territory, designed to provide assistance to Aboriginal people, although the referendum made no difference to the Commonwealth's plenary powers in the Northern Territory. It did not give Aboriginal people and their laws any form of constitutional recognition.
- (e) The difficulty in designing such programs is to find a balance between genuine assistance to ameliorate the disadvantages still experienced by many Aboriginal people and intrusion or dependency-creation. The concerns in this regard have led to increasing demands by the Aboriginal people themselves for greater consultation and participation in the design and management of programs.
- (f) At a federal level new approaches are being sought which stress consultation and greater participation by Aborigines. While most Australians may agree with this in principle, further discussions and practical outcomes have only just begun. It is not appropriate in this paper to enter into detailed discussion of these matters.
- (g) At a community level in the Territory, the experience of the Committee is that there is frequently a desire for local Aboriginal self-management within the framework of the wider community, wherever possible based on links with the traditional tribal lands, and with preservation of customary law and traditional society.

- (h) This approach has been complemented by efforts seeking to increase that involvement of Aboriginal people in the wider community. There have, for example, been extensive efforts to encourage Aboriginal communities to incorporate as community government councils under the Local Government Act of the Territory. However, some communities have preferred to use the medium of the Aboriginal Councils and Associations Act of the Commonwealth or to remain as an incorporated association.
- (i) Apart from local government, and the special provision made for the role of Territory land councils, under federal legislation and complementary Territory legislation, Aboriginal residents of the self-governing Northern Territory have generally been expected to use the same channels as other Territorians in order to participate in Territory decision-making processes within the wider community.
- (j) No special provision has been made by the Commonwealth for the representation in Parliament of Aboriginals at either federal or Territory level. Under the Northern Territory (Self-Government) Act 1978, the single member electorates for the Territory Legislative Assembly are to be distributed in accordance with a 20% quota rule (section 13(5)), without regard to race.
- (k) The two main Aboriginal Land Councils in the Northern Territory, established under the Aboriginal Land Rights (Northern Territory) Act 1976 of the Commonwealth, have taken a leading role in pushing for greater Aboriginal control in various matters, including as to land. Land Council support was given to a Conference in Alice Springs in June 1989 on the Future of Government for Aborigines in Central and Northern Australia. That Conference advocated autonomous Aboriginal local and regional self-government with direct links with the Commonwealth, and not as part of the Northern Territory.
- (l) The concepts of Aboriginal self-management and self-sufficiency are explicitly stated to underlie the Aboriginal and Torres Strait Islander Commission Act 1989 (see in particular section 3), or "ATSIC" for short.
- (m) Proposals for self-government or self-determination have generally been concerned more with enclave forms of separate development of Aboriginals in a distinct group. They are not so much concerned just with the preservation of traditional society within and as part of the wider State or Territory community. These broader proposals raise issues going beyond this Committee's terms of reference. In any event, the Committee, although not of a final view on the matter, does not consider that any recognition of customary law is an appropriate method for achieving Aboriginal self-government or self-determination. The issues concerning possible self-government or self-determination are much broader. The full range of problems experienced by Aboriginal people generally in the Northern Territory in their contact with the wider constitutional and legal system will not be solved just by recognition of customary law.
- (n) Alongside, the development of concepts of self-government, self-determination or self-management, the concept of a "Makaratta" or treaty between Aboriginal and

non-Aboriginal Australians has developed in recent years. This originated in the late 1970's with calls by Dr H C Coombs, Judith Wright, Stuart Harris and others. The concept was to use such a mechanism to recognise the historic rights of Aboriginal people to the Continent, and to work towards a reconciliation between the two groups. It could include provision for the maintenance of tribal laws.

- (o) This call was supported in 1983 by the Senate Standing Committee on Constitutional and Legal Affairs when it called for a constitutional amendment to provide for a treaty. This approach was subsequently endorsed by the Advisory Committee in its Report on Individual and Democratic Rights 1987, but not accepted by the Constitutional Commission in its Final Report of 1988 until such time as an agreement with Aboriginal people had been negotiated. A referendum for this purpose has not so far resulted.
- (p) In 1988, Prime Minister Hawke announced in the Barunga Statement that there would be a treaty negotiated between the Aboriginal people and the Commonwealth Government on behalf of all the people of Australia.
- (q) The current federal Minister for Aboriginal Affairs has stated that there will be an instrument of reconciliation, which should be achieved by the Centenary of Federation, 1 January 2001. The Commonwealth Parliament has enacted the Council for Aboriginal Reconciliation Act 1991 to promote the process of reconciliation, including a consideration of whether it would be advanced by formal document or documents of reconciliation. The Act ceases to operate on 1 January 2001.
- (r) The 1991 Constitutional Centenary Conference, in its concluding statement, resolved that there should be a process of reconciliation between the Aboriginal and Torres Strait Islander peoples of Australia and the wider Australian community, aiming to achieve some agreed outcomes by the Centenary. It said that this process should among other things, seek to identify what rights these peoples have and should have as the indigenous peoples of Australia, and how best to secure those rights, including through constitutional change. As part of that reconciliation process, the Commonwealth Constitution should recognise these peoples as the indigenous peoples of Australia.
- (s) The Committee does not wish to comment on the proposals for reconciliation at a national level, as this is outside its terms of reference. It is, however, concerned with the issue of reconciliation between the Aboriginal and non-Aboriginal residents of the Northern Territory and in particular how that might be assisted by the adoption of a new constitution for the Territory. It would seem to be in the interest of all Territorians to work towards a harmonious and tolerant society. There may be considerable merit in the comments in the 1991 Report of the Royal Commission on Aboriginal Deaths in Custody (Vol 5) that reconciliation should be an ongoing process which must have bi-partisan support, and which should not be limited to the concept of a single instrument of agreement (however called). It is clearly not just a matter for the Commonwealth.

- (t) One of the arguments in favour of some form of constitutional or legal recognition of Aboriginal customary law within the Territory is that it may well advance the process of reconciliation. The question of whether any such recognition could or should take place, and the options for same, including by way of provisions of a new Northern Territory constitution, are dealt with in Item H below.

APPENDIX 4

Northern Territory Community Government Schemes As At June 1993

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Functions	Lajamanu	Angurugu	Milakapati	Pirlangimpi	Mataranka
1. the establishment, development , operation and maintenance of communication facilities for the community government area and in so doing the council may enter into a contract with the Australian Telecommunications Commission to act, for reward, as the agent of the Commission;	Yes	Yes	Yes	Yes	Yes
2. the establishment and maintenance of parks, gardens and recreational areas and carrying out landscaping and other associated works;	Yes	Yes	Yes	Yes	Yes
3. the establishment and maintenance of sports facilities, libraries, a cinema, community halls, public toilet and ablution blocks and laundry facilities;	Yes	Yes	Yes	Yes	Yes
4. the provision of a service for the collection and disposal of garbage, the maintenance of particular places where garbage is to be dumped, and the control of litter generally;	Yes	Yes	Yes	Yes	Yes
5. the provision and maintenance of sanitation facilities and the removal of health hazards;	Yes	Yes	Yes	Yes	Yes
6. the provision and maintenance of sewerage, drainage and water supply facilities;	Yes	Yes	Yes	Yes	Yes
7. the supply of electricity by contracting with a government department or statutory authority responsible for providing electricity, and action, for reward, as an agent in respect of the collection of electricity charges;	Yes	Yes	Yes	Yes	Yes
8. the provision of adult education and vocational and other training;	Yes	No	No	Yes	Yes
9. the provision and maintenance of housing for residents and their families on such terms and conditions as the council thinks fit;	Yes	Yes	Yes	Yes	Yes

Functions	Lajamanu	Angurugu	Milakapati	Pirlangimpi	Mataranka
10. the provision of relief work for unemployed persons;	Yes	No	No	Yes	Yes
11. the promotion and provision of community welfare, health and care facilities for all age groups within the community government area and the provision of appropriately trained staff to provide counselling or temporary assistance;	Yes	Yes	Yes	Yes	Yes
12. the prevention and control of substance abuse;	Yes	No	No	Yes	No
13. the maintenance of a cemetery or cemeteries;	Yes	Yes	Yes	Yes	Yes
14. the control or prohibition of animals within the community government area;	Yes	Yes	Yes	Yes	Yes
15. the development and maintenance of roads, boat ramps and channel markers within the community government area (including the provision of street lighting and traffic control devices) and, for reward, the development and maintenance of roads, both ramps and channel markers outside the community government area;	Yes	Yes	Yes	Yes	Yes
16. the maintenance of an airstrip and facilities related thereto;	Yes	No	Yes	Yes	Yes
17. the hiring out, for reward, of any plant, appliance or equipment belonging to the council and the repair and maintenance, for reward, of any plant appliance or equipment not owned by the council;	Yes	No	Yes	Yes	Yes
18. the contracting of works projects within or without the community government area;	Yes	No	Yes	Yes	Yes
19. the establishment and operation of pastoral and commercial enterprises;	Yes	Yes	Yes	Yes	Yes

Functions	Lajamanu	Angurugu	Milakapati	Pirlangimpi	Mataranka
20. the establishment and operation of a post office agency and bank agency;	No	Yes	Yes	Yes	No
21. the selling of petroleum products;	Yes	No	Yes	Yes	No
22. the establishment and maintenance of a fire-fighting service, including the acquisition of property and equipment and training of personnel for the service, and the protection of the community government area from fire;	Yes	No	Yes	Yes	Yes
23. the promotion and development of tourist attractions, and provision and maintenance of tourist facilities, within the community government area;	Yes	No	No	Yes	Yes
24. the production and selling of artefacts and souvenirs;	Yes	No	No	Yes	Yes
25. the management and control of sites of historic interest;	Yes	No	No	Yes	Yes
26. the maintenance and preservation of Aboriginal law and custom;	Yes	No	No	Yes	No
27. the support and encouragement of artistic, cultural and sporting activities.	Yes	No	No	Yes	Yes
28. the provision of such public transport within the community government area as the council thinks fit.	No	No	Yes	No	No
29. the distribution of social service benefits	Yes	No	No	No	No
30. the receipt of money, grants or gifts of property paid or made to the Council	No	No	No	No	No
31. The production and distribution of Publications relating to the functions of the Council.	No	No	No	No	No

Functions	Lajamanu	Angurugu	Milakapati	Pirlangimpi	Mataranka
32. The Establishment and operation of a licensed Abattoir under the <i>Abattoir & Slaughtering Act</i> .	No	No	No	Yes	No
33. Selling of goods or equipment purchased by the Council for or in connection with any enterprise and found to be in excess of the Council's immediate needs.	No	No	No	Yes	No
34. The operation of a bakery, general purpose shop, bookshop, printing enterprise, market garden, mechanic workshop and any contract for work currently in existence.	No	Yes	No	No	No
35. Liaison with, and the giving of advice to the Wampana Progress Association in the management of the Lajamanu Shop, and the provision of non-financial assistance to that Association and to any other commercial interest within the Community Government area.	Yes	No	No	No	No

Functions	Elliott	Wallace Rockhole	Yugul Mangi	Naiyu Nambiyui	Dagaragu
1. the establishment, development , operation and maintenance of communication facilities for the community government area and in so doing the council may enter into a contract with the Australian Telecommunications Commission to act, for reward, as the agent of the Commission;	Yes	Yes	Yes	Yes	Yes
2. the establishment and maintenance of parks, gardens and recreational areas and carrying out landscaping and other associated works;	Yes	Yes	Yes	Yes	Yes
3. the establishment and maintenance of sports facilities, libraries, a cinema, community halls, public toilet and ablution blocks and laundry facilities;	Yes	Yes	Yes	Yes	Yes
4. the provision of a service for the collection and disposal of garbage, the maintenance of particular places where garbage is to be dumped, and the control of litter generally;	Yes	Yes	Yes	Yes	Yes
5. the provision and maintenance of sanitation facilities and the removal of health hazards;	Yes	Yes	Yes	Yes	Yes
6. the provision and maintenance of sewerage, drainage and water supply facilities;	Yes	Yes	Yes	Yes	Yes
7. the supply of electricity by contracting with a government department or statutory authority responsible for providing electricity, and action, for reward, as an agent in respect of the collection of electricity charges;	Yes	Yes	Yes	Yes	Yes
8. the provision of adult education and vocational and other training;	Yes	Yes	Yes	Yes	Yes
9. the provision and maintenance of housing for residents and their families on such terms and conditions as the council thinks fit;	Yes	Yes	Yes	Yes	Yes

Functions	Elliott	Wallace Rockhole	Yugul Mangi	Naiyu Nambiyui	Dagaragu
10. the provision of relief work for unemployed persons;	Yes	Yes	Yes	Yes	Yes
11. the promotion and provision of community welfare, health and care facilities for all age groups within the community government area and the provision of appropriately trained staff to provide counselling or temporary assistance;	Yes	Yes	Yes	Yes	Yes
12. the prevention and control of substance abuse;	No	No	No	No	No
13. the maintenance of a cemetery or cemeteries;	Yes	Yes	Yes	Yes	Yes
14. the control or prohibition of animals within the community government area;	Yes	Yes	Yes	Yes	Yes
15. the development and maintenance of roads, boat ramps and channel markers within the community government area (including the provision of street lighting and traffic control devices) and, for reward, the development and maintenance of roads, both ramps and channel markers outside the community government area;	Yes	Yes	Yes	Yes	Yes
16. the maintenance of an airstrip and facilities related thereto;	Yes	No	Yes	Yes	Yes
17. the hiring out, for reward, of any plant, appliance or equipment belonging to the council and the repair and maintenance, for reward, of any plant appliance or equipment not owned by the council;	Yes	Yes	Yes	Yes	Yes
18. the contracting of works projects within or without the community government area;	Yes	Yes	Yes	Yes	Yes
19. the establishment and operation of pastoral and commercial enterprises;	Yes	Yes	Yes	Yes	Yes

Functions	Elliott	Wallace Rockhole	Yugul Mangi	Naiyu Nambiyui	Dagaragu
20. the establishment and operation of a post office agency and bank agency;	No	No	No	No	No
21. the selling of petroleum products;	Yes	Yes	No	Yes	Yes
22. the establishment and maintenance of a fire-fighting service, including the acquisition of property and equipment and training of personnel for the service, and the protection of the community government area from fire;	Yes	Yes	Yes	Yes	Yes
23. the promotion and development of tourist attractions, and provision and maintenance of tourist facilities, within the community government area;	Yes	Yes	Yes	Yes	Yes
24. the production and selling of artefacts and souvenirs;	Yes	Yes	Yes	Yes	Yes
25. the management and control of sites of historic interest;	Yes	Yes	Yes	Yes	Yes
26. the maintenance and preservation of Aboriginal law and custom;	No	No	No	No	Yes
27. the support and encouragement of artistic, cultural and sporting activities.	Yes	Yes	Yes	Yes	Yes
28. the provision of such public transport within the community government area as the council thinks fit.	No	No	No	No	No
29. the distribution of social service benefits	No	No	No	No	No
30. the receipt of money, grants or gifts of property paid or made to the Council	No	No	No	No	No
31. The production and distribution of Publications relating to the functions of the Council.	No	No	No	No	No

Functions	Elliott	Wallace Rockhole	Yugul Mangi	Naiyu Nambiyui	Dagaragu
32. The Establishment and operation of a licensed Abattoir under the <i>Abattoir & Slaughtering Act</i> .	No	No	No	No	No
33. Selling of goods or equipment purchased by the Council for or in connection with any enterprise and found to be in excess of the Council's immediate needs.	No	No	No	No	No
34. The operation of a bakery, general purpose shop, bookshop, printing enterprise, market garden, mechanic workshop and any contract for work currently in existence.	No	No	Yes	No	No
35. Liaison with, and the giving of advice to the Wampana Progress Association in the management of the Lajamanu Shop, and the provision of non-financial assistance to that Association and to any other commercial interest within the Community Government area.	No	No	No	No	No

Functions	Numbulwar Numburindi	Coomalie	Belyuen	Yulara	Timber Creek
1. the establishment, development , operation and maintenance of communication facilities for the community government area and in so doing the council may enter into a contract with the Australian Telecommunications Commission to act, for reward, as the agent of the Commission;	Yes	No	No	No	No
2. the establishment and maintenance of parks, gardens and recreational areas and carrying out landscaping and other associated works;	Yes	Yes	Yes	Yes	Yes
3. the establishment and maintenance of sports facilities, libraries, a cinema, community halls, public toilet and ablution blocks and laundry facilities;	Yes	Yes	Yes	Yes	Yes
4. the provision of a service for the collection and disposal of garbage, the maintenance of particular places where garbage is to be dumped, and the control of litter generally;	Yes	Yes	Yes	Yes	Yes
5. the provision and maintenance of sanitation facilities and the removal of health hazards;	Yes	Yes	Yes	Yes	Yes
6. the provision and maintenance of sewerage, drainage and water supply facilities;	Yes	No	Yes	No	Yes
7. the supply of electricity by contracting with a government department or statutory authority responsible for providing electricity, and action, for reward, as an agent in respect of the collection of electricity charges	Yes	No	Yes	No	Yes
8. the provision of adult education and vocational and other training;	Yes	Yes	Yes	Yes	Yes
9. the provision and maintenance of housing for residents and their families on such terms and conditions as the council thinks fit;	Yes	No	Yes	see Appendix 1(D)	Yes

Functions	Numbulwar Numburindi	Coomalie	Belyuen	Yulara	Timber Creek
10. the provision of relief work for unemployed persons;	Yes	No	Yes	No	Yes
11. the promotion and provision of community welfare, health and care facilities for all age groups within the community government area and the provision of appropriately trained staff to provide counselling or temporary assistance;	Yes	Yes	Yes	Yes	Yes
12. the prevention and control of substance abuse;	Yes	No	Yes	No	No
13. the maintenance of a cemetery or cemeteries;	Yes	Yes	Yes	Yes	Yes
14. the control or prohibition of animals within the community government area;	Yes	No	Yes	Yes	Yes
15. the development and maintenance of roads, boat ramps and channel markers within the community government area (including the provision of street lighting and traffic control devices) and, for reward, the development and maintenance of roads, both ramps and channel markers outside the community government area	Yes	Yes	Yes	Yes	Yes
16. the maintenance of an airstrip and facilities related thereto;	Yes	No	Yes	No	Yes
17. the hiring out, for reward, of any plant, appliance or equipment belonging to the council and the repair and maintenance, for reward, of any plant appliance or equipment not owned by the council;	Yes	Yes	Yes	Yes	Yes
18. the contracting of works projects within or without the community government area;	Yes	Yes	Yes	Yes	Yes
19. the establishment and operation of pastoral and commercial enterprises;	Yes	Yes	Yes	see Appendix 1(D)	Yes

Functions	Numbulwar Numburindi	Coomalie	Belyuen	Yulara	Timber Creek
20. the establishment and operation of a post office agency and bank agency;	Yes	No	No	No	No
21. the selling of petroleum products;	Yes	No	No	No	No
22. the establishment and maintenance of a fire-fighting service, including the acquisition of property and equipment and training of personnel for the service, and the protection of the community government area from fire;	Yes	No	Yes	No	Yes
23. the promotion and development of tourist attractions, and provision and maintenance of tourist facilities, within the community government area;	Yes	No	Yes	see Appendix 1(D)	Yes
24. the production and selling of artefacts and souvenirs;	Yes	No	Yes	No	Yes
25. the management and control of sites of historic interest;	Yes	No	Yes	No	Yes
26. the maintenance and preservation of Aboriginal law and custom;	Yes	No	Yes	No	No
27. the support and encouragement of artistic, cultural and sporting activities.	Yes	No	Yes	Yes	Yes
28. the provision of such public transport within the community government area as the council thinks fit.	No	No	No	No	No
29. the distribution of social service benefits	No	No	Yes	No	No
30. the receipt of money, grants or gifts of property paid or made to the Council	No	No	No	Yes	Yes
31. The production and distribution of Publications relating to the functions of the Council.	No	No	No	Yes	No

Functions	Numbulwar Numburindi	Coomalie	Belyuen	Yulara	Timber Creek
32. The Establishment and operation of a licensed Abattoir under the <i>Abattoir & Slaughtering Act</i> .	No	No	No	No	No
33. Selling of goods or equipment purchased by the Council for or in connection with any enterprise and found to be in excess of the Council's immediate needs.	No	No	No	No	No
34. The operation of a bakery, general purpose shop, bookshop, printing enterprise, market garden, mechanic workshop and any contract for work currently in existence.	No	No	No	No	No
35. Liaison with, and the giving of advice to the Wampana Progress Association in the management of the Lajamanu Shop, and the provision of non-financial assistance to that Association and to any other commercial interest within the Community Government area.	No	No	No	No	No

Functions	Barunga-Wugularr	Nguiu	Borroloola	Pine Creek	Anmatjere
1. the establishment, development , operation and maintenance of communication facilities for the community government area and in so doing the council may enter into a contract with the Australian Telecommunications Commission to act, for reward, as the agent of the Commission;	Yes	Yes	Yes	Yes	No
2. the establishment and maintenance of parks, gardens and recreational areas and carrying out landscaping and other associated works;	Yes	Yes	Yes	Yes	Yes
3. the establishment and maintenance of sports facilities, libraries, a cinema, community halls, public toilet and ablution blocks and laundry facilities;	Yes	Yes	Yes	Yes	Yes
4. the provision of a service for the collection and disposal of garbage, the maintenance of particular places where garbage is to be dumped, and the control of litter generally;	Yes	Yes	Yes	Yes	Yes
5. the provision and maintenance of sanitation facilities and the removal of health hazards;	Yes	Yes	Yes	Yes	No
6. the provision and maintenance of sewerage, drainage and water supply facilities;	Yes	Yes	Yes	Yes	Yes
7. the supply of electricity by contracting with a government department or statutory authority responsible for providing electricity, and action, for reward, as an agent in respect of the collection of electricity charges	Yes	Yes	Yes	Yes	No
8. the provision of adult education and vocational and other training;	Yes	Yes	Yes	Yes	Yes
9. the provision and maintenance of housing for residents and their families on such terms and conditions as the council thinks fit;	Yes	Yes	Yes	Yes	Yes

Functions	Barunga-Wugularr	Nguiu	Borroloola	Pine Creek	Anmatjere
10. the provision of relief work for unemployed persons;	Yes	Yes	Yes	Yes	Yes
11. the promotion and provision of community welfare, health and care facilities for all age groups within the community government area and the provision of appropriately trained staff to provide counselling or temporary assistance;	Yes	Yes	Yes	Yes	Yes
12. the prevention and control of substance abuse;	No	No	No	No	Yes
13. the maintenance of a cemetery or cemeteries;	Yes	Yes	Yes	Yes	Yes
14. the control or prohibition of animals within the community government area;	Yes	Yes	Yes	Yes	Yes
15. the development and maintenance of roads, boat ramps and channel markers within the community government area (including the provision of street lighting and traffic control devices) and, for reward, the development and maintenance of roads, both ramps and channel markers outside the community government area	Yes	Yes	Yes	Yes	Yes
16. the maintenance of an airstrip and facilities related thereto;	Yes	Yes	Yes	Yes	Yes
17. the hiring out, for reward, of any plant, appliance or equipment belonging to the council and the repair and maintenance, for reward, of any plant appliance or equipment not owned by the council;	Yes	Yes	Yes	Yes	Yes
18. the contracting of works projects within or without the community government area;	Yes	Yes	Yes	Yes	Yes
19. the establishment and operation of pastoral and commercial enterprises;	Yes	Yes	Yes	Yes	Yes

Functions	Barunga-Wugularr	Nguiu	Borroloola	Pine Creek	Anmatjere
20. the establishment and operation of a post office agency and bank agency;	No	Yes	No	No	No
21. the selling of petroleum products;	Yes	Yes	No	No	No
22. the establishment and maintenance of a fire-fighting service, including the acquisition of property and equipment and training of personnel for the service, and the protection of the community government area from fire;	Yes	Yes	Yes	Yes	Yes
23. the promotion and development of tourist attractions, and provision and maintenance of tourist facilities, within the community government area;	Yes	Yes	Yes	Yes	Yes
24. the production and selling of artifacts and souvenirs;	Yes	Yes	Yes	Yes	No
25. the management and control of sites of historic interest; and	Yes	Yes	Yes	Yes	Yes
26. the maintenance and preservation of Aboriginal law and custom;	No	No	No	No	No
27. the support and encouragement of artistic, cultural and sporting activities.	Yes	Yes	Yes	Yes	Yes
28. the provision of such public transport within the community government area as the council thinks fit.	No	No	No	No	No
29. the distribution of social service benefits	No	No	No	No	No
30. the receipt of money, grants or gifts of property paid or made to the Council	No	No	No	No	Yes
31. The production and distribution of Publications relating to the functions of the Council.	No	No	No	No	No

Functions	Barunga-Wugularr	Nguiu	Borroloola	Pine Creek	Anmatjere
32. The Establishment and operation of a licensed Abattoir under the <i>Abattoir & Slaughtering Act</i> .	No	No	No	No	No
33. Selling of goods or equipment purchased by the Council for or in connection with any enterprise and found to be in excess of the Council's immediate needs.	No	No	No	No	No
34. The operation of a bakery, general purpose shop, bookshop, printing enterprise, market garden, mechanic workshop and any contract for work currently in existence.	No	No	No	No	No
35. Liaison with, and the giving of advice to the Wampana Progress Association in the management of the Lajamanu Shop, and the provision of non-financial assistance to that Association and to any other commercial interest within the Community Government area.	No	No	No	No	No

"Yulara Community Government Scheme

**SCHEDULE 3
Clause 11(2)
SPECIFIED MATTERS**

In this Schedule, "ARRC" means the Ayers Rock Resort Company Limited, and "Resort" means that part of the Community Government Area comprising the Ayers Rock Resort.

The council will take into account -

1. that the council was created, inter alia, to provide Resort employees, their families and other residents involved in supporting the commercial activities of the Resort, with appropriate community facilities and services;
2. that the prime purpose of the Resort is tourism, guest and visitor satisfaction, and commercial success to generate adequate returns to shareholders;
3. the necessity for a high degree of continuing consultation, coordination and cooperation between the council and ARRC;
4. that ARRC, recognising that the high performance of staff and residents in satisfying guests is in part dependant on the supply of appropriate staff accommodation and the application of appropriate staff accommodation policies, in its capacity as Housing Manager acting on behalf of the Northern Territory Housing Commission, undertakes to invite regular participation by the council in housing matters;
5. that the Resort, and the township of Yulara which supports its activities, have the central and over-riding objective of presenting the Resort, Uluru National Park and other surrounding attractions as a major tourist destination;
6. that ARRC, which owns, manages and develops the Resort, is a commercial venture with the objective of maximising the profitability and long term value of the Resort on behalf of the people of the Northern Territory; and
7. that it is essential -
 - a. that the facilities at Yulara are developed so that the Resort presents a single consistent and integrated face to tourists; and
 - b. that all tourist activities are coordinated to ensure a unique and rewarding visitor experience is offered,

under the overall direction of ARRC"

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APPENDIX 5

List of Incorporated Aboriginal Associations Established In The Northern Territory Under Commonwealth Legislation As At 18 December 1992

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Abbott Aboriginal Corporation	2-Sep-89
Aboriginal Broadcasting Organisation Media Aboriginal Corporation)	2-Jun-85
Aboriginal Bush Broadcasting Association Aboriginal Corporation	19-Oct-89
Aboriginal Corporation for Sacred Sites	17-May-89
Aboriginal Rabbit Control Programme Aboriginal Corporation	22-Oct-90
Abskill Construction Aboriginal Corporation	3-Sep-91
Aghirringho Aboriginal Corporation	28-Oct-88
Ahakey Aboriginal Corporation	12-Jun-89
Ahalperarenye Cattle Aboriginal Corporation	28-Nov-91
Aherre Aboriginal Corporation	22-Jun-89
Aheyenehne Aboriginal Corporation	1-Nov-90
Aileron Aboriginal Corporation	1-Nov-90
Alatyeye Aboriginal Corporation	13-Feb-89
Aliyawe Aboriginal Corporation	27-Feb-90
Alkngarintja Aboriginal Corporation	27-Feb-90
Alkupitja Aboriginal Corporation	14-Aug-85
Allalgara/Annangara Aboriginal Corporation	18-Jun-80
Alpara Community Aboriginal Corporation	12-Aug-81
Alparrinya Apungalindum Aboriginal Corporation	2-Nov-88
Alpawerrke Aboriginal Corporation	29-Jan-91
Alpirakina Cattle Aboriginal Corporation	30-Sep-91
Alpirakina Store Aboriginal Corporation	14-Sep-90
Alpurrurulam Land Aboriginal Corporation	17-Jul-87
Aluralkwa Aboriginal Corporation	22-Jul-83
Alyuem Aboriginal Corporation	7-May-82
Amoonguna Progress Association Aboriginal Corporation	23-Aug-85
Amundurrngu Mt Liebig Community Store (Aboriginal Corporation)	19-Aug-87
Amundurrngu Outstations Council Aboriginal Corporation	20-Dec-89
Anangu Uwankaraku Aboriginal Corporation	22-Jul-91
Anangu Winkiku Stores (Aboriginal Corporation)	7-Mar-83
Angkerle Aboriginal Corporation	17-Sep-87
Angkerle-Irenge Aboriginal Corporation	15-Feb-89
Angkwetengarenye Cattle Aboriginal Corporation	27-Mar-92
Angula Aboriginal Corporation	22-Apr-81
Anhelke Aboriginal Corporation	15-Apr-87
Anilalya Council (Aboriginal Corporation)	22-Mar-84
Antere Aboriginal Corporation	3-Aug-85
Anumarru Piti Aboriginal Corporation	25-Oct-88
Anyinginyi Congress Aboriginal Corporation	24-Aug-84
Anyungyumba Aboriginal Corporation	7-Apr-88
Apmwerre Aboriginal Corporation	10-Dec-84
Arkarnta Aboriginal Corporation	26-Sep-91
Arlparra Aboriginal Corporation	6-Feb-89
Arlperreyekele Arts Aboriginal Corporation	29-Jan-90
Armstrong Aboriginal Corporation	22-Aug-90
Arnapipe Aboriginal Corporation	23-Aug-85
Arrillhjeru Aboriginal Corporation	10-Oct-90
Arrkilku Aboriginal Corporation	30-Apr-87
Arruwurra Aboriginal Corporation	6-Feb-89

Association of Northern and Central Australian Aboriginal Artists (Aboriginal Corporation)	8-Aug-90
Atakartarenue-Theleyarenye Cattle Aboriginal Corporation	10-Dec-91
Athenge-Lhere Aboriginal Corporation	24-Apr-86
Atite Cattle Aboriginal Corporation	17-Jun-91
Atitjere Community Aboriginal Corporation	12-Aug-83
Atitjere Land Aboriginal Corporation	21-Nov-88
Atyilera Community Aboriginal Corporation	6-Mar-88
Atyilera Land Aboriginal Corporation	12-Sep-87
Autilly Aboriginal Corporation	26-Mar-87
Babbara Womens Advisory Council Aboriginal Corporation	26-Oct-87
Bampiti Nitjpurru Aboriginal Corporation	15-Feb-89
Barranyi Aboriginal Corporation	29-Mar-90
Bawinanga Aboriginal Corporation	15-Oct-79
Binjari Aboriginal Corporation	4-Jun-90
Blakbela Musicians Aboriginal Corporation	25-Aug-89
Bongoi Aboriginal Corporation	30-Sep-91
Boolrna Aboriginal Corporation	24-Apr-89
Boonu Boonu Womens Aboriginal Corporation	10-Oct-90
Borroloola Cemetery Trust Aboriginal Corporation	22-Dec-89
Broken English Band Aboriginal Corporation	28-Aug-89
Bulabula Arts Aboriginal Corporation	8-Aug-90
Bulbulanyi Aboriginal Corporation	2-Sep-90
Burungkut Aboriginal Corporation	16-Apr-86
Burungkut Homeland Resource Centre Aboriginal Corporation	2-Apr-91
Central Australian Aboriginal Child Care Agency Aboriginal Corporation	1-Nov-85
Central Australian Aboriginal Media Association (Aboriginal Corporation)	12-May-80
Central Australian Aboriginal Pastoralists Association (Aboriginal Corporation)	12-Jun-84
Central Desert Outstations Council (Aboriginal Corporation)	7-May-82
Centralian Aboriginal Organisation Enterprise (Aboriginal Corporation)	26-Apr-83
Crossroads Aboriginal Corporation	4-Oct-90
Dak Milnigin Aboriginal Corporation	11-Mar-89
Darwin Aboriginal and Islander Medical Service Aboriginal Corporation	17-Jun-91
Djarrung Aboriginal Corporation	5-Jul-90
East Arnhem Aboriginal Corporation for Sport and Recreation	18-Mar-92
Elitjia Aboriginal Corporation	16-Jun-87
Elliott Store Aboriginal Corporation	19-May-88
Fitzroy Aboriginal Corporation	6-Dec-91
Fraser Aboriginal Corporation	4-Sep-90
Garawa 1 Camp Aboriginal Corporation	27-Nov-89
Garawa No. 2 Housing Aboriginal Corporation	20-Feb-89
Goonamah Aboriginal Corporation	24-Apr-89
Granites Mine Affected Area Aboriginal Corporation	31-Jan-91
Gulgulgwanja aboRiginal Corporation	29-May-90
Gulin Gulin & Weemol Community Council Aboriginal Corporation	29-May-92
Gulunurru Aboriginal Corporation	12-May-83
Gurungu Council Aboriginal Corporation	27-Feb-89
Guyanggan Aboriginal Corporation	30-Sep-91
Gyrrigas Aboriginal Corporation	2-Apr-91
Hermannsburg Trading Aboriginal Corporation	6-Jul-85

Illurawara Community Association Aboriginal Corporation	8-Aug-86
Ilparpa Aboriginal Corporation	25-Oct-79
Ilpeye Ilpeye Aboriginal Corporation	12-Jul-79
Ilpila Alkngarintja Aboriginal Corporation	13-Feb-89
Ilwemp-Akente Aboriginal Corporation	10-Apr-80
Imangara Aboriginal Corporation	12-Oct-79
Ingkerreke Outstations Resource Services Aboriginal Corporation	3-Aug-85
Injartnama Aboriginal Corporation	21-Nov-88
Injulkama Aboriginal Corporation	14-Nov-83
Inkamala Aboriginal Corporation	13-Feb-89
Ipolera Aboriginal Corporation	3-Aug-85
Irintata Homelands Council (Aboriginal Corporation)	15-Jul-86
Irrawanyere Aboriginal Corporation	2-Sep-90
Irrerlirre Aboriginal Corporation	19-May-88
Irriltyere Aboriginal Corporation	2-Jul-90
Iteyepintye Aboriginal Corporation	29-Jan-90
Itperlyenge Aboriginal Corporation	2-Sep-90
Janganpa Aboriginal Corporation	22-Dec-83
Jangirurlu Aboriginal Corporation	2-Dec-90
Jarnba-Gadarlandji Aboriginal Corporation	12-Oct-79
Jarra Jarra Aboriginal Corporation	21-Jul-82
Jawoyn Association Aboriginal Corporation	31-May-85
Jemelkere Aboriginal Corporation	22-Dec-89
Jibabana Aboriginal Corporation	20-Jun-91
Jingaloo Aboriginal Corporation	10-Aug-84
Jirrngow Aboriginal Corporation	9-Oct-86
Joint Aboriginal Management Information Service (Aboriginal Corporation)	25-Feb-83
Jukurrpa Aboriginal Corporation	3-Aug-89
Julalikari Council Aboriginal Corporation	29-Jun-89
Julalikari Workshops Aboriginal Corporation	29-Jun-89
Jungarrayiwarnu Aboriginal Corporation	31-Jan-91
Jurnkurakurr Aboriginal Corporation Stores Services	7-Apr-88
Jurnkurakurr Aboriginal Resource Centre Aboriginal Corporation	18-Oct-84
Kakalyalya Aboriginal Corporation	24-Nov-92
Kaltjiti Cattle (Aboriginal Corporation)	5-Jul-90
Kaltjiti Community (Aboriginal Corporation)	30-Jun-86
Kaltukatjara Association (Aboriginal Corporation)	16-Jan-90
Kaltukatjara Community Council (Aboriginal Corporation)	19-May-83
Kaltukatjara Nguratjaku Council (Aboriginal Corporation)	19-Nov-82
Karlantijpa Aboriginal Corporation	27-Jun-89
Karnte Aboriginal Corporation	7-Nov-83
Karrinyarra Aboriginal Corporation	8-Apr-87
Katherine Regional Aboriginal Cultural Centre Aboriginal Corporation	18-Mar-92
Keringke Arts Aboriginal Corporation	23-Oct-89
Kiwinyi-Wampana Aboriginal Corporation	6-Feb-87
Kiwirrkurra Council Aboriginal Corporation	10-Aug-84
Kulumbiringin Aboriginal Corporation	25-Mar-88
Kumbarada Outstation (Homeland) Centre Aboriginal Corporation	29-Mar-90
Kumunu Aboriginal Corporation	27-Mar-92
Kwombom Aboriginal Corporation	12-Mar-87

Labrabuntja Aboriginal Corporation	2-Sep-90
Lajamanu Women Yawalyu Aboriginal Corporation	2-Jan-91
Langarama Numumurdidi Enterprises Aboriginal Corporation	20-Feb-89
Larrpayanji Aboriginal Corporation	28-Jul-89
Lawi Gurindji Community Services Aboriginal Corporation	22-Jun-89
Leedi Aboriginal Corporation	4-Sep-90
Lhenpe Artne Aboriginal Corporation	8-Aug-86
Liku Aboriginal Corporation	26-May-88
Lilla Aboriginal Corporation	8-Feb-85
Lingarra - Ngarinman Aboriginal Corporation	21-Nov-88
Liritjal/Marrawulwul Aboriginal Corporation	26-Sep-89
Ltalaltuma Aboriginal Corporation	22-Aug-88
Mala Aboriginal Corporation	3-Apr-81
Malinja Aboriginal Corporation	30-May-90
Malthouse Aboriginal Corporation	22-Aug-90
Mamadi Aboriginal Corporation	26-Oct-89
Mangarrayi Aboriginal Corporation	3-Feb-92
Mangkururpa Aboriginal Corporation	13-Feb-90
Manuburduma Housing Association Aboriginal Corporation	5-Jan-87
Mara Aboriginal Corporation	28-Jul-87
Mara Camp Aboriginal Corporation	27-Oct-89
Maranunggu Homeland Aboriginal Corporation	24-Feb-89
Marapurn Aboriginal Corporation	27-Mar-92
Margalkmi Aboriginal Corporation	28-Nov-91
Mayamumbin Aboriginal Corporation	1-Dec-90
Mbantarinya Aboriginal Corporation	26-Aug-83
Mbungara Housing Aboriginal Corporation	26-Sep-91
McNamara Aboriginal Corporation	27-Feb-89
Merrepen Arts Aboriginal Corporation	16-Nov-90
Minbani Aboriginal Corporation	28-Feb-89
Mingatherre Aboriginal Corporation	24-Apr-86
Mirrena Aboriginal Corporation	3-Aug-81
Mistake Creek Aboriginal Corporation	6-Jan-88
Mount Liebig Aboriginal Corporation	26-Aug-88
Mount Winter Aboriginal Corporation	23-Nov-90
Mparntwe Sacred Site Aboriginal Corporation	29-May-90
Mpwelarra Aboriginal Corporation	15-Nov-89
Mpweringe - Arnapipe Outstation Council Aboriginal Corporation	10-Sep-84
Mpwetyerre Aboriginal Corporation	25-Oct-79
Muckaty Aboriginal Corporation	6-Dec-91
Mukurrmanja Aboriginal Corporation	(no date given)
Mulluyu Aboriginal Corporation	25-Mar-88
Mundawalla Aboriginal Corporation	1-Nov-90
Mundululu Aboriginal Corporation	22-Jul-91
Mungar Mungar Open College Women's Learning Centre Aboriginal Corporation	28-Mar-90
Mungkarta Community and Outstation Aboriginal Corporation	6-Feb-89
Mungkarta Community Store Aboriginal Corporation	27-Jun-89
Mungoorbada Aboriginal Corporation	10-Feb-90
Munupi Arts and Crafts Association Aboriginal Corporation	8-Aug-90

Munyupanji Aboriginal Corporation	27-Mar-92
Murputja Homelands Council (Aboriginal Corporation)	7-Oct-86
Mutchirr Aboriginal Corporation	5-Feb-89
Mutitjulu Community Health Service (Aboriginal Corporation)	23-Feb-89
Mutulgi Aboriginal Corporation	18-Apr-89
Naayakuku Aboriginal Corporation	31-Oct-91
Nabarlek Traditional Owners Aboriginal Corporation	25-Mar-88
Namarrmu Outstation Aboriginal Corporation	18-Mar-92
Ngaanyatjarra Land Council (Aboriginal Corporation)	19-Oct-88
Ngadunggay Homeland Resource Centre Aboriginal Corporation	19-Apr-89
Ngalakan Aboriginal Corporation	17-Feb-89
Ngangirritja Aboriginal Corporation	7-Aug-87
Nganiyurlma Aboriginal Corporation	29-Jan-89
Ngappamilarnu Aboriginal Corporation	29-May-90
Ngarutjara Homeland (Aboriginal Corporation)	10-Oct-90
Ngintaka Women's Council (Kamu Minyma Kutjarratjarra) Aboriginal Corp.	29-Jan-90
Ngukurr Adult Education Aboriginal Corporation	2-Sep-89
Ngukurr Womens Resource Aboriginal Corporation	15-Oct-90
Ngurra Waltja Services Aboriginal Corporation	27-Jul-88
Ngurratjuta/Pmara Ntjarra Aboriginal Corporation	23-Aug-85
Ngurrdalingi Aboriginal Corporation	3-Jun-90
Ngwalalanima Aboriginal Corporation	30-Sep-81
Ninu Aboriginal Corporation	27-Feb-90
Noradidgee Aboriginal Corporation	12-Oct-79
North Australia Aboriginal Corporation	14-Jan-91
Ntjalka Aboriginal Corporation	22-Aug-90
Nungali Jaminjung Aboriginal Corporation	22-Aug-88
Nunukut Land Council Aboriginal Corporation	27-Mar-92
Nuralindji Aboriginal Corporation	2-Aug-91
Oak Valley Aboriginal Corporation	27-Mar-92
Officer Creek Pastoral Aboriginal Corporation	2-Dec-92
Ooratippra Aboriginal Corporation	24-Apr-89
Orrtipa Thurra Aboriginal Corporation	1-Nov-85
Pantu Luritja Aboriginal Corporation	6-Feb-87
Papulu Apparr-Kari Aboriginal Corporation	12-Mar-87
Patina Aboriginal Corporation	27-Mar-92
Patjarr Aboriginal Corporation	28-Apr-80
Payeperrentye Aboriginal Corporation	31-May-88
Penapore Aboriginal Corporation	28-Nov-91
Pertame Aboriginal Corporation	11-Jun-90
Perte Rratenge Aboriginal Corporation	7-Feb-92
Pintubi Homelands Health Service (Aboriginal Corporation)	2-Jun-85
Pintubi Media Association (Aboriginal Corporation)	13-Feb-89
Pirlalini Aboriginal Corporation	22-Jun-89
Pmer-Ulperre Aboriginal Corporation	3-Aug-85
Porodunga Aboriginal Corporation	14-Sep-90
Pulardi Aboriginal Corporation	7-Apr-88
Purrukwarra Aboriginal Corporation	14-Apr-86
Purturru Aboriginal Corporation	13-Feb-91
Putardi Aboriginal Corporation	28-May-92

Puwarrinji Aboriginal Corporation	28-Nov-83
Pwertenhatherre Aboriginal Corporation	2-Jul-90
Pweyeperre Aboriginal Corporation	24-Apr-89
Rak Ngungthwudi Aboriginal Corporation	13-Nov-92
Ramingining Homelands Resource Centre Aboriginal Corporation	9-Mar-90
Ratara Aboriginal Corporation	20-Dec-89
Red Sandhill Aboriginal Corporation	22-Aug-90
Renkaraka Aboriginal Corporation	12-May-88
Rirratjingu Association Aboriginal Corporation	17-Oct-84
Ritjingka Aboriginal Corporation	23-Aug-85
Rontji Aboriginal Corporation	22-Aug-90
Ross Aboriginal Corporation	26-Oct-88
Roulpmaulpma Aboriginal Corporation	24-Feb-89
Rrumburriya Malandari Council Aboriginal Corporation	21-Feb-89
Sandover Farm Aboriginal Corporation	17-Nov-88
Smith Aboriginal Corporation	22-Dec-89
Stingray Heads Fishing Aboriginal Corporation	8-Aug-90
Taliparnta Aboriginal Corporation	25-Oct-88
Tarrawarra Aboriginal Corporation	25-Feb-80
Thangkenhareng Aboriginal Corporation	18-Feb-87
The Arrernte Council of Central Australia Aboriginal Corporation	26-Jan-86
The Gap Youth Centre Aboriginal Corporation	12-Nov-86
The Wulain Homelands Council Aboriginal Corporation	11-Dec-90
Tiwi Designs Aboriginal Corporation	24-Mar-80
Tiwi Ngaripuluwamigi Aboriginal Corporation	25-Jun-80
Tjaliri Aboriginal Corporation	30-Sep-91
Tjara Antal Outstation (Aboriginal Corporation)	10-Oct-90
Tjukurla Community (Incorporated) Aboriginal Corporation	17-Feb-87
Tjunkupu Aboriginal Corporation	21-Nov-88
Tjupanyin Aboriginal Corporation	5-Jun-91
Tjurma Homelands Council (Aboriginal Corporation)	16-Dec-85
Tjuwanpa Outstation Resource Centre (Aboriginal Corporation)	27-Apr-84
Tnerte Aboriginal Corporation	16-Dec-88
Tnorala Aboriginal Corporation	25-Mar-87
Tnyimiputa Aboriginal Corporation	7-Sep-87
Top End Aboriginal Bush Broadcasting Association (Aboriginal Corporation)	10-Oct-89
Top End Aboriginal Coalition Aboriginal Corporation	25-Mar-88
Top End Catholic Aboriginal Corporation	4-Nov-90
Top End Music Aboriginal Corporation	21-Aug-92
Tupul Community Aboriginal Corporation	28-May-92
Turlpartna Aboriginal Corporation	22-Jun-89
Tuta Aboriginal Corporation	17-Feb-89
Tutiniji Aboriginal Corporation	11-Sep-90
Tuwakam Aboriginal Corporation	29-Jan-90
Twetye Aboriginal Corporation	25-Mar-88
Tyapalaneme Aboriginal Corporation	16-Dec-85
Tywenpe Aboriginal Corporation	14-Aug-85
Ukaka Aboriginal Corporation	3-Aug-85
Ulbullla Aboriginal Corporation	20-Oct-88
Ulpanyali Aboriginal Corporation	8-Feb-85

Uluperte Community Aboriginal Corporation	20-Dec-89
Umbakumba Outstation Aboriginal Corporation	2-Jun-80
Umутju Homeland Aboriginal Corporation	23-Nov-92
Undoolya Aboriginal Corporation	10-Aug-84
Urapuntja Council Aboriginal Corporation	30-Sep-81
Urapuntja Health Service Aboriginal Corporation	1-Feb-79
Uringke Aboriginal Corporation	28-Oct-88
Urlampe Aboriginal Corporation	14-Aug-85
Uruna Potara Aboriginal Corporation	6-Feb-88
Utopia Artists Aboriginal Corporation	30-Jul-91
Utopia Land Aboriginal Corporation	16-Aug-79
Utugulun, Aboriginal Corporation	1-Jul-81
Wadjigan Aboriginal Corporation	30-Aug-90
Wagaman Aboriginal Corporation	19-Sep-89
Wakaya Aboriginal Corporation	5-Feb-84
Walangurru Community Council (Aboriginal Corporation)	16-Nov-81
Waljjukurru Aboriginal Corporation	24-Jun-92
Wallany Homeland Community Aboriginal Corporation	24-Jun-92
Wallatinna Aboriginal Corporation	25-Mar-91
Walungurra Action Group Aboriginal Corporation	12-Jul-89
Wanarkula Aboriginal Corporation	15-Mar-90
Wangari Jangu Kari Aboriginal Corporation	8-Mar-90
Wanmarra Aboriginal Corporation	8-Feb-85
Wardaman Aboriginal Corporation	29-Jan-90
Warlpiri Aboriginal Corporation	22-Aug-90
Warlukurlangu Artists Aboriginal Corporation	15-Apr-86
Warmungku Aboriginal Corporation	10-Dec-89
Warnayaka Tribal Assembly of Yuendumu (Aboriginal Corporation)	28-Jan-82
Warnutungu RRU Aboriginal Corporation	18-Jun-91
Warte Alparayetye Aboriginal Corporation	7-Aug-87
Wawi Homelands (Aboriginal Corporation)	6-Mar-92
Welere Community Aboriginal Corporation	17-Dec-84
Werenbun Association Aboriginal Corporation	31-May-85
Werre Therre Aboriginal Corporation	23-Aug-85
White Eagle Aboriginal Corporation	5-Aug-85
Winbarrku Aboriginal Corporation	22-Oct-90
Wintawata Homeland (Aboriginal Corporation)	10-Oct-90
Wirrmalyanya Aboriginal Corporation	3-Aug-85
Witjintitja Aboriginal Corporation	28-Feb-91
Wogayala Aboriginal Corporation	1-Jul-81
Wonmurri Aboriginal Corporation	21-Sep-92
Woolla Aboriginal Corporation	30-Sep-81
Wugular Aboriginal Corporation	3-Feb-92
Wunara Aboriginal Corporation	8-Aug-86
Wunoorill Aboriginal Corporation	18-Sep-89
Wurli Wurlinjang Aboriginal Corporation	17-Dec-91
Wurrkleni Aboriginal Corporation	2-Dec-90
Wutunurrgurra Aboriginal Corporation	12-Aug-83
Yambah-Mpweringe Aboriginal Corporation	4-Dec-84
Yamparlinyi Outstations Aboriginal Corporation	31-Oct-90

Yanangu Stores Association (Aboriginal Corporation)	7-Jan-85
Yanap Aboriginal Corporation	26-Mar-85
Yanginj Aboriginal Corporation	10-Dec-84
Yangulinyina Aboriginal Corporation	27-Jun-89
Yankunytjatjara Council (Aboriginal Corporation)	7-Aug-83
Yanyuwa Camp Aboriginal Corporation	27-Oct-89
Yilburra Aboriginal Corporation	9-May-90
Yothu Yindi Foundation Aboriginal Corporation	20-Nov-90
Yuendumu Alcohol Prevention Association Aboriginal Corporation	30-Sep-91
Yuendumu Outstations Councils Aboriginal Corporation	16-Dec-85
Yuendumu Outstations Resource Centre (Aboriginal Corporation)	21-Nov-88
Yuendumu Sports Association (Aboriginal Corporation)	4-Feb-82
Yuendumu Women's Centre Aboriginal Corporation	18-Jan-90
Yurrampi Crafts Aboriginal Corporation	21-Aug-91

APPENDIX 6

Northern Territory Aboriginal Programmes and Initiatives [A document prepared and supplied by the Northern Territory Government]

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Northern Territory Aboriginal Programmes and Initiatives

[A document prepared and supplied by the Northern Territory Government]

The Northern Territory's 38,000 Aboriginal people comprise 21.5% of the Territory population and 14.9% of the national Aboriginal population.

Since self-government in 1978 there have been significant advances for Aboriginal people in the Northern Territory in health. Education, housing, employment, tourism, local government and law.

The Territory Government has:

- outlayed over four billion dollars - equivalent to over \$130,000 per Aboriginal person over the 11 year period - on Aboriginal housing, health, essential services, education, training, local government and culture - an amount 83% higher per capital than expenditure on non-Aboriginal Territorians
- promoted Aboriginal self-management through community government
- built over 1800 dwelling units on over 60 Aboriginal communities
- upgraded almost 2000 km of Aboriginal-purpose public roads and over 40 airstrips at a cost of some \$35 million
- installed, replaced, upgraded and extended water and effluent disposal services in over 50 permanent Aboriginal communities at a cost exceeding \$50 million
- achieved significant improvements in Aboriginal health, including a reduction of over 40% in the rate of Aboriginal infant mortality
- greatly expanded the number, range and effectiveness of Aboriginal educational services around the Territory
- encouraged involvement by Aboriginal people in the Territory's economy, resulting in improved Aboriginal participating in the workforce, and also substantial direct Aboriginal investment in commercial enterprises.

The Northern Territory Government has consistently:

- involved Aboriginal leaders and communities in public decision making
- sought Aboriginal opinions and aspirations in the development and implementation of programs and policies.

The program of self-management - the encouragement of local government for communities - dates back to 1978.

The housing program involves grants to Aboriginal organisations in isolated communities, land servicing, urban town camp infrastructure and housing, and a participation rate of about 20% in Territory housing developments in major urban centres.

The road, airstrip and water and sewerage programs have seen a quantum leap in the transport network and basic services to remote Aboriginal communities.

Health indicators are improving, as a consequence of better housing and water and special Aboriginal health programs.

In 1978, the attack on liquor problems began with "self-licensing", allowing communities to request total alcohol bans or tailored restrictions.

The Northern Territory Government initiated the Living With Alcohol program in November 1991. This \$9 million per year program aims to minimise alcohol related harm in the Territory.

A comprehensive approach is being developed with three interwoven streams of activity, encompassing care, culture and controls.

Care covers the development of the wide range of alcohol treatment and support services for those experiencing various alcohol related problems. It will also support those close to people with alcohol related problems, particularly their families. Care also includes the provision of facilities for the safe accommodation of persons found intoxicated in public places (sobering-up shelters).

Culture includes those activities which will change the community's knowledge about, and use of, alcohol. The objectives of these, primarily educative, programs will be to alert individuals of the personal risks of alcohol abuse and provide attractive and effective alternative strategies to reduce or eliminate these risks.

Controls are the legislative and regulatory measures governing the supply of alcohol. These are being strengthened to better complement the other measures which are being implemented.

In education since 1978, the number of trained Aboriginal teachers has increased by over 300%, education delivery has spread through outstations and Aboriginal student retention rates from Year 10 to Year 12 have grown strongly.

The Territory leads Australia in bilingual education in Aboriginal communities - 21 bilingual programs, involving 17 different Aboriginal languages, are available today.

Training to increase Aboriginal economic independence has led to the creation of 34 separate vocational training courses and, in the major urban centres of Darwin, Alice Springs, Katherine and Tennant Creek, Aboriginal employment rates are commensurate with the Aboriginal proportion of the urban populations.

More than 3000 Territory Aboriginals are estimated to be involved in tourism - most in artefact production with numbers double those of the late 1970's and about 150 - around 3 times the number 10 years ago - employed in tourism and tourist attractions.

In addition to the two Commonwealth-controlled parks. Kakadu and Uluru, the Territory controls around 75 parks and reserves covering a total area exceeding 2,350,000 hectares and has doubled the number of Aboriginal rangers pre- 1978.

An early Parliamentary initiative in 1978 gave protection for Aboriginal sacred sites, and today the Territory remains the only State or Territory with its own sacred sites protection legislation. The Aboriginal Areas Protection Authority is Aboriginal controlled.

In law, the Territory led Australia in the incorporation of Aboriginal customary law into general law.

Tribal marriage is recognised for marriage, succession, maintenance and child custody and Aboriginal social structures are recognised in the adoption and fostering of children.

Territory Courts led the way in the recognition of Aboriginal tradition for assessing offender punishments, and Territory legislation and administrative practice largely pre-empted the 1986 Law Reform Commission Report on Aboriginal Customary Law.

Police and prison officers receive in-service training on Aboriginal culture and social life: the Territory Police Force in 1979 began an Aboriginal Police Aide program now 34 strong, and 10% of prison officers are of Aboriginal descent.

Territory Aboriginal imprisonment rates in per Aboriginal capita terms are the second lowest in Australia behind Tasmania - they are less than half those of Queensland. New South Wales and South Australia and less than one-quarter those of Western Australia and Victoria.

The Northern Territory Government has consistently demonstrated a high level of commitment to the vast majority of the Royal Commission's 339 recommendations. A commitment which stems from our very rapid implementation of recommendations of the Muirhead interim report. Only 3 recommendations were not supported by the Northern Territory.

Most of the 20 recommendations that have received only qualified support from the Northern Territory have done so because of our particular difficulties with regard to remote communities.

The Northern Territory is a leader among the States in addressing the Commissions recommendations and is very aware of the "underlying issues" of unemployment, education, health, housing and other social problems.

In 1980, the Territory led Australia by introducing compulsory voting for Aboriginals in Parliamentary elections and mobile polling of isolated communities.

In 1982, the Territory was again first in introducing candidates' photographs on election ballot papers.

The costs to the Territory Government of meeting the needs of its Aboriginal citizens are high. There are special disability factors which have been documented to, and accepted by, the Commonwealth Grants Commission.

However, the Territory Government will continue to implement programs to support its policy objectives. Much remains to be done there is an on-going challenge for both the Commonwealth and the Northern Territory.