



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Sessional Committee on Constitutional Development

Foundations for a Common Future:

**The Report
on Paragraph 1(a) of the Committee's
Terms of Reference
on a
Final Draft Constitution
for the Northern Territory**

**Volume 4 [1] —
Written Submissions Received**

(Submissions 1 to 70)

November 1996

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PLEASE NOTE:

- The Written Submissions in this Volume have been edited for consistency purposes. The substantial content of the Submissions have not been changed. In most instances the enclosures sent with the Submissions have been omitted.
- Copies of the Original Submissions (including enclosures) can be viewed either at the Table Office, Northern Territory Legislative Assembly or the Northern Territory Library, Parliament House, State Square, Darwin NT 0800.

Telephone (08) 8946 1537; Facsimile: (08) 8941 2558

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SUBMISSION NO. 1

A J HOSKING

61 Adcock Crescent
NAKARA NT 5792

2.4.1986

The Secretary
Select Committee on Constitutional Development
GPO Box 3721
DARWIN
NT 5794

STATEHOOD FOR NT

Dear Sir

I welcome the opportunity for members of the public to express their views on this subject.

I believe that the concept can be readily divided into 'principles' and 'mechanics'. A statement of philosophy is urgently required on the former. The latter will tend to 'look after itself' once the 'principles' have been enunciated and the public perception of Statehood has been heightened and energies have been channelled appropriately.

In reality, the 'principles' are quite simple and I believe are as listed below.

1. All components of the Australian Federation must be on an equal footing. There must be no second class tier for the Territory which must have exactly the same rights, privileges and responsibilities as the States.
2. Statehood presupposes a certain level of economic independence from the Commonwealth. The same means of revenue raising must be given to the Territory as exist in the States.
3. The word 'Territory' implies dependence on a central government. Thus, an 'unfortunate' side effect of Statehood inevitably will be a new name. A public competition should be held to give all citizens a chance to air their views re a new name. 'Possibles' such as Northern Australia or North Australia do not excite the imagination and should not be used. Possibly, a suitable Aboriginal word can be found (perhaps the most common word for the Rainbow Serpent would be appropriate?)
4. The attainment of Statehood should not be rushed. The transition must be smooth for the transfer from the Commonwealth of all necessary legal, administrative and other functions. The transition must be smooth for the transfer from the Commonwealth of all necessary

legal, administrative and other functions. Only two 'psychological' dates exist for completion of the process viz

Bicentenary 1988 - too early!

Federation Centenary 2001 - ideal!

5. It is most important for citizens of both the Territory and the rest of Australia to have a Statehood goal to aim for. To my thinking, the sooner 'the date' is announced the better. The public can then adjust and progressively develop interest in and enthusiasm for the big event. In effect, the psychology of the event must be recognised and a stimulus given now! I am sure a vast store of public goodwill on the subject of Statehood is waiting to be tapped. To paraphrase J.F. Kennedy 'Ask not what my State can do for me but rather what I can do for my State'.
6. Once the proclamation date has been announced, priorities can be assigned for attainment or completion of the various necessary functions and activities leading up to the date. A table of deadlines and priorities must be provided to the public to show a smooth buildup to the actual day.
7. Further to the subject of economic independence, three areas require major change by the Commonwealth to ensure that the Territory is on an equal footing with the States viz
 - land tenure (administration by the Territory)
 - ownership of National Parks (Uluru, Kakadu)
 - ownership of minerals (uranium)

Unless the revenue raising capabilities are as for the States, true Statehood will not exist and the mendicant view of the Territory in the eyes of the Commonwealth will continue.

8. Statehood should not be tied to attainment of a certain population level. Rather assignment of the remaining revenue raising functions by 1990 would leave a decade for the Territory to develop apace and to thus reduce the level of dependence on the Commonwealth to a figure much closer to the national average by 2001.

In conclusion, Territorians can and must be given control of their destiny. The completion of Federation at day 1 of the year 2001 would, in effect, fill in the last hole on the map of Australia. Statehood must be complete and Territorians must be complete citizens of Australia. The challenge is most exciting, the public perception of the last frontier remains and northern development is essential. Statehood would lead to a stronger and more prosperous Australia but there must be no half measures! Statehood is literally a unique opportunity for Territorians and their fellow Australians to collectively reassert their belief in Australia and to heighten the national consciousness.

Yours faithfully

A J HOSKING

SUBMISSION NO. 2

K F FLETCHER

Submission on Constitutional Development of the Northern Territory

a) Representation in the Federal Parliament

Lower House as indicated in the Australian constitution.

Upper House - Equal representation with the other states, ie, 12 members.

Reasons for this comment are

- (i) the purpose of the second chamber was to allow the smaller states equal representation in the House of review and
- (ii) we were legally part of an original state at the time of Federation - namely South Australia.

b) Legislative Power

Should be the same as applies to other sovereign Australian states, certainly no less.

Provision should be made for an Upper House once the NT Population exceeds 350 000 people. The Territory should be just one electorate returning 12 members or about half the number of members to that number that is in the Lower House, ie, the Legislative Assembly.

c) Executive Powers

The Governor or Administrator should have a 'reserve power' to dismiss a government and force an election. This power should be spelt out and the electorate made aware of it. Such action would only be used as a last resort, ie, if a government was doing something illegal or was corrupt.

The Public Service Commissioner and departmental heads should be appointed by the Executive Council and only subject to the council's removal. Senior Public Servants should however, be under the direction of the Minister.

d) Judicial Powers

I cannot see any immediate need to change the present system other than giving consideration for the establishment of a District or County Court for some time in the future. A procedure to deal with the removal from office of any Judge or Magistrate who is corrupt or incompetent should perhaps be set up as well at this time.

e) Constitutional Framework

The format of our constitution should, I feel, be based on the Australian constitution including a means to amend it from time to time. At its beginning the constitution should be based on a conservative model, it can then be amended as seen necessary.

The principles upon which it should be drawn, in my view, are the Westminster ideals.

f) Method of Approval of the Constitution

The only answer to this question is by the people of the Territory voting in a referendum.

g) Steps desirable for the granting of Statehood

There are none that I can think of other than legal ones. As I see it such action should only require the consent of the Federal and Territory governments. The requirement may depend on what other States have to say about Senate representation and some other matters. If it is at all possible, I would like to see another 10 years pass before we accept Statehood.

This will give us a chance to build up certain community foundations which I see as important.

K. Fletcher

SUBMISSION NO. 2A

K F FLETCHER

3/39 Kurrajong Crescent
NIGHTCLIFF NT 0810

26-4-1989

Mr Steve Hatton, MLA,
Oleander Street
NIGHTCLIFF NT 0810

Dear Steve

Attached please find a copy of my submission on Constitutional Development for the N.T. I appeared before the Committee chaired by Tom Harris M.L.A., on Wednesday 10th August 1988 at about 2.00 P.M.

Several verbal amendments were made, by me, during the discussions I had with the Committee.

Regards,

Kevin Fletcher.

**ANSWERS TO THE DISCUSSION PAPER CONCERNING CONSTITUTIONAL
DEVELOPMENT OF THE N.T.**

(Pages v and 10)

The Governor should have power to suggest amendments back to the new State Parliament and be able to dismiss Parliament "at will" for breaching the constitution or acting unlawfully.

(Pages viii and 25)

Change to read three months.

(Page xix)

Support that Local Government should be recognised in the Constitution.

(Page xx)

Not in favour of Aboriginal rights as entrenched rights.

(Page 5)

Do not favour a written Bill of Rights as cases overseas have shown that a written Bill of Rights means in some cases very little in safeguarding individual rights.

(Page 15)

This definition should include the words "the Queen's Representative".

(Page 16)

Provision should be made in the constitution so that a second chamber can be added at a later date when the N.T. population increases and the people desire it.

(Page 18)

See comments for page 16.

(Page 22)

A prisoner serving more than 6 months should not have the right to vote while in prison.

(Page 32)

I support a 10% tolerance between electorates.

(Page 38)

See pages 10, 16 and 32 for comments.

(Page 47)

The positions of Premier and Ministers should be mentioned in the constitution.

(Page 65)

State Judges should have similar guarantees to High Court Judges listed in the Constitution. Section 72 of the Australian Constitution refers.

(Page 67)

Should include a similar section to section 71 of the Australian Constitution to cover N.T. courts.

a). Should have a section to deal with proposed alterations to the new State Constitution and the method of voting to change such.

K F FLETCHER

5/8/88

SUBMISSION NO. 3

W WHILEY

Groote Eylandt

**DISCUSSION PAPER ON REPRESENTATION IN A TERRITORY
CONSTITUTIONAL CONVENTION**

COMMENTS:

Convention members should be nominated, final choice going to the Legislative Assembly. Nominations sort from groups and individuals by public advertisement and form letter to community groups; with perhaps elections held in these groups.

A small number of members should represent Territory parliamentarians. The only non-Territorians should have expertise in the general area of Constitutional Law. Special areas being NT Judiciary, Aboriginal rights, NT company law, social welfare (not covered by the Commonwealth Constitution) should be covered by NT representatives. Womens' Advisory Council could specialise in this as it is not covered on the Discussion Paper.

The form of the Convention should be with specialist committees meeting in plenary session for the final decision on matters raised by each committee. These should be Executive and Legislative Government Committee, Judicial Committee, Social Welfare Committee, Trade and Economic Management Committee.

Committee Conveners should be NT residents; having more understanding of local needs and wishes.

DISCUSSION PAPER ON OPTIONS FOR A GRANT OF STATEHOOD

Statehood should be through the section 121 method, Territory wide referendum. Commonwealth government being consulted right from the outset of such a proposal; thus allowing the Legislative Assembly the powers to proceed.

Possible Changes to Commonwealth Legislation

3. **Aboriginal Land Rights Act (N.T.) 1976**

This should not be patriated to the new State for two reasons.

- (1) The rights of Aboriginal people to their own homelands is a Commonwealth rather than a state issue.

(2) The policy of the governing party too much influences decisions in these matters.

6. National Parks and Wildlife Conservation Act 1975 and Regulations

I do not agree that national parks be transferred to the new State. This not the case in other states or overseas countries. These areas of land are part of our Commonwealth/national heritage and should be legislated as such.

7. Environment Protection (Alligator Rivers Region) Act 1978 and Environment Protection (N.T. Supreme Court) Act 1978

This legislation must be kept to protect the natural resources that are the backbone of NT tourism.

11. Koongarra Project Area Act 1981

Although I do agree with 10. Atomic Energy Act 1953 I do not see the need for adding this amendment. I have visited this natural area and feel it would be much resources to the NT in its natural state. Part of the natural beauty that is the backbone of NT tourism, bringing in valuable revenue.

12. Commonwealth Electoral Act

Representations Act 1983

Upon NT attaining Statehood Cocos (Keeling) Island and Christmas Island Territories should be made a separate territory.

13. Ashmore and Cartier Islands Acceptance Act 1933

This Act should be changed to make these islands part of the territory formed by the Cocos (Keeling) and Christmas Islands.

DISCUSSION PAPER ON A PROPOSED NEW STATE CONSTITUTION FOR THE NORTHERN TERRITORY

COMMENTS

Terms of Reference

The NT Constitution should cover the quality, manner, and use of power of the Executive, Legislature and Judiciary in much the same manner as has been recommended for the inclusion in the Commonwealth Constitution.

Process of Decision Making

The Legislature - General Comments

-
- (h) As the Monarch's representative the Governor has mainly the role of a figurehead, his or her role should be limited to assenting or withholding assent of legislation on the advice of the Premier.
- (i) The new State should be treated as existing states; there should be no provision for disallowance of legislation by the Commonwealth parliament or any other body.

Transitional Provisions

- (a) The existing Legislative Assembly should continue after the Grant of Statehood as the Parliament of the new State as was done with self Governing Colonies at Federation.

FORM AND COMPOSITION

Constitution of Parliament

- (a) The parliament should be defined as being the elected chamber only.
- (b) The Governor, as the representative of the Monarch should be apart from the new State parliament with the power to assent or to disallow legislation on the advice of the Premier.
- (f) The NT must have a uni-cameral parliament as the population and revenue do not allow the extra expense of a bicameral system.

Number of Members

The requirement for election to the Legislative Assembly of the new State should qualify by conditions of the Northern Territory (Self-Government) Act with the single residential requirement of 6 months in the new State.

- (c) A person in local government should not be excluded from nomination for election as this is a completely separate system to Territory government.
- (d) When convicted a prisoner loses some of his/her rights, one of these being nomination to the Legislative Assembly, although retaining the right to vote under the NT Electoral Act, Section 27.
- (e) A Member should only be disqualified if they fail to attend the new State parliament 7 consecutive days without permission.
- (g) All provisions of qualification and disqualification of Members needs to be in the new State constitution.

DISCUSSION PAPER ON A PROPOSED NEW STATE CONSTITUTION FOR THE NORTHERN TERRITORY

Term of Office

I support a partially fixed-term parliament of 4 years. This could stabilise the government and development of the new State.

OTHER LEGISLATIVE MATTERS

Voting

- (b) In the new State parliament this should be one man one vote with the Speaker holding a deliberative and a costing vote as in the NT (Self-Government) Act.

Entrenchment

The Constitution of the new State should be a document accorded special status in the law and therefore only deal with those matters of vital importance. The whole constitution should be entrenched, so only allowing change after support by a specified majority of the new State electors in a referendum.

Governor and the Crown

- (9) The Governor should be given the express constitutional duty of upholding and maintaining the new State constitution as part of his/her wider general responsibility of administering the government of the new State. This limits and defines the role of Governor in the new State.
- (15) The constitution of the new State should show more closely contemporary practices and expectations than other existing constitutions e.g. proposals formed to update the Commonwealth Constitution.

Removal of Judges

- (d)1. A determination of 'misbehaviour and incapacity' by some form of judicial tribunal formed by the Attorney-General and relevant legal organisations. Followed by an address in the Legislative Assembly for removal. Thus the initial inquiry is carried out by people in the legal profession.

LOCAL GOVERNMENT

This should have provisional entrenchment under the new State constitution to guarantee the people of each area of the NT self-determination and representation in local matters. These areas (shires) could be based on population of each area. The people of the mining towns of the NT would be much happier and stay longer if they were represented in Local Government rather than being at the mercy of the 'Big Brother' mining companies for their most basic needs.

DISCUSSION PAPER ON A PROPOSED NEW STATE CONSTITUTION FOR THE NORTHERN TERRITORY

ABORIGINAL RIGHTS

Aboriginal land rights should be fully entrenched in the constitution of the new State because these people make up approximately 30% of the NT population. And their rights to own their own land which is also part of their culture could become part of the updated Commonwealth Constitution.

-
4. The constitution preamble, like the new one proposed for the Commonwealth, should recognise the multi-cultural/racial society of the new State, approximately 30% of Territorians were born in another country. Special reference should be made to Aboriginal people; being the original owners of the lands of the new State, now taken over by the government of the Northern Territory.

HUMAN RIGHTS

9. Should be set out as part of the preamble to the constitution. Setting out the basic rights and goals of the citizens and government of the new State.

Social Welfare should also be covered under this constitution of the new State, as this is seen as a state's issue and is not covered by the Commonwealth Constitution except in the form of welfare payments. This is not in the discussion paper. PERHAPS THE WOMENS' ADVISORY COUNCIL COULD FOLLOW THIS UP.

SUBMISSION NO. 4

J M THOMSON

STATEMENT BY PROFESSOR J.M. THOMSON ON —

**DISCUSSION PAPER ON A PROPOSED NEW STATE CONSTITUTION
FOR THE NORTHERN TERRITORY**

These views are personal; they do not relate to my position as Warden of the University College of the Northern Territory. I have been a resident of the Northern Territory for only two years, but as a result of my experience here I have changed my views on a number of matters, such as the Kakadu National Park, since viewing things personally instead of relying on newspaper and other propaganda in the remoteness of Brisbane.

I shall comment only on those sections where I would seek modification of the proposal or where I feel particularly strongly that the proposal must be agreed to.

- B (a) It would be unthinkable for a new State to be treated differently from the others.
- B (c) I do not agree with the proposal. In a constitutional democracy the Monarch's representative (or the Monarch) should follow the advice of his (or her) Ministers. Only formal assent should be open to the Monarch's representative. As it is the will of the electorate as expressed by parliament that is embodied in the legislation the representative of the Monarch should not formally suggest amendments back to the new State parliament. This smacks of colonialism. On the other hand, if the representative of the Monarch points out problems to the Executive Council (or Ministers) and they or the Premier are willing to refer the matter back to parliament as a result, that is perfectly reasonable.
- B (d) I support this notion strongly.
- C (a) I do not consider that the Monarch or the Monarch's representative are part of parliament. Such a person is the formal Head of State, not part of the legislature.
- C (b) While I can understand a second house having the function of reviewing the possibly clarifying legislation, I believe that the potential of a second house to frustrate the intentions of the government is sufficient reason to retain a one-house parliament.
- C (e) While I acknowledge that it is usual practice to exclude from nomination the classes of people listed in the proposal, I do not see myself why they need to be treated differently from others. If elected to parliament the provision of automatic termination of the other office should hold or if automatic termination is not possible for holders of office under the Commonwealth, confirmation of office in the Parliament should be contingent on resignation

from the other position. I include in the concept of automatic termination persons in local government. Being a parliamentary representative should be a full-time job.

- C (g) If a person may not be nominated for parliament if in jail under criminal proceedings, a member of parliament should automatically lose his or her seat if jailed as a result of criminal proceedings. Under the proposal parliament could effect this by refusing permission for absence of the required number of sitting days. But this is a device for something that should occur automatically.

I also cannot see why failure to attend for three consecutive days without permission of parliament should not result in disqualification. It is discourteous to parliament and a dereliction of duty to the member's constituents.

- C (i) and (j) - I agree strongly with these views.

- C (k) Personally, I would make the maximum period between sittings four months. It is not good for government to be without questioning by the opposition for prolonged periods.

- C (l) I am firmly in favour of the proposition.

- D (a) I agree with this but I believe that the following should be enshrined in the constitution: one person one vote (but with a 10% tolerance in electorates); secret ballots; redistribution of seats immediately any seat exceeds its maximum tolerance either above or below the norm in the number of enrolled voters. I do not deliver that the 10% tolerance should be amenable to legislative change. This is a protection for the electors and should not be changed except by referendum.

- D (b) I agree with the proposal; the only other proposal that should even be considered would be for proportional representation which would more fairly reflect community support than the single-member electorate, but is complex to administer and confusing for people to understand. Proportional representation would be along party lines, not other considerations.

- D (f) I agree.

- E (d) I consider that entrenchment is essential. It is the only protection the electorate has against capricious or malicious action by parliament. To claim that the voters can react by voting members out at the next election is unacceptable as some irreversible damage can be effected; indeed, the legislation could be to defer elections or deny them.

- H (a) I consider that the Governor should only act on the advice of his (or her) Ministers except (1) where the advice is contrary to a decision of parliament; (2) the Governor should be required under the constitution to invite the leader of the largest party in the House to form a government, and only if that person fails to do so should the Governor have choice in whom he invites; (3) to dismiss a government which attempted to continue in office after a vote of no confidence; (4) to dissolve parliament and issue writs for an election if parliament twice refuses Supply.
-

-
- I (c) I do not like the word 'choice'. While the Governor may grant the Commissions to the Ministers, the choice of Ministers must be the Premier's. There should be no inference that the Governor has a choice to refuse a Premier's nomination.
- I (f) I disagree strongly; the Governor should have no such function, even formally. While the Governor issues commissions it must be on the advice of the Premier.
- I (g) In view of past adverse publicity received by the legislatures making such decisions, I believe that it would be far wiser for emoluments to be fixed by an independent tribunal.

We seem to have two 'I' sections in the summary, although the second is 'J' in the text and the 'J' of the summary is 'K' in the text. Using the text references therefore:

- J I believe that the Premier or Acting Premier should always be present at Executive Council meetings.
- K (a)(iii) I do not understand the reasons for this recommendation (none are given). On the face of it this could lead to embarrassment of the government if the parliament rejected the money bill. I would consider it the job of the elected representatives to determine money bills and I can see no reason for the government to act differently with money bills than with any others.
- O (c)(iii) There is one potential difficulty about this recommendation. If there were to be a recession and everyone else had their wages and salaries cut it would be iniquitous for judges to be continued to be paid at the salaries they received in a buoyant economy.
- R Apart from saying that there shall be local government throughout the state, I believe that the Constitution should say no more. The nature of that local government should be for parliament to determine, and members no doubt will consider the views of their constituents in reaching decisions on local government policy.
- S I do not believe that separate rights for Aboriginals should be entrenched in the Constitution. Whatever wrongs may have been inflicted on Aboriginals any separate status sows the seeds for future dissension. All citizens should be treated equally, and that should be the basis of legislation. Likewise, I do not believe that Aboriginals should have rights over land which other citizens do not have, for example banning of mining. Nor should others have rights which Aboriginals do not have.
- I favour a reference to the historical circumstances of the Aboriginals and this preamble should accept them as equals; but I consider that it should not acknowledge any 'historical rights' any more than Great Britain would acknowledge prior rights of the Celts in Wales and Scotland which in their original culture would have differed from the rights of Anglo-Saxons.
- T I do not believe that there are any such things as rights simply because one is born. What are called 'rights' are concessions or agreements between people which may be obtained by persuasion or by coercion, such as strikes, or by force, such as revolutions.
-

No rights are absolute. Freedom of speech should be constrained from defamation (indeed this restraint should include statements in parliament); freedom of religion should not allow abuse, verbal or physical, of those whose beliefs differ; freedom of assembly should not be permitted to interfere with the lawful passage of other citizens. I consider that every large city should have the equivalent of Hyde Park where assemblies can voice their prejudices. I do not believe that the right of assembly includes the right to march to the detriment of traffic and commerce.

The only matter which is not listed in the Constitution, as far as I have noted, is the right to education. I believe that the Constitution should embody the right of every child to education at both primary and secondary levels and this should be free unless that child's parents exercise their option to send the child to a non-government school, a decision which I believe should require the parents to bear the cost. Indeed, I would prefer also to see tertiary level education free also, as it was in Western Australia before the Whitlam revolution in 1974 but that seems contrary to current perceptions.

SUBMISSION NO. 5

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January 26 1988

Select Committee on Constitutional Development
Legislative Assembly of the Northern Territory
G P O Box 3721
DARWIN NT 5794

Dear Sirs

SUBMISSION

The constitutional issues now facing the Northern Territory are similar to those in Canada's northern territories where constitutional development and Aboriginal rights have been debated, usually bitterly, for many years. A look at the Canadian experience may be useful to your deliberations.

The Northwest Territories (NWT) and Yukon make up 40% of Canada's land area, of which the NWT alone makes up 34%. In recent years the ocean areas have been of no less interest to southern Canada because of their oil and gas potential. These northern areas have been the traditional territory of Aboriginal peoples: the Inuit, or Eskimos, living from the tree-line northwards, and the Dene, or Athapaskan Indians, south from the tree-line. Today in the NWT Aboriginal Dene, Metis (mixed-blood Indians) and Inuit make up about 60% of the population, and in the Yukon about 25% are Indian-descended. The total territorial populations are approximately 50-55 000 in the NWT and 28 000 for the Yukon.

The northern territories have always been a development frontier from the point of view of white outsiders. First the Vikings from 1000 AD exploited the catches of walrus and narwhal for ivory, walrus for hides to make ships cables, polar bears for skins or live for European courts, and falcons, as important trade goods, sailing Baffin Bay annually from their south Greenland farms to acquire these. Later the whales attracted European fleets annually, again in the eastern seas of what is now the NWT, and from Elizabethan times occasional voyages in search of a Northwest Passage to the Orient also sought whatever wealth might lie to hand. From the late 17th century the fur trade based on Hudson Bay spread slowly across the far north, and in the 19th century another bout of whaling began, ending in the western arctic in the early 20th century, and leaving whaling stocks exhausted. The Klondike Gold Rush of 1898 saw the Yukon carved out of the NWT as a separate territory for

ease of administration. The 20th century brought mining and oil exploration increasing intensely from the 1920s, but it was only the Second World War with its northern military presence (serving the air routes to Alaska and to Europe) and the advances in aviation which opened the modern north.

Indeed, the history of the northern areas of what are now the Canadian provinces was no different. As with Australia, the territorial jurisdiction is part of a larger outback. The provinces' northern boundaries were arbitrary, but the incorporation of northern areas in provinces has totally altered their jurisdictional situation. (Nonetheless, the failure of provincial governments to deal with Aboriginal land and society in any satisfactory way has been a major reason for federal insistence that the northern territories not suffer the same fate.)

In its western areas, and later in the north, Canada prided itself on avoiding the Wild West typical of the American frontier. Law and order were to be maintained, and the Aboriginal people protected from the worst exploitation of the whites, and the whites safe from Aboriginal attack. This policy was largely successful in its immediate aims. Treaties were signed with the Indian peoples, although their meaning has been long disputed. Lands were not selected nor set aside because the Aboriginal people wished to use the whole territory and wished to avoid the evils of the reserve system prevalent farther south. The relative lack of northern development has made this possible and it is only in our own time that resource exploration and development have become extensive enough to require new approaches. Today the two main constitutional issues are:

- What are the rights of Aboriginal peoples?, and,
- How can these be accommodated in a single system of territorial government?

Over the past 15-20 years, the political goal of many white northerners has been Provincehood. Their reasons for seeking this have been that it is the conventional political destination of Canadian regions; it would mean that northerners were no longer 'pushed around' by southerners, especially by southern bureaucrats; and it would mean gaining control of land and resources. Unfortunately, it is not so simple. The territories would remain in significant financial deficit positions, and they would not receive equalisation payments as do 'have-not' provinces because these are calculated on per capita tax yield and the territories by such measures are rich. Unless existing provinces agreed to substantial special fiscal arrangements, provincehood would be impossible; all Canadian practice has shown that the other provinces would not accept such special treatment, least of all for another government representing few people from a non-contributing area. (The four small Atlantic provinces are already resented, with many Canadians grumbling that they should unite into one.) Further, new provinces would dilute the constitutional amending formula and re-open a major point of contention in Canadian federalism, so provinces are unlikely to agree. The Canadian Constitution as amended in 1982 requires provincial consent to admit new provinces. As for resources, there is little probability that Canadians or the federal government will turn over 34% of Canada's land plus a vast amount of hydrocarbon-rich seabed to 0.2% of Canada's population in the NWT. The potential wealth of the north is completely in federal hands, and Ottawa is unlikely to surrender it easily. However, some revenue-sharing arrangements will be made, soon, but these will not greatly change the outlook.

While white northerners have pursued the ideal of Provincehood, many Aboriginal northerners have put their faith in Land Claims. The term is misleading because much more than land is involved.

How much more is now at issue, but to Aboriginal peoples they are negotiating recognition of their culture, its survival and their land and water based livelihoods, as well as compensation payments. The basis of their society in the land and waters is the reason for calling these 'land claims', but they represent as full a statement of political hope as Provincehood. Indeed, the Aboriginal groups in the NWT and Yukon have included Aboriginal self-government proposals as part of their claims. (In northern Quebec province, Inuit and Indians who settled their claims in 1975 have regional governments with wide powers, although these have encountered various problems. Canada has a great number of Aboriginal self-government proposals and projects at various stages of realisation, and these promise to provide much useful experience for others in Canada and abroad.)

It may be useful to sketch the situation in each of four regions, the Yukon and three regions of the NWT.

YUKON

In recent years the Yukon Indian people have been close to a land claims settlement, but have failed to agree because of the lack of self-government and other provisions. White Aboriginal tensions used to be fierce, but the present government, which included prominent Aboriginal members, has taken a line of reconciliation and much progress is being made. In such a climate an agreement may be reached.

NWT - SOUTHWEST

This area of forests with the great lakes and rivers of the Mackenzie River system is also the most developed area of the NWT. Mining, and exploration services in support of mining and oil and gas farther north, are main productive forces. Big government is no less a part of the economy. Indeed, like Danish Greenland and northern Norway, Canada's NWT is a very advanced welfare state society. The conditions of the Aboriginal peoples were the main object of the government push into the north since the early 1950s, and provision of health care, housing, social assistance, education and training, community services, heavily subsidised and encouraged local government and administration, and business development assistance have been the growth industry. Before the 1979 territorial election, the older whites who ran the NWT were fashioning it around their values of no special rights for Aboriginal peoples and maximum business development. The stand-off between whites and Aboriginal peoples was a source of conflict and uncertainty, but in 1979 younger whites more ready to accommodate the realities of Aboriginal political weight, together with some leading representatives of the Aboriginal community (who had previously boycotted the legislature), took power and in an extraordinary first session threw out the constitutional development and Aboriginal rights policies of their predecessors. Territorial policy since has been much more Aboriginal-oriented, although since 1985 a slide back has taken place and the future is uncertain.

In 1982 a plebiscite to divide the NWT and create an Inuit-run territory in the east and north (see below) attracted Indian and Metis support. Although they feared that to lose the overall Aboriginal majority in the NWT would hurt their interests, they also believed that only something definite like division would force constitutional change. The NWT legislature does not have political parties yet, and some main issues divide east-west, or white-Aboriginal. Most big issues, of course, simply do

not receive attention, the lack of party system and discipline making serious policy-making almost impossible.

NWT - EAST AND NORTH

This large area, the treeless tundra, seas and coasts of the true arctic, is inhabited mainly by Inuit. Much less developed than the western portions of the NWT, here the Inuit language and culture remain strong. As part of their land claims, Inuit have demanded that this area they call Nunavut ('our land') be constituted a separate territory with its government. Both Liberal and Conservative governments in recent years have supported this goal and have financed a special body, the Nunavut Constitutional Forum, to bring it into being. Consultations have taken place in each community and an outline of a constitution and implementation plan developed. What has delayed creation of Nunavut has been failure to resolve the boundary between Nunavut and the western NWT. The failure of the federal government to offer any assistance or mediation, while telling the northerners to resolve matters, has resulted in factions wishing to 'up the ante'. These frustrating delays have encouraged the territorial government to try to finesse the process of dividing the territories to avoid attendant creation of new governments and institutions more responsive to Aboriginal populations, preferring to maintain and strengthen the present territorial government - ie, the present incumbents. Inuit have strongly resisted this 'backlash', but the federal government, fearful of further conflict, has begun backing away from any northern constitutional changes and the Prime Minister has said that a long gradual process would be better.

NWT - NORTHWEST

The Inuit of the Beaufort Sea and Mackenzie River delta communities, a distinct regional population, broke away from other Inuit in the mid-1970s and have since settled their land claims. The unresolved issue is that of self-government. Their claims agreement has wording which they understand to mean they will be able to establish a strong Inuit government with quasi-territorial powers, and even some powers independent of territorial control. This view is not accepted by governments. Various regional government formats have been suggested but these have not been strong enough to satisfy the local Inuit. Meanwhile, in order to pursue their demand for strong regional power, these Inuit have effectively filibustered the whole NWT constitutional process. They have overplayed their hand at times, but their position remains powerful. The Inuit population of c. 2500 is in the area where the most promising northern oil and gas developments occur, and the reason they were so eager to settle claims was that they believed themselves to be negotiating 'with a gun to their heads'. Their claims settlement sets aside community and hunting lands, and provides important economic opportunities, not all of which are evident from a simple reading of the agreement.

DISCUSSION AND CONCLUSIONS

The Northwest Territories and Yukon have been politically and economically immobilised for the last two decades because of the failure to resolve constitutional and Aboriginal rights issues. Although full Provincehood may not be practical until population and revenues and other matters are different, full self-government and virtual provincial status are entirely feasible. All territorial residents agree that such steps are desirable. There is no obstacle to these today except the inability

of white and Aboriginal territorial residents to accept a mutually acceptable structure of government. Ottawa will not resist, and has even invited creative solutions.

Unlike Australia, Canada in recent times has devoted its national energy to constitutional change and there is no resistance to such prospects *per se*. Also, governments and public (as reflected in repeated polls) have moved forward a very long way in accepting the political claims and view of the future propounded by Aboriginal peoples groups. (The March 1987 failure to agree on an Aboriginal self-government amendment to the national Constitution does not alter that generalisation; the failure here was on method rather than principle). But what has happened is that white northerners with their land claims-based approaches, have failed to work out agreements which would satisfy national public opinion and federal government policy.

Canada has already accepted a policy of negotiating land claims settlements and securing these in federal legislation, beyond the reach of territorial legislatures. These settlements are viewed as national constitutional documents and receive special protection under the amended (1982) Constitution, a further measure of security negotiated by northern Aboriginal people through national constitutional processes. They are also, of course, basic territorial constitutional documents and take precedence over other aspects of the territorial constitutions. There is now concern that not enough thought has been given to reconciling public bodies established under claims settlements with the mandates of territorial bodies open to all residents. (Although only one of the four Canadian territorial claims is settled, elements of the other three have been agreed and have given rise to this concern.)

Disputes and delays have meant that white businessmen as well as Aboriginal development corporations have been denied the chance to get on with development. All northerners have been denied the chance to govern themselves - the one thing they all strongly agree they want. The Aboriginal peoples groups are not going to accept systems which in their view threaten their land and culture, and until the white community moves to accommodate them, there can be no progress. The NWT cabinet are hopeful that they can finesse the problem, but this is most unlikely because national opinion will not accept it. Meanwhile, in frustration, the Aboriginal groups are more and more tempted to reject territorial government altogether and seek purely Aboriginal government solutions. This would leave the north deeply divided, jurisdictionally and ethnically, with nobody having sufficient or geographically extensive powers for a strong future. Small northern populations could remain vulnerable both to federal hegemony and to industrial development plans beyond their ability to influence.

Where there has been progress, on the other hand, in both NWT and Yukon, it has come from white acceptance of Aboriginal land rights and cultural aspirations within the territorial system.

Both NWT and Yukon were slow to recognise the force of Aboriginal rights and environmental interests in the wider political culture outside the territories and, indeed, outside Canada. National opinion may be hypocritical in supporting policies for the distant romantic north that are not wanted closer to home in southern Canada's provinces, but such opinion is a political fact. There is no possibility of northern Canada becoming fully self-governing until Aboriginal people are accommodated to their satisfaction within the territorial systems.

In Canada, national constitutional and human rights opinion, based in part of the unsatisfactory experience with past jurisdiction and policy, is demanding new standards. In Australia, the reports of the national Constitutional Commission support strong federal power and action in respect of Aboriginal and environmental matters, as, apparently, do public opinion. The territories in both countries may be unable to appeal successfully to past precedents of Province - or Statehood. It is clear, however, that by not reaching accommodations within the north, one risks either the long delay of full political rights on one hand, or imposed solutions on the other. Neither course is desirable, but federal authorities have few incentives to enter a domestic spat.

I hope that this background may be of interest and use to your committee. If further information is required, I will try to provide it.

NOTE - From 1966 I was assistant to the head of government in the NWT; from 1968-80 in the federal Prime Minister's 'department', the Privy Council Office, served the constitutional and federal-provincial relations committee chaired by the Prime Minister, and was Adviser on the Constitution (Aboriginal and Northern Affairs); from 1980 to 1987 was, first, adviser to Inuit on constitutional development and, from 1982, staff person and adviser for the Nunavut Constitutional Forum. In recent years I have conducted studies on the constitutional and socio-political developments in northern Canada and similar ones in Alaska, Greenland, the North Atlantic island nations and sub-nations, and the Lapland areas of Norway, Sweden and Finland. In November 1987, I migrated to Australia with my Australian wife.

SUBMISSION NO. 6

ALICE SPRINGS TOWN COUNCIL

ALICE SPRINGS TOWN COUNCIL

SUBMISSION TO

THE LEGISLATIVE ASSEMBLY SELECT COMMITTEE

ON CONSTITUTIONAL DEVELOPMENT

INTRODUCTION

The Select Committee has invited comment on its discussion and information papers.

The Alice Springs Town Council (the Council), has resolved to make this submission, which promotes the entrenchment of Local Government within the new State Constitution for the Northern Territory.

The Council notes from pages 92 of the 'Discussion Paper on a proposed new State Constitution for the Northern Territory', that the Select Committee has already decided in favour of some constitutional provisions for the recognition of Local Government, and that the nature of these provisions will be the subject of public comment.

This submission proposes a method of providing for Local Government in a way which will encourage more positive regard for that sphere of government which is closest to the community.

THE NATURE OF STATE CONSTITUTIONS

Existing State Constitutions exhibit certain uniform features, having been established by similar Acts of the British Parliament during the period from 1850 to 1891.

There are, in broad summary, a collection of measures which delimit the powers of the States in very general terms as power to legislate for the 'peace, order and good government' of each particular State. The Australian Council for Intergovernmental Relations has suggested that:

The generality of State Constitutions perhaps provides one reason why it is rare for them to be relied upon in litigation, and why, therefore, the possibility of unfavourable judicial interpretation constitutes less of a deterrent to the inclusion of new provisions. 1

ENTRENCHMENT

It is likely that a more convincing reason for not relying on existing State Constitutions is that they exhibit a degree of flexibility which is not always entirely advantageous. Thus, provisions relating to Local Government (or for that matter, to any institution or process whatever) could, as a matter of law, be removed from a State Constitution as easily as it was included unless the provisions are 'entrenched'.

The Council is gratified to note the views of the Select Committee 2 that it favours 'some degree' of entrenchment for the whole of the Constitution, and agrees that the form of entrenchment should underline the accountability of parliament to the electors rather than to the Federal Parliament.

The Council would urge that among the 'other matters' which may be included for entrenchment 3 should be the recognition of Local Government as an autonomous delegate of governmental powers. Further, the Council urges that the entrenching provision should itself be entrenched, a process which, as the Select Committee will be aware, constitutes 'double entrenchment'.

As to the manner and form to be prescribed in the entrenching provision, the Council suggest that once Local Government has its existence guaranteed by entrenchment, there should be a requirement for a referendum to be held in order to change the provision. A two thirds majority would be an appropriate gauge of support for change.

REASONS FOR RECOGNITION

The Council submits as reasons for Constitutional recognition, those which have previously been identified by the A.C.I.R in its Discussion Paper No.3 (1980). These are:

1. Safeguard against arbitrary dismissal;
2. Guarantee autonomy to a degree which is fitting for an elected representative sphere of government;
3. Guaranteed powers and consequent removal of the threat of challenge under the doctrine of ultra vires;
4. Guarantee of Democracy, even to the extent of entrenching the Local Government franchise in the Constitution itself;
5. Status and recognition, which although not an automatic consequence of constitutional recognition, would be a more likely result.

Appendix A contains an extract from A.C.I.R. Discussion Paper No.3. The Council places reliance on the contents of this extract as support for its submission, and believes that it underlines the validity of the reasons previously advanced by the Northern Territory Local Government Association, and referred to in the Select Committee's Discussion Paper. 4

THE FORM OF RECOGNITION

The Council believes that, in order to meet the criteria previously referred to, for meaningful recognition, the entrenched provision relating to Local Government should go further than just formal recognition, but perhaps not quite as far as the 1979 amendment to the Victorian Constitution in relation to the details of the franchise.

With this in mind, the provision should:

1. State that there will be a system of local government by bodies constituted of elected members who hold office from election but who may be dismissed by the Parliament only after due inquiry and only on the grounds of misconduct.
2. State that the Council of an area has all of the powers necessary for the peace, order and good government of the area, subject to the normal precedence of state legislation.
3. State that, in respect of the fiscal powers which Councils are accorded, these may be exercised without unreasonable limitation being imposed by the State.

CONCLUSION

The Council would be pleased follow up this submission with oral discussion between its representative and the Select Committee, at a convenient time.

END NOTES

1. A.C.I.R. 'Constitutional Recognition of Local Government - Relationships Reference', Discussion Paper No.3; 1980.
2. NT Select Committee on Constitutional Development, 'Discussion Paper on a proposed new State Constitution for the Northern Territory'; October 1987 p 36-38.
3. op cit. p 38
4. op cit. p 91

SUBMISSION NO. 7

WOMEN'S ADVISORY COUNCIL

SUMMARY OF RECOMMENDATIONS

Recommendation No 1:

That the Select Committee appoint a sub-committee of three (3) women nominated jointly by the Ethnic Community Council, the NT Women's Lawyers Association and the NT women's Advisory Council. Such a sub-committee to be involved in all three states of constitutional development including appointment of members to the convention.

Recommendation No 2:

That Convention membership be constituted by:

50% part election/50% part nomination;

that the previously recommended sub-committee of three women responsible to the Select Committee (Recommendation No 1) be involved in all stages leading to the appointment of the Convention;

that membership of the Convention proportionally reflect the Territory population; and

nomination of members to the Convention redress any imbalance between specialists/generalists.

Recommendation No 3:

The Council Supports the view of the Select Committee that the section 121 method is the **preferred option.**

Recommendation No 4:

That the Memorandum of Agreement should include provisions which are legally binding for Senate representation in the new State to be equal with existing States, that is 12, but that Senators be elected to the full complement over a period of up to and no more than 12 years.

For example:-

Upon Statehood, which it is understood may coincide with a Federal election, the number of Senators initially elected be four, and that the remaining Senators be elected at appropriate federal elections up to a period no greater than 12 years.

Recommendation No 5:

That entrenchment include provisions for the independence of the Judiciary and security of tenure of Judges appointed by the new State Parliament.

Recommendation No 6:

That there be some constitutional provisions for recognition of local government in the new State;

That the Constitution recognise local government of Australia, and that Parliamentary privilege should be equal for all levels of government;

That specific details regarding local government be dealt with by a Local Government Act of the new State;

That such Act include provisions for local government to be elected through the democratic process; and

Any changes to a Local Government Act be effected only through an Act of Parliament **of the new State.**

Recommendation No 7:

That extensive debate and consultation be undertaken on the issue of the Aboriginal Land Rights (Northern Territory) Act, 1976, patriation to the laws of the new State;

Such debate and consultation to be accessible to all interested person(s) within the Northern Territory; and

That the findings of such debate and consultation be widely publicised well before any decision is made.

Recommendation No 8:

That the Constitution for the new State be written in non-sexist language.

Recommendation No 9:

That the new State Constitution should include a preamble establishing basic human rights for the new State and its citizens including non-discrimination on the grounds of race, national or ethnic origin, colour, creed, religion, sex age or mental or physical disability; and

That the new State establish legislation to protect basic human rights.

Recommendation No 10:

That the Constitution for the new State should contain a commitment to the principle of equality of the sexes; and

That the new State be given legislative power over the protection of the principle of equality and non-discrimination.

1. **DISCUSSION PAPER ON REPRESENTATION IN A TERRITORY CONSTITUTIONAL CONVENTION**

1.1 **Membership of Select Committee:**

The Women's Advisory Council (hereinafter called 'the Council') notes that women are not represented on the Select Committee. Membership of the Committee is drawn from the Legislative Assembly - three representing the Country Liberal Party and three representing the Australian Labor Party.

Within the powers vested in the Select Committee by the Legislative Assembly in a resolution passed on 28 August 19851, the Committee is able to appoint persons with specialist knowledge for the purpose of the Committee.

The Council believes that women should be involved, through proportional representation, in the development of all stages of a proposed New State Constitution, including the appointment of, and participation in, a Constitutional Convention.

Recommendation No 1:

That the Select Committee appoint a sub-committee of three (3) women nominated jointly by the Ethnic Community Council, the NT Women's Lawyers Association and the NT Women's Advisory Council. Such a sub-committee to be involved in all three stages of constitutional development including appointment of members to the convention.

1.2 **Representation** (Constitution Convention):

The Council believes that representation on the Constitutional Convention should take into account the need for both specialists and generalists. Representation should also reflect the interests of the Territory population which is currently comprised of 52.6% male, 47.4% female. Of the total population, male and female, 22.4% is Aboriginal and 12.2% is from a non-English speaking background.

In order to ensure that membership of the Convention maintains a balance between generalists and specialists and reflects the diversity of the population, the Women's Advisory Council supports B.1. (iii) partly elected/partly nominated.

The Council believes consideration should be given to 50% of the Convention being appointed by election. On completion of such election the appointment of the remaining 50% by nomination would then allow any gaps in the interests of the Territory population and/or specialists/generalists to be redressed. This would also provide the opportunity for non-Territorians to be selected on the 'grounds of national eminence, capacity and acceptability', if considered appropriate by the Select Committee.

The Council believes that the sub-committee of three women should participate fully in the formation of, election and nomination procedures in respect of the Convention.

Recommendation No 2:

That Convention membership be constituted by:

50% Part election/50% part nomination;

that the previously recommended sub-committee of three women responsible to the Select Committee (Recommendation No 1) be involved in all states leading to the appointment of the Convention;

that membership of the Convention proportionally reflect the Territory population; and

nomination of members to the Convention redress any imbalance between specialists/generalists.

2. INFORMATION PAPER NO 1

2.1 Options for a Grant of Statehood:

The Council supports the creation of a new State by Act of the Commonwealth Parliament under Section 121 of the Commonwealth Constitution.

In supporting Section 121 the Council recognises the potential for the Commonwealth to impose terms and conditions upon the new State which may be inferior constitutionally compared with existing States. It would be the responsibility of the NT Government, on behalf of the population of the Territory, to ensure that the new State will be granted constitutional equality with existing States.

To alter the Commonwealth Constitution under Section 128 by national referendum is considered too cumbersome and costly. It would require a comprehensive national publicity campaign with no guarantee of a successful outcome.

Recommendation No 3:

The Council Supports the view of the Select Committee that the Section 121 method is the preferred option.

2.2 Basic Steps to Statehood:

The Council supports in principle the basic steps proposed by the Select Committee, and in particular clause 9, Section C page 7 of the Information Paper No 1.

2.3 Selected Provisions from the Commonwealth Constitution:

The number of senators for each State was increased to 12 by the Representation Act, 1983, S.33.

The Council strongly supports the principle that the new State should be granted representation in the Senate equal to all existing States.

Recommendation No.4:

That the Memorandum of Agreement should include provisions which are legally binding for Senate representation in the new State to be equal with existing States, that is, 12, but that Senators be elected to the full complement over a period of and up to no more than 12 years.

For example: Upon Statehood, which it is understood may coincide with a Federal election, the number of Senators initially elected be four, and that the remaining Senators be elected progressively at appropriate federal elections up to a period no greater than 12 years.

**3. DISCUSSION PAPER ON A PROPOSED NEW STATE
CONSTITUTION FOR THE NORTHERN TERRITORY**

The Council has studied the Discussion Paper and makes the following comments:

3.1 New State Parliament: Form and Composition:

The Council strongly endorses the Select Committee's proposal 'that the new State Parliament should consist of one house only'. (Section C(b))

The Council endorses 'the different treatment between (qualifications for) voting and nomination in the case of prisoners'. (Section C(f))

The Council endorses 'the inclusion of all provisions on qualifications and disqualification of members (in the new State Parliament) in the new State Constitution ...' (Section C(i))

The Council supports that the new State Constitution require not more than six (6) months pass between successive sittings of the new State Parliament. (Section C(k))

3.2 New State Parliament: Electoral Provisions:

The Council endorses the view that the new State Constitution contain provisions as to casual vacancies and by-elections. Under these provisions Council would support that an election (either a general election or a by-election) should be held within 6 months of any casual vacancy. (Section D(c)).

3.3 Governor and the Crown:

The Council endorses the Select Committee's view that 'direct links must be established between the new State Government and the Monarch, at least in relation to the appointment and termination of appointment by the Monarch of the new State Governor'; ... and 'that the composition of a new State Government from time to time is entirely a matter for the new state and its citizens and is not a matter in which the Commonwealth has any legitimate role to play'. (Section G(a) and (b)).

In this matter the Council believes that the new State should be equal with existing States.

3.4 Financial Matters:

The Council endorses the provisions set down by the Select Committee relating to Financial Matters. (Section J(a) to (b) inclusive)

3.5 The Judiciary - Independence:

The Council endorses the provisions favoured by the Select Committee. (Section N(a) to (e) inclusive)

3.6 The Judiciary and the New State Constitution - Entrenchment:

The Council supports the provisions for entrenchment recommended by the Select Committee, particularly the independence of the Judiciary and the security of tenure of Judges appointed by the new State Parliament.

Recommendation No. 5:

That entrenchment include provisions for the independence of the Judiciary and security of tenure of Judges appointed by the new State Parliament.

3.7 Local Government

The Council supports that there should be 'some constitutional provisions for recognition of local government in the new State'.

Whilst the Council does not believe it would be appropriate to make specific constitutional provisions for local government in the new State, given the special situation in the Northern Territory with regard to sparsely populated areas, it considers the Constitution should recognise that local government is a partner to the Government of Australia, and that parliamentary privilege should be equal for all levels of government, including freedom of speech.

The Council supports the view that specific aspects of local government would be better covered by a Local Government Act of the new State, such Act to provide legally that local government should be elected through the democratic process with any changes to be implemented only through an Act of Parliament.

Recommendation No.6:

That there be constitutional provisions for recognition of local government in the new State;

That the Constitution recognise local government is a partner to the Government of Australia, and that Parliamentary privilege should be equal for all levels of government;

That specific details regarding local government be dealt with by a Local Government Act of the new State;

That such Act include provisions for local government to be elected through the democratic process; and

Any changes to a Local Government Act be effected only through an Act of Parliament of the new State.

3.8 Aboriginal Land Rights:

Given the complexity and sensitivity of the issue of Aboriginal Land Rights, Council recommends that before any attempt is made for the Aboriginal Land Rights (Northern Territory) Act, 1976 to be patriated to and become part of the law of the new State, extensive debate and consultation should be undertaken. Such debate and consultation to be made accessible to all interested person(s) within the Northern Territory population. The findings of such debate and consultation to be published and circulated well in advance of any decision being made.

Recommendation No.7:

That extensive debate and consultation be undertaken on the issue of the Aboriginal Land Rights (Northern Territory) Act, 1976, patriation to the laws of the new State;

Such debate and consultation to be accessible to all interested person(s) within the Northern Territory; and

That the findings of such debate and consultation be widely publicised well before any decision is made.

4. **NON-SEXIST LANGUAGE**

The Council commends the Select Committee on its use of non-sexist language in the preparation of the two discussion papers and Information Paper No 1, and strongly urges that the proposed Constitution for the new State also be written in non-sexist language.

Recommendation No.8:

That the Constitution for the new State be written in non-sexist language.

5. **HUMAN RIGHTS AND EQUALITY OF RIGHTS**

5.1 Human Rights

The Council considers that the new State Constitution should include a commitment to basic human rights for the new State and its citizens including non-discrimination on the grounds of race, national or ethnic origin, colour, creed, religion, sex, age or mental or physical disability.

And that the new State establish legislation to protect basic human rights.

5.2 Equality of Rights

The Council strongly believes that discrimination on the basis of sex is the major obstacle for women in achieving equality.

Therefore the Council is concerned that in the section of Human Rights, (S. T), no specific reference is made to discrimination on the basis of sex.

The Council believes that the new State should embrace the obligations Australia accepted through the Convention of the Elimination of all forms of Discrimination against Women, ratified in 1983 by the Australian Government to which the NT Government was a party and treated as a separate entity akin to a State.

5.3 Constitutional Provisions

Obligations for Australia (and Council believes the Northern Territory) under this Convention include a commitment to Article 2:-

... to agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake to:

- (a) embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle; ... ' 6

The Council believes that the Constitution for the new State should contain provisions guaranteeing equality of the sexes and non-discrimination for all people residing within the new State. And that such provisions embrace article 2(a) of the Convention.

5.4 Legislation

All regulation of discrimination, whether State or Commonwealth, has legislative status but provides no permanent guarantee of equality. The Commonwealth and State Governments may weaken or repeal their respective legislation without any legal or constitutional restraint.

For example Commonwealth legislation which may be weakened or repealed includes:-

the Human Rights Commission Act 1981;

the Sex Discrimination Act; and

the Racial Discrimination Act

The Northern Territory Government has chosen 'not to take the legislative path, but rather to work through the Office of Equal Opportunity. The only Northern Territory Legislation with reference to non-discrimination is the Public Service Act (S. 14(3)). This Act may also be weakened or repealed.

The Northern Territory Public Service Act applies to residents employed by the Northern Territory Public Service. The private sector may take up issues of discrimination through the Human Rights and Equal Opportunities Commission, and only for as long as that Commission is in existence.

By deciding not to take the Legislative path, it may be seen that the Northern Territory Government has abrogated its responsibility for a large number of its population in favour of Commonwealth legislation.

Recommendation No 9:

- That the new State Constitution should include a preamble establishing basic human rights for the new State and its citizens including non-discrimination on the grounds of race, national or ethnic origin, colour, creed, religion, sex, age or mental or physical disability; and
- that the new State establish legislation to protect basic human rights.

Recommendation No.10:

- That the Constitution for the new State should contain a commitment to the principle of equality of the sexes; and
- that the new State be given legislative power over the protection of the principle of equality and non-discrimination.

ENDNOTES.

1. Northern Territory of Australia Hansard 28 August 1985
2. Australian Bureau of Census and Statistics, 1986 Census
3. The Constitution as altered to 31 October 1986. Notes, No 5. S. 7 Page 37
4. Submission by the National Women's Consultative Council to the Australian Constitutional Commission.
5. Convention on the Elimination of all Forms of Discrimination Against Women, Report of Australia, Page 3, Part 1.
6. Ibid, Appendix I, Part I, Article 2(a)
7. Ministerial Statement - Development in NT Equal Opportunities Program, by the Minister for Labour and Administrative Services, Hon Terry McCarthy

BIBLIOGRAPHY:

1. Australian Bureau of Census and Statistics (Census 1987)
2. Constitution (The) as altered to 31 October, 1986, Australian Government Publishing Service, Canberra 1986.
3. Convention on the Elimination of all Forms of Discrimination Against Women, Report of Australia, June 1986. Australian Government Public Service, Canberra 1986.
4. Distribution of Powers, Report of the Advisory Committee to the Constitutional Commission 1987, Canberra Publishing and Printing Co, Fyshwick, ACT.
5. Ministerial Statement - Developments in NT Equal Opportunities Program, by the Minister for Labour and Administrative Services, Hon Terry McCarthy
6. Northern Territory of Australia Hansard 28 August 1985
7. Select Committee on Constitutional Development: Discussion Paper on Representation in a Territory Constitutional Convention; Discussion Paper on a Proposed New State Constitution for the Northern Territory; and Information Paper No 1, Legislative Assembly of the Northern Territory, Darwin 1987
8. Submission by the National Women's Consultative Council to the Australian Constitutional Commission, Hilary Charlesworth and Cheryl Saunders, 1987.

SUBMISSION NO. 8

DARWIN INSTITUTE OF TECHNOLOGY

Office of the Director

13 January 1988

The Secretary
Select Committee on Constitutional Development
Legislative Assembly of the Northern Territory
GPO Box 3721
DARWIN. NT

Dear Sir

I have read the documents submitted under cover of your letter 6 November 87, on the subject of constitutional development. Particular attention was given to any areas that would affect the province of education. There does not appear to be a need for the Institute to make a submission on the matter. We are examining the documents in more detail, and should there be a need to present an oral submission I will contact you in the near future.

There is only one point I would like to raise and that is in respect of the booklet 'Information Papers No 1' page 19 clause 35. I would point out here that it is our understanding that the Tertiary Education Commission Act 1977 is likely to be abolished in the 1988 autumn session of parliament, and will most likely be replaced by another act. We look forward to this new act, as we believe it will contain changes to the funding of educational organisations and States.

I will keep you informed of any significant passages of the act as they might affect the discussion on Statehood.

Yours sincerely

KEVIN W DAVIS
Director

Dripstone Road, Casuarina, N.T.
P.O. Box 40146, Casuarina, N.T. 5792, Australia
Fax No: (089)27 0612 Telex: Dacol AA85235 Telephone: (089)20 4211

SUBMISSION NO. 9

THE NORTHERN TERRITORY LOCAL GOVERNMENT ASSOCIATION

1st Floor, North Wing, Civic Centre, Harry Chan Dr., Darwin
Telephone: 81 3660, 81 5570(b); 81 3238(h)

PRESIDENT: C H GURD
SECRETARY: N LYNAGH

G.P.O. BOX 4502,
DARWIN, N.T. 5794

File: 87/23

10 February 1988

The Hon S P Hatton, MLA,
Chief Minister
GPO Box 3721
DARWIN NT 5794

My Dear Chief Minister,

The Association has duly considered the discussion papers on the proposed Northern Territory Constitution.

The Association supports in general the philosophy inherent in the discussion papers and agrees with various proposals including:-

A Unicameral Parliament with a 4 year term; and Independence of the Judiciary

With regard to the issues of Aboriginal rights (S p93) and Human Rights (T p95) this Association believes they would best be dealt with by way of general preamble to the new Constitution, rather than by specific enshrinement.

Particular concerns of this Association are mainly those associated with

- (a) Form and Composition (of the Legislature) - C p19 4:Qualifications of Members. See also relevant Section 21(1) of the Federal Northern Territory (Self-Government) Act.

and

- (b) Local Government (R p90).

With regard to (a) we are concerned that unlike other states the Select Committee suggests that elected members of local government bodies might need to resign their position to become eligible. Given that, in other states, NSW for example, members may not only nominate, but also serve in

both local & state governments it seems inconceivable that elected members, serving their respective communities, should be forced to resign in order to offer to serve the wider community. This situation has already caused disturbance (and possible expense of re-nominating) to elected aldermen; and the avoidable expense of a by-election to Local Government bodies involved. As the Select Committee suggests that all other holders of office of profit under the Crown should be eligible for nomination, exclusion of elected local government members appears discriminatory.

With regard to (b) this Association reconfirms its policy:-

That provision for constitutional recognition should be in accordance with the following principles:

- (a) general competence and autonomy for each local government body to act for the peace, order and good government of its area;
- (b) Secure financial basis;
- (c) proper recognition of the elected member role;
- (d) protection from dismissal of individual local government bodies without public inquiry; and
- (d) due consultation prior to any changes to powers, functions, duties, responsibilities and financial resources.

We believe that the proposed NT Constitution provides the opportunity to lead the way for enshrinement of Local Government into an Australian Constitution.

This Association supports the proposal of the Select Committee that Section 121 of the Commonwealth Constitution be utilized in the creation of the new State of the Northern Territory; and that the new Constitution be developed by way of a wholly nominated Constitutional Convention.

The Northern Territory Local Government Association would like to express its thanks for the opportunity to make this submission and to assure the Select Committee for our willingness to offer full co-operation in the pursuit of this unique foundation stone for our burgeoning new State.

Yours sincerely

C H GURD
President

SUBMISSION NO. 10

**THE NORTHERN TERRITORY COMMUNITY GOVERNMENT ASSOCIATION
INCORPORATED**

President: Cyril Rioli

Executive Officer: Kevin Anderson

Ref: 37-1

7th March, 1988

Select Committee on Constitutional Development,
Legislative Assembly of the Northern Territory,
GPO Box 3721,
DARWIN. NT 5794

Dear Sir/Madam,

RE: CONSTITUTIONAL DEVELOPMENT OF THE NORTHERN TERRITORY

Please accept this late response to your request for comments on Constitutional Development initiatives as outlined in your Chairman's letter of 6th November 1987.

With regard to REPRESENTATION IN A TERRITORY CONSTITUTIONAL CONVENTION, the Association strongly favours Option (i) but, providing the majority of the Convention were elected representatives, would support Option (iii). The Association would oppose and resolution to institute Option (ii).

The Association Executive understands that INFORMATION PAPER NO.1 and the NEW STATE CONSTITUTION DISCUSSION PAPER have been widely circulated to Association Member Councils for comment. No doubt your Select Committee will receive separate responses from those Councils which wish to comment.

The Association Executive has particularly noted the discussion on Constitutional recognition of Local Government. It strongly supports the five-point basis for Constitutional entrenchment of local government put forward by the Northern Territory Local Government Association and endorsed by the Australian Local Government Association.

The Association would oppose any inclusion in the Northern Territory Constitution which would dilute the status of Community Government Councils as a legitimate and equal partner with Municipal and Shire Councils in third tier of government.

Yours sincerely,

KEVIN ANDERSON.

GPO BOX 320, DARWIN, N.T. 5794, Telephone: (089)41 4680

SUBMISSION NO. 11

TANGENTYERE COUNCIL INC.

MARCH 1988

**SUBMISSION TO THE SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT
IN THE N.T.
FROM TANGENTYERE COUNCIL**

INTRODUCTION

This is a response to Part R of the Discussion Paper on a Proposed New State Constitution for the Northern Territory. That part discusses the constitutional recognition of Local Government and with some qualifications concludes by favouring some recognition of Local Government in the proposed new state constitution. While Tangentyere does not take issue with most of the principles put forward in the discussion paper, the issue of Aboriginal Town Campers within existing Municipal Boundaries has been ignored. Tangentyere Council fear that its current negotiations with various Governments for some limited autonomy within Municipal Boundaries will be prejudiced unless the proposed constitutional recognition retains flexibility or specifically recognises Town campers.

TANGENTYERE COUNCIL - THE PRESENT SITUATION

Tangentyere Council is an incorporated association, incorporated under the N.T. Associations Corporation Act and was formed in 1977 by Aboriginal Town Campers in Alice Springs to assist them in obtaining secure title to land, adequate shelter and services, Membership is open to Aboriginal individuals and Aboriginal Associations. 17 Aboriginal Housing Associations are members of Tangentyere and 15 of these are the lessees of Special Purpose Leases granted under the NT Special Purpose Leases Act.

Tangentyere is involved in a wide variety of activities to improve the living conditions of its members - including:

- Co-ordination and provision of essential services to residents.
 - employment and training programmes
 - design and construction of houses and community facilities and support services for these buildings
 - Banking service
 - a representative voice for residents on important issues e.g. the work of the Tangentyere Liquor Committee.
 - Support for families who wish to retain or adapt traditional Aboriginal social structures, cultural activities and a sharing economy.
-

With the expansion of these activities, one of Tangentyere's continual problems has been the number of different funding agencies it now has to deal with and the unpredictability of funding over time.

An example of this is the wide fluctuations in Municipal Services funding from the NT Government to Tangentyere over the last five years. (Tangentyere has always been a quasi-municipal body in that it supplies specialised versions of services such as garbage collection, maintenance, (of communal facilities, roads, parks, playgrounds, etc) water carting and wood supplies to the town camper's special purpose leases in the same way that Aboriginal communities in the bush supply these services to their members using local labour):

| <u>Year</u> | <u>Funds (Operational)</u> only | <u>% Increase</u> |
|-------------|------------------------------------|-------------------|
| 82/3 | 134 766 | |
| 83/4 | 170 528 | 26.53% |
| 84/5 | 220 662 | 29.39% |
| 85/6 | 217 539 | 3.45% |
| 86/7 | 417 628 | 91.97% |
| 87/8 | 426 400 | 2.1% |

In an effort to over-come the unpredictability of funding in this area Tangentyere Council has sought to be included in the new arrangements for the funding of Local Government.

(It is worth noting that during the same period, ADC's grants to Tangentyere for municipal-type activity have been cut by almost \$400 000, and the increased grant from the NT Government has served to compensate for less than half this loss. The DAA grant of \$135 000 for maintenance of Parks and Gardens has also ceased in the 1987-88 year. These figures are not included in the above table).

The legislative framework of the new arrangements is contained in the Commonwealth Local Government (Financial Assistance) Act 1986 and the NT Local Government Grants Commission Act. Briefly Commonwealth funds for Local Government bodies will be distributed by the Northern Territory Local Government Grants Commission on a principle of horizontal equalization. The NT Government has also directed its funds for local government services to the NT Local Government Grants Commission for distribution.

It is legally possible for Tangentyere Council to be included in the distribution as there is provision for bodies providing local government services to become 'declared local governing bodies', for the purposes of the Act. However the policy decision of the current NT Local Government Grants Commission is to not recognize more than one local governing body within the one geographical area.

Tangentyere Council is currently making representations to the Northern Territory Government and the Commonwealth Government to make the Aboriginal town camps an exception to the policy decision of the NT Local Government Grants Commission on the basis that:-

-
- The town campers are largely traditionally orientated Aboriginal people, products of missions, settlements and pastoral properties which effect little integration of Aborigines into the non-Aboriginal Community.
 - Tangentyere has grown as a response to the unique problems they face in living for the greater part of the year in town.
 - Their use of most Alice Springs Town Council Services is minimal.
 - There are unique costs in administering municipal services to groups which are and must be dispersed for reasons of tradition, language and homeland of origin, over 17 isolated leases within the Alice Springs Municipal boundary.

For these reasons Tangentyere Council argues that it is not appropriate to simply leave these issues to be resolved between Tangentyere and the Alice Springs Town Council, and affirms the desire of Aboriginal town campers to exercise a degree of autonomy over their communities and affairs and to be eligible to receive funds for Tangentyere's local government type activities.

Tangentyere realizes that the Select Committee will not wish to become involved in existing legislation but rather the Constitutional framework. But careless wording of the proposed constitutional recognition of local government may foreclose current negotiations and future possibilities for some autonomy for Aboriginal town campers' organisations.

TOWN CAMPERS AND SELF-DETERMINATION

Tangentyere Council is committed to a policy of Aboriginal self-determination and self-management.

This is reflected in its membership and structure. It means that Tangentyere seeks some political autonomy as well within the context of Alice Springs township. It accepts the need to be subject to the building and health by-laws of the Alice Springs Town Council but in other respects seeks to exercise powers similar to a Municipal Council but only within the confines of the Aboriginal leases. If it does not do so there would be an absence of such services on these leases, with subsequent problems for the town as a whole.

The Turner Report, among other things, suggested that a solution to the problem of political autonomy would be for Tangentyere to become a Community Government Council under part 8 of the NT Local Government Act. This could give Tangentyere by-law making and revenue-raising powers but would also bring with it certain controls by the NT Government. Turner saw the only legal problem as the need to amend S.237 which states that the Community Government part of the Act does not apply to land within a municipality. Arguably amendment would not be necessary if the municipal boundaries were to be redrawn excluding the town camps. But the more fundamental problem would be the Commonwealth Racial Discrimination Act which binds the NT and only allows exclusion on the basis of race if it is a 'special measure' designed to guarantee a group full and equal enjoyment of human rights and fundamental freedoms. A minimum demand of self-determination in Tangentyere's case is the exclusion of non-residents and non-Aboriginal people from executive positions on their decision making bodies. Whether a Community Government Scheme so excluding non-Aboriginal people would be considered a 'special measure' is doubtful.

In any event, Tangentyere is not happy with the Community Government option, as the powers retained by the NT Government may be unacceptable. What will be acceptable will be the subject of future negotiations on the political level. In the meantime the proposed Constitution should not foreclose options. This could happen in the following ways:-

1. A Clause requiring the Government to set up a system of local government may impart the concept of one local governing body within one geographical area. For example S.74 A(1) of the Victorian Constitution states in part: 'There shall be a system of local government - which shall provide for the constitution of an elected body with such powers as the Parliament deems necessary for the peace, order and good government of the district in respect of which the body has been constituted'. Again it is arguable that a way around this for town camps would be a redrawing of town boundaries excluding town camps but because of the unresolved nature of the situation any doubt should be avoided by specific reference to the exception of Town Camps.
2. At the Commonwealth level it has been suggested by the Office of Local Government (Commonwealth) that the constitutional recognition of Local Government should include a provision which requires local Councils to be democratically elected i.e. that is the right to vote and the principle of one vote one value. (See Office of Local Government (March 1987). A case for the Constitutional Recognition of Local Government: A Submission to the Constitutional Commission; Department of Local Government and Administrative Services, Canberra, and their second Submission, November 1987). While Tangentyere in its formal structure has adopted these principles, it may in some other time or circumstance wish to structure such things according to local Aboriginal tradition.

CONCLUSION

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.

SUBMISSION NO. 12

THE FEDERATED MISCELLANEOUS WORKERS UNION OF AUSTRALIA

North Australian Workers Union Branch

President: KJ Hubbard
Secretary: JR Rodda
Asst Secretary: PW Tullgren

OFFICES:
38 Wood Street, Darwin
39 Irvine Street, Alice Springs

Our Ref: PT/AM

Your Ref:

Contact Officer: Peter Tullgren

Date: 11 May, 1988

POSTAL ADDRESS:

G P O Box 32

DARWIN NT 5794

FAX: 811060

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81 5611, 81 5047, 81 52

Alice Springs: 52 4441

The Secretary,
Select Committee on Constitutional Development,
Parliament House,
DARWIN NT 0800

Dear Sir

As indicated on a prior occasion, this Union was seeking to make both an interim and final submission. This serves as the interim submission.

I point out that both submissions will be brief with the Union seeking to make more detailed verbal submissions.

1. POSITION ON STATEHOOD:

Set out below is the position of the Union on Statehood.

"That Central Council at this time is opposed to any move to make the Northern Territory a State.

Central Council adopts this position for many reasons including:-

- (1.) the NT does not have the necessary tax base to support being a State.
 - (2.) the NT being an anti-worker government should not be given control over industrial relations.
-

- (3.) there is no justification for giving the NT Senate representation equal to the States in the Senate."

I also note that the Northern Territory Trades and Labour Council has adopted a similar position which is also set out below.

"The Northern Territory Trades and Labour Council rejects any move to have the Territory made a state for the following reasons:

- (1.) there is not the population base necessary to sustain a viable state;
- (2.) the Northern Territory does not have a sufficiently large tax base which would be essential in any move to become a State;
- (3.) the Labour Council rejects any move to give the Northern Territory control of Industrial Relations. The NTTLC notes that, on the whole, the current situation works well and with amendments as set out in the Industrial Relations Bill the system will be improved further;
- (4.) the NTTLC is opposed to giving the Northern Territory Government control of Aboriginal land rights due to the racist views of the government.

2. INDUSTRIAL RELATIONS

Set out below is the position of this Union on Industrial Relations and Statehood.

"That the Federal Officers express to the ACTU the FMWU's opposition to any move to set up a State industrial system in the Northern Territory and that the ACTU be asked to convene a meeting of affiliates with members in the Northern Territory to co-ordinated submissions to the proposed Inquiry into Industrial Relations upon Statehood.

In general terms the reasons for this position are:-

- (1.) The current system is the system applying under the Australian constitution, and the Conciliation and Arbitration Act has, on the whole worked well.
- (2.) There is no basis for supporting the creation of an additional local system of Conciliation and Arbitration. To do so would only create duplication.
- (3.) Any system must be accepted by all parties and this includes a belief in the independence of the systems.

It is unlikely many trade unions including this one would feel any alternate system would be independent.

As I indicated, this Union would seek to address your committee on the issue of Statehood.

Yours faithfully
JOHN RODDA

BRANCH SECRETARY

SUBMISSION NO. 13

NORTHERN TERRITORY TRADES & LABOR COUNCIL

PRESIDENT: Jamey ROBERTSON

Address all Correspondence to:

SECRETARY: Mark CROSSIN

The Secretary,

P.O. Box 1833,

Darwin, N.T. 0801

14 June, 1988

Telephone: (089) 41 0001

(089) 41 1998

Fax:(089) 81 1770

Hon S. Hatton

Ref: 6/7

The Chairperson

Select Committee on Constitutional Development

G.P.O. Box 3146

Darwin, NT 0801

"Without Prejudice"

Dear Sir,

Set out below is an interim submission from the Northern Territory Trades and Labor Council regarding NT Statehood.

It is an interim submission as it deals only with a limited number of matters. In particular, the submission deals with the workings of a Territory Constitutional Convention and representation on same.

The NT TLC wishes to state that as the peak body of organised labour in the Northern Territory, that its views should be sought on all aspects relating to any proposals for NT Statehood. As debate and discussion occurs on specific matters, then it will become timely for the NT TLC, other peak bodies and community groups to enter the debate as appropriate.

On the basis that the above argument is accepted, the interim NT TLC submission is as follows:

1. NT TLC Statehood Policy

The NT TLC rejects any move to have the Territory made a state for the following reasons:

- a) There is not the population base necessary to sustain a viable state;
- b) The Northern Territory does not have a sufficiently large tax base which would be essential in any move to become a state;

-
- c) The NT TLC rejects any move to give the Northern Territory control of Industrial Relations. The NT TLC notes that on the whole the current situation works well and with amendments as set out in the Industrial Relations Bill, the system will be improved further;
 - d) The NT TLC is opposed to giving the Northern Territory Government control of Aboriginal Land Rights due to the racist views of the government.

2. Justification for Statehood

As a threshold matter there needs to be justification for a change from the current situation of Self Government to Statehood.

The justification for Statehood must be fully developed and explained.

The NT TLC clearly remembers promises from the then NT Government that the cost of "Self Government" would be "a can of beer per Territorian".

These claims have proven to be demonstrably false. It is the view of the NT TLC that slogans such as this do nothing to advance the Statehood debate or inform the public. The debate should not be progressed by any such misleading slogans but by accurate information and informed argument.

3. Draft Constitution

There must be a suitable period of time between the preparation of a draft constitution by the Constitutional Convention and adoption of same by that body.

During this time there needs to be a wide circulation of the draft document and mechanisms established to receive and deal with input and submissions from all interested parties.

4. Representation - Constitutional Convention

- a) The NT TLC submits that it must be adequately represented on the convention. Other groups should also be guaranteed representation.

The criteria should be that groups be represented by "peak bodies" when possible and that the group must represent a significant body of opinion. Further, the groups should be represented as far as possible according to the size of their constituencies.

- b) The NT TLC favours a combination of partly elected and partly nominated representatives to the Convention. The NT TLC places particular importance on the participation of key groups in the convention process.
 - c) Notwithstanding this, the NT TLC does not favour a specialist Select Committee approach. It is the submission of the NT TLC that such a group could well become elitist, that the opportunity for democratic input into such a committee may be limited and that select committees may frustrate 'ordinary' members.
 - d) The NT TLC submits that the convention should determine its own operating procedures.
-

5. Other Matters

a) Industrial Relations

The NT TLC strongly favours retention of the current system, ie. the NT Industrial Relations powers and administration known under the jurisdiction of the Commonwealth Conciliation and Arbitration Act 1904.

This system has served the Territory well. Decisions have been made having regard to "Australian Made" situations, thus, preventing the Territory from becoming isolated and inward - looking.

A system of Conciliation and Arbitration established to assist the parties requiring an independence in decision making which is both real and perceived to be real.

This would not be the case if a small community such as the Northern Territory was forced to provide such a system from within its own resources.

b) Sovereignty

The NT TLC submits that prior ownership of the Northern Territory by Aboriginal people needs to be recognised. To this end, appropriate guarantees of Aboriginal land ownership must be included in a Territory Constitution.

c) Human Rights

The NT TLC submits that the Constitution should include human rights matters.

This should be so that the Constitution provides a framework for the economic, social and political development of all groups and so that the democratic rights of all citizens are guaranteed.

To this end, the report of the Advisory Committee to the Constitutional Commission on Individual and Democratic Rights (1987) contains much submission to date which should be considered within a Territory Constitution.

d) Reform

The NT TLC submits that the development of any new Constitution would provide a unique and excellent opportunity to enshrine social, economic and political reforms that have occurred since Federation.

It is most important that such an opportunity should not be lost. Equal opportunities, prevention of discrimination and the rights of indigenous peoples are matters that spring readily to mind.

Yours faithfully,

Mark Crossin
Secretary

SUBMISSION NO. 14

Northern Territory of Australia

OFFICE OF EQUAL OPPORTUNITY

DEPARTMENT OF LABOUR AND
ADMINISTRATIVE SERVICES

88/1229

July 1988

The Executive Officer
Select Committee on Constitutional Development
GPO Box 3721
DARWIN NT 0801

Dear Rick

Enclosed please find a submission to the Committee on Constitutional Development from the Office of Equal Opportunity.

Yours sincerely

L M POWIERZA
Director
Office of Equal Opportunity

encl.

TO: SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

FROM: THE OFFICE OF EQUAL OPPORTUNITY

HUMAN RIGHTS

The office of Equal Opportunity believes very strongly that as a minimum position the preamble of the new State constitution should set out the basic human rights of the citizens within the overall goals of the new State. This is crucial in view of our population mix of well over 50% of people originating from non-English speaking backgrounds including 25% made up of Aboriginal peoples, a situation unique in Australia. While it is appreciated that no other State has rights enshrined in constitutional forms, there is no reason why the Territory should not take the lead in this area. An entirely new era has emerged since the time when constitutions in other places were drafted, with dramatic changes in the recognition of individual rights within both International Law and the law of individual countries. It is of particular interest that Canada as recently as 1982, amended its Constitution to include Fundamental Freedoms, Rights, Official Languages and Minority Language Educational Rights as well as Enforcement.

Such a provision within the Preamble would serve as a foundation for the development of particular legislation covering Equality of Opportunity. To date it has been policy to maintain that there is no need for separate legislation in this area as citizens have recourse to either Commonwealth law or Common Law. It is becoming increasingly obvious that there are severe limitations to this approach. There are numerous people who are not covered by Commonwealth law or the NT Public Service Act, (eg employees at DIT, university College of the NT, College staff under the proposed new Colleges legislation, PAWA employees) and the cost for the individual to access Common Law solutions is prohibitive. Additionally, it has been the experience in other parts of Australia and the world that change does not occur without legislation.

ABORIGINAL RIGHTS

All of the discussion under the previous heading applies to the Aboriginal people in the Northern Territory and their case serves to emphasise the need for the enshrinement of individual rights in the Constitution. Further, their history should be recognised and their ownership of the land should be entrenched particularly in recognition of the fact that they form by far the largest majority of permanent and lifelong generational residents within the boundaries of the Territory. This has been the case in the past and will continue to be in the future.

The Bilingual education program in the Territory should also receive specific treatment given its crucial importance to the preservation and continuation of Aboriginal languages.

A very real commitment to full access and participation in the new State should be given to the Aboriginal peoples. Within this context consideration should be given to strategies to ensure equitable representation of Aboriginal peoples in Parliament.

NUMBER OF PARLIAMENTARIANS

It is felt that the number of parliamentarians or an appropriate ratio should be set out in the Constitution.

LENGTH OF RESIDENCY

The Select Committee's views on this matter are endorsed including a single six month's residency clause.

TERMS OF OFFICE

The four year option for terms of office is supported.

CONSTITUTIONAL CONVENTION

The Office believes that a mixed model of selection of members is the best option. While mention is made of participation of key groups, populations groups are not featured. It is essential if the Government's stated objectives are to be fulfilled, that women, Aboriginals, people from non-English speaking background and people with disabilities are involved in the Convention in proportion to their representation in the population at large to ensure that this does happen nominations could be called from various specialist groups. Real commitment and involvement will not be achieved without representation and participation in the decision making process.

ELECTORAL TOLERANCE

The maximum amount of electoral tolerance (ie up to 20%) should be permitted to adequately take account of vast distances and sparsely populated areas incorporating, in the main, Aboriginal peoples. The urban areas of Darwin and Alice Springs will always be dominant in terms of numbers of members and thus a larger tolerance factor can be accommodated.

SUBMISSION NO. 15

P R HOCKEY

P O Box 1638
KATHERINE, NT 0851

8.7.88

The Executive Officer
Select Committee on Constitutional Development
G.P.O. Box 3721
Darwin NT 0801

Dear Sir,

I would like to make whatever contribution I can to your Committee, and would appreciate any information you have.

In particular, what is considered to be the N.T. constitution so far.

After 10 years of self-government, some concept of this has probably become established.

One contribution I make now, is that voting should not be compulsory at any level of government. Present law on this, violates the basic principles of democracy and an invasion of personal liberty. I doubt if this concerns many people, one way or the other, but the matter should be put to a vote in any constitutional referendums.

Yours sincerely

P.R. Hockey/

SUBMISSIONS TO DEVELOPMENT OF A N.T. CONSTITUTION

Comments on discussion paper OCT 1987.

Summary of recommendations and endorsements page (v) para c).

I submit that the representative of the Monarch should have the right to suggest amendments back to the Parliament.

Electoral provisions and voting.

1. I submit that a new constitution should guarantee the right to vote, but that voting should not be compulsory.
 - (a) The Australian Constitution does not guarantee the right to vote.
 - (b) To have a compulsory vote is contrary to several basic human rights, chiefly freedom of conscience.

Local Government

That Local government be recognised by a constitution and that the principles, (a) to (e) on page 91 be incorporated.

In addition, provision should be made so as to allow the State government to overrule a Local government by way of appeal from an agreed number of constituents.

This could take the form of a petition in the ordinary way, but in any case some right of appeal should be guaranteed if a Local government itself is guaranteed.

Bill of Rights

At this stage I feel the adoption of any Bill of Rights. a part thereof should remain the prerogative of the Commonwealth.

In all other matters canvassed within the discussion paper, I support the view of the Select Committee.

Yours sincerely,

P.R. Hockey.
PO Box 1638
Katherine NT 0851

P.O.Box 1638
KATHERINE N.T. 0851

July 26, 1988

The Executive Officer
Select Committee on Constitutional Development.

Mr Rick Gray

Dear Sir,

As you would be aware, there does not appear to be widespread interest in a constitution for the N.T. and a rather lukewarm interest in Statehood as well.

However, I consider the efforts put in so far to be of a high order. Quite obviously a great deal of dedicated work has been done and those taking part in it are to be congratulated.

It will be a long, thank-less task I am afraid, but the work is vital and perhaps we can take heart from the U.S. Constitution; some 10 years in the making and with a greater national urgency.

We may yet see some act of a Federal Government. which will make people aware that Statehood must come to pass if we are able to progress beyond a certain stage.

I note previously on the need for a Bill of Rights in the constitution, but this should first find its way into a Federal constitution.

Motivation for a Bill of Rights must first come out of the hearts and minds of the people; which will only come when there is a need.

I have had a close association with the National Rifle Association of America for a long time. (I am a 5th generation Australian of English origin). I receive up to date information on their activities regularly and it is interesting how various U.S. agencies litigation and legislation has attempted to go around the second amendment. Despite U.S. supreme court rulings, which uphold the 2nd amendment, mostly in the form it was first written, police associations, State Governments, State-Federal legislation continue to probe for loopholes in U.S. supreme court decisions.

Much of the legislation was tolerated for a time, such as gun registration, cooling off periods of 3 days between the application of a gun permit and actual purchase, barring of gun ownership by convicted felons etc. All this was perhaps felt wise and necessary at the time, but victory on the part of the anti-gun lobby eventually led to the N.R.A. going on the offensive. The point of attack by then was launched in, Florida, not long ago and involved a 'coloured' [what colour I can't work out; or if it makes any difference] shop keeper was stabbed 7 times in almost as many days and was

refused a hand-gun licence. The N.R.A. launched an attack on the Florida government, with the result, residents of that State can now walk into any shop anywhere and buy any kind of gun and simply walk out with it - no registration, no questions asked. In some mid-Western States a U.S. citizen can now own a machine gun, on a 105 m/m howitzer if he or she wishes to do so.

One of the ultimate aims of the N.R.A. is complete freedom to own, possess and use any kind of arms they wish.

From this distance this seems wrong or somewhat ridiculous to me, but what we are seeing in one power group against another, which one would feel could not happen, because it is written into the U.S. constitution, 2nd amendment.

The N.R.A. WASHINGTON D.C. is now a political force in its own right, it could no longer be regarded as a pressure group. Aspiring Senators and Congressmen now need the O.K. of the N.R.A. before they can run for office, or at least they have to calculate the difference between getting N.R.A. endorsement or not.

I think this example of what is contained in a constitution, or Bill of Rights points to political power and although I believe a constitution is important, it is political power which will decide in the end.

Yours sincerely

P R Hockey.

SUBMISSION NO. 16

P MITCHELL

9 July 88

GPO Box 3491
Darwin NT 0801

The Exec. Officer,

Dear Sir,

On receiving your request for my view on Constitutional Development, I would think we would need to have equal representation as the states have and remove some of the extreme laws that currently separate us from the states. I am referring to for example NT Firearms Act and the police detention laws.

We need also to bring the NT economy closer to the states, that means getting rid of at least half of the public servants and starting up an industrial base and more diversification and no interference with people who want to start up and run a business - A good start.

P. Mitchell

SUBMISSION NO. 17

H CROMPTON

Unit 10
112 Esplanade
Darwin 0800

SUBMISSION TO THE SELECTED COMMITTEE
ON CONSTITUTIONAL DEVELOPMENT

10 July 1988

I do not consider the time is right for the N.T. to become a state.

When I look at the N.T. Government 's record on land right and on environment safety, I am grateful that the federal government retains control of Aboriginal affairs and Uranium mining, and I wish that control to continue.

There is no way we could justify laying claims to the same number of senators as a populous state like N.S.W.

Herbert Compton

SUBMISSION NO. 18

J HARE

SUBMISSION
to the
SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

Options for a Grant of Statehood

The terms of reference of the Select Committee on Constitutional Development include provision for the Committee to inquire into and report and make recommendations on the issues, conditions and procedures pertinent to the entry of the Northern Territory into the federation of a new State.

In its Information Paper No 1 the Committee states that the preferred method of creating a new State is by an Act of the Commonwealth Parliament under Section 121.

I am of the view that Section 121 is the preferred method. It is contended that the Commonwealth Parliament would be more competent in analysing the issues involved in the grant of Statehood - in hopefully an objective manner than say a nationwide referendum where the majority of citizens may not understand the issues.

Politicians (in this case Commonwealth Parliamentarians) would be held accountable. The general public cannot be.

Irrespective of the constitutional power which the Commonwealth may or may not have under Section 121 re the imposition of terms and conditions, the new State would have determined its bargaining position prior to approaching the Commonwealth Parliament.

While it is unlikely that the Territory (particularly with the current political complexion of the Commonwealth Parliament) could obtain in advance a public commitment from the Commonwealth Government to support a proposed grant, it follows that support from within the Territory must be demonstrated.

The select Committee's concurrence with the holding of a Territory referendum within a reasonable time is supported. The key issue is the definition of "within reasonable time".

The timetable for Statehood should not be determined by political considerations or at the whim of the Government. The Government has indicated that it is moving "Towards Statehood". That process has commenced and should be finalised within 18 months.

The preparation of a draft constitution for presentation to the Legislative Assembly and the establishment of a Territory Constitutional Convention should be in place by the end of 1989.

The low level of political knowledge and education in the community at large is appalling. Surveys Australia wide indicate a poor level of knowledge or understanding of the Constitution or the political process.

The development of a new Constitution for the Northern Territory provides an excellent opportunity to educate the general population on the parliamentary system of government as it operates in the Northern Territory as well as Australia wide. Such education would, hopefully, result in a more politically literate community which in itself would contribute to the enhancement of the institution of parliament and the good governance of the Northern Territory.

I make a distinction in such an awareness programme between the selling of the concept of Statehood and its advantages in relation to the fundamental issues of control of land, mineral rights, etc on the one hand; and an awareness programme on our system of governments on the other. While the Government of the day should have responsibility for the former, the Select Committee should have responsibility for the latter.

Proposed New State Constitution

The drafting of a new State Constitution provides a unique opportunity for a Territory Constitution to be drawn up to reflect the social, economic and geographic diversity of the Northern Territory.

Lessons should be drawn from the inadequacies of existing State Constitutions. We have a unique opportunity to devise a Constitution in keeping with the evolution and development of the Territory.

The principal remains that the Territory should not have a Constitution enforced on it but rather should develop its own.

I only wish to comment on one particular aspect of the Constitution and that relates to the Executive.

As a general rule I support the Select Committees view that the Premier and other ministers of the new State should be chosen from the members of the new State Parliament.

I would, however, ask the Select Committee to consider a complementary system which would allow the Governor on the Premier's recommendation to make ministerial appointments from outside the Parliament.

This would have the advantage of allowing the Premier to choose the best available brains to assist in the good governance of the Northern Territory.

Ministerial accountability would still be through the Parliament. This could be done in one of two ways:

- (a) the non Parliamentary Cabinet minister could be called to the Bar of the House to address Parliament or be subject to questioning.

OR

- (b) the non Parliamentary Cabinet Minister could be "shadowed" by a parliamentary colleague.

This system would afford the Government the best possible scope and range of expertise to the Executive level of Government.

As admitted in the Select Committee's Discussion Paper on a Proposed New State Constitution for the Northern Territory, the Executive has become the dominant arm in the "Westminster" system. The Executive sets the agenda for the Parliament and effectively dictates the business. While in theory the Parliament has control over the Executive the reality is the Parliament does not, in a practical sense, have that power.

Since that strand of responsibility has been effectively removed it also removes the constraint (in theory) or inhibition that same of the ministry could not be drawn - with certain safeguards - from outside the Parliament.

Under this system the Executive would still be dependent on the legislature for the passage of its legislative proposals and - most importantly - for the ongoing appropriation of funds necessary for the performance of government functions.

The ministry is responsible to Parliament because Parliament claims to represent the people. On whose behalf it acts and to whom it is therefore responsible.

Like most other Parliaments there is the criticism that the Executive is not really accountable to the Parliament. In the Territory there is the added criticism that because of the small population base the Government of the day is unlikely to have a large enough pool from which to draw its managers - the ministers.

Necessary safeguards would have to be built into the system.

For example it has to be the function of Parliament to appropriate monies. It would be essential that the treasurer and/or Finance Ministers be Parliamentary Ministers to at least afford the Parliament the opportunity to vet appropriations.

No doubt other mechanisms could be devised such as an expanded committee system to act as the necessary watch dog.

JOHN HARE
August 1988

SUBMISSION NO. 19

P McNAB

August 1988

TO THE SELECT COMMITTEE OF THE LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY ON CONSTITUTIONAL DEVELOPMENT
SUBMISSION BY PETER McNAB*

Background

In 1985 the Territory Government launched a campaign for statehood for the Northern Territory. A Select Committee on constitutional development was formed to inquire into matters connected with statehood. The Committee has caused to be published the following reports and papers:

- (a) discussion paper on Representation for Constitutional Convention
- (b) discussion paper on a proposed New state Constitution
- (c) Information Paper on Options for a grant of Statehood.

2. In November 1986 the writer, on behalf of the Law Society of the Northern Territory, made a submission to the Commonwealth Constitutional Commission on Statehood for the Territory. That Commission published its first report (2 volumes and a summary) in April 1988. The Law Society's support for equal statehood for the Territory is set out at pp.563-64 of the First Report (Vol.II). The possible constitutional problems of statehood are discussed at pp. 559-60 of the Report.

3. In October 1988 the Law Society, in conjunction with the North Australia Research Unit (NARU), held the first and, so far, only public conference on all of the issues of statehood. In early 1988 the proceedings of that Conference and other material relating to statehood was jointly published by the Law Society and NARU (Australia's Seventh State).

4. The writer makes the following submissions on the constitutional arrangements following statehood:

Form of New State Constitution

5. The Constitution should be a statute of the Territory entrenched so far as is required to give effect to certain fundamental elements and rights (as are discussed below) and otherwise modelled upon the existing State Constitutions. The Constitution should set out the broad framework of a

* Principal Legal Officer, Commonwealth Attorney General's Department, Darwin, Co-Editor of Australia's Seventh State, member of the Council of the Law Society, part-time lecturer in law at the University College of the Northern Territory; member of the Northern Territory Law Reform Committee.

The views in this submission are the writer's personal views and do not represent the views of either the Law Society, the Attorney-General's Department or any other organisation. 3.

government under the Crown (in right of the Territory), assuming rather than spelling out in any detail a general separation of powers and responsible government, and supplemented by the operation of conventions. These conventions should not be codified in the Constitution.

6. The new State Constitution should establish a unicameral legislature with full plenary power (subject to the Constitution); require direct democratic election from more or less uniform constituencies (see below); allow ministers to be appointed solely from the legislature; permit a formal embodiment of executive power in a Governor or Administrator with that official, in effect, also a party to the legislative process (by assenting to legislation and dissolving the legislature). Such provisions should be entrenched to the extent that change requires the passing of an ordinary law approved by a majority of the electors at a referendum.

7. Generally speaking, this model is in place for the Commonwealth and the States and works satisfactorily. Indeed the present Constitution of the Territory, found in the Northern Territory (Self-Government) Act 1978 and other Commonwealth legislation, with exceptions not presently relevant, is similarly modelled. The absence of an upper house in the Territory means that such a system can work quite adequately; such problems that have arisen with such Constitutions have often arisen from the existence of their upper houses.

Entrenchment : fair electoral laws

8. The writer is of the view that any electoral system for the Territory should be entrenched and be subject to judicial review against a constitutional standard that the system chosen:

- (a) operate by way of secret ballot
- (b) be democratic (i.e. genuinely representative) in nature; and
- (c) otherwise be fair and free.

This right of judicial review by the Supreme Court should also be entrenched as stated above except that a two-thirds majority of the legislature should be required to take away judicial review.

9. It is to be noted that the Constitutional Commission has concluded that the right to vote and 'one vote, one value' should be given Constitutional protection.

Entrenchment : fundamental rights

10. The writer generally supports the fundamental rights identified by the Constitutional Commission for possible inclusion in the Constitution of the Commonwealth of Australia. (See attachment 'A'.) Modern experience in places such as Canada indicates that judicial review of alleged government legislative and executive interference to accepted fundamental rights, there codified in a Charter, can cause strain on the political and legal system (see, for example, P. Hanks in Australia's Seventh State [1988]). Nevertheless, the writer, on balance, accepts the view that a polity will in the long-term be well served by such judicial review and by the application of what is, in effect, a 'bill of rights'.

11. This right of judicial review by the Supreme Court should also be entrenched requiring a two-thirds majority of the legislature as well as a referendum for change. The codified 'rights'

themselves should be entrenched in the usual way stated above. (The difference in suggested entrenchment arises because the tribunal for the enforcement of the relevant rights is arguably more important than the specific rights themselves, which will presumably be subject to change and modification over time.)

12. Any existing similar rights under the Self-Government Act (e.g. compensation on just terms) should be retained.

Aborigines and Aboriginal Land

13. The writer is of the view that the new Constitution should contain a statement, in general terms, recognising the special position of the Aboriginal people in the history, culture and development of the Territory and, in particular, recognising prior Aboriginal occupation of the Northern Territory. Such a statement could possibly form a part of the preamble to the Constitution. However, the writer is not persuaded that any such statement should of itself be justiciable.

14. It is recognised that this issue is one of considerable sensitivity and difficulty as to concept, the precise wording of any such statement and its effect. Nevertheless such difficulties are not in themselves adequate to excuse any failure on the part of our community leaders to reach common ground on such a statement.

15. Aboriginal land has been created under the Aboriginal Land Rights (Northern Territory) Act 1976. The writer supports the patriation of that Act to the new State, but the writer also accepts that Aboriginal land and rights in respect thereof should be preserved in their essential respects. However, this should not prevent the exercise by the new State of its full legislative and executive powers where such powers are reasonable for the benefit of the community as a whole but which also seek in their effect to preserve to the fullest extent practicable the principles of continued Aboriginal ownership, control, use, exploitation and occupation of Aboriginal land for the policy reasons underlying the Land Rights Act. Judicial review of legislative and executive power against such a constitutional standard should be permitted and entrenched by requiring a two-thirds majority of the legislature and a referendum for alteration.

16. The Land Rights Act should not be entrenched except insofar as amendment to it would breach the constitutional safeguard formulated above. However, the Land Councils should be guaranteed their present structures, status, rights and duties for some specified minimum period, say, from five to ten years.

17. The issue of Aboriginal land rights under the new State Constitution may well be the most contentious and divisive issue facing those who advocate statehood. The writer offers the model suggested above as a balanced attempt at compromise. The courts (and judicial method) have been, for many years, the 'battleground' on the Issue of land rights. The writer submits that the courts should continue to play a role in resolving this issue but by implementing a constitutional safeguard like that formulated above.

Independence of the Judiciary

18. The writer has given careful consideration to the position of the Supreme Court under the new State Constitution. Apart from vesting (and entrenching in the ordinary way) judicial power of the Territory in a Supreme Court of the Northern Territory, and in other inferior courts established by the legislature (but without a strict separation of powers), the writer is not persuaded that express constitutional guarantees are needed about the Court and its independence. These matters will be best governed by existing practices and convention.

19. Nevertheless an increased scope for judicial review including the invalidation of enactments contrary to the constitutional safeguards discussed above) may elevate the appointment of judges to matters of considerable public debate. Such a regrettable development could only be completely avoided by vesting the power of appointment of judges in some consensual body such as a broadly representative commission or committee. After careful consideration the writer has come to the view and submits that the method of the appointment of judges (i.e. by the Executive) should remain unchanged but with the addition of a constitutional requirement for an independent Judicial Service Commission (as exists, for example, in Hong Kong) to be established by the legislature to advise the executive on such appointments.

Constitutional Convention

20. Of the options identified by the Select Committee (see the discussion paper) the writer would support a Constitutional Convention made up of elected and nominated members (elected members constituting, say, at least three-quarters of the Convention) being as far as practicable geographically, politically and ethnically representative of the people of the Territory. This Convention should have adequate resources and some independence from existing political structures to permit a genuine community-based Constitution to emerge.

Peter McNab

General references:

B. Brunton & D. Colquhoun-Kerr, The Annotated Constitution of Papua New Guinea (1984).

R.D. Lumb, The Constitutions of the Australian States (1977)

P. Loveday & P. McNab (eds.), Australia's Seventh State (1988): Chapters 8,9, 10.

Peter Wesley-Smith. An Introduction to the Hong Kong Legal System (1987).

Constitutional Commission, Summary of the First Report of the Commission (May, 198~).

Peter W. Hogg, Canada Act 1982 Annotated (1982).

Journal articles:

R.D. Lumb, 'Methods of Alteration of State Constitutions in the United States and Australia' (1982) 13 Fed. L. Rev. 1.

J.A. Thomson, 'State Constitutional Law: Gathering the Fragments ' (1985) 16 W.A.L.R. 90.

T.G. Ison, 'The Sovereignty of the Judiciary'

The new provisions which we recommend would go in a new Chapter of the constitution, as follows:

Extent of guarantee

124A. This Chapter guarantees the rights and freedoms mentioned in it against acts done:

- (a) by the legislative, executive or judicial arms of the Commonwealth, States or Territories;
- (b) in the performance of any public function, power or duty conferred or imposed on any person or body by law.

Remedies.

124B. A person whose rights or freedoms, as guaranteed by this Chapter, or by sections eighty, one hundred and sixteen or one hundred and seventeen, have been infringed may apply to a court of competent jurisdiction for an appropriate remedy.

Limits..

124C. The rights and freedoms guaranteed by this chapter may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Other rights and freedoms.

124D). The rights and freedoms guaranteed by this Chapter do not abrogate or restrict any other right or freedom that a person may have.

Freedom of conscience etc.

124E. Everyone has the right to:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief and opinion;
- (c) freedom of expression;
- (d) freedom of peaceful assembly; and
- (e) freedom of association.

Freedom of movement.

124F. (1) Every Australian citizen has the right to enter, remain in and leave Australia.

(2) Everyone lawfully in Australia has freedom of movement and residence in Australia.

(3) Sub-sections (1) and (2) of this section are not infringed by laws made by the Parliament with respect to entry into and residence in a Territory that is not on the mainland of Australia.

Equality rights.

124G. (1) Everyone has the right to freedom from discrimination on the ground of race, colour, ethnic or national origin, sex, marital status, or political, religious or ethical belief.

(2) Sub-section (1) is not infringed by measures taken to overcome disadvantageous arising from race, colour, ethnic or national origin, sex, marital status, or political, religious or ethical belief.

No cruel or inhuman punishment etc.

124H. (1) Everyone has the right not to be subjected to cruel, degrading or inhuman treatment or punishment.

(2) Everyone has the right not to be subjected to medical or scientific experimentation without that person's consent.

Search and seizure..

124I. Everyone has the right to be secure against **unreasonable search or seizure.**

Liberty of the person.

124J. (1) Everyone has the right not to be arbitrarily arrested or detained.

(2) Everyone who is arrested or detained has the right:

- (a) to be informed, at the time of the arrest or detention, of the reason for it;
- (b) to consult and instruct a lawyer without delay and to be informed of that right;
- (c) to have the lawfulness of the arrest or detention determined without delay;
- (d) to be released if the detention or continued detention is not lawful.

Rights of persons arrested.

124K. Everyone who is arrested for an offence has the right:

- (a) to be released if not promptly charged;
- (b) not to make any statement, and to be informed of that right;
- (c) to be brought without delay before a court or competent tribunal;
- (d) to be released on reasonable terms and conditions unless there is reasonable cause for the continued detention.

Rights of persons charged.

124L. (1) Everyone who is charged with an offence has the right:

- (a) to be informed without delay, and in detail, of the nature of the charge;
 - (b) to have adequate time and facilities to prepare a defence;
 - (c) to consult and instruct a lawyer;
 - (d) to receive legal assistance if the interests of justice so require and, if the person does not have sufficient means to provide for that assistance, to receive it without cost;
 - (e) to be tried without delay,
 - (f) to a fair and public hearing by a court;
 - (g) to be present at the trial and to present a defence;
 - (h) to have the assistance, without cost, of an interpreter if the person cannot understand or speak the language used in the court;
 - (i) to be presumed innocent until proved guilty according to law;
 - (j) to examine witnesses for the prosecution and to obtain the attendance and examination of witnesses for the defence under the same conditions as the prosecution;
 - (k) not to be compelled to be a witness against himself or to confess guilt;
 - (l) if finally acquitted of the offence or pardoned for it, not to be tried for it again;
 - (m) if finally found guilty of the offence and punished for it, not to be tried or punished for it again.
- (2) everyone convicted of an offence has the right to appeal according to law against the conviction and any sentence.

No retrospective offences.

124M. No one shall be liable to be convicted of an offence on account of any act or omission which did not constitute an offence when it occurred.

SUBMISSION NO. 20

NORTHERN TERRITORY BAR ASSOCIATION

PRESIDENT: DEAN MILDREN Q.C.

SECRETARY: JOHN REEVES

29 August, 1988

The Honourable Mr S P Hatton, MLA
Chairman
Select Committee on Constitutional Development Legislative Assembly
Mitchell Street
DARWIN NT 0800

Dear Mr Hatton,

RE: DISCUSSION PAPER ON THE PROPOSED NEW STATE CONSTITUTION

Please find enclosed the submission(*) from the Northern Territory Bar Association in respect of the Discussion Paper published by the Committee. This submission was approved unanimously at a recent meeting of the Association.

Unfortunately, due to heavy court commitments, we were not able to appear before the Committee at the recent public hearings in Darwin. We are however anxious to contribute to the process of constitution making as far as we are able. The members of the Association have considered and discussed at length many of the issues that will arise on the path to statehood and would be in a position to provide informed advice on such issues to the Committee should you so require.

Particularly, as you will note from our submission, we propose that detailed research be undertaken into the existing State and Federal bodies politic so that we may be better informed about the "statehood" we are undertaking and whether it would be possible to improve on the existing systems in any respect. Our Association would be pleased to contribute as far as it is able to this process of research and any other matters upon which the Committee may require assistance.

If yourself, any other members of the Committee or your staff wish to discuss any matters raised in our submission or this letter, please contact Mr. Alistair Wyvill (ph. 81 8322) who is the member of the Association who prepared the submission.

Yours sincerely,
DEAN MILDREN Q.C.
President

(*) Encl. - Submission to the Select Committee on Constitutional Development

NORTHERN TERRITORY BAR ASSOCIATION

SUBMISSION TO THE SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

The Select Committee has produced a "Discussion Paper on a proposed New State Constitution for the Northern Territory".

"The areas selected for discussion were those which the Select Committee considered had more than one viable or acceptable option for inclusion in the Constitution". (Page 6 of the Discussion Paper).

"Comments are invited not only on matters discussed in the paper, but also on any matters relevant to the terms of reference". (Page 7).

THE TASK OF CONSTITUTION MAKING

The task confronting the people of the Northern Territory in the drafting and adoption of a constitution for the new state has no precedent as such in the history of Australia. None of the existing Australian States have what could be described as a complete written constitution. As is the case with the United Kingdom and New Zealand, the constitutions of the Australian states are essentially a collection of conventions and practices that are not recorded in any single authoritative document.

Further, the Australian Constitution arose not out of a popular movement to create a new body politic to provide for true self-government but out of a desire to establish a Federation, self-government existing already in the various State Governments.

The Select Committee has implicitly determined that the constitution should set out the rules that are to govern the new body politic in far greater detail than the "constitutions" of the other Australian states (the last of which to gain responsible government being Western Australia in 1890).

The Bar agrees that, in the context of Australian political systems of the 1980's, there is a need to spell out more precisely the respective rights powers and duties of the various organs of Government. Further, the experience of the operation of representative government in Australia over the last century and particularly the changing nature and role of its constituent parts, highlights a need to consider afresh the respective rights, powers, and duties of these constituent parts. As the Select Committee itself has noted, the powers of the Queen's representative require careful reconsideration - a reconsideration no doubt due in part at least to the events of 1975. Indeed, the actual presence of the Queen's representative requires a fresh examination.

What then is the role of the draft persons of the constitution of the new State?

The new State must exist in a Federation with the other Australian States and the Commonwealth. These other bodies all follow the Westminster system of responsible government which, in the

absence of persuasive reasons to the contrary, also ought to be adopted for the new State. On this assumption, a fortiori, it must be the experience of these bodies which will be of greatest relevance to the task of drawing the constitution of the new State.

The starting point therefore must be to examine the operation of the States (and also the Commonwealth) over the last century (including an examination of the experience of the Territory since self-government) in an attempt to determine; firstly, what is the true nature of their constituent parts; secondly, what rules currently exist to govern their functions; thirdly, what inequities and injustices are arising out of these systems of government and for what reasons; fourthly, in the context of the above to define the system of government desired by Territorians; and finally, to draw a constitution that will provide for and protect such a system.

It is fair to say that the Select Committee in dealing with items one to four above have assumed the Territorians desire generally the same system of State Government that exists elsewhere in Australia. Whilst it may be true that the majority of Territorians desire full Senate representation and Territory control over the Territory's land resources, who can say with confidence that the majority of Territorians agree with a system where parliament is asked to consider legislation to remove a basic civil right put forward by the executive after midnight (Queensland -amendment to Traffic Act to take away the effective right of appeal from a decision refusing a permit to march) or where the travel excesses and frauds of parliamentarians unpunished (Queensland - Peel Report) or where public monies are used to meet the award and costs arising out of an unjustified defamation because the defamer was a Minister of the Crown (South Australia's Minister for Health August 1988)? There are many other instances in the history of the Australian states which would concern Territorians and which they may wish to guard against in the constitution of the new state.

If we are simply to duplicate the existing systems of State Government we shall inherit their inequities as well as their strengths. In drawing the constitution we must look closely at what exists, what we want and, in the context of the former, determine how best to achieve the latter.

Matters that ought to be considered but have not to date been raised are, for instance:-

1. Citizen initiated referenda.
2. A system of reviewing public expenditure.
3. An express and enforceable set of Parliamentary ethics.
4. An entrenched right of review of administrative decisions.
5. An entrenched right of freedom of information.
6. An entrenched right to due process.

The fact that these matters have not been raised for discussion suggests persuasively that a full analysis of the options available to us has not yet taken place.

As the experience with the Australian Constitution indicates, every effort must be made at this stage to ensure that the final product satisfies as far as possible the legitimate aspirations of the people of the Territory. Unless a real effort is made to ascertain what those aspirations are, the end product will not properly serve its purpose.

THE PROCESS OF CONSTITUTION MAKING

It is axiomatic that the Constitution will be a reflection of the process by which it is made. The principles and sentiments we wish to see in the final product must be incorporated into the process of creation.

Particularly, the process ought to involve the participation of the members of the community as far as is reasonably practical. Further there must be a balance in the representation of the various interests groups in the community.

The process proposed by the Select Committee is open to criticism on the grounds that it fails to properly balance the interest groups in the community.

The Select Committee itself consists entirely of members of the Legislative Assembly. Whilst the Committee is seeking the views of all interested persons, in the end it is its decision alone as to what form the draft Constitution will take and what options are available within that draft.

This draft is then presented to the Legislation Assembly where it is debated and recommendations made, presumably along party lines, with respect to the options for amendment.

Up to this stage, the process of constitution making is within the ultimate control of the members of the legislative arm of the existing body politic only, which in practical terms can be further confined to the members of the ruling political party in the Legislative Assembly.

It is beyond reasoned dispute that such persons have a clear vested interest in the process of constitution making as it is more than probable that they will make up a substantial number of the members of the legislative arm of the body politic that will be created by the new Constitution. It is these people that will have their conduct governed by the provisions of the new Constitution.

Whilst it is clear that politicians have a legitimate, important and indeed necessary role to play in the constitution making process, that role should not be determinative or out of proportion to the legitimate interests of other groups in the community.

It would be difficult to suggest that by the time the draft is placed before the "Territorial Constitutional Convention", that convention will not find its options limited to a substantial extent by the nature of the draft (which itself will detail the "options") it receives from the Select Committee and the Legislative Assembly. This limitation on the power of the convention is expressly referred to by the Select Committee itself when it states that the convention's task will be to "ratify a final draft" (page 4 paragraph (ii)).

The Bar recommends that in order to remedy this imbalance, the Select Committee ought to convene the constitutional convention directly and to pass on to it at this stage the preparation of a draft Constitution.

This body should be expressly empowered (and appropriately funded) to enquire into the operation of the existing state systems of government and, in the light of the perceived aspirations of Territorians, to determine the system of Government that ought to be adopted in the Territory. Once

this point has been reached the task of drawing the constitution ought to be relatively straight forward.

This is not to say that the Select Committee should be rendered impotent - indeed it ought to continue to assist the convention and to ensure that it functions according to its terms of reference. The reference of the draft Constitution to the legislative assembly for its comments prior to the referenda would ensure that Parliament has an ample opportunity to contribute to the Constitution making process and particularly to make its views known.

CONCLUSION

It is trite to say that great care must be taken in the drafting of the Constitution. Particularly, the aims to be achieved by it and the principles to be enshrined in it must be scrutinised closely in the light of the experience of the existing bodies we seek to emulate.

Until we have done this, it is too early to be addressing the matters raised in the discussion paper.

Further, it is essential that the consideration of these major issues be given to the constitutional convention at this stage. As with the Australian Constitution, it must be the product of a popular consensus, not a parliamentary committee.

SUBMISSION NO. 20A

ADDITIONAL SUBMISSION NO. 20A

NORTHERN TERRITORY BAR ASSOCIATION

PRESIDENT: DEAN MILDREN Q.C.

SECRETARY: JOHN REEVES

30 March 1989

Mr Rick Gray
Executive Officer
Select Committee on Constitutional Development
G.P.O. Box 3721
DARWIN N.T. 0801

Dear Sir,

Thank you for your letter of 7 March 1989. I understand that you now have a copy of our submissions of 29 August 1988.

A representative of the organisation would be pleased to attend before the Committee to speak in support of our submission. I would be grateful if you would liaise with me in order to fix a mutually convenient time.

I have perused the booklet of proposals enclosed in your letter and would respectfully commend the committee on producing a document that allows persons of all backgrounds to understand a number of the issues involved in the preparation and adoption of the new constitution.

However, I would strongly recommend that you add the following items to the agenda in order to obtain the views of the members of the public in respect thereto:

1. CONSTITUTIONAL CONVENTION

The proposal made in our submission that the convention be convened immediately and be given the task, by committee, to draw the draft constitution. Clearly it is imperative that a determination be made in respect of this issue as soon as possible. Accordingly it is important that the views of the general public on this question be obtained directly. This would also provide an opportunity to seek their views concerning the composition of the convention and the selection of its delegates.

2. ABUSE OF POWER

Protection against corruption in Government, the Judiciary and the Police, by providing, for example:-

- 2.1. an entrenched right to freedom of information
- 2.2. an entrenched right to administrative appeal
- 2.3. an entrenched right to the audit and review of government expenditure and access to supporting documentation
- 2.4. the declaration of the financial interests of members of parliament, senior public servants and judicial officers
- 2.5. the entrenchment of an express and enforceable set of ethics in respect of ministers, parliamentarians, senior public servants and judicial offices

3. CITIZEN INITIATED REFERENDA

The right of a certain percentage of voters to require by petition that a referendum be held in respect of the amendment the subject of the petition.

With the exception of the proposal that the task of drafting the constitution be referred to the constitutional convention at this stage, I would stress that the Bar does not yet have a fixed opinion in respect of any of the above. However we believe that these proposals ought to receive serious and detailed consideration.

If you have any queries with respect to any of the above matters please do not hesitate to contact me.

Yours sincerely,

ALISTAIR WYVILL

Chairman - Constitutional Development
Subcommittee

SUBMISSION NO. 21

K T BORROW

5 Lockwood Road
ERINDALE SA 5066
Telephone: (08) 31.4075
Received 28 September 1988

SUBMISSION RECEIVED FROM MR K T BORROW

(CASSETTE TAPE)

THE NORTHERN TERRITORY OF AUSTRALIA AND FEDERATION.

My subject this evening is the Northern Territory of Australia and Federation. The Northern Territory from what could be called a legal point of view, having been so recently discussed in the Australian Law Journal, I am free to devote attention this evening to how Australians themselves viewed the acquisition in 1863 of what could be called the new northern province.

The history of the Northern Territory eventually will possess little real importance except as an illustration of what could happen when either through ignorance or any cause the nation's history comes to be disregarded. It generally happens that when any large unoccupied country is discovered an immediate urge is created to explore for purposes of financial gain. The Northern Territory was no exception in this regard. The South Australian Pastoral Association, a powerful body with high connections and having the ear of the London Times, was eager to fill a customary role and although not officially connected with the movement, in its early stages was very successful in contriving matters to its own liking.

The Northern Territory has variously been described as a white elephant or a great Eldorado of vast potentialities according to political taste and fancy of the moment. And even in late years as a monster harlequinade. It is sometimes said the truth is stranger than fiction. One might well be excused for applying this old adage to almost everything associated with the Northern Territory. By a strange sort of irony of fate whatever was proposed was almost at once brought to nought by what might almost seem a higher power.

For example most unwittingly a chain of circumstances was at once set in motion, the effects of which are discernible even to this day. This has to be traced to an incident which occurred during John McDouall Stuart's journey to Chambers Bay when an Aboriginal was unfortunately shot by a member of his party. Mercenary interests magnified this affair to a point where the authorities were forced to bring the matter under notice of the Court. Questions of jurisdiction in this remote area of north Australia were thereupon hotly argued and it is not too much to say that this resulted in it becoming a factor in the passing, in 1865, of the famous Colonial Laws Validity Act which laid restraint on the passing of local laws opposed to imperial legislation. Dicey comments "this Act is of the highest importance because it determines and gives legal authority to principles which have never before been accurately defined and were liable to be treated as open to doubt".

When it is appreciated that it is this Act which actually destroyed the many foreign hopes of South Australians in their dealings with the Northern Territory and later barred the way to a simple

arrangement being come to between the Commonwealth and South Australia to take over the Northern Territory, its unpopularity in this country is understandable enough. The Northern Territory was placed by England under the control of the Governor of South Australia by letters patent dated the 6th of July 1863. By its very action in this regard it showed that it was claimed as British territory and when, in 1888, Earl Darby gave what is described as the gratifying assurance to South Australia that there was no prospect of the terms of the union being disturbed, it shows how it was regarded at that moment.

This is important because the question of how the English Ministry viewed this matter has to be clearly understood because no reasonably well-informed Australian would, for a moment, desire to lay claim to more than they are, or rather we are justly entitled to, especially where the mother country is concerned. But it must be made clear that power to pass laws for the peace, order and good government which is the usual method by which legislative power is given was not considered necessary in this case because, it is said, of a clear understanding with South Australia which was not to become involved in any large-scale colonising venture in the Northern Territory. It can easily be seen that this peace, order and good government which is always recognised as sovereignty in the air, once has been conceded would have at once ended the temporary nature of the arrangement. But this absence of any real legislative authority so far as the Northern Territory is concerned made it a sort of floating Territory and a tempting bait to a later school of ardent land nationalists.

However it also made it a major issue in Australian politics as it still is, although all is kept well in the background. South Australia originally readily enough acquiesced in the temporary nature of this arrangement but very soon afterwards came to regard the Northern Territory as their very own, to do with as they pleased. No doubt it is true that some of the more sober minded members of the community rather, such as Mr Henry Scott, rather deprecated this idea but when he expressed disapproval in the Legislative Council, he was promptly told he was unpatriotic and was shouted down. (See Hansard).

Consistent with this view of ownership each government resident sent to the Northern Territory, with monotonous regularity, complained of the hampering effect of the absence of any real governing authority, only hopefully, and with equal regularity, to be told that if only a little patience were to be exhibited everything would soon be put right. But such a power and the very nature of things could not be created until the colony became self-governing. It is worthy of notice, however, that great trouble was always taken to create the impression that South Australia and the Northern Territory represented one undivided geographical area. Maps without a dividing line were issued in England in support of Dr John Coben's thesis entitled "South Australia as a Federal Unit" which he read before the Royal Colonial Institute in London in March 1899. Dr Coben's mission seems to have been to teach the English people that federation meant union but not unity. But on this occasion he had the temerity to say that South Australia, as you are all aware, is the middle strip of the Australian continent extending from the southern sea to the Indian ocean.

The name was correct in the geographical sense when the colony was established but since the addition in 1863 of the Northern Territory, it is no longer so. It seems quite evident that he did not quite get away with this on this occasion because the Journal Record that Dr Coben is a man unused to contradiction and when it comes, he takes it very badly, but we need not go into that. But the point is that if such a view had generally existed in Australia, that is that the Northern Territory was

in fact incorporated within the province itself and actually formed an integral part of the colony of South Australia, it would have been unthinkable or at least highly improper for David Syme of the Melbourne Age to constantly harp on the national danger of allowing the Northern Territory to remain undeveloped and unpeopled. Yet immediately the Commonwealth was established, we are told, Syme proceeded to teach the nation that his duty was to take over the Northern Territory at the national charge.

During the federal campaign Sir Edmund Barton coined the phrase "a continent for a nation and a nation for a continent". But this was hardly a happy auxiliary seeing it was a mere repetition of the dispossessed convicts cry of 1819 of "Australia for the Australians". However it was hardly to be expected that merely by the employment of high-sounding phrases a new nation would be given birth, endowed with all the wisdom of the ages and which suffered no growing pain. At the time of federation, matters were in a very unsettled state in parts of Australia. Many responsible early settlers of the more conservative class greatly feared the inception of federation but were led to support the move because they realised that growing republican tendencies in Australia could easily produce something even less palatable.

Sir Henry Parkes of New South Wales and John Murtagh McCrossin of Queensland had gathered around them a body of persons, generally speaking consisting of comparatively new arrivals in this country. McCrossin of Queensland and Duncan Gilles of Victoria were both miners and arrived for the gold rush in 1851. And Dr John Coben, after which Sir John, one time premier and Agent General for South Australia, only reached South Australia in 1875. Such new arrivals it is said new little and cared less to enquire deeply how such a wide field was open to them almost without letter or hindrance, for reshaping to their own liking.

McCrossin, for example, aimed to hand over the Crown's possessions in parts of Western Australia and in the Northern Territory to the new Commonwealth parliament. Parkes, more cautious in his approach to what he regarded as a thorny subject, advised at first, avoiding any reference to the Crown lands in the manifesto which is about to be issued. (See 50 years of Colonial Government). Dr Coben records that the idea had been fostered in this country that we had only to agree amongst ourselves on the sort of constitution desired for it to be at once rubber stamped in England. But when rumours held it that on the contrary, it might be subject to close scrutiny, considerable consternation prevailed.

David Syme had played a prominent part in promoting federation and I quote "Syme aimed to abolish all arbitrary divisions and boundaries and to teach the Australian people that they were not any longer New South Welshmen or Victorians or South Australians but an undivided people and a nation". (David Syme, by Ambrose Pratt with introduction by Alfred Deakin 1908). Deakin had been a leader writer on "The Age" and introduced to politics by Syme. He and Deakin always appeared to have expressed very similar sentiments. Parkes even went further and proposed, by legislation, to change the name of New South Wales to Australia but was laughed out of the idea.

How all these ideas could be reconciled with the Australian Constitution, which is a constitution under the Crown of the United Kingdom, never seems to have entered their heads or to have bothered them in the least. It is not surprising therefore that when the Constitution eventually came under consideration in England, Mr Joseph Chamberlain insisted that the Colonial Laws Validity Act would apply and determine the lawfulness of anything which later might take place and of course the

Statute of Westminster has recently confirmed this. Mr Chabledon disclaimed all desire to interfere with Australian interests. Those he said were left to the Australians themselves.

The British Government was only anxious to protect imperial interests which, if left to an Australian Court, might enlarge the scope indefinitely to the prejudice of the rest of the empire. (The Federal Story, page 54). From such a confused background, it is fortunate indeed that we are able to turn for our enlightenment to a recognised contemporary authority in order to understand how, in view of the fact that Mr Barton at an early date had refused to include in the Constitution anything which he called a blank cartridge, it was proposed clearly to set out the expectations of Australia on the one side and consistent with the imperial obligations on the other.

Quick and Garran, the annotated Commonwealth Constitution affords just such a useful record. Mr John Garran was secretary to the Constitutional, was secretary to the Commonwealth Commission Drafting Committee and therefore his views must be given considerable respect. I quote "at first the Constitution will limit to the Commonwealth, will not necessarily be coterminous or have a common boundary with the boundaries of the states. Under the Constitution any country not within the chartered limits of a state, may be placed by the Queen under the control and authority of the Commonwealth. This grant of power will enable the Queen, with the concurrence of the Federal parliament, to give effect to any approved plans for transferring the Northern Territory and will enable it to be placed under the authority of the Commonwealth."

This, not only is a clear acknowledgment that the Northern Territory, as late as 1900, was not an Australian possession or under the control of any local authority but remained in possession of the English Crown. It also implies that without the cooperation of the Queen, nothing could be accomplished in the desired direction. It is important to note that the vital orders in Council, which are envisaged in this previous remark, still remain to be issues, evidently something had gone wrong in the meantime. Even before 1900, the Northern Territory had become a mere pawn in Australian politics and been caught up with the aims and aspirations of a powerful pressure group, always prone to call itself the voice of the people. Berithdale Keith, *Dominions of Sovereign Governments*, eminently accepts the view that they failed in many of their aims for these states.

Enthusiasts for federation sanguine thoughts the federation might dispose of the lands which the colonies had been unable to develop and to take over the vast Northern Territory which South Australia nominally owned. Matters were allowed to drift into a very unsatisfactory position when Sir Landon Bonython was moved to inquire in the Federal Parliament whether it was intended to leave the Northern Territory without laws of any kind. Mr Deakin asked at first that the question should not be pressed. Only shortly afterwards it was announced to Parliament that it was hoped shortly to come to some arrangement with South Australia to take over the Northern Territory (Hansard). It must be explained, for reasons which will appear shortly, that nothing which will be said about Mr Deakin and the Northern Territory detracts in any way from his early notable achievements in connection with the federation of the Australian colonies. Direct negotiations between South Australia and the Commonwealth commenced in 1907 and continued up until 1910: McMahan Glynn for South Australia and Mr Deakin for the Commonwealth, except for a very slight break to allow Mr Deakin to attend the Colonial Conference in London in 1907.

It must be assumed that while in England Mr Deakin had hoped to come to some arrangement whereby the Northern Territory could be taken over by the Commonwealth without passing by

orderly stages to self-government, as provided for by the Repeal Act of 1861. During Mr Deakin's absence abroad considerable publicity was given to the matter in Australia. A conference of premiers was held in Brisbane in May 1907, at which Premier Tom Price of South Australia seems to have rather dropped a brick when he told the Assembly "South Australia does not own the Northern Territory, only manages it".

And the Reverend Mr W H Fitchet, republished an article by the explorer H V Barkly entitled "Who Owns the Northern Territory". This contained a statement that nothing but a new imperial act could put matters right. Mr Deakin reached London in April and left again on May the 20th, according to Professor Walter Murdoch. I am relying much on Mr Walter Murdoch because he was given access to all Mr Deakin's diaries and journals and he appears to speak with inside information. I quote "Mr Deakin suffered defeats at the conference itself on most of the issues which he considered important, he was beaten".

It is not impossible that the local publicity, this local publicity contributed somewhat towards these defeats. In any case, this is how Mr Deakin evidently viewed it. On July the 4th 1907 the Bulletin published an article entitled "A Gain on Marbles on the Day of Judgement" which unmistakably singles out the slighting reference Premier Tom Price, the Reverend Mr Fitchet, whose book deeds that when the empire is alluded to, and Premiers, as a class genre. But the sudden and complete disregard of all previous reticences on the subject of the Northern Territory shows its blaze to the world in its true state to the rest of Australia seems remarkable. However, the article which is too long to be quoted in full but extracts at best speak for themselves. I quote "The obvious advantage to be gained by the unification of Australia, the abolition of state names, boundaries, legislative and governments, the transfer bodily of everything to the Australian parliament and the subdivision later on of the country into local governing districts for purely local purposes would be that it would abolish the school in which a narrow local politician is trained. The noisome old building would go down roof, walls and chimney and even the floor and cellar would be obliterated."

These thoughts naturally arise through consideration of the present position as regards the Northern Territory. There is something monumental about the effrontery of certain small men engaged in a local way to attend to purely local affairs when they profess to dictate to the whole people of Australia what they should do with their own continent. It is only by amazing good fortune that the Northern Territory through state selfishness, dissension and folly is not already another India, another China run on Crown colony lines or bossed by a chartered company, all by reason of this neglected northern possession, and the danger is not yet over.

The Northern Territory was never really transferred to South Australia. It was administered by that state but remained purely British property. It was never politically part of Australia and is not to this day. It is a portion of the Commonwealth only in name. It is competent to the British government without even the consent of the British parliament to revoke the present arrangement at a moment's notice. Even at this late hour, Britain might be willing, if approached, to take it back and make it part of its other Asiatic possessions. It is fairly well understood that Britain is willing to surrender the Crown colony of the Northern Territory to Australia when the Commonwealth is prepared to take over responsibility of it. There is no news as yet of anything of any such definite surrender.

Therefore the folly of these little men, who babbled on the edge of a precipice, as to what they were willing to do or were not willing to do, is curiously suggestive of a mob of infants quarrelling over a

handful of marbles in the backyard on the day of judgement. It is interesting to note how well this accords with Quick and Garran's version of the constitutional position of the Northern Territory. But whatever explanation might be forthcoming for this all embracing dissatisfaction which is being expressed in connection with a constitution for almost anything for which the constitution stood, the inescapable fact emerges that the Northern Territory, regarded as purely British property, is being paraded for all the world to see and consequently a little later on it would have been almost ridiculous for Mr Deakin to claim it being within the sovereign rights of the Commonwealth parliament over existing interests within its dominion. Yet this is precisely what happened.

The final decision to go ahead with the passing of the Northern Territory Acceptance Act in 1910 arose out of a suggestion made by an Adelaide newspaper that possible delay might be due to waiting on replies to Commonwealth communications with imperial authorities. This at once brought forth an indignant telegram from Mr Deakin, curtly pointing to an earlier announcement that such a view impugns the sovereign right of the Commonwealth parliament over existing interests within this dominion.

Unfortunately for this argument it was this very 1907 conference which seems to have turned, constituted turning point in Mr Deakin's career that the titled dominion owed its origin being then chosen to distinguish parts of the empire enjoying responsible government from the dependent empire and this of course included the Commonwealth of Australia. The employment therefore, in such a context, could reasonably be supposed to imply Mr Deakin's earlier assertion that in future colonial policy must be imperial policy. In any case the hint which he then gave was avidly seized on and on a formal legal opinion being obtained pointing to Section 111 as providing power to South Australia to surrender territory, the bill was passed by an incoming Prime Minister, Mr Deakin in the meantime having passed out of politics.

And the Northern Territory was declared to be a Territory of the Commonwealth. Mr Vance Palmer says it was apparent that Mr Deakin impressed the multitude more by his oratory rather than by his arguments and the Australian Encyclopaedia, evidently sensing the need for some explanation or apology, speaks of Mr Deakin's mental remoteness and his failure to understand how arguments and acts that appealed to him will strike other people, all of which leads up to what is always called Professor Walter Murdoch's painful revelation that Mr Deakin never quite recovered from his oversee campaign in 1907 and that was his terrible fate to be the spectator of his own mental failure.

In conclusion I cannot do better than to quote explorer H V Barkly's remarks when he says "it is certain that nothing can be done towards developing this fifth of Australia on business lines until the ownership question is settled definitely and forever".

Mr K T Borrow

[Some of the enclosures to this Submission have not been included in this Volume.]

SUBMISSION NO. 22

DARWIN CITY COUNCIL

LORD MAYOR'S OFFICE

CIVIC CENTRE,
DARWIN N.T.

17 August 1988

The Hon T Harris, MLA
Chairman
Select Committee of the Legislative Assembly on Constitutional Development
GPO Box 3721
DARWIN NT 0801

Dear Sir

RE: PUBLIC HEARINGS ON CONSTITUTIONAL DEVELOPMENT

I refer to Darwin City Council's verbal submission to the Select Committee of the abovementioned hearings, and confirm that the Council was represented by a senior officer of Council's Management.

This path was chosen for two reasons; firstly, the lack of availability of the Lord Mayor or elected members due to prior commitments both interstate and in Darwin, and secondly, the detailed knowledge required to field questions from the Committee, which the particular senior officer who attended to give evidence possessed.

I am surprised that any suggestion should be made of this Council's lack of interest, preparedness, or sincerity regarding the issue of constitutional development. As was indicated in the Council submission, Council fully supports the Northern Territory Local Government Association's position. The NTLGA's position was established, as you would be aware, by way of input from member Councils, including Darwin City Council.

It had been indicated that this officer would appear on behalf of the Council, and no indication was given that this action might be considered inappropriate by the Committee.

It is disappointing to Council that, at this "ice-breaking" stage, Darwin City Council was not given a full and proper hearing.

Council is aware that submissions may be forwarded to the Select Committee during the next six months or so, thus will be submitting further contributions as it sees fit so to do.

Yours faithfully

ALDERMAN J ANTELLA
ACTING LORD MAYOR
Encl.

**THE FOLLOWING SUBMISSION IS VERBALLY PRESENTED BY
SUSAN ANDRUSZKO, EXECUTIVE ASSISTANT TO THE TOWN CLERK, ON
BEHALF OF THE DARWIN CITY COUNCIL - WEDNESDAY 11TH AUGUST 1988**

"MR CHAIRMAN

MEMBERS OF THE SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT,

THE DARWIN CITY COUNCIL HAS CONSIDERED THE DISCUSSION PAPER ON THE PROPOSED NORTHERN TERRITORY CONSTITUTION, AND, ALTHOUGH IN GENERAL AGREEMENT WITH VARIOUS PROPOSALS, HAS CONFINED COMMENTS ON SAME TO THE ISSUE OF LOCAL GOVERNMENT AND ITS PLACE IN THE CONSTITUTION.

AS YOU ARE AWARE, THE NORTHERN TERRITORY LOCAL GOVERNMENT ASSOCIATION HAS ALSO MADE WRITTEN SUBMISSION TO THE SELECT COMMITTEE, THE CONTENT OF WHICH THIS COUNCIL SUPPORTS.

THIS COUNCIL APPRECIATES THE FACT THAT THE SELECT COMMITTEE FAVOURS SOME CONSTITUTIONAL PROVISIONS FOR THE RECOGNITION OF LOCAL GOVERNMENT IN THE NEW STATE, HOWEVER, WISHES TO STRESS THAT THE ISSUE AT HAND IS THE RECOGNITION AND PROTECTION OF LOCAL GOVERNMENT POWERS, FUNCTIONS, DUTIES, RESPONSIBILITIES AND FINANCIAL RESOURCES.

AT ONE END OF THE SPECTRUM IS SIMPLE RECOGNITION OF THE EXISTENCE OF LOCAL GOVERNMENT AND AT THE OTHER IS ENSHRINING THE ENTIRE LOCAL GOVERNMENT ACT AND ANY NECESSARY AMENDMENTS INTO THE PROPOSED NEW CONSTITUTION. OF COURSE, AGREEING ON A POSITION BETWEEN THESE TWO POLES IS DESIRABLE.

IN ADDRESSING THIS ISSUE CONSIDERATION SHOULD BE GIVEN TO THE PRINCIPLES SET OUT BY THE NORTHERN TERRITORY LOCAL GOVERNMENT ASSOCIATION IN THEIR SUBMISSION AND TO WHICH THIS COUNCIL IS IN AGREEMENT. BRIEFLY THESE ARE:

- A) GENERAL COMPETENCE AND AUTONOMY FOR EACH LOCAL GOVERNMENT BODY TO ACT FOR THE PEACE, ORDER AND GOOD GOVERNMENT OF ITS AREA.
 - B) SECURE FINANCIAL BASIS.
 - C) PROPER RECOGNITION OF THE ELECTED MEMBER ROLE.
 - D) PROTECTION FROM DISMISSAL OF INDIVIDUAL LOCAL GOVERNMENT BODIES WITHOUT PUBLIC ENQUIRY.
-

-
- E) DUE CONSULTATION PRIOR TO ANY CHANGES TO POWERS, FUNCTIONS, DUTIES, RESPONSIBILITIES AND FINANCIAL RESOURCES.

THIS COUNCIL STRONGLY BELIEVES THAT ENTRENCHMENT AND PROTECTION OF LOCAL GOVERNMENT WITHIN THE CONSTITUTION MUST BE IN ACCORDANCE WITH THE ABOVEMENTIONED PRINCIPLES, PRIMARILY TO PROTECT THE EXPECTATIONS OF ORDINARY RESIDENTS WITHIN THE COMMUNITY THAT THE THIRD TIER OF GOVERNMENT, — WHICH THEY AS A COMMUNITY, HAVE COME THE RELY ON — WILL IN PLACE AS LONG AS ACTING FOR THE PEACE, ORDER AND GOOD GOVERNMENT OF ITS AREA.

IT IS VITAL THAT A NEW NORTHERN TERRITORY STATE RECOGNISES THAT RESIDENTS HAVE A RIGHT TO DEMOCRATICALLY ELECT A THIRD TIER OF GOVERNMENT AND THAT THIS GOVERNMENT AND ITS MEMBERS WILL BE AFFORDED LEGITIMATE RECOGNITION AND PROTECTION OF THEIR POWERS, FUNCTIONS, DUTIES, RESPONSIBILITIES AND FINANCIAL RESOURCES. IT IS THIS COUNCIL'S VIEW, IN RESPECT OF SECTION P. ENTRENCHED PROVISIONS GENERALLY, THAT LOCAL GOVERNMENT IS A MATTER OF VITAL IMPORTANCE IN THE FUNCTIONING OF THE NEW STATE, THUS SHOULD BE ENTRENCHED IN A CERTAIN MANNER AND FORM SO AS TO REQUIRE A TWO-THIRDS MAJORITY OF NEW STATE ELECTORS AT A REFERENDUM PRIOR TO ANY MATTER RELATING TO LOCAL GOVERNMENT BEING AMENDED OR REPEALED.

IT IS ALSO THIS COUNCIL'S VIEW THAT THE NEW CONSTITUTION BE DEVELOPED BY WAY OF A WHOLLY NOMINATED CONSTITUTIONAL CONVENTION, OF WHICH THE MAJORITY OF DELEGATES SHOULD BE TERRITORIANS. THERE IS SCOPE FOR A PARTIALLY NOMINATED, PARTIALLY ELECTED CONVENTION; HOWEVER, TOO MANY QUESTIONS REMAIN UNANSWERED AT THIS TIME TO MAKE A DEFINITE DECISION (E.G. WHETHER IN FACT THE COMMONWEALTH WILL ALLOW A WHOLLY NOMINATED CONVENTION. THIS COUNCIL RECOGNISES THAT THERE MAY BE A NEED TO NOMINATE SPECIALISTS FROM INTERSTATE, OR INDEED OVERSEAS.

I THANK YOU, ON BEHALF OF THE DARWIN CITY COUNCIL, FOR THIS OPPORTUNITY TO PRESENT OUR VIEWS TO THIS COMMITTEE, AND ADVISE THAT WE LOOK FORWARD TO CONTINUED INVOLVEMENT IN THE PROCESS OF DEVELOPING A NEW STATE CONSTITUTION FOR THE NORTHERN TERRITORY."

SUBMISSION NO. 22A

DARWIN CITY COUNCIL

CIVIC CENTRE, DARWIN, NORTHERN TERRITORY

Correspondence to Town Clerk, G.P.O. Box 84, Darwin, N.T. 0801. Telephone: 82 2511, Telex AA 85772 Facsimile 41 0849

6 OCT 1989

Mr. Rick Gray
Executive Officer
Legislative Assembly of the NT
GPO Box 3721
DARWIN NT 0801

Dear Mr. Gray,

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

Following your recent circular regarding the above matter, I am pleased to advise that Council has resolved to inform the Committee that it has no further submission to make at this stage. However, it would be pleased to provide a copy of its correspondence with the Chief Minister regarding its views on the transfer of powers between Governments. On this basis, I have enclosed the relevant material for the Committee's information. I trust this will be of use to the Committee in its deliberations.

Yours sincerely,

BARRIE L. MCINTYRE
ADMINISTRATION MANAGER

ENC:

LORD MAYOR'S OFFICE

CIVIC CENTRE,
DARWIN N.T

89/TCX403:SA:SH

8 SEP 1989

Hon. M. B. Perron, MLA
Chief Minister of the Northern Territory
GPO Box 3146
DARWIN NT 0801

My dear Chief Minister

TRANSFER OF POWER - COMMONWEALTH TO NORTHERN TERRITORY

I refer to your letter of 10 July 1989, and advise you that Council has adopted a very constructive approach to the submission, both from the Government and Local Government perspectives.

The following are the powers that the NT Government is seeking from the Commonwealth which, after consideration by Council, were deemed relevant to Darwin and therefore commented on by Darwin City Council.

1. Consultation with the Territory for the appointment of the Administrator.

Council agrees with Government that there should be consultation prior to the appointment of the Administrator.

Council also points out that there are some appointments currently made by Government Ministers, for example, Town Planning Authority Members, for which Council would like to be consulted. Of course, Council does have the ability to put up nominations from which the Minister will choose members, but by having to put up more names than that required for the authority, the Minister is choosing, rather than approving, the members.

It is accepted that the appointment of Administrator is specially linked between the Commonwealth and your Government, and therefore more likely to follow a consultative course rather than one of approval.

2. Removal of the powers of the Commonwealth Minister to instruct the Administrator of the Northern Territory.

Council agrees with Government's reasoning, especially since the power is not known to have been used since Self Government. There are parallels between Council and Government, for example, the Minister for Lands and Housing directing the Planning

Authority from time to time, and the Minister for Labour and Administrative Services directing Council, through unnecessary legislation, in certain areas. An example of this is the inclusion of fees in the by-laws, unnecessarily so, thereby causing a long process every time Council wishes to change the fees for various permits, etc.

Council would be pleased to discuss other areas where Government intervention or the possibility thereof is unwarranted.

Abolition of the power of the Commonwealth to reserve and disallow N.T. legislation.

Council supports the Government on this point, and wishes to indicate that Councils should be given more power in relation to by-laws for municipalities. I refer specifically to the example where fees and charges are included in by-laws. It would be in the Council's and Government's interests to not include these, as each year amendments to the legislation are required as a result of their inclusion.

4. Transfer administration of Commonwealth National Parks in the Territory to the Northern Territory.

This matter does not affect this Council as the areas are not proximate to Darwin and upon approval of the recommendations arising from the Working Party on the rationalisation of functions, Council will receive title to East Point Reserve and Bicentennial Park. Council has debated with the Government for years on this very subject, and it is pleasing to see that positive results arising from our efforts will soon come to fruition.

5. Transfer the ownership of uranium and other prescribed substances in the N.T. to the Territory, and the executive authority in these matters.

Though this matter does not directly affect this Council, I would be interested to receive your comments on the economic and safety impacts on the City of Darwin.

6. Transfer of land in the Territory currently held by the Commonwealth but not required for clearly identifiable Commonwealth purposes.

The parallel of this matter has been the subject of ongoing negotiations between the Territory Government and Council for some time. Again, the working party has resolved many of the components of the problem, but there still remains land in Darwin which should be identified, then granted to Council if not required for Government purposes.

Council offers its assistance to the Department of Lands and Housing Urban Land Management Branch, if it is viewed as potentially helpful in finalising this ongoing matter.

The following are the powers which are less consequential to this Council, but which have nevertheless been considered.

7. Transfer to the N.T. ownership of minerals on Commonwealth land and the establishment of the sole authority to issue mining titles.
-

8. Introduce the N.T. as a party to the Gove/Nabalco agreement.
9. Re-incorporation of the Island Territory of Ashmore and Cartier within the Territory.
10. Full legislative and executive authority in all matters relating to industrial relations.
11. Patriation to the N.T. of the Aboriginal Land Rights (Northern Territory) Act 1976, whilst maintaining an appropriate role for the Commonwealth in ensuring the protection of Aboriginal interests.
12. Immediate grant of additional representation in the Federal Parliament of two Senators and one Member of the House of Representatives.

Although the effects of items 7 through 12 are seen to be negligible on this Council, Council is supportive of Government's pursuit of the various powers to enable Government to take the Territory a few steps closer to Statehood.

On the topic of Statehood, I reaffirm Council's keenness to contribute to the proposed Constitution. I understand the last scheduled hearings were delayed, thus would be pleased if you would advise Council of the revised date.

As a matter of interest, Council's policy on Council/Government relations is "To promote cooperative working relationships with other Councils and Government to ensure consistency and fairness in the treatment of Darwin City Council and its residents." Part of the strategy to implement this policy is that Council comments on submissions when requested by Government or other bodies, and supports as appropriate various directions and plans by other bodies.

Council believes that there are many opportunities for your Government to treat Council in the same manner as you wish to be dealt with by the Commonwealth. There is much that should be agreed to in relation to the responsibilities of each level of Government and its appropriate functions for the development and security of Community and Country.

Should you require further support from this Council, please do not hesitate to make a request. I will be pleased to receive any information as to progress on this matter, as it represents the continuing advancement of Darwin, and the Territory.

Yours sincerely

ALD J P ANTELLA
ACTING LORD MAYOR

SUBMISSION NO. 23

SHEILA KEUNEN

4 October 1988

CIRCULAR TO:-

Sheila Keunen
6 Halford Cres
Page ACT 2614

Federal Gov.
and All States-Chief Minister, M PERRON
in acknowledgment of your letter,

Dear Mr T. Smith,

In answer to your letter dated the 15th September, 1988.

RE - ENCLOSURE FOR COMMENT DISCUSSION PAPERS ON A PROPOSED NEW STATE CONSTITUTION FOR THE NORTHERN TERRITORY.

Being an interested party in the light of an eventual Capital Territory Constitution I'm looking at yours with more than a casual interest. It might well be a role model. The fore runner of a modern, updated constitution, not only for the A.C.T. but ALL states. Being the last granted Statehood could well lead for a comprehensive and secure constitution not only for the people but the whole country. "and the last shall be first."

DISCUSSION PAPER ON REPRESENTATION IN A TERRITORY CONSTITUTIONAL CONVENTION.

NO PRESENTATION WITHOUT REPRESENTATION endorsing the condition the Chief Minister stressed, that the Convention must represent "a broad cross-section of community interests and opinions".

REPRESENTATION AT THE CONSTITUTIONAL CONVENTION.

I offer the public comment of the "mixed model", democratic enough for some and less costly for others. Across the board presentation from elected and nominated.

The suitability of nominated candidates offered - (Participating with elected members) such as local community organisations, farmers, land councils, Aboriginal, key groups for adequate Territory interest, each "specialists" in their own fields for executive, legislative, judicial and "other matters" .

Inclusion in both elected and nominated "generalists" who have some broad appreciation of constitutional subjects.

Residence in the elected territory; with provision for X numbers of floating elected nominated members chosen by the Legislative Assembly noted for their N.T. interest and/or qualifications.

The Select Committee s preferred Convention size of up to sixty to be represented of two thirds elected to one third nominated.

This was based on Elected Disadvantages being less, (the advantages, cost aside, were qualities desired for the people were reasonably balanced). Disadvantages broken down for a fair representation :

Wholly-elected two disadvantages (b,d).

Wholly-nominated four disadvantages (b,c,d,e)

INFORMATION PAPER No.1.

B. Method of grant of Statehood. Section 121 method to create a new State does seem on balance the preferable one as stated by the Select Committee. Proceeding on this basis being given the Territory referendum to proceed, in order to gain Commonwealth support.

To follow stated course of action as in 4(a) preparation of a new State constitution; (b) negotiations between Territory and Commonwealth incorporating the terms and conditions of the proposed grant.

C.(7) Where consultation with existing States to seek their support to the proposed grant of Statehood. This could be the time to confer with them the proposed newly created bill for human rights as roughly outlined below, than wait till Statehood is granted.

The bill to be universally taken up by all States.

This proposed Australian Rights Bill to include not only the American Bill of Rights as informed to the other states; BUT ALSO to marry it to the twelve articles of the American Universal Declaration of Human Rights with two counts from the Canadian Charter of Rights and Freedoms to make:(A.U.B.O.H.R.) AUSTRALIAN UNIVERSAL BILL OF HUMAN RIGHTS.
Compounded of:-

1. American Bill of Rights - Articles 1 - 10.
2. The addition of the Universal Declaration of Human Rights Articles - 2,12,17,19,20,21,22,23,25,26,29,30. (Subject to closer scrutiny)
3. Canadian Charter of Rights and Freedoms - Equality Rights, 15 (1) and Part 2. Rights of the Aboriginal Peoples. (Subject to scrutiny additions at this point.)

Further on Aboriginal Rights below.

E.12. Cocos (Keeling) Islands and Christmas Island Territories to be incorporated with the nearest state coastline.

PROPOSED NEW STATE CONSTITUTION FOR THE NORTHERN Territory.

C. FORM AND COMPOSITION.

Retention of the Westminster system of responsible government or 'Australian model' accepted by the Select Committee. If as in C.I.(c) does not include the Monarch or his or her representative is sought; the State in question is also losing God's representative of the church through the Royal House.

It is 15 DESIRABLE in this 'lucky' and 'God's own country' not to lose this spiritual link for Australia. As in C.I.(b) the definition of Parliament varies amongst the Australian States. Here a clear directive is needed, not only for the N.T. Constitution but all States if they are to come not only to maturity physically but to keep spiritually in line as well. The suggestion to the Select Committee that the legislative power of the N.T. shall be vested in State Parliament consisting of God and the Legislative Assembly.

P. ENTRENCHED PROVISIONS GENERALLY.

As in P.(d,e) a degree of entrenchment of the new State constitution as quoted.

R. LOCAL GOVERNMENT.

R. 2 & 3. Degree of entrenchment protection to include local government to avoid regional network control of states from impersonal Federal government.

R.4.a. A new Rights Bill to tighten up the loose wording of 'peace, order and good government'

T. HUMAN RIGHTS.

As in T.7. the adoption of an enforceable statement of human rights in the new State constitution as a form of "check" against possible abuses by the government or against undesirable legislation; on the understanding the human rights statement or bill is well-founded and veracious in as much it does not unduly limit other rights.

As in T.9. include (A.U.B.O.H.R.) in the new State constitution.

To recognise here that Indigenous (ref. Chambers 20th Century Dictionary, New Edition 1983) means ALL natives by right of birth (born in Australia), to include immigrants children born in Australia.

That Indigence means (native, aboriginal).

That Indigenous, Indigent and Multi-racial peoples be recognised in (A.U.B.O.H.R.)

Same educational requirements, dressing appropriately as required in establishments. Indigent leaning towards stockmen, breaking horses to be encouraged and made a national asset.

(A.U.B.O.H.R.) is: -

ONE FOR ALL AND ALL FOR ONE,

WE ARE FAMILY, WE ARE ONE.

We should not forget along with Human Rights, improved Animal Preservation Rights and Conservation Rights for each State.

S. ABORIGINAL / INDIGENT RIGHTS.

Put after T as a separate issue in recognition and protection of the 'first' natives.

S.2. If a favoured option by the Select Committee is to guarantee Aboriginal/indigent ownership In the new State Constitution, such that they can only be amended by following specified entrenchment procedures then it is paramount that the area of land such as tribal sacred burial ground be carefully chosen, so as not to encourage to the pointing of land after its become or is valuable.

S.4. For all groups it pays benefits of one kind or another. Ayers Rock is really of proud significance to Indigenous and Indigent alike, albeit different reasons.

Here the Indigent threatened the Indigenous Equality rights. T.8.ref.

NON-DISCRIMINATION IMMIGRATION SPECIAL ACT.

For the multi-racial peoples in all States coming under equal rights for every Australian and Federal Governments common entry requirements into Australia.

Entry requisite to be able to speak Australian and sign contract that in five to ten years their intention to become naturalised persons if intending to stay. 'Immigrant:- to migrate or remove into a country with intention of settling in. Accept and adopt Australia, its language and culture, in the land picked out to live, rather than extend their original country.

The older people who cannot change the language to have visiting visas. Certainly family groups are close, but this is what going to another country entails, the leaving of this group. These non speaking family groups prevent integration, making islands of different communities. The over practice of encouraging many previous customs, rather than your adopted country's, is not equality to those residents they come to join .

The stipulation of speaking Australian being not racial or unjust as it applies to all; having the effect of uniting a multi-racial Australia.

FINALISATION.

When the Northern Territory of Australia becomes a new State and a member of the federation it will have safe guarded and guaranteed the constitutional rights, that are presently only accepted on good faith by the 'peace, welfare and good government' charter.

It is hoped in the light of these new contributions stated above not only the Commonwealth accept them but the other States will follow along.

Yours faithfully,

From one Territorian to another,

SHEILA KEUNEN.

SUBMISSION NO. 24

R G (DICK) KIMBER

PO Box 2436
ALICE SPRINGS NT 0871

1-7-88

The Executive Officer
Select Committee on Constitutional Development
GPO Box 3721
DARWIN NT 0801

Dear Mr Grey

Hello.

As a resident of Alice Springs I can only state that the proposed public hearing for 5th July must be a poor-taste joke, a calculated insult, a deliberate attempt to frustrate legitimate discussion, an example of the Berrimah line at work yet again, and illustrative of the crassness of Northern Territory politics in general.

The day that this arrived in the mail it generally seemed to get what it deserved - hundreds were placed in the rubbish-bins, as with most junk-mail.

School wind-ups, the Alice Springs Show week-end and school holidays, with probably half the town/city heading for Expo or elsewhere, will no doubt insure that the Select Committee avoids a considerable member of supporters of the new State and Constitution, as well as a considerable number of opponents.

Please don't take this personally, but take the above as praise!

I now turn to the terms of reference.

Point (a) is irrelevant if there is not to be a new State. I therefore turn my attention to Point (b).

I do not at all agree that the Northern Territory should even remotely consider Statehood at this point in time. My reasons are as follows.

- (1) The population of the Northern Territory is insufficient, in the 1980's and foreseeable future, to warrant Statehood. A very considerable proportion of NT are non-voters (children), extremely short-term residents or (in the case of Alice Springs if not elsewhere) other than Australian citizens. This does not deny that these people contribute to the Territory's well-being, but it makes for an extremely small total NT adult population.

- (2) Following from the above, it is clear that there are, and will continue to be, considerable difficulties. These include:
- (a) An insufficient population for revenue raising through taxes;
 - (b) A continuing major dependence upon Federal Government, and therefore the rest of the Australian population through their tax contributions;
 - (c) An insufficient population to encourage people of ability to enter politics - the present combined NT Government and all members of the Opposition appear unable to run a Chook Raffle, and with very few exceptions past and present I see no hope for future improvement.

I fully accept that there have been many positive changes since the commencement of self-government, but the majority of them have not been as a result of the NT Government's doing so much as an extremely generous initial Federal-NT Government agreement, private enterprise at its best, Federal Government initiatives, and other accidental, incidental or outsider factors.

I also make the point that I greatly appreciate living in the Northern Territory, and more generally Australia; do my best in my own way to speak and write positively about it all (NT and most other politicians and used-car dealers aside); and have an effector CLP background that is stronger than anyone else I know (early colonial MP great-great grandfather; foundation President of old Liberal League; foundation President of Women's Liberal League; and so on).

The brochure received in the PO Box states that, "We Want YOUR Views". I am still on the boil, and my regret what I have written when I cool down. You and all members of the Select Committee may well all be very nice, reasonable people. Nonetheless, having written the above I'd rather be honest and send it off.

I remain offended. No doubt you'll feel much the same.

Yours Sincerely

R G (DICK) KIMBER

PS I encourage continued debate about Statehood for the NT, but suggest that the year 2001, the centenary of Federation, is a more likely appropriate time to be considering Statehood as a reality rather than the Bicentennial year.

SUBMISSION NO. 25

AUSTRALIAN SMALL BUSINESS ASSOCIATION

Australian Small Business Association
Northern Territory Division
P.O Box 39824
WINNELLIE NT 5789

16 August 1988,

THE CHAIRMAN,
SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT,
P.O. BOX 3721,
DARWIN N.T. 0801

ATT:- MR TOM HARRIS

Dear Tom,

Following our chance conversation last Friday I thought it would be wise to forward to you a copy of a paper I have left with Sir John Moore on Industrial Relations.

As I pointed out A.S.B.A. N.T. has been the primary force in attempting to have the N.T. Business Council present a united business approach on constitutional development. I still feel that this should be the most responsible business approach rather than the "scatter-gun" effect of multitudes of submissions.

However I am still happy to discuss with you our own associations views if you so desire.

Yours faithfully,

MAX ORTMANN.

PRESIDENT

Australian small Business Association
Northern Territory Division
P.O Box 39824
WINNELLIE NT 5789

It is patently obvious to anyone trying to work under the present system that industrial relations in Australia needs overall review.

In the Northern Territory we have the opportunity before us to introduce an industrial relations system, streamlined sufficiently, to carry us into the future in a productive and harmonious environment.

A.S.B.A. sees no problem with unions and big business carrying on its affairs under a totally regulated system. However even under such a system, controls, must be in place to ensure that stand-over tactics by either side do not take place. We must never have a system that allows ridiculous work practices implemented, as a result of abuse of power. Such actions destroy our productive ability and also above all destroy any chance of trust and harmony in the workplace.

The Northern Territory is made up, in the business sector, mainly of small businesses and pastoralists. If we look at two of our main income earners for the Territory, namely the tourism and pastoral industries, we see that they are mainly made up of small businesses. It is therefore apparent to our Association that small business must be listened to in any discussions on an Industrial Relations System for the Northern Territory.

Firstly we totally reject any interference or underlying pressure for compulsory unionism. The closed shop syndrome cannot be supported in a free society and any moves towards such a system must be outlawed. This does not in anyway detract from union membership or representation. In fact it would ensure that the executive of unions acted with the support and compliance of the grass roots membership at all times. After all there is no compulsion to join employer groups. It will be argued that there is no such thing as compulsory unionism in Australia. I would much rather face fact than fantasy.

Secondly we must introduce a system of voluntary agreements for any business wishing to opt out of the arbitration system.

Such a system is in the interests of all Australians :

- * it will bring about more harmonious relations between employers and employees, by stressing cooperation and common interest, not conflict;
- * it will enable people to work more productively and with greater satisfaction;
- * it offers the best prospect of higher living standards and improved job opportunities.

These agreements will assist in developing a common purpose between employer and employees, for the benefit of all. Where employers and their employees agree, they should be free to have wages and conditions of employment determined by an agreement between themselves instead of by an award. Agreements could take into account such factors as regional-economic conditions, the availability of labour and the recognition of skills.

These agreements can and should be used as a means of increasing efficiency, introducing new technology and management methods, removing archaic work practices which limit the productivity and profitability of firms, improving employer - employee relations and introducing more flexible work practices. In particular, more flexible hours of work, permanent part-time work and flexible rewards for skill and ability can be introduced by this means.

Minimum standards may be seen as appropriate to include in any legislation but we really have to face the fact that the market forces prevail and market forces must be the guide.

Any agreement should have written into it a method of settling dispute, preferably by private arbitrators. Again we should keep in mind that small business especially in the Northern Territory, suffers from very few disputes other than those imposed by unions over membership.

The system of voluntary employment agreements has recently been introduced in Queensland. Many feel that it is creating problems there. No doubt it will, as any new system takes time to bed down but in analysing progress in Queensland we must be sure to differentiate between genuine teething problems and subversive practices by the entrenched industrial relations club from both sides.

At present small business needs, wishes, requirements call them what you wish are totally ignored. Small business and their staff are the backbone and the dynamism of the Northern Territory private sector. No-one supposedly representing small business in the arbitration commission has had any experience in running a small business in the real world. Owner operators must be allowed their say.

We have an opportunity to throw off the shackles and consolidate our vision for the future. Let not the comforts of the club and its regulated industrial relations system drown out the cries of the real wealth creators and their employees.

Max Ortmann.

President.

5/8/88

SUBMISSION NO. 26

J M THOMSON



NORTHERN TERRITORY UNIVERSITY

PO BOX 40148 CASUARINA, NT AUSTRALIA, 0811
TELEPHONE: (089) 46 6666 • FACSIMILE: (089) 27 0612
TELEX: DACOL AA85235

15 March 1989

Executive Officer
Select Committee on Constitutional Development
G P O Box 3721
DARWIN NT 0801

Dear Sir

May I first point out that the Legislative Assembly abolished the University College of the Northern Territory as from 1 January 1989 by passing the Northern Territory University Act 1988. I am no longer Warden of the College. I am now Deputy Vice-Chancellor of the University. What follows is my own opinion. I shall refer your letter to council to ascertain whether the University, as such, wishes to express a view. Personally, I believe that it is not appropriate for an institution which comprises so many individuals with individual opinions to take a stance on the policy, though individual experts may well be willing to express opinions on particular matters such as the question of the state courts.

I would make one comment before dealing seriatim with the questions posed in the booklet. I believe that in putting the case to the people a clear statement should be made on the financial implications. I have been told, but I do not know with what accuracy, that the Territory is now or shortly will be receiving funds from the Commonwealth on the same formula used for the states. But the Territory is not being treated as the states in that revenues such as mining royalties still go to the Commonwealth. If this is true then this surely would be a more compelling argument for most people that discussions on land rights and control of national parks.

My opinion on the questions posed are as follows:

Page 5:

- (A) Yes
- (B) Yes

- (C) Four year terms
- (D) Yes. I believe a minimum of three years should be mandatory, except if the Legislative Assembly passes a vote of no confidence in the government.
- (E) I prefer one member per electorate, though I have no great objection to a system like Tasmania's. The latter does give more opportunity for minor parties and independents to represent their adherents in parliament.
- (F) In my opinion No! The sooner all Australians are treated equally and none have special rights the better. Our social guilt feelings about the past treatment of Aboriginals should not be assuaged by providing privileges not enjoyed by other minorities such as Chinese, gays or Muslims.
- (G) Should be 21 or more, should not be bankrupt, in gaol or held in an institution for mentally disturbed people.
- (H) Personally I believe that 21 should be the minimum age, but I recognise the old argument that if you are old enough to fight for your country at age 18 you should be entitled to vote at that age. However, at 18 relatively few young citizens are politically mature. (However, if I pursued that argument I might be forced to make my minimum age 25 or so.)
- (I) Yes.

Page 6:

- (A) There could be advantages to able administrators being appointed as ministers even though not elected members of the parliament. However, if this procedure was adopted such ministers would have to be available at Question Time in the Assembly, but as non-elected members they should not participate in debate (other than to answer questions or on a personal explanation). Although appointed by the Premier or cabinet such ministers should resign or be dismissed if a vote of no confidence in them is passed by the Assembly. I would question whether a permanent public servant should be appointed a minister in such a system.

However - attractive though it may be to get better administrators into cabinet than the electors generally seem willing to elect (or the parties to nominate), it is probably better in a state with a small population where people like to feel they have ready access to their members that minister should be elected members of the Assembly.

- (B) The powers of the Governor should be strictly defined. In my opinion he should only be able to act on recommendation of cabinet except where there is doubt after an election whether either any major party has a clear mandate when he would reach a decision on whom to invite to form a government after discussions with the party leaders. He also should have power to dismiss the government if he has clear evidence that the government in collusion has offended the constitution. Otherwise I believe that the Governor's role is to perform those many public tasks which have significance to the community but significantly intrude on the time of the Premier and ministers.
-

(C) If minister or cabinet make a decision which flouts the constitution presumably an alert Governor would raise this at an Executive Council meeting. If no executive meeting was called he should send a message to the Assembly detailing his concerns. If the Assembly refused to direct the Minister to act otherwise, the Governor should have power to dismiss. If such a matter was taken to the courts and the Governor's interpretation proved wrong, he should be liable to dismissal from his post by vote of the Assembly.

(D) Yes, except in the circumstances mentioned above.

Page 7:

Yes.

Page 8:

I believe that the constitution should make mention of local government. I believe that community government should be local government. Sensitive decisions on the boundaries of old community government areas would retain the community feeling until the communities evolve into full acceptance of the general local government principles.

Page 9:

Having seen the record of other countries which espouse human rights I do not believe that listing them in a constitution has any real effect. I have more faith in legislation and decisions of courts based on legislation than on pious platitudes in constitutions.

Page 10:

Certainly being a state implies having the responsibilities of all states, including Aboriginal land rights.

Page 11:

On this topic I believe that land should be allocated on strict historic grounds, that is the land should belong to the tribal group(s) which occupied an area when the Europeans arrived or where they reached in any subsequent voluntary movement of the people, but not any relocation forced on the Aborigines by European intervention. Such land should be held on the same basis as all other free-hold land owners in Australia, except that for a period of 50 years the Aboriginal owners should not have the right to dispose of the land for a quick monetary gain. This period would be sufficient to allow them to make considered judgments on whether in the development of the community they want to retain all the land under their control. This policy would mean that control of access to property, mining rights, royalties from timber-getting etc would be those laws and regulations pertaining to all owners of land.

I believe that the rights of all minorities should be protected, not just Aborigines.

Page 14:

(a) Territory Consultation Convention.

I would only say that a wide spectrum of the public should be represented with representatives from all geographic areas and all walks of life. In particular the convention should not be dominated numerically by public servants. But before the official convention is held, I believe that public meetings should be held in all the major centres of population in the Territory to allow the general public to air their views.

(b) Outside Expertise

Such people should be invited to attend as advisers, and should neither vote nor participate in debate other than to give invited advice.

Page 15:

I go for alternative (1). Given the dismal record of YES votes in Australia referenda I would have doubts about the outcome of a referendum.

Yours sincerely

Professor J M Thomson

Deputy Vice-Chancellor.

SUBMISSION NO. 27

NT TRADES & LABOUR COUNCIL

**NORTHERN TERRITORY TRADES & LABOR
COUNCIL**

PRESIDENT: JAMEY ROBERTSON

SECRETARY: MARK CROSSIN

Address all correspondence to:

The Secretary

P.O. Box 1833

Darwin, N.T. 0801

Telephone : (089) 41 0001

(089) 41 1998

Fax: (089) 81 3947

Hon Marshall Perron
Chief Minister
Chan Building
DARWIN NT 0800

Dear Chief Minister

Find attached an interim submission in response to Sir John Moore's report on "an appropriate Industrial Relations System upon Statehood."

While the Northern Territory Trades and Labor Council has provided some preliminary comments on Sir John's report, we reserve the right to respond in greater detail on Industrial Relations matters raised within the report throughout the course of future consultations on the matter of moves towards the granting of Statehood for the Northern Territory.

The interim submission should not be perceived as an exhaustive, detailed response to the various matters highlighted by Sir John Moore's report.

We look forward to playing a prominent role within the Statehood debate.

Yours faithfully,

Mark Crossin

Secretary

NORTHERN TERRITORY TRADES & LABOR COUNCIL

PRESIDENT: JAMEY ROBERTSON

SECRETARY: MARK CROSSIN

Address all correspondence to:

The Secretary

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Fax: (089) 81 3947

Hon Marshall Perron

Chief Minister

Chan Building

DARWIN NT 0800

"INTERIM SUBMISSION"

INDUSTRIAL RELATIONS SYSTEM UPON STATEHOOD

Dear Chief Minister

The Northern Territory Trades & Labor Council notes Sir John Moore's Report to the Government of the Northern Territory, on the Question of an Appropriate Industrial Relations System on Statehood, August 1988.

Notwithstanding, the contents of Sir John Moore's report the NTTLC maintains the position of opposing any changes to the existing Federal Industrial Relations System.

It is the view of Council that the existing system has over a number of years served all parties well.

The union's position of seeking to retain the existing Federal system is also supported by the NT Confederation of Industry and Commerce as the peak employer body within the Northern Territory.

Of the major industrial relations players it appears that only the government politicians seek to change the current Industrial Relations System.

The NT Trades and Labor Council sees no real justification to establish a new "State" system or to create new embodying State Industrial Relations legislation.

In essence, the establishment of any new "State" IR System in our view would be unnecessarily costly and would only duplicate existing structures.

The costs which would be incurred in establishing a "State" system could not be justified.

The NTTLC would also seek the following from your government .

1. A detailed justification as to why the NT Government seeks to replace the existing Industrial Relations system, given the opposition of the NT Confederation of Industry and Commerce and the NT Trades and Labor Council.
2. The government's view of the future role of the Select Committee on Constitutional Development.
3. Clarification of the proposed extent of future regional consultations with Territory committees.
4. Clarification of the status of the proposed Constitutional Convention.
5. Details of any revised timeline within which the NT government will seek to pursue moves toward the granting of Statehood.

A response to the above matters at your earliest convenience would be appreciated.

In conclusion, the NT Trades and Labor Council advises of its preparedness to actively participate within the Statehood debate. This includes our preparedness, to consider and respond to any draft Industrial Relations legislation which may be developed by government in your moves to pursue greater autonomy in relation to Industrial Relations powers.

Yours faithfully

Mark Crossin

Secretary

SUBMISSION NO. 28

KEVIN ARTHUR McGREGOR-KING

Post Office
PINE CREEK NT 0847

17 March 1989

Dear Sir

On this Statehood for our Northern Territory, if we ever have it will poverty people of unemployment, pensions and low working pay be better off, such as cheaper foods, petrol, tobacco, building materials, household items, land and the paying of rent and rates, water, electricity, and tax? Or will it just be that our Northern Territory Governments ALP, CLP and so on just become richer for much bigger pay rises and more power in a say in Canberra parliament and more white-collar people in Canberra and the Northern Territory for us to pay more taxes for. Now do you not think it would be much better for our Northern Territory land, businesses, our people and tourism boom to leave the Northern Territory as the Northern Territory, a wilderness, wild, undestroyed land. It is the only way you will ever get our airport and railway line. The uranium mining companies let us down by shipping their uranium, not railing it and it is also a Government mistake. But it is never ever too late. Mining and tourism could and should work together for a much better Northern Territory to live in.

Yes, cattle are out, buffalo are in. The breeding of sea and land wildlife are in, mining is in, pine forestry is in, and the growing of our natural flowers are in for a wild, undestroyed land of the Northern Territory. The environmentalist, conservationalist and Aborigines are destroying mining and tourism boom. And now we have our cattlemen doing the very same thing. But I must tell you this, it is not really my Aboriginal people doing this. It is our Aboriginal Land Councils doing this.

It is not mining of our land we do not like because the mining companies keep to environmental, conservation laws, control and protection. But it is the mining exploration we do not like. They just do not care what they do to our land.

Now the mining companies say on destroying our land that they will put the area back as it was before. Well, this is just a waste of money. It would be much better if our mining companies left the mining are & as it is for tourism and to give the land holder the money for tourism improvements of the land and wildlife improvements. Like our NT Government community council of Pine Creek. This is what they want done too. Just the money, \$18 million. You see, our mining companies would be helping our Northern Territory in this way into a tourism boom. And also this should stop these environmentalist, conservationist, Aborigines, cattlemen, buffalo men, and Pine Creek people from crying. But you Northern Territory Governments want to stop our Aboriginal Land Councils and our Gagudgee Association Inc. from holding and using our Aboriginal uranium royalty money on themselves, not on us or our land or our wildlife, or tourism while our people live in poverty.

I am the ALP Aboriginal Leader of Pine Creek and Kakadu National Park but I want to be a CLP Aboriginal Leader and adviser. Can you help me to be so? You know me as McGregor or St George but I am really Mr King of Woolwonga Kakadu land. I am Aboriginal descent of Gagudju native people. My three wives are Violet Alderson, Rita Sullivan, and Margaret Hardy or Gabarrigi, all of Stage 1-2-3 of Kakadu National Park. Yes, we own the lot every stage. You see, I could go on and on because I am writing a book of some 300 to 600 pages. I hope all you Government people read it because it is for our Northern Territory on our Northern Territory Government, tourism, education, and guide. I have written some 300 odd pages to our Pine Creek NT Government community council on tourism, mining, wilderness park, beautifying our town, pine trees and natural wild MT flower growing for employment, tourism and marketing, and all the councillors want me to write more of my ideas so I hope this letter will help you also .

As you know I am the Aboriginal spokesman of our Kakadu land and spokesman of the Australian Conservation Foundation for my people. I am also an Aboriginal artist and Aboriginal x-ray painting artist. I worked for our Canberra Government for 14 years before I was put on a pension through a loss of memory. I really do not think that our NT or governments are ready yet for Statehood until you have read my book. On the Greenhouse effect, only uranium, sun, wind, lighting, water, and power will help to stop it.

I would say our Northern Territory Government is really silly to kill our buffalo, Bang Tang cattle, deer, camel, donkey and wild horses. They are very good to make our country look alive and are very good for tourism and meat trade for overseas countries.

Is it true that all our Northern Territory Governments want Statehood for is to own land and control all mining, national parks, Aboriginal people, all the big money things. Well, you are very wrong because all these things came under the tourism boom to our Northern Territory land.

If you destroy these they way you are going, our mining companies, Canberra government, Aboriginal people and tourism people will hate you more then than they even do to day. You are always fighting and hating Aboriginal people like I do the way they are living and acting today. But you should not fight or ever hate. It is a very wrong thing to do for our land of our Northern Territory because as you know and Canberra knows, Aboriginal people are the real key to mining, National Parks, and the tourism boom. Yes, our Aboriginal people are taking a little and giving a little so our Northern Territory should do the same thing. Yes, I help to make up our Aboriginal Land Rights Northern Territory Act 1976~0 with Mr Rowlands ~C. But it is not working the way it should be because we have men like our Yunupingu, Mick and Tessie Alderon misusing and misleading our people. It would be the same if we ever get our treaty. We have not only got the Northern Territory Governments down on us but also our own people in power too are down on us and misusing our money.

I see Mr Marshall Perron is going to have a beautification plan of Darwin put into action for tourism. Well, us Pine Creek people want the same thing done here or no Statehood or State.

Now I hear Mr Perron is backing out of this beautification plan for Darwin because every tourist town in our NT wants the same thing for their area too, so this way you will not get Statehood or a State. No help off our Government before it is a state or after, that is the way it looks to us Pine

Creek people, 50 leave it as it is, a wilderness, free Territory which is only good for mining, tourism and us Aboriginals.

So why do not all white-collar Government people just go back to wherever they came from and leave our NT to us true Territorians, Aboriginals, tourism people and mining company people.

Also give our buffalo and Kakadu National Park back to us SG we can run it our way, not the Canberra way. I also was a forestry ranger, a miner at Rum Jungle and I was a part owner of Patonga big game millionaire safari lodge, Jim Jim River, Kakadu NT.

Yours truly

Mr K A McGregor-King

SUBMISSION NO. 29

J. B. FORSCUTT, J.P.

P.O. Box 31
KATHERINE, N.T. 0851

22 March 1989

The Executive Officer
Select Committee on Constitutional Development
G.P.O. Box 3721
DARWIN N.T. 0801

Dear Steve

Further to my comments to your Select Committee on March 16 in Katherine, I notice in my research in the areas of Coat of Arms, Flora and Fauna Emblems and Flag for the Northern Territory that we do not have a badge to denote the state symbol.

I am aware that, unofficially, a badge of the flag in miniature is used, and I would therefore ask that you, as the Chairman of the Select Committee, set up a competition to establish what our symbol would be, and to have it included in the Northern Territory Constitution with our already established symbols.

Kind regards,

JAMES B. FORSCUTT, J.P.

SUBMISSION NO. 30

D J GANS

PO Box 636
ALICE SPRINGS NT 0871
28-3-1989

The Hon Mr M Perron
Chief Minister
Parliament House
DARWIN NT 0800

Dear Mr Perron

This morning I was listening to you on ABC radio re a constitution for the NT. You said that you wanted suggestions from the people, to see what they want. I like to pass you on some of my thoughts.

We should have a fixed term of Parliament, either 3 or 4 years, with a clause included that the Parliament of that day cannot have an election till the very last month of their term. Two reasons for this. Often a Government goes for an election just before they have to make some difficult decisions. Secondly it will save the State a lot of money. Look at the present Labour government. When we have an election some time this year, they have not even completed 6 years of office, and yet we have had by then four elections. In other words a term of less than 18 months, what a waste of taxpayers money.

We should also bring back Capital punishment. This was instituted by God, and who are we to change that. I realise that many people have been executed and found later not to have been guilty. This can easily be overcome by making sure that it is 100% sure that the person is guilty. Not on circumstantial evidence like the Chamberlain case, where there is still a lot of doubt. With our modern techniques this should not be so difficult. Brutal cold blooded murder and drug trafficking should definitely carry the death penalty. Instead we lock them up for life, which again cost the taxpayer a fortune.

There should also be given power to the Housing Commission to inspect their houses on a regular basis. The wanton destruction by tenants, by both black and white goes beyond description. By the time the tenant vacates his house, the Housing Commission has to fix it all up again on our cost. This could be prevented by regular inspections, and chuck the people out if they cannot look after the property, or even demand a bond before people move in, like the private sector does.

The Government should also have a good look at the Workers Compensation Act. I have had an accident back in August 1986 and have not been able to work since and the case is not finished yet.

The reason the case is not finished is because the Insurance Company keeps dragging on, yet have admitted liability. For the first six months one is paid his full

salary, then it is cut down to \$247.00 per week for husband and wife, minus tax. We do not get any benefits because it is workers compo. The only thing we did get is reduced rent from the Housing Commission, for which we are grateful. On that small amount of money it is hard to live today. It is time that something is done to stop those Insurance companies from dragging their feet, as they hate to pay out money. I feel a person involved in an accident and the insurance have admitted liability, they should be made to pay full salary till the case is finished.

Sincerely yours

D J GANS

SUBMISSION NO. 31

F SCHMIDT

40 Chin Gong Ct
PALMERSTON NT 0830

28 March 1989

The Executive Officer

Dear Sir

I write regarding the proposed NT constitution.

An issue which affects all Territorians greatly is that of Public Access to land.

Aboriginal land currently occupies one third of the NT, with claims taking that up to half the NT.

This seems to me to be a form of apartheid, where certain people (the Aboriginals) can go anywhere in the territory, but others (like me) cannot.

It would appear that most of the land claims allowed are by trendy Southerners and radical Aboriginal groups, unrepresentative of the majority of Aboriginals. The Federal Government knows it can appease these trendies by giving away the NT to minority groups, because we in the NT don't have enough voters to make any difference in the election of a Federal Government.

I would propose that the constitution allow the NT to have control over land given to Aboriginals and also to review that land already given.

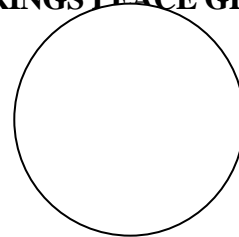
I also propose that the current system of granting white people access to Aboriginal land be reviewed so that the land is available for use by all.

Yours sincerely

F Schmidt

SUBMISSION NO. 32

ALICE SPRINGS PEACE GROUP



CLOSE PINE GAP

Alice Springs Peace Group Bases Campaign
PO Box 1637 Alice Springs
N.T. Australia. PH. 089-526782

10 April 1989

Executive Officer
Select Committee on Constitutional Development
GPO Box 3721
DARWIN NT 0801

Dear Sir/Madam

Enclosed please find a submission from the Alice Springs Peace Group. Two of our members attempted to present this submission in person at the advertised public hearing scheduled for 7 pm on Friday 7 April. However, on arrival at the appointed place (the Garden Room at the Town Council) we were disappointed to find that there was no-one in attendance, and no indication of what had become of your committee.

I am now aware that various times had been advertised for the hearing, and that the committee had in fact convened briefly earlier in the evening. However, we were sent an invitation for 7pm, and we confirmed this by ringing the Legislative Assembly to check the arrangements on 5th April.

Please pass this submission on to the Committee, and we are interested to hear the committee's response to the important issues which are raised in it.

Yours faithfully

RUSSELL GOLDFLAM

for Alice Springs Peace Group.

SUBMISSION TO
LEGISLATIVE COMMITTEE SELECT COMMITTEE ON
CONSTITUTIONAL DEVELOPMENT FROM THE
ALICE SPRINGS PEACE GROUP

P.O. BOX 1637
ALICE SPRINGS
N.T. 0870

7TH APRIL 1989

This submission represents the views of the Alice Springs Peace Group on a number of specific issues. It does not address the questions of Statehood or increased autonomy for the Northern Territory! and in fact at this time the ASPG has no policy on these matters. This submission should therefore not be taken as an endorsement of the Statehood process, or even of the need for a Constitution for the Northern Territory at all, In particular, the ASPG recognises the continuing sovereignty of Aboriginal people in the Northern Territory, and consequently their right not to have Statehood imposed on them,

However, if there is to be a Constitution, the opportunity to include in it provisions which strengthen the security of the Northern Territory and its people should not be neglected, The ASPG thanks the Constitutional Committee for making available this opportunity to make our contribution to its work,

There are many local and international precedents for the inclusion of articles such as the one, proposed here in the charters of political systems at all levels, from the municipal through to the international, At the local government level, there are at least 104 Nuclear Free Zone Councils in Australia, many of which have a larger constituency than the Northern Territory itself), and over 2700 Nuclear Free Councils worldwide, Over 65% of New Zealanders live in local authorities which are declared nuclear free zones,

At the State level, there are of course no constitutional precedents in Australia, as all such documents were drafted in the nineteenth century, However, in 1982 the Victorian State Government enacted legislation giving effect to a nuclear free Victoria, and two years later the ACT Nuclear Prohibitions Ordinance was passed by the ACT House of Assembly, In Britain, the thirteen counties of Wales voted themselves nuclear free in 1983.

In our own region, there have been a number of initiatives to establish nuclear free zones at a national level, The

example of New Zealand is well known. In addition, the Republic of Belau has a nuclear free constitution, and Vanuatu has also banned visits by nuclear ships. The Bavandra government of Fiji had also committed itself to establish a nuclear free zone, before it was deposed. The Philippine is

currently considering the introduction of nuclear free provisions into its Constitution, which is due to be adopted in 1992.

Finally, there are the international treaties and agreements limiting the use of nuclear arms and power: the Antarctic and Latin America have been subject to Nuclear Weapons Free Zone agreements since the 1960's, The Treaty of Rarotonga (1985) established a (partial) nuclear free zone in the South Pacific, Other treaties establishing nuclear free zones are the Outer Space Treaty (1967 and the International Seabed Treaty (1971),

The ASPG supports the following principles, which should be embodied in a Constitution for the Northern Territory:

The Northern Territory shall be declare a Nuclear Free Zone, and other than for strictly controlled medical and research purposes, no radioactive material shall be mined, milled, processed, stored, bought, sold or transported within the Northern Territory.

The prior occupation and ownership by Aboriginal people of the Northern Territory; their continuing sovereignty over the Northern Territory; their right to self-government, land rights and compensation for dispossession are recognised and affirmed .

All nuclear warfighting and associated intelligence facilities existing in the Northern Territory shall be immediately closed down when the Constitution comes into force.

No further nuclear warfighting or associated intelligence facilities and activities may be established or maintained in the Northern Territory.

No nuclear powered and/or armed vessels or aircraft shall be permitted to visit or use harbour or other support facilities in the Northern Territory (excepting in emergencies where human life is in immediate danger).

No facilities shall be established within the Northern Territory with the purpose of undermining the sovereignty and independence of other nations by allowing these facilities to spy on them.

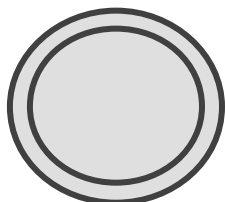
No facilities shall be established in the Northern Territory which play a role in supporting foreign nuclear or non-nuclear military strategies including the US Star Wars program,

No facilities shall be established in the Northern Territory which shall involve Australia in contributing to the nuclear arms race,

The import of these provisions, if included in a Northern Territory constitution, would be to cease uranium mining in the NT, close Pine Gap, and halt the flights into the NT of B-52's, B-1 bombers and other nuclear capable aircraft. It would also result in the serious questionings of the role of other facilities such as Cabarlah, Detachment 421 (Alice Springs), Tidal and Jindalee, the operations of which may also, in the light of public investigation, prove to be contrary to the above principles.

SUBMISSION NO. 33

TENNANT CREEK TOWN COUNCIL



The Tennant Creek Town Council

PEKO ROAD, TENNANT CREEK, NORTHERN TERRITORY 0860

Please address all correspondence to

THE TOWN CLERK
P.O. BOX 821
TENNANT CREEK N.T. 0861

Fax.: (089) 62 2868
Telephone: (089) 62 2401
62 2108
A/H 62 2247

Our Ref.

Your Ref.

In reply direct enquiries to

PROPOSALS FOR A STATE CONSTITUTION FOR THE NORTHERN TERRITORY.

COMMENT FROM:: TENNANT CREEK TOWN COUNCIL.

In 1978, by virtue of the Northern Territory (Self Government) Act, certain powers were transferred to the N.T. Legislative Assembly. And for Territorians it was the beginning of formal acceptance of responsibilities for the decision making process that would frame all social and economic development of this most important part of Australia for the future. In the ten years since this Act came into force, Territory people and their elected representatives have ably demonstrated their ability to accept that responsibility - to make those decisions, and to now take their place as an equal member in the federation of States. The time for caring only for the "soft" options is over -- full Statehood is not only our right - but our responsibility.

THE LEGISLATURE

The experience of having one house (Legislative assembly) has been a good one for the Territory. A single house State Parliament would seem appropriate. The new Parliament would have the same powers as other Australian States. A 4 year term is seen as desirable. Persons standing for election in a new State Parliament should be subjected to a security check to establish a past free of any proven criminal charges; be an Australian Citizen; and be competent in both speaking & comprehending the English language.

Electorates in the Territory are of such size and diverse populations that representation & boundaries could perhaps be determined on a point basis taking into account issues such as communications, distance, population spread, industry mix etc. Voting should be both compulsory and secret.

THE GOVERNMENT

Only Members of the new State Parliament should be appointed to be Ministers. The Ministers should not be able to control decisions of the Convenor. The office of the Governor should have the authority to protect the new State constitution.

THE JUDICIARY

The new State Constitution should state that the Courts and the work of the Judges be protected from interference, and have safeguards against corruption.

LOCAL GOVERNMENT

A system of Local (& Community) Government should be written into the New State Constitution allowing for elected (or appointed) representation from Areas of significant and permanent population. The nature of the powers, authorities, duties and functions of Local (Community) Government should be in accordance with the Laws of the Legislature.

SUBMISSION NO. 34

T S WORTHINGTON-EYRE

Heathcots Court
Flat 3 36 Gunn Street
MATARANKA NT 0852
Tuesday 18 April 1989

The Executive Officer
Select Committee on Constitutional Development
GPO Box 3721
DARWIN NT 0801

Dear Sirs

Please find enclosed Letter to Mrs Margaret Thatcher of England which contains what I think is the first Australian parliamentary provisional condition to be got clear. More opinions to follow.

Regards

T S Worthington-Eyre

PS I want to tender this petition, reading to the Legislative Assembly - through our Local Member Mr M Reed, at Katherine or can you deal with this directly through your Executive Officer.

Mr T S Worthington-Eyre
Heathcots Court
Flat 3 36 Gunn Street
MATARANKA NT 0852

Friday 14 April 1989

The Prime Minister of England
Mrs Margaret Thatcher
10 Downing Street
LONDON ENGLAND

Dear Prime Minister

I am a Northern Territory of Australia English Australian person of 64 years who is invited by our Northern Territory Provisional Government to take part in the literal construction of a uniquely suitable Constitution for our Northern Territory of Australia to become a brand new Full-Statehood status, New State, joining our Ausland Federation of States within a couple of years hence.

I feel that the majority consensus of our NT citizens opt for the straightforward businesslike name of the State of Northern Australia - we already have in Australia the State of Western Australia, the State of South Australia - and a new State of Northern Australia does sound bit like a to plain a compass bearings cluster of tourism signposts. I myself prefer a more humanlike new State name as Queensland, Victoria, Tasmania and I tender as a quite valid and real comparablest variety suggestion, as matching with our first Elder State of New South Wales - the State of New Stonehenge! Well at this moment the more of these ideas the better.

Today in our Australia-wide Commonwealth Literary Fund everything - we Australians of cur first 200 years, increased now to just over 16 million inhabitants, of which a 25%, a 4 million, already accounts for all native indigence aboriginals, foreigners, Asiatics - and we have got to keep, even strictly confine this percentage, to be the absolute limit allowable to live mix midst us, todays white Australia policy householders. Keeping this utmost level balanced along our immediate short terms with long terms years ahead, maintaining Australia's slowly steadily increasing number of inhabitants - which our most dependable estimators firmly hold that Australia can safely increase its number of peoples, through this incoming 200 years, 400 years of all in all futuristic to as of todays weather, fresh water, rich soils etc continuities - an easily containable hundred and sixteen million inhabitants.

Australians have got a lot to do - day by day - our technology very much smoother advancing space's mainstreamlined burdensome duties, demand that the general state of mind of most workaday average Australians, must be of the easiest possible wide-brown-land-mateshippers own commonwealth heritages as can readily be maintained these times.

We Australians cannot anymore avoid speaking openly nowadays, about what we have kept decently silently to ourselves these previous many years. Our year 1900 Australian Commonwealth Federated States Constitution inherently permanently holds, and properly so for all of us Australians that Queen Victoria and Her Successors be the emblematic and everpresent longliving Head of Australia and for us mid to elderly aged seriously thinking Australians we do want our present Elizabeth II to reign on for many more years.

In Australia now there is a lot of organisational movement towards Australia separating from our English-British monarchical Royal Family establishment; mostly because of the shortsighted delicate marriage of the Royal Household being let drift along into the present state of half-caste foreign children coming to sit on the Throne of England and to wear the Crown of England which most Australian-English people do not like or want and will not accept as the everliving and permanent emblematic Head of Australia. Most clear thinking solidly Australian-English people do not want this separating of Australia into a USA Republic style of nation to eventuate, and they see the impending takeover foreignisation of our Throne of England: Crown of England as another Mrs Simpson-King Edward VIII escapade.

Thus we Australians wish herewith to start this Constitutional linebreak fixing up with your English Isles, British Parliamentary Westminsterials Governmental moving into existence the political procedural machinery that disqualifies all foreigners" as commoners from sitting on the Throne of England; wearing the Crown of England [Charles] and qualifies with announces that the fully acceptable rightful successor to our English-Australian Throne-Crown, Royal Family Household is the everpresent Bless Queen Elizabeth II, next of kith and kindred, the family of the present Duke and Duchess of York.

We Australians really do trust that you will take this delicate situation most seriously, and will straightaway write to us the - stitch in time saves nine - accurate guidance advice we cooperatively need to resolve-dissolve this distasteful unsavoury snag to our Australian-English evermore common inheritances with by your timely politically expedient favourable granting of this requested decision now.

Regards yours

T S Worthington-Eyre

SUBMISSION NO. 34A

T S WORTHINGTON-EYRE

HEATHCOTS COURT, FLAT 3
36 GUNN ST
MATARANKA NT 0852

WED 19 JULY 1989

Executive Officer
Select Committee on
Constitutional Development
GPO Box 3721
DARWIN NT 0801

Dear Sir

There is enough evident proof of the Foreignality Nationality Identity of the present Duke of Edinburgh, the Husband of our present Queen Elizabeth II, and Father of the present English-British Royal Family Household children that is worldwide known common knowledge fact as herein to absolutely preclude every member of our present Royal Family - except Queen Elizabeth II herself - from having any succession rights to acceptably, properly sit on the Throne of England, wear the Crown of England, be the Sovereign Head of Australias every White Australia Policy Householder peoples.

We Australian-English voters hereabout at Mataranka, NT are concerned about our NT New State ... New Country Constitution best futuristics .. and we want to say that our view is, this far to much Foreignality Nationality of the present Heir presumptive to be the Sovereign Head of Australia makes Charles absolutely unacceptable. AND that this contentious denigrating defaming doubt about the Englishness of the British Throne-Crown, must be settled by this issue being one of the Questions in the forthcoming NT wide .. Australia wide Referendum(s).

Should I be asked to give evidence this is the base that I will be keeping to - will firmly restate that this to much foreignisation is far to much unaustralian to be followable. Everyone I have talked to about this agrees that the Duke Duchess of York must be the successor.

In view of the present Fitzgerald inquiry into QLD Govt corruption etc I have come to the decision that our NT New State Square buildings should from the start accommodate a Two House Government.

More opinions to follow ..

Regards

T S Worthington-Eyre

[Some enclosures to this Submission have not been included in this Volume].

SUBMISSION NO. 34B

T S WORTHINGTON-EYRE

Heathcots Court, Flat 3
36 Gunn Street
MATARANKA NT 0852

Thursday 4.7.91

Legislative Assembly of the N.T.
Committee on Constitutional Development
Executive Officer Mr Rick Gray
GPO Box 3721
DARWIN NT 0801

Dear Sir

Your letter of 24.06.91, received together with the enclosed 2 copies - transcripts of your Mataranka Town Hall meeting and witnessing about the NT, New State things - matter - of 16 March 1989.

I myself through this previous year have full preoccupations with ones own - ongoing - pensioners status - private hobbycraft scrutinisings. And I am glad that you are getting ready for another furthermore advancing yearly round of compilings towards the NT, first launching Constitution of our new Full Statehood ranking - within its NEW NAME...

Whilst thinking of what the determined - eventually by yourselves - new name for our New State is going to be - I want to ask you - what limits if any - your committee puts upon us private individual about running competitions for a suggested suitablest NAME for our N.T., in its fully Gazetted first starting Full Statehood days. Myself, I prefer that that our N.T. would be projected namefully - all futuristically known as --- THE STATE OF NEW STONEHENGE ---- (or whatever).

Your request for me to check ones own input witnessings for accuracy together with ones need to take care of what one is saying - is - now that all Constitutional things are on the move again - I feel is going to take me another 7 days; additional to your required 14 days return.

Such witnessings as within your large preponderance of wanting ideas - how best to deal with the NT - 25% native indigenous Aboriginal populace - The best investigating scrutinisings that I canst offer - to sum up - as at todays likely slower Aboriginal developmental's futures ahead - is to make separate areas diffinitive treatys of rights AND obligations.

Would you obtain for me - if you can please - a short half page of, from Mr Barry Coulter's - ideas drawn from his study travels through the North American - Canadian - USA Governments - dealings with their comparablest native indigenous Indians treatys. How they Governmentally just went straight ahead and made starting treatys, fully expecting floodings of arm-chair critics with all humanistics attitudes - the same style as about the first inventing of the helicopter.

The Governments just made relevant treatys to their standards of living of the days that proved from days observations, to be quite sufficient - to get the start made (mentioned within the proposed NT, New State Constitution the same procedure - allowing all variations for Australian Aboriginal conditions) - AND also proved - along the hundred(s) years to nowadays - to be futuristically quite easily movable, changeable, as really alterable to the indigenous Maori Indians - as hence from now on the necessary varied same things within our NT, New State Constitutionally mentioned concern for the ever accompanying NT, New State indigenous native black Aboriginal inhabitants areas treatys to always be respected in these present years - AND through the future expected changing versatilities of the times that as parliamentarians of our Australian governments are properly telling us - at least a couple of times each year - that it is all within the laps of the powers that be.

Would you ask NT Constitutional Development Committee Lawyer, Mr G Nicholson if he has got any briefest data on the New Guinea Tribals Government - Councils treatyings - as could be projected within the NT, indigenous Aboriginal black peoples present standards of living in poverty. Treatyings obligations to separately confine their fullblood status selves to their wanted present landholding communities - where they would be best ablest to develop the property - the more slowly - towards improving their gradual mixings selectings of their best suited black peoples cultures into themselves, with all assisting provisioning materialistics from the NT, Governments and Australian white predominantly Anglo-Saxon peoples.

Has Mr G Nicholson any available notes on relevant treaty provisionings that would be useful to NT, New State, indigenous native black Aboriginals - that can be adopted from the New Zealand Maori and white peoples - treatys experiences.

Would Mr G Nicholson, hope always - be able to comment on the vary profitable contribution by the NT, New State, treaty'd indigenous black Aboriginal peoples themselves to participate in yearly volunteer military training camps programmes - as adopted within the British Nepalese Ghurkha type of communities recruitings and returnings to their communities villages - as nowadays is the ongoing, as is where is - the plainly evident Ghurkha as Australian, Aboriginal the more goodly broadening improving thing to do unto themselves.

Has your office been keeping any notes on Prime Ministers B Hawke's - ideas about making treaty(s) with Australian indigenous black Aboriginal peoples.

Now that the ALP, Hobart Conference is raising the Australia - a Republic issue again - and that Mrs Margaret Thatches has changed her position - we Australians may well be able to obtain a Memorandum of Sovereignty Succession Certainty, claiming all the uncertainty factor about to much foreignality coming onto the Throne Crown representative Head of Australia - AND assuring us the acceptablest British-English nationality Duke Royal - Duchess Royal - at the next coronation times will be given to the Rightful Succession.

The checked transcript copy to follow in 7 days.

Thanks, regards T S Worthington-Eyre.

SUBMISSION NO. 35

R G KIMBER

PO Box 2436
ALICE SPRINGS NT 0871

20 April 1989

The Executive Officer
Select Committee on Constitutional Development
GPO Box 3721
DARWIN NT 0801

Dear Sir/Madam

Thank you for the booklet, "Proposals for a New State Constitution for the Northern Territory". I had hoped to be able to attend the meetings in Alice Springs, but unfortunately was otherwise "tied up" at the critical times.

In the "Introduction", and in fact by the very production of the booklet, there is an assumption that Statehood is inevitable. I believe this to have been a reasonable assumption in the recent past, and that it is reasonable that it should be a point of continuing discussion. Nonetheless, I do not believe that it is realistic, at this point in time, to be considering actual Statehood for the Territory, nor do I think any fixed date should be kept in mind. (The year 2001 would obviously be symbolically appropriate, and has been mentioned by some politicians, but I do not believe should become "solidified" as "THE YEAR"). I believe that I am, generally speaking, a positive-thinking person, but that it is foolish to ignore realities or probable future developments. The latter point is that which I will now briefly develop.

As I am sure you are all well aware - that is, all members of the Executive Committee are aware - the Greenhouse Effect has become a major topic of scientific consideration. I have done my best to keep up with whatever truly scientific discussion is available, and I think it fair to say that the majority of scientists learned in the particular fields of study now believe that this is an actual Effect and not some ancient climatic change that has always occurred (even though ancient forms of climatic change may be blurring the pictures available). It seems possible that the changes envisaged will be dramatic, and that in the next three decades will become very apparent, particularly in rising sea-levels and changes in the amount and intensity of rainfall. Accepting that these changes are inevitable, and are likely to have very big implications for the Darwin and hinterland coastal regions (as well as all of the World's coastlines); quite possibly mean the demise of the Kakadu wetlands - or at the very least dramatic changes there; and dramatically increase the potential of the * country and further south, it strikes me that we may be looking at such dramatic shifts in Australia's (and the World's) population that the present geographical perception of the Northern Territory may be worthy of further consideration by you, the Select Committee. I respectfully

suggest that this is something worthy of the Select Committee's genuine considerations, and that it may well have ramifications for the constitutional developments. The following are some key aspects:

- (1) Will Darwin remain the key population centre or will there be an enforced need for population shifts to such as Katherine or elsewhere in Australia?
- (2) Defence force scenarios inevitably look to Indonesia. If key areas are flooded, what are the likely results? Will the entirety of Papua-New Guinea become substantially Indonesian? What are the ramifications for the NT?
- (3) In the light of dramatic Greenhouse Effect changes should the present NT look to geographical change - eg by an incorporation of a large portion with either Queensland's or Western Australia's northern portions? (The creation of an extra state linking the northern parts of the present NT with northern Queensland was seriously considered in the 1920's, as well as before that time).

Even if no Greenhouse Effect changes were to occur, I respectfully suggest that all of the above are worthy of further consideration in your deliberations.

Turning to P. 5, firstly I commend the producers of the booklet as the clarity of the questions. In reply to them:

- (A) The wording is clear, but without wishing to be pedantic I believe that it could be clarified a little more. My reply is yes, with the qualification that there may be changes to the powers that the "other Australian State Parliaments have now" (technically meaning 1989), and that any such changes would need to be given due consideration in developments of a Constitution for the NT.
- (B) Without going into a major discussion for or against my reasons I believe that a ~T State Parliament should have two houses. I also very strongly believe that the elected members of such houses should be resident in the Northern Territory (no matter how that Territory or State is geographically or otherwise defined). It may be that there should be some extraordinary provision made for residents outside of the Northern Territory/State in extraordinary circumstances. I have in mind here such as the status of Christmas Island people, at one stage discussed as being linked with the Northern Territory.
- (C) I believe that the costs of running elections, and the difficulties of implementing programs which have been given a mandate at elections, suggest that term of office should be extended to 5 years if at all possible. (This length of time is suggested to me on the basis that I also understand it to be the maximum time for which future predictions can be made with any degree of certainty).
- (D) The cost of holding elections suggests to me that the term of office should be maximised, yet I also believe that flexibility should exist. The flexibility should not, I feel, be such as to allow outright cynical manipulation - for instance, to hold an election one year into a three-year term. This is a difficult questions, but I respectfully suggest that, whether the term be three, four or five years, the last 6 months of that term be the maximum time possible for flexibility.

- (E) I believe that there should be one member for each electorate, but also believe that the Select Committee should very seriously consider the present number of electorates, and extremely importantly, build in to the State Constitution a series of provisions to ensure that gerrymanders (such as existed in South Australia in the middle-1960's and such as presently exist in Queensland) are not possible. My own belief is that, much as the geographical size of the Northern Territory makes things difficult, the Northern Territory presently has too many electorates given its population. This could dramatically change so that more electorates are required and, although I do not believe this is likely, I believe it should be taken into consideration.

My substantial concern is that dramatic or creeping changes in demography should be taken into consideration, so that electoral boundaries can be modified, electorates eliminated or expanded in number, and that at no stage should a gerrymandered system be allowed to be created.

- (F) This is an exceedingly difficult question given my perceptions of Aboriginal demography, the concept of extremely different cultures (including languages) within the NT, and associations by Aborigines in the ~T with others outside what are, after all, arbitrary lines drawn on a map 40r the NT boundaries. Given that their land-based groups do not accord with the electoral boundaries, the questions are even more difficult. Quite obviously the Aboriginal perceptions must be sought (and I commend the Select Committee for its concern to discuss the "Proposals ..." with Aboriginal groups), yet it is possible that the majority NT population of non-Aborigines may consider that Aborigines should not have "special seats". Would this necessarily mean that the majority was correct if it did have such a perception? Aboriginal views seem to be so exceedingly varied, ranging from creation of a separate Aboriginal state to basic acceptance of being Aboriginal Australians under the wider Australian laws, that I find the question even more difficult.

For the present I await developments of the discussions but believe two things are essential, no matter how independent Aborigines remain. These are that as Pat Dodson has put it, there should be a drive towards "reconciliation" between Aborigines and other Australians; and secondly, that if "special seats" are created all efforts should be made to have accord with the Constitutional, electoral developments over time.

- (G) The rules should include, first and foremost, that any person wanting to be elected to the envisaged new Parliament should be a citizen of Australia through the Australian citizenship laws. Secondly, that person should be an adult eligible himself or herself to vote, the term adult being defined by law on both age and eligibility (which may involve such mental capacity to comprehend, preserve status etc in the wider Australian context) I believe that a person should also be actually resident in the Northern Territory/State, and on the electoral role. The definition of "resident in the Northern Territory" may, in fact, be one that requires considerable deliberation by the Select Committee. I have already mentioned the situation of Aborigines who live close to the present ~T borders, and there are absentee owners of properties (pastoral or industrial). In addition the present very rapid turn-over of population (average stay 89 days at Yulara, so I believe) suggests that the NT may have peculiar problems that need to be taken into consideration.
-

These points having been made, I believe that a person should have been an eligible adult, on the electoral role and resident for 6 months, before being able to be elected to any Parliament.

I do not believe that ownership of a house or some other property, or the fact that one is employed or unemployed, should be a consideration. In general I would envisage the wider Australian laws to prevail over such issues as, in addition to those already mentioned, bankruptcies or other issues. (These laws may well be open to amendment from time to time - in fact, should be open to amendment in compliance with wider Australian amendment of such laws).

- (H) I believe one person - one vote to be appropriate.
- (I) I believe that voting at elections should definitely be by secret ballot to prevent coercion or other manipulation of any voter, and believe that this could very wisely be included as a point in the Constitution.

These points having been commented upon, I wonder whether any other issues should be considered? For instance, continuing in the alphabetical form of page 5:

- (J) Should voting at elections be compulsory? For a variety of reasons I believe it should be, yet many people would disagree. It may be a point worthy of further debate.

Turning now to Page 6.

I believe that the issue of whether there should, in fact, be a Governor or not is worthy of further debate. I am aware of the present conventions over both compulsory voting and the role of Governor (and Governor-General), yet believe that they are conventions and positions which can usefully be publicly debated in the course of the "Proposals ..." discussion. As a follow-up to this point, the Constitution may usefully be drawn up in such a way as to include the possibility of Australia becoming a republic in the distant future. The majority of people clearly do not yet wish for Australia to become a republic, yet since World War I (when 96% of the Australian population on the census was British in origin) dramatic changes in population have occurred, and support for a republic has slowly but steadily grown.

I really do not believe there should be a need for a Governor, whether Australia remains substantially as it is or moves closer to Britain again (unlikely). Nonetheless, the quite extraordinary situations which developed in Queensland in the last few years of the 1980's suggest that some kind of basically latent or curbed role is beneficial if the position of Governor remains. A costly figure-head is, quite obviously, of no value whatsoever. For the time being, then, accepting that the position of Governor would remain in substantially the same "form" as in 1989, I address the questions on page 6.

- (A) I see no reason why other than elected Members of any parliament should be appointed to the State Parliament by the Governor, given that to be elected any Member is deemed to have had eligibility under the prevailing laws. I make the point, however, that there may be a need for a Governor of the Northern Territory/State to have additional powers of

appointment if such situations as a Christmas Island representative, or Aboriginal representatives, are elected to other than a conventional Member's role.

- (B) Except in the most extraordinary situations I believe that the Governor should only be able to make recommendations rather than decisions. Thus, keeping in mind point (C), I believe that the Government of the day, and its Opposition, through the elected Ministers, should heed any recommendations by the Governor in so much as to give them careful consideration, but not necessarily accept them.
- (C) I believe that, first and foremost, any State Constitution should be protected by the Opposition and electorate as a whole if some wrong decision is made. However a Governor, himself taking heed of learned legal advice, could come to the point of perceiving wrong decisions. Under such circumstances, which I would consider to be extraordinary, I believe the Governor should have the power to protect the State Constitution from wrong decisions made by the Ministers. How he (or she) should exercise these powers is a matter for serious consideration, but the spirit should be one of cooperations rather than confrontationist or dictatorial.
- (D) Under normal circumstances, yes, the Governor should only be able to dismiss Ministers from office when the (new) Parliament agrees. I draw attention to the extraordinary situation which prevailed in Queensland at the end of John Bjelke-Petersen's reign as Premier. My understanding is that the Governor was in a very real predicament, exercised considerable restraint, and had sought advice through the Queen's leading advisors on such matters. Thus I consider that there is a case to be put for the Governor to have extraordinary powers (other historical examples could be given); that such powers need to be very carefully considered and worded; and that such powers should only be exercised as a last possible resort to protect the people of the State through protection of such as the agreed upon people's Constitution and the institution of Parliament.

Further points to arise from this discussion are the minor, yet not insignificant ones in terms of cost, of housing and paying a Governor for both his or her office and all its requirements; and more importantly, the rights of a Parliament to force a Governor to resign. I believe that the Select Committee needs to consider these two points from both a practical, and a legal-constitutional, point of view.

Turning now to Page 7:

This is a clear, succinct statement. I believe that the Constitution should include reference to the Judiciary, and I think particularly emphasise, that the judges "should be independent of the (new) Parliament and the Government". I emphasise this point because both the previous Premier of Queensland, Sir Joh Bjelke-Petersen, and his disgraced Minister, Lane, stated in televised interviews that they did not understand what was meant by the effective system of "checks and balances" that, amongst other things, the independence of the judiciary ensures. (The American model, with all its flaws, is probably the strongest in the World in recognising the crucial importance of this independence).

For the particular wording of this aspect, as with all others, I have no suggestions other than that, assuming a Constitution does emerge from the present process of Select Committee consultation and discussion, it be drawn up by appropriate legal experts using the various other existing Australian State's constitutions as models. These other constitutions may well be old-fashioned, and at times out-of-date, and one could argue for a fresh direction. I accept that one does not want a "horse-and-buggy" model so much as a safely futuristic jet or rocket model, but the model has to "carry" the same Australian passengers. Thus I believe a conservative approach is required, even as it is also vigorously 21st century-looking.

Turning now to Page 8.

As above, I consider adequate models exist in the various Australian States as also in the present NT model. Nonetheless these can always be improved, as witness what appears to be the present NT Government's attitude towards Tennant Creek (a problem created by the NT Government's attempt to block land-rights at the last minute) and the April 1989 confusion over Emily Hills developments. In these, and a great many other matters ranging from regional within the NT

to Northern Territory-Federal matters the Northern Territory Government has, in my view, displayed remarkable immaturity. Somehow the prevailing "bullying-confrontationist-overriding arrogance" style needs to become one of creative tension and cooperative endeavour. I am quite sure that the Select Committee can draw up an excellent Constitutional model;

just hope that future governments will be a bit more sensitive to the legitimate aspirations and needs of local government and community government. This does not at all mean that the Parliament should not have an over-riding power and authority local and community governments can make errors of judgement as well as wise decisions - just that I believe it needs more wisdom than the present Northern Territory Government, and at times its present Opposition, exhibits.

I now turn to Page 9.

I believe that it would be an enlightened move to include a statement of Human Rights in the NT/State Constitution. It is an instance where the NT/State Constitution could lead the Australian Constitution and the various States' Constitutions. In addition to the important freedoms stated I respectfully suggest consideration of:

- freedom of the press and other media;
- freedom of information;
- freedom of access to country (including air space and seas).

My wording is deliberate in stating that the Select Committee consider these aspects, along with the freedoms listed. I believe that all can legitimately be discussed. The suggested list of five freedoms have a comparatively long history, but the above-suggested three are less well-enshrined. Some very brief comments on the three are:

- freedom of the press and other media. In general this flows on from freedom of speech, but "other media" means radio, films, television, video, records and a variety of developments from
-

these. Visual images are being questioned quite a deal these days and, much as one may well wish and hope for the least censorship possible, people in general are accepted as needing protection from subliminal advertising, minors are perceived as requiring protection from films depicting violence etc., and so-on. If such a freedom were to be incorporated it would require some associated legislation to do with the general concept of "common decency".

- freedom of information. I believe that this is an important matter and that the American model can profitably be studied. The Official Secrets Act and other like Acts can well protect all that needs protecting, but in Australia bureaucracies seem to rule no matter how mundane the topic. The Northern Territory lags quite severely behind in this "freedom".
- freedom of access to country. This seems to have been increasingly curtailed in the last two decades in the Northern Territory with such as the Federal Government in various ways, NT Government in others, pastoralists, miners, Aborigines, and virtually anyone who decides to try, erecting barriers of some kind. The rights of all of these competing forces are acknowledged, yet where do those rights truly end and where does the "ordinary" citizen have any rights at all? And if freedoms exist, then responsibilities do too - for miners to truly set in train restoration work on such as old shot-lines, for pastoralists to manage their land so that it is not degraded, for "ordinary" citizens to be responsible in many ways.

I believe that this "freedom" is truly worthy of consideration, although it is almost certainly more difficult to strike reasonable balances in any discussion of it than in all others.

Turning now to Page 10, "Aboriginal Rights".

This is an exceedingly difficult question in practice, if not in theory. The major political parties of Australia take different (and seemingly changing) views, and Aborigines themselves have different views (or at least in my perception they do). I am assuming from the outset that all basic "Human Rights", such as are listed in P. 9, are totally accepted as being the rights of Aborigines as well as non-Aborigines, all being Australian citizens. Should there be positive discrimination of any kind? Some people would argue, "No", yet all major political parties in Australia seem to accept that there should be some, even if they differ substantially in what form it should take, how it should be implemented, etc. Should Aborigines be the sole determinants with regard to land rights and other rights?

I believe that the NT population as a whole needs continuing, better education on this whole question, and that the Select Committee's responsibility includes the continuing dissemination of information which will allow all citizens to make a valid, responsible assessment when the State Constitution is eventually drawn up.

The comments on Page 11 link-in with the preceding, so have deliberately not been discussed.

With regard to the Territory Constitutional Convention believe that it would be wise of the Select Committee to suggest public meetings be held first in the widest range of communities practically possible. The interest will undoubtedly vary from individual to individual, locality to locality, and region to region. It may well also vary over time as moves towards Statehood seem less distant than they presently do.

The purpose of these public meetings would be to nominate local representatives who can, if they so desire, have input into regional sub-committees. The determination of what

constitutes a region, and how many sub-committees there should be, is something that would need careful consideration. I would envisage the Territory Constitutional Convention to include a representative, or representatives, from each sub-committee, such representative (or representatives) to be chosen by the individual sub-committees.

In addition to these "people's" representatives I believe a number of members should come from the elected members of at least the two major parties within the Northern Territory, and that a wider representation might be considered desirable. Party differences would not be the key to the membership, though, so much as genuine interest in the well-being of the Northern Territory/State.

The above suggested membership should, I believe, consist only of adult members of the Northern Territory community who, through residence and other qualifications, are Australian citizens on the electoral role, eligible to vote.

Further to these members I believe experts in Constitutional Law should be invited to be members, such experts to be drawn from the wider Australian community.

Finally, I believe that other experts should be called upon whenever it is considered desirable, such experts to be either drawn from the wider Australian public or, if needs be, from overseas.

The Select Committee, I believe, should give due consideration to the manageability of the Convention, both with regard to the problems of geographical distance and sheer size (in numbers of people), yet also be as generous and flexible as possible to allow for expansion if needs be or as temporarily required, to allow for replacement of members who may wish to resign from a sub-committee, leave the Northern Territory, die or otherwise become unavailable. Furthermore, the ratio of the sexes should be as equal as possible and, in addition to Aborigines, there may be other ethnic groups which should have special representation rights.

In so much as the people of wider Australia, through the Commonwealth Government, effectively support the Northern Territory at present, and are likely to into the foreseeable future, I believe an Australia-wide referendum should be held to allow for - or deny - the creation of a new State for the Northern Territory. In this referendum I believe that the people of the Northern Territory should definitely be included in the eligible voters, "the people of the Northern Territory" meaning eligible adult voters.

I trust that this submission is acceptable to the Select Committee and apologise for not being able to be present at the meeting in Alice Springs, and also for being obliged to present my submission in hand-written form.

I wish the Select Committee well in what are its serious deliberations.

Yours sincerely

R G (DICK) KIMBER

PS Having reflected on all of this I believe that the Select Committee could give attention to the over-all management of the land and its resources - the natural flora and fauna, introduced flora and fauna, the sea and its products, the air, mineral resources, and other aspects that may be pertinent now or in the future. This is implicit rather than explicit in the "Proposals for a new State Constitution for the Northern Territory". I respectfully suggest that the Select Committee give consideration to this matter, in such a way as to give greater emphasis than in the "Proposals ..." document. In any Constitution the wording would need to be general, as the new NT/State laws would obviously cover specific points to do with fishing rights, pastoral management, mining developments and so-on. Nonetheless I am concerned that the Constitution should look to the rights, needs, aspirations and expectations of future generations as much as is realistically possible.

SUBMISSION NO. 36

PHILLIP R HOCKEY

PO Box 1638
KATHERINE NT 0851

1 May 1989

The Executive Officer
Select Committee on Constitutional Development
GPO Box 3721
DARWIN NT 0801

Dear Sir

As I have been unable to visit the places chosen for the public to meet and talk with committee members I wish to submit my contribution in the enclosed form.

You do not mention in the brochure if this form of submission is acceptable so I hope it may be of some value.

I would like to expand on one or two issues such as on page 9 at some time if such a thing would be of value to you.

Congratulations on a well presented brochure and I wish all committee members patience and good luck.

Yours sincerely

Phillip R Hockey

RESPONSE TO QUESTIONS ASKED

PAGE 5

| | | |
|----------|---|--|
| QUESTION | A | YES |
| | B | YES - FOR THE PRESENT |
| | C | YES |
| | D | NO |
| | E | YES |
| | F | NO |
| | G | NO QUALIFICATION; APART FROM RESIDENCE IN THE NT |
| | H | NO |
| | I | YES |

PAGE 6

| | | |
|----------|---|---------------------------------------|
| QUESTION | A | YES |
| | B | NO |
| | C | YES |
| | D | YES - PROVIDING A 75% MAJORITY AGREES |

PAGE 7

| | |
|--------------|-----|
| THE QUESTION | YES |
|--------------|-----|

PAGE 8

| | |
|--------------|--|
| THE QUESTION | APART FROM THE <u>RIGHT</u> TO FORM AND CONDUCT BUSINESS, IT SHOULD HAVE NO CONSTITUTIONAL GUARANTEE OR PROTECTION |
|--------------|--|

PAGE 9

ALL POINTS CONSTITUTIONAL GUARANTEE OF ALL POINTS EXCEPT
FREEDOM OF ASSEMBLY IN LARGE CROWD SITUATIONS. E.G.
PERMIT SYSTEM TO APPLY.

PAGE 10

THE QUESTION YES

PAGE 11

FIRST PART YES

SECOND PART YES

PAGE 14 THE TOWN OF KATHERINE CAN BEST BE

REPRESENTED BY TWO PEOPLE CHOSEN FROM EACH OF THE
MAJOR POLITICAL PARTIES, OR BY BALLOT, SIMILAR TO MAYORAL
ELECTIONS, PREFERABLY, THE LATTER METHOD.

PAGE 15 THE NT SHOULD OPT FOR METHOD II.

SUBMISSION NO. 37

P. SMITH-VAUGHAN

66 Rocklands Dve
Tiwi
Darwin 0810

3/5/89

Dear Sirs,

I am grateful for this opportunity to contribute to the formation of a Constitution for the Northern Territory.

The first point I wish to discuss is religion in education.

While I strongly support freedom of religion I believe that this must include freedom from religious indoctrination by the state.

An example of a threat to this freedom is the pseudoscience of "sensationalism" promoted by minority groups of Christian fundamentalists.

With their demands for "equal time" with the teaching of science in schools they have succeeded in using the state school systems in parts of the United States and in Queensland to impose their view of the world on the majority.

Intolerance and extremism, however well disguised, are fundamental to these sects.

These qualities are particularly inappropriate in the Northern Territory, which I believe to be unique in its harmonious mixture of races, cultures and beliefs.

I urge that this climate be maintained by protecting our children from an indoctrination which most Territorians would find offensive and a threat to their way of life.

I also urge that this freedom should not take the form of legislation but should be recognised as a basic right in our Constitution.

Another issue I wish to discuss is that of criminal violence. I am disturbed, as I believe many people are, by the increase in violence against innocent members of the public in their own homes.

I understand that if I use force in the protection of my family and property from intruders I run the risk of incurring greater penalties under law than the intruders.

I believe that the right of Territorians to protect their homes without the fear of being treated like a criminal should be a part of our Constitution.

While the rights of the individual must always be protected, it should be recognised that the rights of the innocent victim must take precedence over those of the attacker.

On a similar subject, I believe that the Constitution should also protect those taken into custody by the police. There should be a specific limit on the length of time a suspect may be held without being charged long enough for the police to gather evidence but short enough not to be used as a form of summary justice. This time should be determined in consultation with police, legal and community groups.

Persons in custody should have the right to a telephone call as soon as possible after arrest.

Again I see these rights as being too important to be granted by legislation which may be changed all too easily.

I hope you will consider these views to be valid and necessary parts of the Constitution.

Yours Faithfully,

P. Smith-Vaughan

SUBMISSION NO. 38

GRAHAM NORTON

To The Committee
Re - Northern Territory Constitution,
G. P. O. Box 3721
Darwin N.T. 0801

To those who are not offended by Truth ...

As opinions are "Requested" in regard to the proposed formation of a Northern Territory Constitution, I feel obliged to take the opportunity to contribute a few of the many main concerns of many thousands of Territorians. I have been resident in Darwin for almost twenty years, in business and management, and am very much aware of the considerations of the "Silent Majority". Although I have always been, and am fully aware that no-one will take the slightest notice of anything heretofore written, I hereby submit, and beg, that someone take notice, before it is literally too late !

1. This land has NOT been inhabited for 40'000 years .
 2. It is approximately 6'000 years since Adam and Eve were created, the FIRST HUMANS !
 3. FACT 3 : Aborigines have been "existing" in Australia no more than 400 years .
 4. Many Brave, Creative, Productive and hard working men have fought and died, that we may enjoy the freedom, wealth and prosperity of this country .
 5. It should NOT be GIVEN AWAY to anyone who has produced or earned ABSOLUTELY NOTHING, by little boy parasites playing politics.
 6. ANY acknowledgment of a Satanic, Pagan, (so called) Sacred Site, will, without any doubt whatsoever, bring the wrath of God upon our nation . (Among many other things)
 7. This land was claimed FOR GOD AND QUEEN 200 years ago, which should also remain the claim in the first paragraph in any new constitution .
 8. This Country CANNOT continue to contribute in excess of FIVE BILLION dollars annually to any minority group who contribute NOTHING except disease .
 9. There are approximately only 100'000 Aborigines in Australia, and as such are only a minor minority group in this Country and should be treated as such .
-

10. Half-castes are NOT Aboriginals, as they are half white .
11. Any Social Security payments, Royalties, etc., should be made according to percentage of colour .
12. IF (?) consideration should be given to "Descendants" of those "Harddone-by" 100-200 years ago, then it will be to the descendants of ALL CONVICTS, as they undoubtedly suffered the most during the establishment of this Colony .
13. The second paragraph in our constitution should be LITERALLY EQUAL RIGHTS for ALL. Which means equal rights for all to EARN, PRODUCE and GIVE, NOT minority favoured rights to get, get, get and give or earn nothing !
14. Persons who CHOOSE to contribute and earn NOTHING, should NOT VOTE, or be heard .
15. The ONLY PERSONS "QUALIFIED" to stand for election to represent the people of this Country, are those who have PROVED, by their OWN EFFORTS to be able to honestly and successfully operate and manage THEIR OWN business. Which obviously excludes ALL the legal fraternity, ALL public servants, those under 40, most women and ALL aborigines .

I am NOT racist or colour prejudiced, in fact the opposite!

GRAHAM NORTON

SUBMISSION NO. 39

DR. PETER K. THORN,

3/314 Casuarina Drive,
Nightcliff,
Darwin, N.T.

14/5/'89.

Dear Sir/Madam,

If the Northern Territory enters the Federation as new State I feel that the following should be included in the constitution for the proposed new State of the Northern Territory:-

- 1) That Aborigines with inalienable Title to Land in the Northern Territory have the ultimate right to decide on the management and use of their land. Proposed State Governments must abide by the decisions of the Traditional Custodians of Aboriginal Lands.
- 2) Aborigines without inalienable Title to Land must retain the right to acquire such title employing the current Land Rights process. This process should, under no circumstances, be under any control by successive proposed Northern Territory State Governments.
- 3) Equitable, and culturally acceptable, education should be available to all residents of the proposed State of the Northern Territory. The definition of equitable and culturally acceptable education should be determined by an expert body which remains independent of political persuasions.
- 4) Areas of national importance for landform, flora or fauna, and marine environments should be guaranteed complete protection by successive proposed State Governments.
- 5) Where existent, and appropriate, traditional Aboriginal Law should be taken into consideration in the judicial system.
- 6) That no resident of the proposed State of the Northern Territory live in a condition of poverty as defined by an independent body.

If the above conditions are not included in the Constitution for the proposed State of the Northern Territory I would not agree with the establishment of such a state.

Yours sincerely,

Peter K. Thorn.

SUBMISSION 40

GEORGE BROWN

GPO Box 4341
DARWIN NT 0801
29.05.89

The Executive Officer
Select Committee on Constitutional Development

Dear Sir

I wish to express my desire to have embodied in our NT Constitution the following rights and freedoms...

The Right...

- .. of assembly ..
- .. to freedom of information without restrictive or prohibitive costs to obtain it ..
- .. to protest and appeal against the decisions of Statutory Authorities ..
- .. to have accesses to all foreshores, freshwater lakes (natural) and streams and rivers within the Northern Territory ..

It is my opinion that, in the Northern Territory we should have "one law, one people".

Thank you for the opportunity to comment. I am willing to appear before the Select Committee.

Yours sincerely

George Brown
Darwin NT

SUBMISSION 41

PATRICK GOUGH

PO Box 1500
DARWIN NT 0801

28 March 89

Dear Mr Hatton

As we approach statehood in the NT we are being asked to comment on constitutional changes to the way we govern the NT.

I believe there should be a system if a law is passed by the NT government which is unpopular with the majority of voters it should be changed.

The way to achieve the change:

Petition is taken of voters on the electoral roll. If say 20% sign the petition the next step would be to go to a referendum.

The majority of voters on the electoral roll would have to pass the resolution which would force the government to withdraw the offensive law. True democracy.

Yours faithfully

Patrick Gough

SUBMISSION NO. 42

**NATIONAL SPIRITUAL ASSEMBLY OF THE BAHAI'IS OF AUSTRALIA
INCORPORATED**

PHONE: 9132771
SYDNEY"
9132772

CABLES" "NATBAHAI

June 10, 1989

Select Committee of the Northern Territory Legislative Assembly
on Constitutional Development

Dear Sirs/Madams,

The National Spiritual Assembly of the Baha'is of Australia has pleasure in offering the enclosed submission.

We have appointed Mr Graham Nicholson to present the submission on our behalf. The National Assembly trusts that our submission will be of some value to you and wishes you every success in the work of your Committee.

Yours faithfully,

NATIONAL SPIRITUAL ASSEMBLY
OF THE BAHAI'IS OF AUSTRALIA

DAVID PODGER
SECRETARY

Enclosure

**SUBMISSION OF THE NATIONAL SPIRITUAL ASSEMBLY OF THE BAHA'IS OF
AUSTRALIA INCORPORATED TO THE SELECT COMMITTEE OF THE
LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY ON
CONSTITUTIONAL DEVELOPMENT**

The National Spiritual Assembly of the Baha'is of Australia congratulates the Select Committee on its work in preparing proposals for a new State Constitution for the Northern Territory and appreciates this opportunity to make this submission to it.

This submission is respectfully tendered to the Select Committee on behalf of the Baha'i community of Australia. A short resume of the Baha'i Faith, with particular reference to Australia, is contained in an attachment to this submission as background information for members of the Select Committee.

The National Spiritual Assembly proposes to confine itself in this submission to the question of religious tolerance and freedom.

Since the inception in the Nineteenth Century of the Baha'i Faith and the Faith of the forerunner to the Baha'i Faith, its principal figures and its followers have been subjected to discrimination and persecution in Iran (formerly Persia). The forerunner of the Faith, known as the Bab (literally "the Gate") was himself abused, tortured, imprisoned and eventually put to death. Some 20,000 of his followers were also killed because of their Faith.

The successor of the Bab, known as Baha'u'llah (literally "the Glory of God") was himself tortured, imprisoned, stripped of his possessions and exiled from Persia to various places in the Ottoman Empire, finishing up in the Holy Land (Palestine), where for several years he was imprisoned in the penal fortress of Akka. He subsequently died nearby, still with the status of a prisoner.

The followers of Baha'u'llah, or Baha'is as they became known, have continued to be persecuted for their Faith in the land of their Faith's birth, and this persecution continues to this day. There have been numerous reports of discrimination and imprisonment and sometimes executions.

The legal position of Baha'is in Iran is perhaps a good example of the need for adequate guarantees of human rights. The Baha'i Faith is not legally recognised in Iran either in its ordinary law or in its constitution. Islam is the State religion, although the Zoroastrian, Jewish and Christian Faiths are constitutionally recognised. The administration of the Baha'i Faith is illegal and hence has had to be disbanded. Baha'is are accused of subversion and other crimes against the State, although the principles of their Faith require loyalty and obedience to governments and non-involvement in politics - Baha'is are accused of apostacy towards the Prophet Mohammed, the founder of the Islamic Faith, even though Baha'is revere the founders of all the great religions of the world. Pressures are brought to bear to make Baha'is recant their Faith. They are arbitrarily deprived of their rights, imprisoned, tortured and in some cases, put to death merely because they are Baha'is.

The Baha'i International Community, both in its capacity as a recognised nongovernmental organisation within the United Nations and elsewhere, has drawn attention to the plight of the Baha'is in Iran and to these breaches of fundamental human rights. It has received support from the leaders and parliaments of many countries, including Australia.

It is now recognised by most people that freedom of religion is one of the fundamental human rights. Everyone has an entitlement and responsibility to seek and find his or her own path to God or otherwise, without being subjected to outside pressures. This right is recognised in the Universal Declaration of Human Rights (as annexed to the Select Committee's Discussion Paper) and in the International Covenant on Civil and Political Rights, to which Australia is a party. It was reaffirmed in the Proclamation of Teheran of 1968.

These international provisions are now reflected in the constitutions of most countries, which contain statements of human rights. Most of these constitutions include guarantees of religious freedom.

Fortunately in Australia, freedom of religion is generally recognised. Baha'is are free to practise their religion and to operate their administrative institutions. The tolerant attitude of the Australian Government is reflected in the acceptance by Australia of thousands of Baha'i refugees. However, this attitude is not fully reflected in the laws of Australia.

Freedom of religion is recognised, albeit on a somewhat limited basis, by section 116 of the Commonwealth Constitution. A similar guarantee is contained in the State Constitution of Tasmania.

Some recognition of the principle is contained in statutes. Thus the Human Rights and Equal Opportunity Act 1986 of the Commonwealth, to which is scheduled the International Covenant on Civil and Political Rights, gives the Human Rights and Equal Opportunity Commission power to inquire into and report on alleged breaches of human rights. In addition, the common law provides a measure of protection in certain situations. There is not, however, any general provision guaranteeing the freedom of religion applicable Australiawide.

The Select Committee will no doubt be considering whether such a guarantee should be included in any new State Constitution. The National Spiritual Assembly respectfully suggests that the Select Committee might like to consider Article 18 of the International Covenant on Civil and Political Rights, which provides --

"1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No-one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

4. The State Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."

Such a provision forms a model for the type of provision that could be adopted in a new State Constitution, whether on its own or as part of a wider statement of human rights.

The National Spiritual Assembly of the Baha'is of Australia

June 1989

SUBMISSION NO. 43

DAVID J. SHANNON

To Steve Hatton,

I was present at the meeting at the Driver Community Centre to discuss the proposed N.T. constitution. (Remember Australian citizenship to own Territory real estate?) I offered to quantify the relationship between government and its constitution.

A government's performance is measured per person. Standard of living is \$ earned per person.

| e.g | (@ 1986/7 in \$U.S.(1988-9), I.M.F. data) | | |
|-----------|---|-------------|-------------------|
| | G.D.P | Population | per capita G.D.P. |
| India | \$ 228.98 bn | 799,727,000 | \$ 286.32 |
| Australia | \$ 175.66 bn | 16,642,000 | \$ 10,555.22 |

Australia therefore has a smaller economy than India, but has a standard of living 36.91 times higher.

Quality of life is measured by the cleanliness of the environment, nutrition, education, freedom and living space per person.

Installing the sane system of government as the other States now use will drop the standard of living 3%, and decrease the quality of life 17%. Therefore the only point in becoming a state is to have a better system of government.

The effectiveness of any command structure decreases 20% for each level in the chain of command, or 66% if that level is a committee

i.e. an organisation with 6 levels of command, 1 of which is a committee, has a command effectiveness of

$$1 \times .8 \times .8 \times .8 \times .8 \times .34 = 11\%$$

(changes will take 9 times as long)

The comparative effectiveness of the U.S.A. and Soviet Union governments is due to the fact that the U.S.S.R has 7 levels of government, while the U.S.A has 3.

A dictatorship can exhibit very few levels of command; the problem is lack of feedback. A representative that you can't fire or somebody else pays doesn't work for you.

So...

to improve feedback, the voters require some way to overrule the elected government at short notice. There are several ways to do this...

voters' veto of legislation,

voters' recall of representatives,

voters' right to sue representatives for non-performance (poor option)

voters' legislative initiative.

to improve structure, govern with fewest levels and no executive committees. At least two levels are required for this government; the intermediate layer is needed for controlled communication.

Because the Federal Government holds the purse strings, any such improvements can only raise the standard of living 57%, although the quality of life will improve 150%. If the Federal Government can be shamed to similar change, the theoretical possible increase in standard of living is over 1300 times.

| |
|---|
| IF ELECTORAL OVERRULE IS NOT INCORPORATED IN THE NEW CONSTITUTION, YOU ARE WASTING YOUR TIME. |
|---|

Given....

- 1) the constitution should be short, concise, and clear. Secondary school level. Kids straight out of school will be using it. Therefore it should use statements of principle rather than precise definitions of hundreds or thousands of words.
- 2) exceptions to a principle should be clearly delineated, rather than making the rule broader.
- 3) the constitution should have no empty offices or paper compromises. Having any deception or falsehood at the top is a suicide move. If we must have a Governor-General, give him or her real power. The judicial system is not independent of the legislative if the government pays judges wages, so treat the justice system as a sub-set of the civil service. If we need a separate set of rules for Aboriginals, say so. Confidence in the government is worth the paperwork.
- 4) in any line of authority, one person should carry sole responsibility. This is not for revenge for mistakes, but for learning from them. For a government, this means somebody with at least a power of veto

...I recommend the following constitution. Values marked X may be altered without affecting the result.

- 1) The Northern Territory shall be a State under the Federal Constitution, with a single House of democratically elected Representatives enacting Legislation and directing a Civil Service.
- 2) The Government is charged solely with the management of public property, so as to provide 1) liberty 2) safety and 3) profit for its residents, in that order of priority.
- 3) The area of the N.T. shall be divided by law into X(14) electorates, such that the numbers of voters in each electorate are within X(10)% of each other.
- 4) Any Australian citizen resident in the N.T, who is over the age of X(17) years shall be entitled to vote
- 5) On the X(100)th day of every X(4)th year, there shall be a General Election, in which each electorate shall choose a Representative by secret ballot.
- 6) As often as a Seat becomes vacant, an election shall be held in that electorate for a Representative.
- 7) A Representative may be dismissed by a petition of more than six of the voters of the electorate.
- 8) Only a Territory resident who
 - a) is an Australian citizen
 - b) is X(17) years of age
 - c) permits the disclosure of such public Service records as are normally held confidential
 - d) is under no allegiance or obedience to a foreign power may be a Representative.
- 9) Before the dispatch of other business, the House shall, by a greatest vote, select one of the Representatives to act as Speaker, and as often as the position becomes vacant, shall select a new Speaker. The Speaker may be re-elected upon a motion from any Representative. The Speaker shall not obstruct the first such motion of any day when the House is in session.
- 10) After the selection of a Speaker, and before the dispatch of other business, the House shall select a X(Premier), who may appoint such ministers as he or she sees fit. Selection and replacement of the Premier shall be by vote of more than 50% of the House.
- 11) Representatives shall attend the House at midday each day until the Speaker sets session times, which shall not be such as to let more than X(forty) days elapse between sittings.
- 12) Legislation shall be enacted by a vote of more than 50% of the House upon a Bill presented by any Representative. The Premier shall have a veto upon the vote.

- 13) No law shall infringe freedom of speech, freedom of belief or freedom of association, save that law may require a) silence in custody and b) veracity in dealings with Civil Servants in office.
- 14) No law shall be retroactive.
- 15) The Government shall have no authority to exact revenue from its residents. Fines levied by a court shall be disbursed at the discretion of that court.
- 16) There shall be a High Court with a Chief Justice, which shall have jurisdiction to hear any matter under N.T. law. Lesser courts may be set in law.
- 17) The appointment, payment and dismissal of any Justice shall be set in law.
- 18) The oaths of office of Justices and Police Officers shall have the defence of the constitution as their first duty.
- 19) This Constitution shall not be suspended or altered save by referendum. A petition of more than X(20)% of the voters of the N.T. shall be grounds for a referendum. If more than 50% of the voting population approve the matter so petitioned, it shall have effect.
- 20) All revenues received by the Government shall form one Consolidated Revenue Fund. Money shall only be drawn from the Fund by appropriation made in law.
- 21) The Government shall have no authority to borrow or lend on the credit of the State.
- 22) The Government shall have no authority to enter into treaty.
- 23) The Government shall have no authority to resume private property without the owner's consent.
- 24) Only Australian citizens or wholly Australian owned Companies may own N.T. land.

* The Aboriginal Option

- 10)select a X(Premier), who shall appoint a minister for Aboriginal Affairs, and such other ministers as he or she sees fit.
- 25) A portion, not less than X(27)%, of the land area of the N.T., shall be set in law, and used exclusively for the preservation of Aboriginal peoples and their culture and heritage. These areas shall be exempt from N.T. law and ministered by the Minister for Aboriginal Affairs.

* The Governor-General Option

- 10)select a Governor-General, who
- 12)The Governor General shall have a veto on such a vote.

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- Notes. 1) The Document of Transition should be separate from the constitution, preferably as two Acts of the old N.T. and Federal Governments.
- 2) Items 4, 7, 19 and 24 are the most important. Get those right and the system will be positively stable.
- 3) This constitution is dependant on the use of referendums. Foreign experience is that voters ability to call referendums is not abused. After a short learning curve, governments get their act together.
- 4) The Speaker maintains the framework/tradition of the government; the Premier/Governor General is the focus of the operation of the government. Do not fuse the two jobs.
- 5) The intent is that electorates will be responsible for their own representatives, so that there will not be good or bad times to make electorally unpopular decisions.

I wish to attend the Convention. If I may required to do so as a representative or delegate, let me know the type of support required, otherwise I shall speak only for myself. I doubt that I will influence the outcome much, but I can probably do good troubleshooting. I am a "generalist".

David J. Shannon

SUBMISSION NO. 43A

DAVID J. SHANNON

TO THE MEMBERS OF THE CONSTITUTIONAL SELECT COMMITTEE

This letter follows from the hearing on the 27th of September.

- a. There was a partial communication failure. The questions I was asked were sometimes contextless, and could therefore only be answered literally. I was nervous (again) which did not help. I request a one-to-one meeting with any of the Committee Members who is willing.
- b. For an example of how I assess the effectiveness of a government structure using GDP per head, see the 3 attached sheets which are extracts from the Australian Bureau of Statistics Yearbook and ABS 5220.0. From these I derive the following amounts of GDP per Territorian, in 1979/80 dollars.

77/78 \$8870 For example, the factor cost
78/79 9621 GDP for Australia for 1977/78
79/80 9589 was \$85, 585m. (Sheet 1).
80/81 10213 The 1979/80-adjusted GDP (Sht 2)
81/82 9828 for Australia was \$113,343
82/83 10109 m for the same year. Then the
83/84 10509 ratio of factor cost to
84/85 10280 constant dollar is 1:1.324.
85/86 11029 1.324 times \$6 698 (Sheet 3) is the GDP per Territorian in
79/80 dollars. i.e. \$8870.

This is an average growth for the 8 years of 2.8% per year in the standard of living.

The result does not directly contradict my prediction of a slight fall in the standard of living after self government, because to NT Government is not truly independent (which is what this whole bun fight is about).

- c. In case the point was missed (the final questions were somewhat longwinded), I recommend that any form of revenue raised upon residents only be done by referendum, i.e. the Government can exact any tax that it can convince the populace is a good idea.
- d. I note that the N.T. received 3.5 - 5.0% of the Federal grants to the States, while only having 1% of Australia's population, (Sheets 4-8) and our level of local direct and indirect taxation is lower than average. I don't expect that to continue when the Territory has 'equal' rights.

DAVID J. SHANNON

[Some enclosures to this Submission have not been included in this Volume.]

SUBMISSION NO. 44

MATTHEW LONSDALE

38 Wandie Crescent
ANULA NT 0812

21 September 1989

The Executive Officer
Mr Rick Gray

Dear Sir

With regard to the structure of our "State Constitution" before the Select Committee, I wish to submit that:

- (A) The Government of the day must serve its full term and not be permitted to call an early election for purely political gain.
- (B) The term of government should be three years.
- (C) We do not use any other name except "The Northern Territory".
- (D) All members of the Government must declare their business interests.
- (E) Any changes to the Constitution in the future must be put to the people as a referendum.

Thank you for allowing us to have our say.

Yours faithfully

Matthew Lonsdale

SUBMISSION NO. 45

A J HOSKING AND ASSOCIATES PTY LTD

PO Box 39220
WINNELLIE NT 0821

Phone: 089) 274930

Mr R Gray
Executive Officer
Select Committee on Constitutional Development
GPO Box 3721
DARWIN NT 0801

Dear Mr Gray,

Public Hearing 27/09/89

The recommendations made in this submission are in the belief that most Territorians have only the vaguest notions or concepts of constitutional development and statehood for the Northern Territory. I believe that the recommendations, if adopted, would work to ensure the widest possible participation at the grassroots level of the Territory community. Constitutional development should not be seen as just another political exercise evolving from the top down. The views of ordinary people must be sought by simple, practical and inexpensive means.

1. Hold an essay competition for Territory schools
 - primary and secondary levels
 - attractive prizes
 - theme to be relevant to the NT's role in the continuing story of Australian constitutional development
2. Request formal inputs from industrial/commercial professional/community organisations
 - individual approach to each one with a request for a formal response after all due discussion and deliberation by members

3. Hold an informal public opinion poll (voluntary) of all Territory voters
 - coincide with the next federal election in 1990
 - various, simple questions in order to canvass opinions on future options for the NT
 4. Promote a bid for more seats in the House of Representatives and the Senate
 - number of seats in the NT should be based on the national average of electorate size eg if 40 000 electors is average, then the NT should be entitled to 4 seats (1 Centre, 1 Barkly, 2 Top End)
 - equality with the states in the Senate cannot be justified yet; as an interim measure, number of Senators should be on a pro rata basis with Tasmania, the smallest state eg if the NT has one third of the population of Tasmania, then the NT should have 4 Senators
 - "full taxation requires adequate representation" and basic "fairness" are the underpinning philosophical justifications
 - inevitably, any bid for increased representation in the federal parliament will only succeed if there is a groundswell of public opinion in favour of it
 5. Canvass support from electors in the states
 - their support is needed
 - use the national media to invite opinions, comments etc .
 - provide a simple one-page Fact Sheet on the NT constitutional development to date and future options/aspirations to each voter at the next federal election
 6. Hold a national competition to find a new name
 - "Territory" has dependency connotations and is unsuitable
 - an Aboriginal geographical word may be appropriate or a person ' s name from history (eg Stuart); most state names have either unimaginative geographical tags (South, Western) or have connotations of royalty (Queensland, Victoria) which reflect political realities at the times the colonies were established (no longer appropriate)
 7. Promote economic development and economic self-reliance
 - constitutional development must go hand in hand with economic development; neither can be considered in isolation
 - only more economic development can bring more people to the NT and ultimately justify full statehood
-

- the concepts of decentralisation and settling the north must be promoted aggressively throughout Australia to complement the constitutional initiatives; these concepts should be highlighted in the Fact Sheet.

Yours faithfully,

A J Hosking

SUBMISSION NO. 46

R.D.TREMETHICK

P.O.BOX 41959
CASUARINA N.T. 0811

25th SEPT. 1989

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT
LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
G.P.O. BOX 3721
DARWIN N.T. 0801

ATTENTION : Rick Gray.

Dear Sir,

RE: Written submission for the Public Hearing Darwin 27th September 1989.

I submit the following submission to the Select Committee on Constitutional Development.

I propose the Constitution read with word to the effect that for each change to the constitution a referendum be held and that only one item or topic is worded in each question put to the referendum.

My proposal is to address the wording of the questions in a referendum. The recent referendum held in Australia costing Thousands of dollars had four questions. Each question in turn addressed two topic areas. One topic palatable to most Australians and the other topic not so agreeable to most.

A single topic question will give a more accurate response of the people of the Northern Territory and not waste our limited funds.

Yours faithfully,

ROBERT DONALD TREMETHICK, S.B. ST. J.
4 PAYNE CRT. DRIVER N.T. 0830.

SUBMISSION NO. 47

N.T COUNCIL OF GOVERNMENT SCHOOL ORGANISATIONS

SUBMISSION TO
LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

FROM: N.T, COUNCIL OF GOVERNMENT SCHOOL ORGANISATIONS

SEPTEMBER 27, 1989

The Northern Territory Council of Government School Organisations represents the parents of the approximately 35,000 students in the Territory's Pre, Primary and Secondary Schools .

COGSO's Representativeness is established through a school, regional and Territory-wide Structure.

Schools which are affiliated with COGSO are entitled to nominate from one to four delegates, depending on their pupil enrolments, to participate in COGSO deliberations at the Regional level and at two Territory-wide conferences held each year.

The system operates in such a way that each of the six regions of COGSO nominates a Vice President and from one to four executive Members.

This means that with a Separately elected President, Senior Vice President, and Treasurer, the organisation comprises a total of eighteen people from throughout the Territory .

According to the constitution these people must be parents of a child or children in the public education system in the Northern Territory.

There is also provision for the Executive to co-opt up to three people, who do not have voting rights, and Life Members of the Organisation, of which there are six, have the right to participate and vote at all meeting of COGSO.

It must be said that, as with all such voluntary organisations, it is not always possible to encourage all of those schools eligible to affiliate to do so, nor is it possible to ensure that all of those which do affiliate send one or all of their delegate entitlement to the business meetings of the organisation.

Nonetheless about half of the schools in the Territory eligible to affiliate with COGSO have done so, and of the others, the vast Majority are small rural or Aboriginal schools where there is less appreciation of, or ability to take part in, the work that COGSO does.

From this it can be seen that while COGSO claims to speak for parents of students in Government Schools, there are gaps in our representation and these are admitted although it does not mean that they are not being addressed.

COGSO has, in recent years, been actively moving to expand representation in schools which have not traditionally been affiliates as well as Aboriginal parents and parents from the many ethnic groups represented in the school community.

It should be said that these problems are not confined to our organisation, I would suggest they are part of a wider problem of getting participation by these particular groups at many other levels in the community.

The problem is compounded by the simple fact of being an organisation which relies on voluntary efforts and because of the workload generated this places quite heavy demands on those who do participate.

All of that being said, COGSO wishes to express its appreciation for the opportunity to make a contribution to the process of constitutional development.

It is our belief that Statehood is a logical step in the Constitutional Development of the Northern Territory although we do not have a view on the timing for such constitutional change.

We wish to address our submission to two specific areas; The form of a Constitutional Convention, and the inclusion of a statement of Human Rights with specific reference to the right of citizens to an education.

THE CONSTITUTIONAL CONVENTION

We believe a Constitutional Convention is a logical step for the process of developing a State Constitution to take and therefore would not only support its establishment, but would hope there would be provision for our organisation to be a member of that convention. For this to happen, therefore, it would seem that the Constitutional Convention must be either partly or wholly nominated.

COGSO would see the best option being a Constitutional Convention which is a combination of elected and nominated members.

We would see nominated members being drawn from the widest possible spectrum of community groups and, to ensure the objectivity of the convention, would want to see that there was no Ministerial or other veto of those nominated by any group.

We would see elected members being drawn from both Territory and Local Government and, ideally, balanced in terms of political persuasion.

STATEMENT OF HUMAN RIGHTS

While there appear to be few precedents in Australia for inclusion of a Statement of Human Rights in a State Constitution we believe this may only reflect the fact that such constitutions were probably

written before the concept of Human Rights has gained widespread currency, although the United States enshrined many rights in its Constitution, or perhaps there was a belief that the provisions of Common Law were adequate protection of the rights of citizens.

COGSO believes there is room in a State Constitution for a declaration of the rights of citizens which could take the form of a preamble but should have some degree of legal enforceability or protection for a citizen who believes he or she has been denied such a right.

Such a statement would incorporate the usual Human rights-Freedom of Speech, religion, movement, Assembly, Equality before the Law, the right to trial by Jury and due criminal process, the right to own property and voting and citizenship rights to name a few -- but we would specifically seek that it include the right of citizens to a free, secular and universal education. COGSO believes Article 26 of the United Nations universal declaration of human rights relating to the right to an education would provide an acceptable basis for such a statement in a new Northern Territory Constitution.

It states:

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

In saying that this statement provides a basis for a statement on education in a new Territory constitution, COGSO recognises there would be a need for some changes to reflect local wishes.

It is proposed that such changes would take place on the basis of consultation when, or if, it is decided the new constitution will include a declaration of rights.

SUBMISSION NO. 48

E.B.M.JAMES

SUBMISSION ON STATEHOOD -

1. INTRODUCTION

In order to establish some bona-fides and provide some evidence of qualification to make a submission on this subject I propose to tell you briefly about my association with the Northern Territory.

I came to the Territory in 1952 at the age of twenty one and, except for a short period in Melbourne I have lived in the Territory for thirty seven years. My wife claims to be a true Territorian having arrived here at the age of two in 1937. We have four sons, two of whom were born in the Territory and all of whom have lived here virtually all of their lives.

During my thirty seven years in the workforce of the Territory I have worked in Government service and in private industry. I served under a federal administration as a public servant for fifteen years. Of my subsequent twenty one years in private industry the first ten were served under the same constraints of rule from Canberra.

I am a Land Surveyor by profession. I have travelled widely throughout the Territory during the course of my professional career. I have an appreciation of at least some of the problems faced by miners and pastoralists. I have served as an elected member in Local Government and as a result I have an appreciation of problems confronting those organisations.

During my term as an alderman of the Darwin City Council My wife and I travelled to Alaska where we discovered the remarkable similarities that exist between that former Territory and this one in which we live. We took an avid interest in the Alaskan's successful fight for statehood, and on our return to Darwin I was successful in reviving Council's interest in the Darwin/Anchorage Sister City relationship.

My profession is concerned with the land, the efficient administration of the land and the appropriate planning for the use of the land. These are matters which must be under the control of those who are closely associated with them and not by those who rarely if ever see the land they purport to administer.

We have seen Darwin grow from a frontier town of five thousand people to a beautiful city of seventy five thousand, and I have seen the rest of the Territory grow with it. My wife and I have a stake in this country and so do our children. We have experienced the frustrations of total control from afar. We have experienced the difficulties associated with partial self government.

We believe the time has come for TOTAL local control.

2. THE NEED FOR STATEHOOD

We do not of course, profess to know all about Statehood or the problems associated with the transfer of powers. However we have read various discussion papers provided by the Select Committee and the ministerial Statement on the subject promulgated in 1986. We wish to take the opportunity to comment on various aspects of those papers.

We are in total agreement with the Chief Minister's view that the Territory has a Legitimate claim to Statehood and would suggest that the same would apply to any other Territory of similar size and population were one to exist. We agree that the present constitutional disadvantages to the Territory are no longer acceptable since the expressed policy of the Federal Government is to treat the Territory as a state anyway.

Under these circumstances we believe that Territorians should get full and equal status to that of the people in the existing states (which I will refer to from here on as "The Other Six" in much the same way as the Alaskan, refer to the American mainland states as "The Lower Forty-eight"); and we believe that this equal status should come sooner than later. Our view is based more on philosophical reasoning rather than any specific argument about the rights or wrongs of any particular constitutional disadvantage.

We have studied the long list of perceived disadvantages published in the Ministerial Statement and we have sympathy with most of them. We believe it to be iniquitous that such a long list of differences between the rights of the people of the Territory and those of the people in "The Other Six" should exist and we believe that all Territorians should fight to have the situation reversed.

By the same token we urge caution against the dogmatic adherence to principles which no Federal Government of whichever persuasion will be prepared to accept.

For example - Aboriginal affairs and Aboriginal land rights is an area over which the Federal Government is adamant that it should have control in all the states. It is an argument which is hard to dispute and is one which the majority of the Australian people would probably support. It would be senseless to have our move for statehood defeated through a belligerent attitude to compromise on such subjects.

3. OPTIONS FOR A GRANT OF STATEHOOD

Let me now move to the options open to the Territory for a grant of statehood and in particular to make some comment on the options published in the Select Committee's Information Paper No.1.

There are two ways in which a new state can be created. One is by act of the Commonwealth Parliament (sec.121 of the constitution) and the other is by national referendum (sec.128). The select committee's preferred option is for the Section 171 method.

Although we realise the method used will be decided by the Federal Government, we believe the Territory Government should push for a national referendum on the subject. It is only through a national referendum that the Territory will gain EQUAL

RIGHTS with "The Lower Six". Acceptance of the Section 121 method should be the fall-back position, and only after hard negotiation in favour of the former has failed,

The people of Australia are not stupid. If sufficient argument is placed before them to show that there is no justice in the grant of unequal rights we are sure the spirit of "giving everyone a fair go" will prevail.

However before any substantive negotiations with the Federal Government are likely to succeed it is essential to convince them that the people of the Territory share the desire for statehood. Whether or not Territorians do share this desire can only be determined by asking them.

We therefore concur with the Select committee's view that a Territory referendum on the subject be held within a reasonable time.

For the same reasons that we believe Australians will support a call for constitutional statehood we also believe Territorians will do likewise. All that is required for success is an appropriate education programme.

There is no doubt in our minds that the present programme of informing Territorians about the subject is totally inadequate. There is a desperate need for a dedicated campaign of information exchange using every medium possible, coordinated by a professional organisation over a short period of time leading up to a Territory wide plebiscite.

If such a plebiscite should fail there would be little point in continuing in the matter. The thought of such a disaster should be sufficient incentive to those controlling the exercise to ensure an advertising campaign of the highest quality. We are convinced that, given the proper information, Territorians are bound to vote for statehood.

We understand that work by the Select Committee in the preparation of a draft State Constitution is proceeding. We believe it is essential that the plebiscite already referred to should be held soon, to ensure that this work is not rendered superfluous.

The action proposed by the committee to finalise the constitution seems to be appropriate to us. The creation of a Constitutional Convention to consider the draft and to produce the constitution in its final form is the way the matter was handled by Hawaii and Alaska and we see no reason to depart from this procedure. The ratification of the final Constitution by the people of the Territory is absolutely essential.

Whichever method is finally decided upon for the granting of statehood, whether by means of Sect.121 or by Sect.128 procedures, the Territory will need the support of the public at large. We will need the support of the politicians in "The Other Six".

To gain public support it is essential to first gain the support of the Media, and especially the support of prominent newspapers, both here and in "The Other Six".

Let me emphasise this point by quoting from Alaska's Quest for Statehood 1867-1959 by Robert A. Frederick.

"By the early 1950s, three of the Territory's newspapers were pressing for statehood....While most Alaskan papers covered the campaign, it was the *Times*, the *Chronicle*, and the *News-Miner* which championed statehood....."

And again -

"Col. Carroll Glines,... in an objective study titled *Alaska's Press and the battle for Statehood* concluded that statehood was attained because Alaska's newspaper publishers provided the stimulus and kept the public aroused until the battle was won."

What those quotations don't tell us is that the Alaskan cause was taken up by such influential mainland papers as the *Washington Post*, the *Chicago Tribune*, the *Seattle Post* and the *Nashville Banner*.

In our view it is essential that Australia's news magnates be convinced of our need.

4. THE CONSTITUTIONAL CONVENTION

As stated in the discussion paper on Representation in a Constitutional Convention, there is a need to agree on the way that the membership of such a convention should be determined. The committee suggests three possible methods-

1. Wholly elected
2. Wholly nominated
3. A mixture of both.

The advantages of a wholly elected system are self evident, but the disadvantages of such a system, as published in the paper, are not entirely valid. To say that the exercise would be costly and time consuming is, under the circumstances a nonsense. The whole operation will be costly and time consuming. To talk of low turnout, deficiencies in representation and unsuitable candidates is in our view negative thinking. None of those problems will arise if the community is sufficiently motivated by the publicity given to the subject.

The one really important disadvantage to a wholly elected convention is the lack of opportunity for interest groups e.g. Members of Parliament and Aborigines.

On the other hand a fully nominated convention has fewer advantages, even though it allows for the representation of minority groups, and even more disadvantages. Whilst it allows for a deliberate choice of candidates it certainly does NOT ensure participation by the best-suited and qualified representative, as suggested in the paper. Such a qualification is a matter of opinion. The real disadvantage is that such a convention would lack legitimacy and would certainly be criticised as unrepresentative.

We believe that representation in a Territory Constitutional Convention should be determined using option three - a mixture of partly elected/ partly nominated delegates.

Having said that, it remains to comment on the election system to be used and on the nominating process. In the Alaskan experience all delegates were elected, but eleven of the fifty five delegates were elected at large by the whole of that Territory. Of the remaining forty eight, fifteen were elected from newly created single delegate districts which bore no significant relation to population distribution, thus giving rural areas the opportunity to be adequately represented. The remaining thirty three were elected from the existing electoral subdivisions which had always been dominated by urban voters and candidates.

The Select Committee has suggested that in an election with single member constituencies minority interests do not fare well. We suggest that this deficiency can be overcome, at least partially, by substituting nominated members for the eleven that the Alaskans elected from the Territory at large.

The election of the remaining forty four should be carried out in a manner which will ensure that rural interests are seen to get an equitable representation. The multi-member electorates suggested by the Select Committee may achieve this result, but it may be that consideration should be given to a number of new single delegate districts together with the existing electoral districts as in the Alaskan experience.

Whatever is decided in this regard, the result to be achieved is epitomised in the words of Vic Fischer in his treatise on Alaska's Constitutional Convention:

"Even though limited, the re-districting produced a legislative body that was the most representative group of popularly elected officials in Alaska. This factor added to the good feeling about the work of the convention during its progress and to the ultimate acceptance of the constitution by the voters."

The Select Committee has sought expressions of interest from parties desirous of representation in the convention. It is our submission that politicians per se would have no particular right to nomination. But we do believe that both the Government and the Opposition should be represented as should the Aborigines.

If the word "parties" includes individuals I would advise that I would deem it an honour to be nominated as a delegate to the convention as a representative of the surveying and construction industries or in my personal capacity as a Territorian experienced in legal matters relating to the land.

5. OPERATION OF THE CONVENTION

On pages 6 and 7 of the Select Committee's paper on Representation in a Constitutional Convention, subparagraph (v) describes a possible form in which the convention could operate. Unfortunately that text is written in the present tense and gives the impression that a decision in this matter has already been taken. We hope this is not the case as we believe the form proposed there is not appropriate. However we note that the committee has asked for public comment on this matter.

In the form proposed in the paper there is too much emphasis placed on "specialist" membership and the participation of M.L.As. I have already commented on the role that politicians should play in this matter. We believe that generally, they should take their chances along with the rest of those

who offer their services. As for "specialist" membership, we believe there will be no end of "specialists" offering their services for membership both as nominees and for election.

We believe the form and method of operation of the convention should be decided by the convention itself. It is the prerogative of the convention to decide whether it makes its decisions in plenary session or with the assistance of committees. These matters should not be forced upon it before it comes into existence.

It can be fairly said that a constitutional convention is not a legislative body. Fischer puts its function quite clearly when he says :

"The most distinctive feature is that its end product the constitution must be a unified instrument, dealing with broad policies and structural arrangements in a consistent, clear and logical manner."

We agree with Fischer when he says that the rules and procedures of a constitutional convention need to be designed to coordinate the work of all the delegates and all committees towards producing a unified whole, and this can only be done when the convention decides upon those rules itself

Rules and procedures should not be imposed on the convention.

Of course this does not mean that this convention cannot be given some guidelines. The Alaskan convention drew on the experience of Hawaii, Missouri and New Jersey and a set of draft rules was devised by the Alaskan Public

Administration for consideration by the convention. We would hope that the same would be done here. In this regard Fischer's treatise on the Alaskan convention contains a wealth of information which must be compulsory reading for anyone making recommendations about the form and method of operation of this Territory's constitutional convention.

We recommend that guidelines for the form and method of operation of the Territory's constitutional convention be drawn up using the successful Alaskan convention as a model and we offer the following comments on the subject.

The first pre-requisite for such a convention is that it should be free from "politics". Of the part that politics had to play in the Alaskan experience Frederick had this to say :

"When it came to the people's right to statehood, ... law, justice and fair play were anticipated by citizens. In these matters, (a concern about) which political party controls the Senate or the House should not be the question. Yet, for a time it was, and Alaska paid the price with statehood's delay."

The second pre-requisite is that all of the convention's deliberations should be open to public scrutiny. The public have a right to know why their delegates made a particular decision and should not have to suffer the indignity of being presented with a fait-accompli. Whilst many believe that coherent debate can be stifled by open proceedings, the benefit that can be achieved from public feedback via the media makes such a process obligatory.

The Alaskan convention accepted a compromise on this issue and its rules provided for committees to invite the public to attend. In our view that arrangement is not particularly desirable although Fischer does say of the Alaskan convention, that:

"the rules finally adopted..... did nothing to hinder an open convention".

Finally on this subject we would urge the employment of adequate staff and consultants to assist the convention in its task. The select committee has posed the question as to whether "outsiders" should be eligible for membership of the convention.

We would say that no one from outside the Territory should have the right to make decisions on the content of a constitution for the Territory, however we certainly believe that learned constitutional lawyers and academics from "the Other Six" should be employed as consultants to the convention.

The examination of Fischer's text will show that a large number of consultants is desirable, and also that not all of them would be required for the entire convention. In fact only one, the representative of the Public Administration Service was employed for the whole period of the Alaskan convention.

6. THE CONSTITUTION

In conclusion I would like to comment on a few of the subjects suggested by the Select Committee for inclusion in a draft constitution.

We agree wholeheartedly, with the principle of one House of Parliament and with the suggestion that the number of members should be stated in ordinary legislation. However we believe the constitution should contain a formula by which the number is determined.

While the select Committee recommends the principle of one person one vote (whatever that may mean) we are at the opinion that there should be a preferential voting system and the system should be a voluntary one.

We favour the constitutional recognition of Local government in accordance with the terms proposed by the N.T. Local Government Association.

We believe the rights of Aborigines (as opposed to other ethnic groups) should be entrenched in the constitution, but not in the form of a treaty or bill of rights.

and

We believe that human rights is not an issue that needs to be enshrined in a constitution.

Having said all this I wish now to thank the Select Committee for giving us the opportunity to express our opinions. We look forward to successful conclusion to the fight for equality "The Other Six" and we wish the committee success in its further deliberations.

SUBMISSION NO. 49

BRUCE REYBURN

PO Box 310
Tennant Creek NT 0861

20 December 1989.

ENTRENCHMENT OF A NEW STATE CONSTITUTION.

Comment on Information Paper No 2.
Select Committee on Constitutional Development.

The information paper, in developing an argument for entrenchment, compares a constitution with Aboriginal traditional law (paragraph 3, page 3). This brings out some salient concerns.

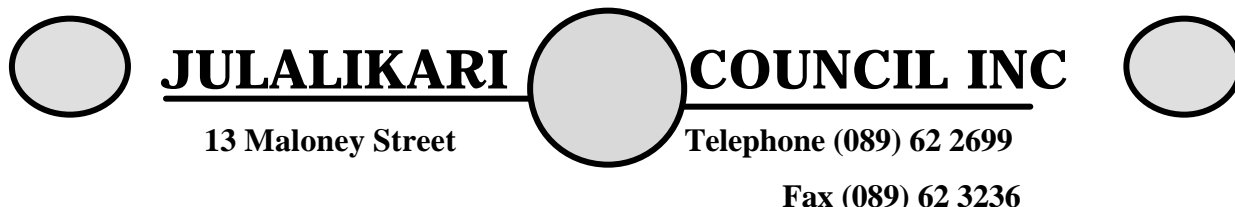
1. Aboriginal traditional law draws on a body of experience with life in Australia which extends back "40,000" years and possibly longer. The present Constitution is yet to be drawn up and debated, not to mention being put into lived practice. The comparison is completely absurd.
2. If Aboriginal traditional law can be held up by the Northern Territory government as an example of a body of law which should continue into the future then why is this body of law not recognised by the Northern Territory government?
3. The question of the relationship between the proposed Constitution and traditional Aboriginal law should be squarely addressed by the Select Committee. I suggest that, given the respective standing of the two traditions, the question should be properly put by seeking to determine how Anglo-Australian law fits in with the tried and tested law of the land (traditional Aboriginal law) rather than vice versa. There is no evidence that this Constitutional question has been put to senior Aboriginal people in culturally appropriate terms. There should be no decision made until this has been done.
4. Experience with the 1901 Federal Constitution (e.g. the failure to grant Aboriginal people the rights of citizenship) and with other State's (e.g. Queensland's recent attempts to initiate citizens referenda) demonstrates the need for a more flexible approach to the inevitable process of Constitutional reform. Those who frame Constitutions are blind to future problems. Why should future generations be bound to the prejudices and fashions of the framers?
5. Life in the Northern Territory, under Anglo-Australian law, is a recent social experiment. The attempts of one sector of the community to preserve their fleeting position of privilege by

'freezing' change in a formal and entrenched Constitution at the cost of the well-being of other citizens - must be strenuously resisted

6. Now is NOT the time for entrenching a Constitution which has been neither ratified by the citizens nor examined for its social and environmental impacts nor tested against real life. A genuine Constitution must first pass a test of time, similar to Aboriginal traditional law.

SUBMISSION NO. 50

JULALIKARI COUNCIL INC.



**P. O. BOX 158
TENNANT CREEK, N.T. 0861**

18 April 1989

**SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT
STATEMENT ON PROPOSED N.T. STATEHOOD FROM JULALIKARI COUNCIL**

- (1) Aboriginal people in Tennant Creek represented by Julalikari Council do not want Statehood for N.T.
- (2) We believe the interests of Aboriginal and non-Aboriginal people are best protected by keeping powers with the Federal Government and maintaining municipal powers and responsibilities of Aboriginal Housing & Community Support Organisations.
- (3) We want to keep Aboriginal control over Aboriginal land and services to Aboriginal people.
- (4) The N.T. Government can't be trusted to look after Aboriginal people because of its "track record", including:-
 - (i) Weakening sacred sites protection.
 - (ii) Opposition to land rights and land claims.
 - (iii) Opposition to Independent Aboriginal services such as Yipirinya School, Aboriginal health and legal services, Imparja.
 - (iv) Opposition to Land Councils.
 - (v) Tendency to mainstream Aboriginal services and deny Aboriginal self-management, e.g. opposition to A.T.S.I.C.



- (vi) The record of State Governments in other parts of Australia is as bad, often worse than the N.T. Government record, especially in Queensland, W.A. and Tasmania.
- (vii) The difference between the relative power of the N.T. Government and State Governments has helped maintain the rights of Aboriginal people. Commonwealth constraints on Territory and State government powers is good for Aboriginal people not bad.
- (viii) We want assurances from the N.T. Government that there will be no more legal challenges to the Warumungu Land Claim.
- (ix) We want assurances from the N.T. Government that Aboriginal rights to own, live and use pastoral lands (including excisions) will be expanded not reduced.

SUBMISSION NO. 51

PEOPLE'S LAW

PEOPLE'S LAW

GOVERNMENT BY THE PEOPLE

PO Box 528, Mentone, 3194 Vic

5th April 1991

Mr Rick Gray
The Executive Officer
Sessional Committee on Constitutional Development
Legislative Assembly of the Northern Territory
GPO Box 3721
Darwin
Northern Territory 0801

Dear Mr Gray

Thank you for your letter of the 26th February 1991 and for the opportunity of making a submission to the Select Committee.

People's Law is a non-partisan organisation concerned with democratic reform. We believe our democratic heritage would be enhanced by the introduction of citizen-initiated referenda. Therefore our submission is concerned with the use of referenda to amend the new constitution.

Would you be kind enough to include **People's Law** on your mailing list.

With Best Wishes

Yours sincerely

Colin Gray
Assistant Secretary

1. INTRODUCTION

- 1.1 **People's Law** believes the question of who should be able to amend the new constitution is a vital one for the Select Committee.
- 2.2 It is our view that both the government and the people should have an equal right to propose amendments to the new constitution.
- 2.3 We submit that the new constitution should entrench the following provisions:

2. AMENDMENT OF THE CONSTITUTION

- 2.1 This Constitution shall not be altered except in the manner outlined below:
- 2.2 The introduction, setting aside or modification of specific sections of the Constitution may be carried out at any time by a popular-initiative of residents qualified to vote for the election of members of the Legislative Assembly.
- 2.3 If five percent of residents qualified to vote for the election of members of the Legislative Assembly request such partial amendment by a popular initiative, the government must call a binding referendum on the proposed amendment not more than twelve months after the popular initiative request is deemed to have qualified.
- 2.4 A state law shall determine the procedures to be followed in the case of a popular-initiative to amend the Constitution.
- 2.5 If by means of a popular-initiative several different provisions are to be amended or introduced into the Constitution, each one must be the subject of a separate initiative request.
- 2.6 If an absolute majority of members of the Legislative Assembly pass a law to introduce, set aside or modify specific sections of the Constitution, the proposed law shall be submitted to residents qualified to vote for the election of members of the Legislative Assembly.
- 2.7 If a majority of qualified voters in a majority of electorates approve a proposed amendment, the government shall carry out the amendment in accordance with the decision of the voters.

Colin Gray
Assistant Secretary
People's Law

Date: 5/4/91

SUBMISSION NO. 52

TED MACK, MP

**PARLIAMENT OF AUSTRALIA
HOUSE OF REPRESENTATIVES**

TED MACK, MP
FEDERAL MEMBER
NORTH SYDNEY

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20 May 1991

The Secretary
Select Committee on Constitutional Development
GPO Box 3721
DARWIN NT 0801

Dear Sir

I wish to make a brief submission to your Committee on the need for a form of participatory democracy including citizens' initiated referendums which I believe are a necessary element in modern government.

I am pleased to enclose copies of speeches I have given in the House of Representatives, advocating such forms under the Australian Constitution.

I enclose copies of two Bills I have introduced into the House of Representatives.

If you require any further information I would be pleased to assist.

Yours sincerely

Ted Mack

Encl.

CONSTITUTION ALTERATION (ALTERATIONS OF THE CONSTITUTION
ON THE INITIATIVE OF THE ELECTORS) BILL 1990

Second Reading

Mr MACK (North Sydney) (11.40)-I move: That the Bill be now read a second time. The Constitution Alteration (Alterations to the Constitution on the Initiative of the Electors) Bill 1990 is a Bill to alter the Constitution which would itself require the approval of the electors to be put into effect. It proposes to alter the Constitution by inserting two new sections-129 and 130. Section 129 provides for a group of 20 electors to present a petition to either House of Parliament addressed to the Governor-General requesting that an alteration to the Constitution be put to the electors.

While section 129 provides for a fully drafted proposal, section 130 provides the alternative of giving a brief statement concerning the purpose of the alteration. The actual terms of the alteration needed to achieve it will be put into final form by the Government if it is approved by the electors. In that case, the alteration drafted would be open to court review.

Both of the proposed new sections provide for limited review of the petition by both the House receiving it and the Federal Court of Australia. The petitioners would then have six months in which they must gather a number of signatures equal to 3 per cent of the electors and 3 per cent of electors in each of a majority of the States. The House must be satisfied that the petition is in accordance with procedures to be prescribed by the Parliament. The petition would then be presented to the Governor-General who would put the question to the electors at the next general election to

approve or disapprove in the manner that the Constitution now provides.

The requirement of the Bill is that some 330,000 electors would have to sign within a six-month period. Signatures in proportion would have to be gathered from electors in a majority of the States. To satisfy these requirements a measure would have to enjoy substantial and widespread support and there would be little danger that matters of trivial importance would be put to a referendum or that there would be a flood of such measures.

Democracy was originally direct in nature. Citizens of ancient Greek states decided matters of public policy directly at public meetings. Later democratic forms included the town meetings of Europe and North America. Representative democracy developed in order to meet circumstances where the direct form was not feasible because of the size of a society, distance and poor communication. Citizens had no choice other than to elect one of their number to go off as their representative to a governing body and to return with news from time to time.

As technology improved, this horse and buggy representative democratic form ceased to be the only option. Switzerland and Austria developed initiative referendums a century ago as an adjunct to their representative democratic systems. The concept was part of a progressive democratic movement of the late nineteenth century which also encompassed the secret ballot and votes for women. Europe, North America and Australia were very much

influenced by this movement—indeed, Australia was a leader. The Australian Labor Party, which had its origins in that period, embraced the concept of the initiative referendum. It was a formal plank in the Party's platform until 1963. Between the world wars the concept had much support and it was raised in Federal and State parliaments on a number occasions. By a nice irony, it was raised by a former member for North Sydney some 76 years ago.

Initiative referendums are now a well accepted feature of government in at least six countries and are used widely in the United States, where some 24 States and 100 city governments provide for it. Wherever the procedure has been adopted, there has been no move to discard it. Eighty-five per cent of Californians voted to keep their initiative referendum system. Where it has not yet been adopted, people have often expressed support for its introduction—as 70 per cent of the voters of North Sydney municipality did when the question was put in a referendum.

Communications have now developed to the point where serious consideration is being given to the introduction of electronic voting in this House. It is conceivable that in the not too distant future, electronic voting could be extended to all electors with a consequent return to democracy in its truest and most direct form. In mentioning that possibility, I am not suggesting that representative democracy should be replaced by referendum only that it is possible and desirable that direct procedures of decision-making should be developed as an adjunct to it.

The Bill, in extending to people the right to initiate constitutional change, would end a monopoly now enjoyed by government. There is no reason why the Government or even Parliament should have a monopoly on law-making. In Australia, unlike England, the question of parliamentary sovereignty does not

arise. Our Constitution firmly establishes the sovereignty of the people. The Bill would do no more than what was recommended by the Constitutional Commission established by the Government in 1985. The ethic of participation is a marked trend throughout the world since the 1960s in virtually all facets of society. The collapse of the Eastern bloc can be partly attributed to a failure to recognise and adapt to this trend. The ethic is now extending to government and people are no longer prepared to be powerless bystanders in the decisions that affect them between elections. People have a right to be involved in the making of decisions that affect their lives. Political parties and institutions of government have a choice to either adapt to that reality or to perish.

Parliament as an institution is now falling to meet its representative function. It has been overpowered by the party system. Party discipline stifles real debate. Nearly all votes in parliament are decided not on merits, but on party lines. When the bell rings, the loyalty of the member is not to his or her constituents, but to party—irrespective of their own or their electorate's views. The Treasurer (Mr Keating) is certainly telling it like it is when he delights in goading members of the Opposition with taunts of their impotence and the fact that they are not part of the decisionmaking process. But I can assure him, however, that a situation where a small group within a party commanding 39.4 per cent of the vote has exclusive rights to decisionmaking—king, while the remainder of the people of Australia are merely spectators is not sustainable, either practically or morally. The development of adversarial party politics with centralised control will reach a point where a mixture of apathy, cynicism and even revulsion will endanger our democratic system.

Constitutional change and laws made on the initiative directly by the electorate would increase the legitimacy of the legislative process. It would counter the tendency to special interest

legislation which is a regular feature of our present system. People would be involved in decisions affecting them, reducing apathy and cynicism. The prospects for consensus would be improved. Participation would enhance the sense of individual involvement and responsibility. It is often said that referendums have such a low success rate in Australia that there is little point in promoting such procedures. But this is not really correct. Changes of great significance have been approved by the Australian people at referendum: the Commonwealth's power in respect of social services; its power concerning Aborigines; and its power over State borrowings. The Commonwealth has put 42 questions to referendum since 1901 of which 34 were rejected and eight accepted.

A rejection of a proposition at a referendum is not a failure of the process, however. It is a decision of the people-no less than their approval. In any event, the low success rate may have more to do with the fact that government has a monopoly of putting questions to the people. Questions that are initiated by the people themselves could well fare much better. The argument based on referendum failure is not supported either by the experience at State level, where referendums have generally been successful with some 20

carried and only 13 rejected. Experience in other countries over thousands of referenda shows that it favours neither left nor right of the political spectrum. Massive spending by proponents or opponents has also been shown not to be decisive. The fear of 'tyranny of the majority' has not been realised as even the 1951 anti-communist referendum at the height of the Cold War showed.

The arguments against the introduction of the initiative referendum are basically the same as those marshalled against universal suffrage and the vote for women. Fundamentally, one cannot deny people the right to vote if one believes in a democracy. Statements such as that of Senator Evans that the initiative referendum is a paradise for single-issue loonies shows contempt for the public and borders on fascist elitism. The fact is that the introduction of the initiative referendum would not revolutionise the world as we know it. It would be a valuable addition to our political system and a step in the development of participatory democracy. We cannot expect our political institutions to remain static in a world of rapid change. This Bill requires a referendum to take effect and the people of Australia should not be denied their right to vote for it. I commend the Bill to.

[Some enclosures to this Submission have not been included in this Volume.]

SUBMISSION NO. 53

F O McGUIRK

175 Canning Street
ROCKHAMPTON 4700
Queensland

21 August 1991

Mr Rick Gray
Executive Officer
Committee on Constitutional Development of the Northern Territory
GPO Box 3721
DARWIN 0801
Northern Territory

(copy to Senator Chris Schacht, Canberra)

Dear Rick

The following be a brief but concise writing re my certain views as I personally promised that I would submit to you when I was recently in Darwin. This pertinent to your interest in the Northern Territory gaining Statehood within the constitutional powers of the nation of Australia. I would be pleased if you permit Mr Ron Greaves who arranged my interview with you to have access to this letter.

I would explain that I have submitted a copy of this writing to Senator Chris Schacht on the grounds of protocol because of the mention of his name within.

So far I have only fully read the Northern Territory booklet entitled "Full Self-Government - A Submission to the Commonwealth of June, 1989". However, I have casually scanned through other like booklets and there be disclosures that causes me to sense that problems could well lay in the immediate future for the goal of Statehood for the Northern Territory to be achieved. I stress that I speak with no authority or pre-knowledge.

I don't have to elaborate to your understanding that the Northern Territory wasn't divorced from the control of the State of South Australia in 1911 for any ulterior motive. This was purely and simply on the grounds of the sparsity of population in the Northern Territory together with its huge land mass. The Australian Government obviously felt that its then action was in the best interests of the nation of Australia in general. Meaning South Australia had enough to do without being burdened by the problems that the Northern Territory faced in the era of 1911.

The reasoning in the above paragraph to a large degree still be in vogue today. The same large land mass and a relative overall small population for the Northern Territory to be classified as a State and then be entitled to all constitutional jurisdiction that the present 6 Australian States enjoy.

However, this in the main is not why I feel that the present push for the Northern Territory to be ordained full Statehood is a little premature. For instance, such a new State would need a Constitution and in all righteousness not such a powerful dictatorial document that has been unjustly used in the recent past by a certain State of Australia. This came about because of the inane powers of Section 108 of the Australian Constitution was made possible by an English Act of Parliament (63 and 64 Victoria, Chapter 12) of 9 July 1900. This English Parliament royal decree although so generously permitting the formation of the Commonwealth of Australia on 1 January 1901 made certain that the incumbent English Monarch had the final say relative to the control of our Federal and State Parliaments.

To digress on the last sentence of the above paragraph, one only has to remember how the English incumbent Monarch's representative for the State of New South Wales, Sir Philip Game, dismissed a constitutionally elected Labor Government in 1932 and a similar action against the constitutionally elected Australian Labor Government in 1975. These dismissals are a power unpossessed by the incumbent English Monarch over the House of Commons. A crazy position.

Away from such digression and back to the purpose of this writing. I attach a photostat of a newspaper article that pertains to remarks of the Labor Senator Chris Schacht regarding Australia becoming a Republic by the year 2001 together with included contrary remarks from members of the present Federal Opposition. This adversity is in keeping with the majority of Conservatives in Australia who delight in kowtowing to the English aristocracy and their Monarchy in particular.

This takes me back to my remarks of a necessary Constitution on the Northern Territory eventually gaining rightful Statehood. A Republic of Australia would require a rewritten Australian Constitution as present reference to the powers of the incumbent English Monarch would no longer exist. State as well as Federal. This makes me feel that perhaps Statehood for the Northern Territory possibly be linked with the era of Australia becoming a Republic. Such a remark is not in adversity to the wants of the Northern Territory but perhaps more logical as to a smooth transition from a Territory to Statehood. More breathing space for the Northern Territory to expand in population and possibly defence capabilities on account of its northernmost location.

My remarks in the above paragraph being in Section 6 of the aforementioned English Act of Parliament of 9 July 1900 and the comments of Senator Schacht in the attached newspaper photostat re a Referendum for Australia to become a Republic.

I would be happier for Australia to become a Republic without the trauma to be faced in a Referendum. I am aware that Section 128 of our present Australian Constitution clearly outlines that a Referendum is necessary to bring about a change to our present English Monarchal Constitution. So where do we go to overcome a Referendum for Australia to rightfully become a Republic. Masters of our own destiny.

Well, when the Japs came into the war in late 1941, the then Australian Labor Prime Minister, John Curtin, proved that he didn't give a damn for our present English Monarchal Constitution by disregarding Section 1 and Section 68 of the Australian Constitution. Or Churchill who as then head of the British War Cabinet tried to stop all our overseas Australian troops to immediately return to Australia to defend our nation against the Japs. And when Churchill couldn't get his own way

against John Curtin in the selfish interests of English, he then sneeringly referred to the men to the 2nd A.I.F as only sons of convicts and Irishmen.

It is ironic to remember that in Prime Minister John Curtin turning to the United States of America for a mutual cooperation against the Japs, he was seeking aid from a free nation who in 1776 turned against their oppressive English Colonial masters. Oppressive by harsh injustices, harsh taxes and particularly the English Parliament political sanction given to the ailing East India Company for their monopolistic rights to sell tea to the American colonists. hence the Boston Tea Party.

The American colonists who in 1776 turned the gun on their oppressive English masters to eventually win their right to live as a free nation didn't worry about a Referendum like we in Australia have had forced upon us under the English Monarchal Constitution of Australia.

Let's look at Ghandi and how by the leadership of his nation, such action outed the English from India. Sadly, many hundreds of loyal Indian people were mowed down by English gun-fire in the Indian passive action to be their own masters. Again Churchill, the arch English Monarchist came into his sneering best as consistently referring to Ghandi as only a Fakir in a loin-cloth.

Yet in 1947, England was forced to bow to the wishes of Ghandi and his nation and with no thanks that up to the end of the 1939-1945 War, Indian troops fought the enemy of the English Monarch. And I don't recall any Referendums being held in India for such nation to now be a Republic.

To again digress for a moment relative to contrary views of the Australian Labor and Australian Conservative Governments. When England declared war on Germany on 3 September 1939 the then Australian Conservative Prime Minister Menzies declared Australia to be at war with Germany in the mere space of 12 hours after the English Declaration of War. Menzies claimed that he had the rightful authority under the Defence Act of 1903-1939. Lord Gowrie as the then English Governor-General of Australia signed the requested war declaration by Menzies. Canada in its action of Declaration of War against Germany took the rightful procedure to have the issue thoroughly debated in its Parliament. This took a matter of 7 days to obtain the sanction of its elected members to declare war against Germany.

What would have happened to Australia had Menzies been in constitutional power instead of John Curtin. Menzies, the arch Conservative. Personally, I could never have seen Menzies patriotically acting like John Curtin simply because Menzies was steeped in abeyance to the English Monarchy. Menzies, defy the power of the English Monarch heading our Australian Constitution and specifically Section 68 of the Australian Constitution. Heaven forbid.

I have little doubt as to how Menzies would have acted as compared to John Curtin.

It is a fact that in the dark days of the fall of France to the German Army, tentative plans had been held in readiness for the English Parliament to move to Canada to carry on the war against Germany if the worst was to be-fall England. And had this happened, there's no doubt that the entire English Monarchy would have moved to Canada as is the usual action world-wide when a Monarchy is overrun by invaders.

To close on this digression. During the 1914-1918 War the then English (Welsh) Prime Minister of Australia, Billy Hughes, twice tried by a Referendum to bring in Conscription in order to send every

available Australian man to the trenches of France. Each Referendum was defeated, the first narrowly and the second by an increasing 100,000 No Votes. The point to remember here is that the defeat of each Referendum was against English Monarchal interests so why wouldn't this be a precedent for a Referendum in Australia becoming a Republic against English Monarchal interests.

Simple, Conscription for Australia as Billy Hughes wanted would have struck at every family household in Australia. From the time of the tragedy of Gallipoli, the allied casualties in France were fast growing in number. Australia had 5 volunteer 1st A.I.F. Divisions in France and overall such divisions suffered 360,000 casualties with 60,000 war dead. So each defeated Referendum for Conscription would not have been purely against English Monarchal interests but a deep down balanced concern by the womenfolk in so many households in Australia for their menfolk.

Australia wasn't shirking it's duty as its soldiers enacted a major part in the eventual defeat of the German military machine. One only has to read remarks of noted German Generals of the 1914-1918 War to assess their opinion of the Australian soldier as a formidable opponent.

But a Referendum in the near future for Australia to become a Republic wouldn't have the same clout for success as the two defeated Conscription Referendums during the 1914-1918 War. Simply because there are those Conservative Australians who look to the English Monarchy as God's gift to our nation, conveniently forgetting how the majority of Australians outed such wanted maximum human sacrifice for the benefit of England in the period of the 1914-1918 War.

The foregoing is why I say that I would hope that our nation can rightfully move into the sphere of a Republic without politics being against such a rightful action. And politics from that section of our population who feel that they are of the better class, a class aligned with the pomp and ceremony of the English Monarchy with it's Lords and Dukes.

Of myself, I served in the front line in many theatres of the 1939-1945 War and on enlisting took allegiance to the then English Monarch who was also the Monarch of Australia. Now I want to see Australia truly a nation in it's own right. And we can never be truly a free nation while we are in the power of the whims and wishes of the English Monarchy.

I reiterate that with Australia becoming a Republic, there'd have to be a new Constitution, a Peoples' Constitution and then the Northern Territory could well be considered in a smooth transition for Statehood. A not unwarranted position as the people of the Northern Territory have every right to full Self-Government.

I see mutual overcoming of a Referendum between our nation and the English Monarchy to be the best way for the smoothest success for our nation to become a Republic as is our own right as a free nation. And with our nation becoming a Republic as soon as possible, the Northern Territory Government could well liaison with Canberra to achieve the Northern Territory's wants of Statehood. A rightful action more so as to how the Northern Territory so humanely treats our indigenous people, the Australian Aborigine.

I was so impressed in seeing so many proud full-blood Australian Aborigines in and about Darwin and also hearing them speak in their own tribal tongue. It made me feel that there is still some hope for the Australian Aborigine to be treated Australia wide in the same manner as the White Man.

This I feel more so as I heard a leading Federal Opposition Member state not only was he against Australia becoming a Republic, he'd also make sure when in power that there'd never be an official treaty declared and signed for the Australian Aborigine. Racism at it's foulest.

I also enclose a photostat as I promised you, detailing the shocking manner in how an Australian Aborigine was wrongfully jailed in Darwin. Justice for this Aborigine made me feel that more than ever we need for Australia to become a Republic by the earliest date. A Republic for our Australian nation with humane beneficial constitutional inclusion for the Australian Aborigine.

Finally, I would again refer to the booklet entitled "Full Self-Government" as per the 3rd paragraph of this writing. Page No. 5 of this booklet refers to 1 July 1990 as the wanted desire for the Northern Territory to achieve Statehood. This date has come and gone but further remarks are heartily endorsed by my humble self re a joint Commonwealth - Northern Territory working party to rightfully achieve the wants of the Northern Territory.

This is why I say that an early date for Australia to become a Republic could give great boost for prepared Statehood to the Northern Territory on sensible stipulated requirements. I really feel that close liaison with a Federal Labor Parliament would be the best Government to achieve such early wants simply because the aforesaid adverse remarks of a Federal Opposition spokesman is against Australia ever becoming a Republic. And this in turn could delay indefinitely the Northern Territory ever achieving it's own home rule.

To my way of thinking such a viewpoint belies all common sense, all one's sense of patriotism to one's own nation.

How true be the words from the magnificent poem that commences:

Breathes there a man with soul so dead
Who never to himself hath said
This si my own, my native land.

All glory to the spirit of the Australian Prime Minister, John Curtin, for he was a man who practiced the full depth of meaning in the above poetic patriotism.

I be sincerely

(McGuirk, Francis Own Tait)

[Some enclosures to this Submission have not been included in this Volume.]

SUBMISSION NO. 54

GRAEME ORR

STRICTLY CONFIDENTIAL

October 14 1991

Mr Rick Gray
Executive Officer
Sessional Committee on Constitutional Development
GPO Box 3721
DARWIN NT 0801

Dear Executive Officer

I have noted with much interest your CITIZENS' INITIATED REFERENDUMS Discussion Paper No. 3 and wish to offer a brief comment.

I have noted the operation of CIR's in parts of Europe and the United States of America. I am in favour of the concept.

You may be aware that some groups in Australia have seized on the idea and promoted it in the belief it will enable them to overturn legislation about which they disagree. Indeed, the League Of Rights and other groups (mostly from the extreme right spectrum) have actively promoted C.I.R.'s on that basis.

Generally this has not occurred overseas much and the more radical minority groups have discovered, to their disappointment, the majority will often support the elected government's original legislation - defeating the C.I.R. proposal.

Please ensure you consider the matter of the number of signatories required and the manner in which signatories are gathered to ensure any referendum becomes a genuine exercise in democracy.

Yours faithfully

Graeme Orr

[Some enclosures to this Submission have not been included in this Volume.]

SUBMISSION NO. 55

MEN'S CONFRATERNITY (INC)

Western Australian Branch

PO Box 422
VICTORIA PARK WA 6100

17.10.91

Our Ref: 01/1726

Your Ref:

The Executive Officer
Sessional Committee on
Constitutional Development
GPO Box 3721
DARWIN NT 0801

PRELUDE: The reason for our submission is, the belief that if your State decides to incorporate Citizens Initiated Referendums into your Constitution, it will set a precedent for our State to follow.

The Reason why

1. It will bring power to the people, not to politicians or political parties.
2. Stop pressure groups who with the help of sections of the media have forced legislation e.g. Sex Discrimination Act, Equal Opportunity Act and Affirmative Action Legislation which has turned nearly have the population, (males) into second class citizens.
3. Stop politicians making promises they do not intend to keep. Stop governments from making jobs for the boys/girls who carry out orders which do not reflect popular opinions. Bring forth (True Democracy).

Examples where C.I.R. has worked (Switzerland) Italy, and certain States in America.

Freedom has a thousand charms to show that slaves however contented, never know. (Please set us slaves free).

Yours sincerely

M Ward
Convenor

SUBMISSION NO. 56

KELLY CROMBIE

**Western Hall, James Cook University
Townsville Qld 4811**

22 October 1991

The Executive Officer
Committee on Constitutional Development
GPO Box 3721
DARWIN NT 0801

Dear Sir

Thank you for your letter of 17 October and for the mass of very interesting material sent with it. Some I shall keep myself and the balance I will pass on to the university library.

Attached please find a short submission to your Committee which I am sure will receive the consideration it deserves.

Yours sincerely

Kelly Crombie

TO: The Chairman
 Committee on Constitutional Development
 Legislative Assembly of the Northern Territory
 Darwin NT 0801

FROM: Kelly Crombie
 Western Hall
 James Cook University
 Townsville Qld 4811

Date: 22 October 1991

SUBMISSION re: CITIZENS' INITIATED REFERENDUMS

1. PREAMBLE

- 1.1 This submission has been prepared and is submitted by a private citizen purely in the interests of seeing a greater measure of innovative democracy introduced into the Australian political and legislative process.
- 1.2 The writer suggests the Legislative Assembly of the Northern Territory is to be congratulated upon its taking the opportunity to give serious consideration to the inclusion of citizens' initiated referendums (CIR) as a feature of the proposed Constitution for the new State of Northern Australia.
- 1.3 The writer further suggests the Legislative Assembly of the Northern Territory is to be doubly congratulated for its providing the opportunity for private citizens to express their views on this most important issue.
- 1.4 Only once in this century has an Australian parliament been given the opportunity to write a completely new Constitution for its citizens. This is that opportunity. It is to be hoped that your Committee, the other parliamentarians who will be involved and the citizens of the Northern Territory generally will take full advantage of it. It is submitted you should not allow yourselves to be inhibited or constrained by the past, but should allow yourselves full rein and scope to construct a constitution befitting free people in a sovereign nation.

2. ADVANTAGES OF CIR

- 2.1 All of the six advantages of CIR which are listed in the Discussion Paper are considered to be real and cogent but this submission seeks to highlight two of them in particular; those listed at (a) and (d) on p.17.
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- 2.2 (a) CIR gives the citizen a real and direct say in the business of government. The lack of commitment of the ordinary Australian to the political process is legendary. It is submitted that that lack stems from a perception that government is something "done to" or "inflicted upon" the average citizen, rather than a vital and continuing process in which he or she has an important part to play. The acceptance of the process of CIR, and its entrenchment in the new Constitution, would undoubtedly provide the opportunity for citizens to play an expanded part in the business of government, to the certain benefit of society as a whole.
- 2.3 (d) CIR can be used to overcome legislative inertia and the discipline resulting from party politics. This item refers to two separate issues, and in this submission they are discussed separately.
- 2.3.1 Legislative inertia. It is submitted that legislative inertia - taking the form of a marked reluctance of the legislature to come to grips with serious and pressing problems which could be solved by legislative action - is a real problem in Australia. Action to reform picketing practices on the Australian industrial scene is a good example, where a referendum would provide a clear direction to government on reforms - or no - which the population desired the government to give legislative effect to.
- 2.3.2 Party discipline. It is submitted that the rigid maintenance of party discipline which is a feature of Australian politics today, and which is common to all parties, is an unsightly scar on the body politic. It results in government not of, by and for the people, or by the parliament, or even by the cabinet; but of, by and for a select and shadowy group of party ideologues responsible to no-one and totally unrepresentative of the mores, standards, wishes and aspirations of ordinary men and women of Australia.

The institution of CIR would provide the opportunity for ordinary Australians to make their wishes known and their presence felt.

3. DISADVANTAGES OF CIR

- 3.1 Ten "advantages of CIR" are listed at items (a) and (j) on pp. 17-18 of the Discussion Paper. It is submitted that these are in fact mere supposed disadvantages; that in fact many are actually disguised advantages, while others are empty fears which vanish upon examination.
- 3.2.1 (a) CIR tends to undermine the system of representative government. It is submitted that the contrary is true, that CIR in fact strengthens and expands the system of representative government by ensuring that the people's representatives are more keenly aware of the wishes of the people they represent.
- 3.2.2. (b) CIR [1] devalues the role of the legislature, and [2] can result in a loss of respect for democratic institutions. It is submitted that CIR merely supplements and complements the role of the legislature and in no way diminishes it. As to the second limb of the objection, how can it possibly be suggested that an increase in democratic participation can result in a loss of respect for democratic institutions?
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- 3.2.3 (c) CIR is inflexible and lacks the deliberative aspect of representative democracy. While it is true that with CIR in place deliberation upon the merits and demerits of some proposed law would take place outside the legislature, how does that situation differ from the present where legislation is debated in the parliament, the caucus, the press and among the people? The objection is empty.
- 3.2.4 CIR tends to over-simplify issues. The fact is that all of the big issues can be resolved into simple questions. Do we go to war, or not? It is submitted that it is the clouding and complication of issues which is the mark of timid and mediocre people, and the simplification of them which marks a great leader politician or statesman.
- 3.2.5 CIR may [be made to] serve sectional interests and can be manipulated etc etc. It is an indubitable fact that the existing political process is at present actively manipulated by sectional interests and pressure groups, through their lobbyists, on a daily basis. Any sectional interest which sought to manipulate the public, using CIR, would need to spend millions on press radio and TV without any guarantee of success. Note: As a bonus, the introduction of CIR would provide politicians with a refuge from lobbyists and enable them to legitimately say, "Look, if you've really got such a great plan, take it to the people".
- 3.2.6 CIR can result in confusion between multiple proposals. This is another empty concern. Alternative proposals are always under discussion in the community - which is just another way of saying that any time you ask you will hear people saying "The government order...." How does it confuse if a number of CIR petitions are circulating at the one time?
- 3.2.7 CIR can result in excessive ballots. CIR ballots, referendum ballots, could and should be held in conjunction with ordinary elections and the only additional expense required is the cost of the ballot papers.
- 3.2.8 Some issues are too complicated ... for the average voter to sensibly express a view on. Is the writer of the Discussion Paper here expressing the view that voting at elections ought not to be compulsory, but should be restricted to a special class of voters who have demonstrated competence to understand and appreciate the issues? No? I thought not. The fact is that in a democracy this view is pretentious rubbish not to be taken seriously.
- 3.2.9 CIR may threaten unpopular minority groups. Yes, indeed it may. Thieves, rapists and murderers may find the community calling for them to be put under pressure to abstain from their criminal acts. Academics and other loud-mouthed rat-bags may be told exactly what their silly ideas are worth to the person in the street. It is submitted that that would be all good stuff and a welcome demonstration of robust democracy at work.
- 3.2.10 CIR may produce defective constitutional provisions or legislation. This, at last, is a serious objection to CIR. The writing of clear and readily understandable law is an art which is mastered by few. It is submitted however, that it is a misunderstanding to suggest that the people would "write the law". What in fact is more likely to happen is that the people would direct the parliament as to the intent and purpose of the legislation they require and that it would remain, as now, the task of the parliamentary draughtsman to actually produce the goods.
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4. RECOMMENDED FOR OF CIR

- 4.1 The form of CIR recommended by the writer is that described as direct: that is, without any intervention or participation by the parliament.
- 4.2 It is however submitted that only ordinary legislation ought to be permitted to be subject to CIR procedures. That is, that there should be no right of citizens to initiate constitutional changes by use of CIR procedures. Citizens should, however, have the right to indicate to the parliament their preference on constitutional matters, by means of CIR questions.
- 4.3 As you know, the CIR process requires two steps. First the petition and second the referendum. It is submitted that the initial proposer or proposers of a CIR question should register with the Electoral Office and pay a reasonable fee. The final form of the question to be put at both the petition and referendum should then be settled in consultation with the Electoral Office. Once settled and approved that form of words should be unalterable without it being totally withdrawn, a further fee being paid. This will discourage dilettantes.
- 4.4 If the petition secures the required percentage of support - which it is suggested should be 10% in view of the special circumstances of the Northern Territory where the bulk of the population is concentrated in Darwin - then the further arrangements should pass out of the hands of the proposers and into the hands of the Electoral Office for the conduct of the referendum at the time of the next election.
- 4.5 It is submitted that each referendum question should be required to refer to a single issue, but that the total number of petitions in circulation should not be restricted.
- 4.6 It is recommended that each petition lapse if it is not returned to the Electoral Officer within a reasonable period, say three months, with the required number of signatures affixed.
- 4.7 At the referendum stage, it is recommended that a 60% majority vote shall be required to direct the legislature to pass the positive law requested. If, however, the question calls for a law to be repealed, then a 40% minority vote ought to be held sufficient to require the legislature to act in accordance with it.

5. THE 'AUSTRALIANS ALWAYS VOTE NO' MYTH

- 5.1 It is often suggested that referendums are a waste of time and resources as "Australians always vote 'no' at referendums".
- 5.2 It is true that Australians generally are suspicious of proposals made by politicians to introduce constitutional change.
- 5.3 Analysis shows that a positive answer to all of the forty-two questions which have been put to the people in the ninety-one years of our constitutional history would have resulted in forty-two increases in the constitutional power of the Commonwealth. That is, of politicians.
- 5.4 This result suggests that the suspicions of the public are fully justified.
-

- 5.5 Despite 5.4 above, there is clear evidence of a willingness to cooperate with government where the questions put are interests of the general community. The fact that eight of the forty-two questions put to the people, that is 19% of the total, have been accepted and approved by the people is evidence supportive of that statement.
- 5.6 Where, however, the questions put reflected mere sectional interests, or were simply to facilitate political or administrative convenience, or were for the advancement of a particular political ideology they have been - and will be - rejected.
- 5.7 Where the question submitted is obviously one which will correct an injustice, for example the 1967 referendum to recognise Aboriginal people by repeal of s.127, the public will give overwhelming support to the referendum proposal. In that particular case 91% voted 'yes'.
- 5.8 It is submitted the points made in 5.5 and 5.7 above demonstrate the falsity of the myth that Australians always vote 'no' at referendums.

6. THE MONOPOLY OF THE POLITICIANS

- 6.1 It is submitted there is no philosophical justification for the retention of the monopoly right of politicians to introduce referendum proposals, if ever there was a justification for it (which is not conceded).
- 6.2 It is nowhere laid down in either the Australian nor any State Constitution that the right to introduce referendums is reserved to politicians.
- 6.3 By implication, on the grounds that that which is not specifically forbidden to free people is permitted, the right to introduce referendums to alter the law of the land is a common law right of all Australian citizens.
- 6.4 It is submitted that it could cogently be argued the right to initiate referendums is not only a common law right, but a statutory right as well which emanates from the Petition of Right of 1628. That law has not been repealed and was one of the Imperial laws received into the law of this country by operation of the Australian Courts Act of 1828 (Imp).

7. CONCLUSIONS

- 7.1 It is submitted that the introduction of CIR as a feature of the Constitution of a new State of Northern Australia would provide a welcome departure from the practices of the past and show a welcome lead to the older States.
- 7.2 The government of the Northern Territory is urged to step boldly forward and by doing so break the undemocratic monopoly to introduce referendum questions to the electorate which is at present held by politicians alone.

SUBMISSION NO. 57

MARTYN WEBB

102 Circe Circle
Dalkeith
Western Australia 6009

Tel: 09 381 4118

18 October 1991

The Executive Officer
Sessional Committee on Constitutional Development
GPO Box 3721
Darwin
Northern Territory 0801

Dear Mr Gray

I am responding to your notice published in the Weekend Australian 12-13 October concerning Citizens' Initiated Referendums.

I have been for some time working on the theoretical and practical aspects of modern post-colonial state and federal constitutions beginning with work on the Westminster system of government while on leave at the University of California Berkeley in 1983.

From this beginning I then made an indepth study of the origins of the American and Australian federal constitutions the first draft of which I presented at a special seminar at Berkeley in August 1986.

From this I turned to the question of state constitutions in federal systems and, in particular, to the extraordinary mis-match between Australia's relatively modern codified federal constitution and her largely unmodified nineteenth-century colonial state constitutions.

As you know, Western Australia celebrated the one hundredth anniversary of the granting of self-government last year. In anticipation that this might be made the subject of a constitutional review I proceeded to construct an entirely new codified state-constitution for Western Australia based upon the principle of People-as-Sovereign.

As I have expected, the Western Australia parliament duly appointed a joint parliamentary select committee to review the state constitution. I promptly informed the chairman of this committee, much to his astonishment, that I had already prepared for them a completely new modern codified

people's-constitution with parliament the master and the executive the servant of both parliament and of the people.

I am pleased to enclose two copies of this constitution for your committee. I would be grateful if you would place one copy in your parliamentary library. You may freely copy this document for the use of your committee.

Since it never was the intention of the Western Australia parliament in any way to disturb the fundamentals of the existing state constitution, my proposals were not exactly welcome. Without dealing too harshly with the Western Australian parliament's terms of reference, there was nothing in the committee's collective mind, for example, paralleling your approach to the all-important and vital problem of constitutional reform at state-level as set out in your public notice mentioned above.

This year, and to a large extent promoted by the revelations of the Royal Commission into the dealings of the Western Australia government, a group of us wrote a book, published on the 18th September, attaching the Westminster system of government and its failings as an accountable democratic system of government.

The book, edited by myself and Professor Patrick O'Brien, is entitled *The Executive State, WA Inc and the Constitution*. I attach a brochure and order form for this book which I think your members ought to have in multiple copies.

The essence or theme of our book lies in the way in which the Australian version of the Westminster system of government has allowed premier and cabinet to capture and control parliament and, by doing so, to provide what is in effect an elected dictatorship. Allied to this is the power of the modern party to control its members of parliament, especially those belonging to the government party (or coalition): and, in the process, reduce the so-called opposition to little more than a "government in exile awaiting its turn at the levers of power".

The book shows how this conflict between the executive and the legislative arms of government, which is to a certain extent inevitable, was better managed before the assumption of constitutional monarchy when it was clear to all, and parliamentarians in particular, that the role of parliament was to curb, rule and direct the reigning monarch in the exercise of his royal prerogatives of executive government. In this regard there is an interesting chapter in the book by Professor Marchant dealing with Charles I and his attempts, as the executive, to control parliament.

With special reference to your current inquiry there is a specially important chapter by Professor Patrick O'Brien on the philosophical foundations of CIR which you will find revealing.

The book also includes, besides other chapters, my work on the philosophical underpinnings of the American and Australian constitutions with special reference to the way in which American principles of constitution making have influenced work in Australia.

In presenting my model constitution for your consideration, you will see that CIR springs naturally out of the basic assumption that the only acceptable form which a modern constitution may take is one based absolutely upon the people's sovereignty and exclusive right to govern either directly or indirectly. CIR is thus a natural outcome and not a graft added to a parliamentary constitution (ie

one that is controlled by parliament with minimal reference to the people's right to prepare and agree to a constitution).

The model constitution has, by Australian standards, a number of novel features.

1. Its codification enables a great deal of loose and generally hidden legislation to be made into higher or constitutional law. This includes such things as definition of state boundaries, state emblems, and official language as so on.
2. Although only briefly, it attempts to include our Aboriginal people and their customs and language within the constitution. One could perhaps do better with greater consideration, but they are at least acknowledged.
3. CIR is written into law in detail and with safeguards.
4. The executive, partly elected, partly appointed, is separate from the legislature. This separation of powers gives increased stature to parliament and to individual parliamentarians thus allowing a more fluid or floating majority on issues rather than our somewhat rigid and almost pro-forma confrontation between government and opposition members.
5. That parliament should have its own budget free from the control of the executive and sufficient to carry out its task of formulating legislation by inquiry within the parliament.
6. The people should elect at least the governor (or premier) and his deputy (or deputy premier) but I would support the election of others. The remaining appointed members of the governor's (or premier's) cabinet to be subject to the approval of the parliament.
7. The creation of a constitutional and non-politicised public service based upon merit alone without political or any other bias.
8. Fixed term parliaments would automatically follow the separation of powers and separate elections for each.
9. A clearer separation of the judiciary from the sole control of the executive.
10. The inclusion of the public domain or crown land within the compass of a constitution with special reference to development and conservation of resources and of the environment.
11. Incorporation of constitutionally based local government within the constitution.

I have taken the trouble to spell some of the main points because I think it important that in constitution making we keep a sharp eye out for the future and its needs, without, however, abandoning the lessons of the past. I believe that my model constitution provides the first step in that direction.

I would like, therefore, to stress that my model constitution be read not merely as a structure, but also in its finer details of government as revealed in its component Articles and Sections.

I must stress this point because my experience in Western Australia confirmed my belief that the Westminster system has become such an article of faith among parliamentarians, that they find it difficult to consider the other aspects of constitution making to which my model constitution refers.

Much of what should be included within a modern codified constitution, for example, habeas corpus, is in Australia buried in some obscure statute known only to lawyers and those actively concerned with its operation.

Thus, even although your own committee might feel somewhat put out by my proposal that we abandon the Westminster executive-in-parliament style of government, I beg them carefully to consider the implications and relevance to their needs of the other proposals set out in the remaining Articles which could as well be incorporated within a Westminster style government.

Finally, I am of the opinion that a modern constitution must be regarded as a supreme document, written in plain English, agreed to by the people at a referendum, and providing a framework within which the people's right to govern either directly (CIR) or indirectly (via representatives) is acknowledged and entrenched.

From this it follows that your committee should carefully consider the possibility that its recommendations be eventually referred by parliament to a properly constituted and representative State Constitutional Convention. This would follow the precedent set one hundred years ago by the First Federal Convention in Sydney in 1891.

May I remind your committee that the Northern Territory has already set one important but little noted precedent in choosing a design for its flag which breaks away from the pattern set in other states. It could set another and more fundamental example by adopting a modern People as Sovereign constitution along lines similar to those suggested in my model constitution.

The people of Australia are ready for such a change as I know from the public response to my proposals.

I would be prepared to appear before your committee should they decide to inquire further into my proposals. But, in any case, I would be grateful if you would keep me fully informed by providing me with your information and discussion papers as they are prepared by putting me on your mailing list.

Yours sincerely

MARTYN WEBB
Emeritus Professor

[Some enclosures to this Submission have not been included in this Volume.]

SUBMISSION NO. 58

R G (DICK) KIMBER

PO Box 2436
ALICE SPRINGS
N T 0871

29.10.91

Mr R Gray
Executive Officer
Committee on Constitutional Development
The Legislative Assembly of the NT
GPO Box 3721
DARWIN NT 0801

Dear Sir

Thank you for your letter of 23.10.91, enclosed with "Discussion Paper No. 3 Citizens' Initiated Referendums", dated August 1991.

Much as I commend the work that you and the Committee are doing, I am of the view, as I know also are many of my friends and acquaintances, that the NT is not remotely approaching readiness for Statehood. This perception is definitely held across all political lines. There are several reasons for this view, including:

- (a) the NT population is too small, has an unusual demography in its age profile, and is also unusually mobile;
- (b) NT industries are too far in number and nature, and are inherently short-term or 'brittle';
- (c) the present NT government, and the Opposition, have not demonstrated qualities that have enhanced the 'idea' of government in the general public's mind.

Such points, and others, may be questioned and debated, but I believe that they are widely held in the NT electorate. In the case of point (3), it is apparent that the Australian electorate at large is considerably disillusioned with politicians, which I suspect also means the institutions of Parliament(s). To a certain extent this is an inherent point on your Discussion Paper No. 3 (p.22, f2. first sentence).

Turning now, though, to the Discussion Paper on a more specific way. I am in favour of Citizens' Initiated Referendums, but certainly not 'at the drop of a hat'. The points on pp.20-21 of the Committee's Discussion Paper No. 3 are very valid.

I notice that in the Constitutions Alteration (Elector's Initiative) Bill 1980, referred to as p.13, a figure of 250,000 electors, Australia-wide, was considered appropriate by some people. Rather than a fixed number of electors, I would propose a fixed percentage of the electors being required as signatories, with a time of collection of signatures of 6 months from commencement of circulation of the petition. (I suggest 6 months because of the geography of the NT, and the remoteness of some communities). I suggest a time-limit because of longer, more exhaustive, campaign could well distract the government of the day, the opposition, and the electors from what might be stated as the longer-term of good government.

Note that as the Swiss situation, a time of 90 days is given (p.8). Rather than 6 months, perhaps a more definite time such as 150 days or 180 days could be considered. I leave either of such times as open points for further discussion and/or debate, but do believe that an extended time should be given.

My suggestion of a percentage of the electorate would be based on a percentage of the recorded electorate on the electoral role as at the time of a previous election, or as otherwise ascended since that election. Such a figure, as determined by the percentage, should be rounded to the nearest 1,000. With today's computers, this should not be a difficult task.

Much as I believe that the various "Disadvantages" (pp.17-18) need due consideration, and much as I also think that p.20 para. 8 required deliberations, at this point I do not wish to delve into these problems.

In that any referendum is a very costly exercise, I believe that the timing of any such Citizens' Initiated Referendum is important. A limit of even one referendum (possibly with multiple proposals) every year would be prohibitive, yet perhaps a limit of one per year might have merit. I can certainly perceive arguments against this idea though. I leave it as a vexing question, as I do not think that to link such a referendum with the conventional election time is necessarily a good or desirable thing.

These few thoughts are offered for discussion and consideration, along with other comments you receive. Much as I am supportive of the idea of Citizens' Initiated Referendums, I am fully aware that difficulties can arise.

Thank you again, and Best Wishes in your further work.

Yours sincerely

R G (Dick) Kimber

SUBMISSION NO. 59

**PARLIAMENT OF AUSTRALIA
HOUSE OF REPRESENTATIVES**

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FRANK WALKER, QC, MP
FEDERAL MEMBER FOR ROBERTSON

7 November 1991

The Executive Officer
Northern Territory Committee
on Constitutional Development
GPO Box 3721
DARWIN 0801

Dear Sir

Thank you for the opportunity to make a contribution to your Committee on the issue of Citizens Initiated Referendums. Like Ted Mack I have been urging the Federal Parliament to improve our Parliamentary system by giving voters some real and relevant role in the legislative function.

Perhaps the most constructive way for me to assist the Committee is to answer the eleven questions posed in the Options section of your discussion paper.

(a) **WHO MAY SIGN?**

Given that the process is one of referendum, logic would suggest that whoever is eligible to vote at the referendum should be able to put their name to the petition. Non citizens and children may of course have a real interest in the outcome (eg a petition to limit immigration or grant children rights) but to extend the petitioners beyond electors will only create unneeded controversy and complexity.

(b) **HOW MANY SIGNATURES?**

I would distinguish between measures to amend the States Constitution, Money Bills and ordinary legislation. On Bills involving amendments to the Constitution and Money Bills I would argue that such fundamental and far reaching change should only be triggered by a significant minority of voters - 20% of enrolled electors at the previous election. For normal bills a petition of 5% of enrolled electors would be the target I would impose.

Having said that I should comment that raising a petition of 17,000 in the Northern Territory would be a much easier task than 2.16 million federally and there may well be a stronger argument for keeping the percentage of petitioners higher in small electorates.

(c) **WHAT MUST THEY SIGN?**

Endless argument can be generated by the wording of referendums. The petition should be worded fairly and clearly and in this regard I would argue that an Independent Office (perhaps the Electoral Commissioner) should be established to register the proposed petition and to ensure its wording matches the spirit and effect of the proposed law. A copy of the proposed Bill should be submitted with the petition.

The Independent Office should approve the form of the petition and set an appropriate period for canvassers to operate and adjudicate on any disputes that arise concerning the petition.

(d) **HOW ARE SIGNATURES AUTHENTICATED?**

Collectors should be obliged to sign a declaration that the signatures have been genuinely canvassed and signed. Provision should be made on the petition for printed names so that they can be checked against the Electoral Roll. If electoral numbers are used then they could be entered facilitating checking. The Electoral Office should check the petition. There should be penalties for fraud and breaches of rules.

(e) **DURING WHAT PERIOD?**

The independent authority should fix a reasonable period. Like most matters here until the procedures are put into practice one is only guessing at what is a fair thing. My view is the limit should be 6 months.

(f) **MUST ISSUES BE SEPARATED?**

I see considerable dangers in omnibus petitions where popular issues could be used to raise signatures for matters which really have little support. Accordingly I would argue that each petition should be separate unless the issues are cognate.

(g) **MAY ONLY PART OF STATE CONSTITUTION BE AMENDED?**

That would depend on the manner and form provided on the Constitution for amendments. The CIR provisions obviously would have to comply with the Constitution.

(h) **MAY ANY LEGISLATION BE ENACTED?**

As I indicated earlier I would treat Constitutional change differently from normal Bills. Further I take the view that Bills seeking to change fiscal or monetary policy should also be subjected to more stringent requirements. Populist moves to abolish taxes or interfere with budgetary strategies are deserving of such limitation given their capacity to create instability and jeopardise credit ratings.

(i) **SHOULD THERE BE RESTRICTIONS ON REPEATING UNSUCCESSFUL INITIATIVES?**

Given the substantial costs involved an affirmative response is required here. Perhaps a 5 year or two electoral term limitation would be appropriate.

(j) **SHOULD THERE BE PROVISION FOR WITHDRAWING AN INITIATIVE?**

Yes. The independent authority should be in a position to register and regulate sponsors of initiatives and allow applications by new sponsors wishing to take over from withdrawing parties.

(k) **SHOULD THERE BE PROVISION FOR AN UNFORMULATED PROPOSAL?**

No. If the proposition is a serious one then it ought to be put in a decided manner. There should be access by drafters of Bills to Parliament Counsel.

TIMING

Given the huge cost of referendums I would argue that they should be held only at the time of general elections. Recall petitions present a different problem of course. Personally as a strong supporter of fixed Parliamentary terms I feel that recall petitions would create too much instability. Perhaps we should first experiment in Local Government with this concept.

Kinds regards,

FRANK WALKER, QC MP
Member for Robertson

SUBMISSION NO. 60

KEITH WRIGHT, MP

PARLIAMENT OF AUSTRALIA
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6 November 1991

Mr Rick Gray
Executive Officer
Legislative Assembly of the Northern Territory
GPO Box 3721
DARWIN NT 0801

Dear Mr Gray

I write to you as an individual, not in my capacity as the Federal Member for Capricornia, as I wish to put forward a personal point of view on the issue of Citizens' Initiated Referenda.

I strongly support the concept providing that there are procedures which must be followed before a referendum is pursued by any government.

I content that where an issue is so controversial within the community that those opposed to it can obtain a particular number of signatures on a petition, that that issue should be made the subject of an open inquiry by a parliamentary select committee. I argue that such a select committee should then hold open and public hearings but with all the protection of a parliament before any referendum is proceeded with. This is an interim step which is not usually pursued by those supporting CIR.

It is my opinion that if a select committee of inquiry was to openly and publicly delve into an issue it would engender better debate but it would also enable the parliamentarians to test out the arguments of the opponents to some specific piece of legislation or government policy. It would also reduce the need to rush into a referendum which everyone knows can be extremely expensive.

Evidence given before a select committee of inquiry would be under the privileges of parliament but would carry the usual responsibility and a person could be held in contempt of parliament.

I believe that it is a part of the fabric of democracy for the broad community to be able to take a stand on a particular issue and given that the proponents of change are able to attract a specific level of support, for example, across Australia 250,000 signatures, or within a State or Territory 50-100,000 signatures, then that issue warrants in-depth study by a special select committee.

I would argue that your Inquiry considers this proposition.

Yours sincerely

KEITH WRIGHT, MP
Member for Capricornia

SUBMISSION NO. 61

BRUCE CHAPMAN

4 November 1991

The Secretary
Committee on Constitutional Development
GPO Box 3721
DARWIN NT 0801

Dear Secretary

Please find enclosed 1. a Draft Bill entitled "Initiative and Referendum Bill 1991 - Queensland", and 2. a precis of that Bill which has been used for promotion of the concept.

While the Bill was written for Queensland, it applies equally in all States, and may address equally legislative matters and Constitutional change.

The first two pages of the precis explain our philosophical approach, the next two summarise the mechanics of the Bill and the final page further explains our reasons for supporting this concept.

The Bill itself is the result of much research of a very broad cross-section of the community and is a direct result of the 7 steps as explained in the precis.

To date, this Bill has received wide spread support.

It is the one currently at Committee stage in the N.S.W. Parliament: it is currently tabled in the A.C.T. House of Assembly: it has received Political support with both the Liberal and National Parties in this Stage: it has the support of the Australian Small Business Association: it enjoys significant support in Tasmania, Western Australia, and Canberra through the Political Parties, and has major community support on bi-partisan levels.

We hope that it will also receive your support.

As you will see, our philosophy for the need for C.I.R. is based on one of building a constructive teamwork between the community and the Government. We believe that constructive guidance is more beneficial to all than is an aggressive "us versus them" approach enshrined in some C.I.R. proposals.

Accordingly our Bill does not support any "Recall" provision, does not support some of the systems as sued in other Countries, and it directly addresses the majority of the "Disadvantages" as listed at pp.17 and 18 of your Discussion Paper No. 3, and indirectly results in addressing the remainder.

Pages 19, 20 and 21 address the options for consideration - we support completely your options 3 and 4, but not options 2, 5, 6 and 7. Options 8 and 9 we believe our Bill addresses very well and results in practical and fair methods.

Your Committee's "tentative views" as expressed in pp. 22, 23 and 24 have shown depth of thought which is to be congratulated. Our views, which are enshrined in the Bill, do not embrace item 1 (d), but addresses a significant number of the other concerns raised.

We should not support the establishment of any form of a "Committee" to review the issues and report, as this has a danger of swamping the views and wishes of the voters at large, which may see cynicism return to the community and thereby rendering the procedure useless.

We believe that the adoption of our provision of C.I.R. is as fair and practical as it can be, with built in protection for minorities, majorities, Parliamentarians and Parliament's duty and ability to govern in a truly democratic manner.

We believe while it does all the above, it also builds consultation at the expense of confrontation.

It is the ultimate House of Review, or Senate, without the costs and is much more representative of the genuine views of those that Government is elected to represent.

Should you wish more information or discussion, we will be pleased to hear from you. From experience, we feel that the best results and understanding are gained by personal presentation of the concept, and we would be pleased to do just that should you wish.

We wish you every success in your endeavour as the resultant decisions may well determine the outcome of an enhanced democratic system nation wide.

Please give our proposal careful and honest consideration.

BRUCE CHAPMAN
Liaison Officer

Ph: (074) 82 2919

[Some enclosures to this Submission have not been included in this Volume.]

SUBMISSION NO. 62

THE CONSTITUTIONAL HERITAGE PROTECTION SOCIETY

Box Q381, Queen Victoria PO Sydney NSW 2000

Telephone: (02) 264 2293

8 November 1991

Mr Rick Gray
Executive Officer
Sessional Committee on Constitutional Development
GPO Box 3721
DARWIN NT 0801

Dear Mr Gray

We have noted your call for Submissions on Constitutional Development in the Weekend Australian 12-13 October. We are not preparing a submission, but we think the information in these booklets should of interest to you.

Yours sincerely

June Smith (Mrs)
Secretary

**THE
CONSTITUTIONAL HERITAGE
PROTECTION
SOCIETY**

Box Q381, Queen Victoria PO Sydney NSW 2000
Telephone: (02) 264 2293

17/10/1991

OPEN LETTER TO MASS MEDIA

Dear Sir

I will begin by quoting from a talk by Dr David Mitchell, a constitutional lawyer of excellent credentials who worked in the Attorney-General's Department for 16 years. The importance of this introduction will become apparent and you will perhaps see why there has, over the years, been such persistent and secretive effort directed toward separating Australia, ONCE AND FOR ALL, from British law; quote:

"We have not been taught at school what the Common Law is or where it was derived from. I need to remind you that when this country was settled ... they brought with them a system of LAW, brought with them a system of RIGHTS and a system of CONSTITUTION...

"King Alfred (848-901) decreed and declared that the responsibility of the Courts was to apply the Ten Commandments to every question that came before the. ... in the light of the whole of Scripture. So the people were to find their rights - that is to say, how the Court would handle any issue - in the Christian Scriptures.

"Thus the Constitution of England came into existence those many years ago, and that was the Constitution which still existed when Australia was settled.

Over the years that Constitutional basis was often neglected, rejected or forgotten. The Hon John Howard has ... correctly drawn attention to the Magna Carta and other basic Constitutional documents." * EQ. Emp.Add.

*The Hon J Howard; quote: "... our basic rights have been defined over the centuries through Acts of Parliaments, decisions of Courts, the ancient Magna Carta and the Bill of Rights of the British Parliament, and so forth. They are our basic rights ..." EQ.

So these rights are still with us. It can be ascertained that neither the Courts of Law nor the Parliament, nor the Government as a whole, were there to make laws. They were there to uphold

the law. It was not until 1917 that English law ruled that Biblical law was no longer relevant to British Law.

However, as the Australian States were formed and had taken on their law from England before that date our law is still, strictly speaking, subject to Biblical Law (Previously mentioned in "Democracy & Treason in Australia").

The document called "The Constitution" and usually known as "The Australian Constitution" is not itself clearly attached to British Law except through the Monarchy. This is a point NEVER mentioned by those supporting republicanism.

Republicans keep repeating that change will mean very little change to our Constitution and this is true in so far as that document is concerned. What they omit is that our civil rights and protections come to us through the attachment to the Monarchy and you only have to change Governor-General to President to sever that tie. No much to change but it changes everything.

Our Constitution's last protection is to insist that change to the important nature of our Constitution must be by referendum. So, although our parliament may set up various devices ("The Australia Act" for instance) that have the effect to divorce our government from restraint that may be imposed by the Monarchy, this does not make the usurpers secure from challenge if any large segment of our community felt inclined to take the matter up.

"The Australia Act", added to the many international agreements now entered into, would, if used in their full force, give Australian sovereignty to an international establishment.

However, to make this treacherous assembly fully secure, the political parties need a public rejection of the Monarchy. Any constitutionally legitimate form of referendum that authorises conversion of Australia to a republican form of government without first providing that all relevant English Bills and Statutes etc, be attached to the Australian Constitution, will have the effect of giving Australia a foreign foundation of civil law.

So there comes the crunch: the reason why it is of particular importance to bring this matter up now is because of the push to make Australia into a republic.

We should all be well aware, and warned, that any referendum that gives permission to make Australia a republic will, finally and with public approval, AUTHORISE the termination of ALL of our historic rights and protections. It will have the effect of giving PUBLIC AUTHORITY for PARLIAMENT, backed by foreign treaties, to decide what is to be law from that moment on. If they succeed in this trick, then our new 'civil rights' are already in place by force of foreign treaties.

All the secretive deals made under 'Foreign

Affairs' powers will no longer be open to challenge on grounds of being illegitimately entered into.

Because of the nature of the treaties signed with the United Nations and new laws being brought in to enforce the terms of these treaties (as CHPS has revealed from time to time) will lose all our basic human rights - our rights in Court will legally change from being innocent until proven guilty to being guilty unless we are able to prove ourselves innocent; our right to privacy (our home will no longer,

even in our legitimate ideal, be our castle); we will lose our right to remain silent - our right to own property will lapse and also our right to legal representation. Children will effectively belong to the State (parents will only be entitled to guardianship so long as State directives for their upbringing are obeyed).

All this is provided for by legislation already in place. Parliament will no longer have to enact any law banning criticism of itself on mass media because opposition to a parliament (that will then be the legal government) will be open to be charged as treachery, sedition or treason.

Perhaps we may now see that the nation-wide push to eliminate weapons of defence from public ownership has a vital political purpose - there is a grave danger that if this plot succeeds, then, when people discover how they had been tricked, there will be danger of rebellion.

These are the facts as we have established over years of research. Political parties and authorities will deny it but I challenge that they cannot disprove it to public satisfaction.

Yours sincerely

Alan Gourley (Administrator)

Constitutional Heritage Protection Society, PO Box Q381,
SYDNEY 2000.

SUBMISSION NO. 63

BRETT MAHAR

9 Maryland Avenue
CARRARA QLD 4211

To R Grey

I saw your recent advertisement in the Weekend Australian calling for submissions on Citizen Initiated Referendums. I believe the proposal for CIR is an excellent idea which definitely should be adopted in the Northern Territory's Constitution.

The concept of CIR is a very popular one with many people and groups across the spectrum of society calling for its introduction. It has shown to be very thoughtfully used, and indeed treasured in the countries where it has been introduced, especially Switzerland where the modern practice originated. The process would definitely be useful in dealing with future issues such as gun control and taxation which are potentially divisive in the community. Any process which strengthens and extends our democratic system, such as this does, will provide greater respect towards the institution of government in the Northern Territory, and as such is an excellent proposal.

The process to call a referendum should begin with an interested group registering their proposal with the electoral commissioner. This then clears the way for anyone who supports the particular initiative to begin collecting signatures. To avoid the prospect that only well financed groups can use this system, the signature requirements should be set at a low level, such as 2.5% of those who voted at the last general elections. For simplified collection of signatures, no requirements should be made that they come from any geographic spread of electorates within the territory. A generous time limit, for example 18 months, should also be allowed in which to gather the required signatures. Once the stipulated 2.5% have been gathered, the electoral commissioner presents the petition to the Speaker of the Parliament. If parliament fails to act on the proposal, a referendum is called on that issue, to be held in conjunction with the next elections to save costs. For the same reason, the government should not be responsible for the publication of for and against arguments. A simple majority of electors is all that would be required to decide the outcome of the referendum. In the case of some emergency issue, a higher percentage of signatures could be set (i.e. 5%) in which case the referendum could be held within 3-6 months. The same number should be required for any proposals related to CIR such as the recall of public servants or in the alteration of the constitution.

I repeat once again that the idea of Citizen Initiated Referendums is a sound and fundamentally excellent one, and add that it is an almost essential reform in Australia at the present time.

Yours sincerely

Brett Mahar.

SUBMISSION NO. 64

KEVIN BAIN

PO BOX 40894
CASUARINA NT 0801

**SUBMISSION TO SESSIONAL COMMITTEE ON CONSTITUTIONAL
DEVELOPMENT ON DISCUSSION PAPER NUMBER THREE.**

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CITIZEN INITIATED REFERENDUM

It is Government of the people by the people.

DEFINITION: A process whereby ordinary citizens can compel their governments to hold a referendum on any issue that they feel is sufficiently important.

THREE STAGES

1. **VOTERS VETO** - The power to veto any existing or proposed legislation. This would give us the power to remove any unjust or oppressive laws from our statute books, and to prevent our governments from introducing more of the same types of laws.
2. **CITIZEN INITIATED LEGISLATION** - The power to introduce new laws. We would not have to wait for the Government - we would introduce our own laws.
3. **RECALL** - The power to dismiss public servants. I am sure that everybody knows of some politician, High Court Judge, Police Commissioner or other public servant who should have been dismissed for the general good of the people.

HOW DOES IT WORK?

Simply collect signatures on a petition. For a Federal issue you would need to collect, say, 50,000 or 100,000 (3-5% of voters) signatures, while for a State the figure would be about 5,000 to 10,000 (3-5% voters) signatures. All you would need to do would be to present your petition to the appropriate authority, and the government would be bound by law to hold a referendum on the issue.

A majority vote would decide the matter, and the result would be legal and binding.

HOW DOES IT WORK IN OVERSEAS COUNTRIES?

Switzerland has had Citizen Initiated Referendum for over 100 years, and it has been a total success there. It operates in 23 states of the USA and also the District of Columbia, while there are also about 20 states campaigning for it. It also operates in Austria and Italy.

WILL IT WORK?

To answer that question we only need to look at how people vote in referenda.

In 1974 Italy held a referendum on the issue of divorce laws,. While the people may have disapproved of divorce, as such, on moral or religious grounds, they nevertheless approved of it on the grounds of legal necessity.

In 1985 the Italians held a referendum on proposed indexation laws. These laws would have given the workers a good increase in income, but they realised that in the long term their employers would be financially disadvantaged, and that they would also lose out in the long term, so they voted against this measure also.

In the USA in 1987 the people of California rejected a government move to dispose of waste toxins in the ground. So far four States have voted to bring back the death penalty through the referendum.

When the Spanish government wanted to leave NATO the people rejected the proposal. The people knew, better than the government, the importance of defence.

In Switzerland in 1977 the people rejected Value Added Tax, which is basically a consumption tax.

In 1984 the Swiss rejected the government's proposal to reduce the working week from 42 hours to 38 hours.

In 1986 they rejected a proposal to join the United Nations. In over 100 years of referenda, voting on about 300 issues, the Swiss people have approved of approximately 50% of issues placed before them.

In AUSTRALIA, where we only get a say if the government decides we should have it, there have been 38 referenda, only eight of which have been passed. The reason for failure of the other thirty was that they would have given the Government more power. Australians aren't stupid!!

In 1967, Australians decided, by a 90.8% majority, to give the Aboriginal people the right to vote. In another case, when the Australian Government wanted to outlaw the Communist Party, the

people said "NO". The Australian people were smart enough to realise that if you outlaw one group, it sets a precedent for governments to do the same with any group.

Obviously, Citizen Initiated Referendum would work just as well here as it does overseas. When people vote at a referendum, they know that the result will become law, and so they vote carefully and thoughtfully.

SUPPOSED DISADVANTAGES

One of the common objections often raised against Citizen Initiated Referendum is that we would have to vote too frequently.

In some places referenda are held every three years, in others annually, and in Switzerland every three months. The Swiss do not think that this is too often! Besides which, good government is surely worth the effort. There is another solution to this supposed problem: voluntary voting. After all, only Australia and Russia have compulsory voting.

A third solution would be to conduct the poll over a five day week. This could be worked in such a way as to considerably reduce the cost of a referendum.

The supposed cost is another commonly raised objection. The cost has been estimated at \$10 million per referendum. Four per annum would cost \$40 million, or only .05% of our annual federal expenditure. That amounts to only \$2.50 per person, or \$4.00 per voter. That is a mere pittance to pay for good government.

In Switzerland the people have forbidden the Government to impose a tax higher than 10%. In Florida the people passed a law to force their government to balance the budget on only 80% of the total revenue.

Florida today is debt free and prosperous. Switzerland today is one of the most prosperous places on Earth. It has a borrowing interest rate of less than 4% with a five year no-interest period. It has an unemployment rate of 1%. It has a 10% tax rate, and the Government is bound by law to balance the annual budget.

It has been claimed that pressure groups can organise referenda. Currently they control elections, therefore they control Governments. They may be able to organise but it is the people who decide the final outcome.

I have heard people say that it would interfere with the parliamentary process. Personally I think that the parliamentary process needs to be interfered with. I have heard that it takes about 5 years to produce a piece of legislation, so surely another three months would not make any appreciable difference.

Besides this I heard a speaker once say that while he was employed as professional legal advice to a certain Canberra Minister, the minister rang him to question him on a certain piece of proposed legislation, which the minister could not understand. The legal expert could not understand it either, so he rang the public servant who had drawn up the particular masterpiece, only to find that he could

not understand it either! The legal expert is convinced that the general public could do a lot better than that.

ADVANTAGES

There are some decided advantages to be gained from Citizen Initiated Referendum.

Firstly, it brings under control that rapist and murderer of good government, the political party. I am not saying that political parties are totally bad, but the system is being abused and manipulated today to the detriment of Australia's welfare, to put it mildly.

There is no such thing as left or right with CIR. All the people have a say, and there is no need for Party politicking. The whole community can become involved in the process of lawmaking, can discuss and debate the issues among themselves, and can arrive at a better solution than an ideologically biased party.

It stands to reason, too, that if the people make the laws, then they will be more willing to obey them. After all, who is better qualified to know what is best for us, a politician who is often intellectually or morally hamstrung by party ideology, or the people themselves.

CIR would free the politicians from control by pressure groups, lobbyists, unions, big business, crime syndicates, party bosses and controlling councils, etc. and make it possible for them to represent ALL Australians instead of only a minority group. It would also give the politicians a mechanism for testing the mood of the electorate on difficult issues without any embarrassment to the government.

It has been said that city people could out vote the country people. In the first place, this is a downright insult to both the honesty and the intelligence of the average city person. Most Australians know that our fortunes are tied in to one another and that for the worker and the small businessman to prosper, the farmer must also prosper. It is also interesting to note that about 85% of people are conservative in their opinions, regardless of their political party preferences.

The experience world-wide proves beyond doubt that Citizen Initiated Referendum can only bring ultimate good and prosperity to any nation that adopts it.

ANSWERS TO SUPPOSED DISADVANTAGES – SECTION D - PAGES 17 & 18

- (a) CIR tends to undermine the system of representative government?

Not so. Rather than undermining the present system, CIR need not interfere with present legislative procedures, but enhance the belief of true representation of the electorate. If CIR were to undermine the present system, it is only because that system is not working correctly. i.e. bad legislation being passed or representatives not perceived to be representing the will of their electorates.

- (b) It devalues the role of the legislature and can result in a loss of respect for democratic institutions.

There is a widespread belief today, that because of a lack of accountability within our democratic institutions that they are no longer democratic but rather autocratic. There is also a perception that these institutions are being run by another better than petulant school boys. These are the main reasons for a lack of respect. The fact of establishing CIR as a means of policing representation and law making procedures would go a long way to restoring the already lost respect. Not only for the democratic institutions but also for the representatives of those institutions.

- (c) It is inflexible and lacks the deliberative aspect of representative democracy.

To say that CIR is inflexible shows a complete lack of understanding of the principles of CIR. It must be more flexible than the present system, because it asks the question of the whole of the electorate, and the electorate must deliberate on each issue. This ensures that the topic is widely discussed. Better a wide range of deliberation than a select few.

- (d) It tends to oversimplify issues.

Just because questions may have to be asked in simple English does not imply over simplification. To qualify as a voter a person must be of sound mind, this should ensure widespread understanding of issues. Also, over the years the Australian people have shown that they study and understand each issue carefully before voting at a referendum, even when ambiguous questions are asked.

- (e) It may serve sectional interests.

The beauty of CIR, is that all groups have the right to initiate a petition, but on securing the required number of signatures the initiative must receive a majority electorate approval by referendum before it can become law.

- (f) It can result in confusion between multiple proposals.

This need not be the case. Any referendum held under CIR should be limited to a maximum of four separate proposals.

- (g) It can result in an excessive number of ballots.

The Swiss people have set aside one day every three months for initiative proposals. These are not always used, but are available should they be needed. We could have 1 day each year set aside for the citizens initiative here in the Territory. The proposal for recall is a different matter. For an elected or appointed public official to have to face recall, he or she would have committed some horrendous offence against the people to warrant recall in the first place. The only time that recall need ever be used would be when the government of the day sits back and does nothing to bring corrupt officials to book. As for cost - better taxpayers money gets spent on proposals the people want rather than the money being spent against their wishes.

- (h) Some issues put to referendum may be too complicated.

Do our present crop of legislators hold a franchise on mental ability? I think not ! Any proposal to go to referendum should be written in simple English and not couched in legal terms that deliberately set out to confuse the electorate, as has happened in the past few referendums (proposed by the incumbent government of the day). Any proposal to go to referendum must be canvassed by both the proponents and any opponents, as would happen any way.

- (i) It may threaten unpopular minority groups.

If on the one hand it can be said to serve special interest or minority groups, how can it at the same time threaten them? Under true democratic rule, minority groups must be allowed to have a say. In fact with CIR all groups will be able to have their say. This is far removed from what we regularly see today in our various parliaments. Today we are ruled by minority and elitist groups e.g. gay groups, greens, and ethnic groups have special legislation drafted on their behalfs. Today it is the majority that are threatened by elitist minority groups who are very vocal and often militant in their methods used in gaining special recognition by parliamentarians.

- (j) It may produce defective constitutional provisions or legislation.

We have a host of well qualified legal minds at our disposal to draft effective legislation. The government employs plenty of these at present. Why not use some of these experts to draft legislation proposed by the people. After all it is the people who pay for the experts that draft the legislation.

It is no coincidence or surprise that the only opposition to CIR is from the professional politicians. However, no politician need fear CIR if they are honest and they truly wish to represent the expressed majority will of their electorate.

ANSWERS TO QUESTIONS ON PAGE 20, SECTION E

(a) Who may sign ?

Any registered voter of the Northern Territory or new State.

(b) How many signatures are required ?

5% of registered voters need sign a petition to be presented for referendum.

(c) What must they sign ?

Petitioners would be required to sign a correctly drafted petition stating the referendum issue.

(d) How are signatures to be authenticated ?

Existing electoral rolls would suffice.

(e) During what period must signatures be collected ?

Probably 120 days (6 months). This would allow both proponents and opponents of the proposal to put their cases to the electorate.

(f) Must issues be kept in separate proposals ?

Issues should be kept on separate petitions, but a referendum may cover say, four proposals.

(g) May any part of the new state constitution be amended by initiative ?

Some part of the new state constitution will be entrenched. Careful consultation with the people must be employed before these sections are entrenched.

(h) May any legislation be enacted by initiative ?

Yes.

(i) Should there be any restriction against repeating unsuccessful initiatives ?

Yes. No proposal should be repeated for at least 5 years.

(j) Should there be provision for withdrawing an initiative ?

Any proposal should and must be carefully researched by the proponents prior to going to petition, so there should be no need for this provision. But there could be provision allowed for, with a forfeiture of a deposit which should be lodged with the original proposal.

(k) Should there be a provision for an unformulated proposal ?

Yes, proposal that has some merit and has the acceptance of a number of electors could be submitted to an appropriate authority e.g. the law society, for correct formulation and drafting.

SUBMISSION NO. 65

HORST PFEIFER

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6-11-91

To the
Legislative Assembly of the Northern Territory
Sessional Committee on Constitutional Development

Re: DISCUSSION PAPER NO. 3 "CITIZENS' INITIATED REFERENDUMS"

Reference will also be made to reports by Mr John Hutton, MP and Mr Peter Reith, MP, copies of their reports are attached hereto.

Thanks you for the opportunity to participate in this debate on 'basic democracy'.

The observation I wish to make re your Discussion Paper No. 3 is, before I had completed reading the fifth page I came to the conclusion that you were not giving an unbiased run-down on CIR and inviting comment, but were somehow trying to convince the readers of your paper that there were undesirable features in the concept of CIR. I fully realise that you did not say so, after reading the full report several times I still support my first impression.

The Oxford Dictionary defines Democracy as "Government by the people, direct or representative".

We are neither governed by the people directly (CIR) nor representatively.

We do not have the opportunity to vote into Parliament those people we want to represent us, the Party system prevents this; nor do elected members represent the wishes of the community who employed them, again the Party system prevents this. In other words, they are receiving their substantial remuneration under false pretences. (Hutton p. 6 "Does Your MP Represent You").

I am convinced that if we had CIR in all our Federal and State Constitutions this country would not be in the mess it is in at the present time.

Thousands of petitions have been presented to Parliament and are ignored.

On the 4 January 1991, 50,000 people marched on the Victorian Parliament presenting a petition containing over 110,000 signatures demanding the resignation of the present Government, they were ignored. The basic principles of democracy were trampled on.

Our present governments, at State and Federal levels are bungling and blundering their way through their term with the bureaucracy running amok and we, the people of Australia can do nothing about it. We will however, for the next five or more decades, pay for the deliberate pillage and destruction perpetrated by those who are supposed to look after our welfare.

We the people of this country must have the power to remove from office, by civilised means, those who are destroying this land unless we prefer the alternative, revolution and bloodshed. For that is the direction we are heading.

You so aptly stated in your Discussion Paper No. 3, on p. 6, #a:

THE PRINCIPLES OF DEMOCRACY ARE BASED ON THE RIGHT OF A CITIZEN TO PLAY AN ACTIVE ROLE IN THE GOVERNMENT OF HIS OR HER COMMUNITY.

Our present system of Government not only denies us that right to actively participate, it decidedly prevents any involvement for no other reason than to enable those in power to further advance their self interests to the detriment of the community.

CIR is an essential part of any democracy for without it, democracy in the true sense, does not exist.

I will now address some of the statements made in your Discussion Paper No. 3.

On p. 3 (d) line 5 "Inherent in the Committee's thinking was the view that any new State constitution must reflect sound democratic principles". - If - (and IF is the question) your committee is genuinely interested in democracy it has no option but to whole-heartedly adopt the principle of CIR.

It appears however that the committee is more intent on finding fault and undermining any proposal that shows the benefit of CIR and whilst you are inviting comment (p. 22-1 #5) I can't help but feel that this whole exercise is more or less a game of deception, intended to give the participants the impression that a genuine attempt is being made to formulate a better and more democratic constitution. For no other reason so that if in future years questions are raised as to why CIR was not included in the NT constitution you can refer to this inquiry and say, "After a lengthy investigation, it was found not to be appropriate". Just as the Constitutional Commission did in 1988.

Having been involved with various groups promoting the concept of CIR for over 10 years, I can honestly say that the only people objecting to the introduction of CIR are the bureaucrats in the first instance and secondly other elected individuals eg politicians and councillors, individuals who should gladly embrace the concept if they are genuinely interested in representing the wishes of the community. When questioned as to their objections they give some totally irrelevant answers. I quote one given by a prominent Liberal politician last week at a public meeting "CIR has not made the poor any richer" that answer reflects the total lack of understanding and the intelligence level of our politicians.

Bureaucrats and politicians realise, (but will not admit it) that CIR can challenge the many irresponsible actions undertaken by them and make them accountable, something they want to avoid at all cost.

I will not go into details about the advantages as they are listed in your report on p. 17. Suffice it to say that the list is incomplete and your book would not have enough pages to include all the advantages of a true democracy.

I do however wish to address the list of 'disadvantages' for not only are they totally wrong they indicate the total lack of understanding by the author, of the principals of CIR.

Page 17 - Disadvantages

- a) As stated previously in this report and supported by Mr Hutton, MP: We do not have representative government, so how can we undermine something that does not exist. The lack of representation is the fundamental problem in Parliament, if we had true representation we would not need CIR. The Party system prevents MPs from representing them.
- b) Here you claim that there could be a loss of respect for the legislature and democratic institutions. To be honest, when I read that I thought you were joking. First of all we have to clarify what we, you and I, understand by "legislature and democratic institutions". My definition is: "parliament and its members". The latest surveys have revealed that every Australian has known for 100 years politicians can't be trusted. They rate in popularity and trustworthiness at the lowest. If you people have not noticed this then you must have been on the moon. The people of this country have lost, what little respect they had for political parliamentary institutions after the recent public exposure of corruption at every single level of government and the wheeling and dealing that has taken place in every single State, and at the federal level in Australia.

Please also read P. Reith, MP, p 13 and p. 14 "The Integrity of the Law".

I would just like to repeat the statement that, for a law to be accepted by the people it must have popular support and some form of legitimacy.

- (c) To state that CIR is inflexible again highlights a total lack of understanding by you in the principles of CIR. The cornerstones, the foundation of democracy are enshrined in CIR. The concept is as flexible as we want it to be, it is the most democratic way of representation.
- (d) There is no evidence to substantiate this statement. That is unless you are referring to the referendums that were initiated by Parliament and were in the main rejected by the people for they saw the hidden agenda behind them, more power for governments.
- (e) Again your assumptions cannot be backed up by facts. This statement assumes that the community consists of drones with no intelligence to dissect the available information whereas history has proven that the people will decide what is best for the community as a whole. (Walker)
- (f) See (e).
- (g) This is another bit of nonsense making me wonder what you are on about, I would like to see some proof to back up this statement. It is the very lack of citizen rights that is costing

this nation millions of dollars. In Geelong we have the old debate of council amalgamation going on for the fifth time in ten years costing this community several millions of dollars in court cases, plus time and money spent on travel and meetings, etc. etc. Under our Local Government Act we have the right to demand a referendum but the Minister is using delaying tactics and is waiting for the introduction of the new Local Government Act. Whilst this has nothing to do with your constitution I wish to highlight the reluctance by governments to let the people decide their own destiny.

- (h) If they are worded in the usual bureaucratic mumbo jumbo they deserve to be rejected. And whilst we are talking about complicated legislation, have a look at our present taxation laws. It is the greatest piece of confusion that our bureaucracy could manage to produce, they may as well have written it in Chinese for even the "Experts" the very people who drafted it do not know what is in it. CIR would demand legislation that can be understood by everyone.
- (i) This addresses part of the problem in today's society where vocal and extreme minority groups are lobbying politicians and are forcing their will upon the majority. If you are suggesting that unpopular minority groups have a superior right to have their demands met by the majority then you do not understand the principles of democracy.
- (j) Is this another joke? Show me a piece of legislation drafted in the last 100 years by our so called "Experts" prodigious and highly paid bureaucrats that has not been defective. To my knowledge not a single piece of legislation has been passed that was not found wanting and requiring amendments later.

I am sorry having to say this, but your list of "Disadvantages" ?? leaves me speechless. I hope that this list was written by someone other than the Sessional Committee on Constitutional Development. If it was written by the above committee I know that I am wasting my time, for the outcome will be a rejection CIR.

Page 19 #1

In this case you must follow our Federal constitution which has served us well. Any constitutional changes must be put to referendum. I agree that of the 38 proposals put to referendum only 8 were carried and thus received the support of the community. When we look however at the other 30 which were rejected we find that each and everyone either had a hidden agenda (like the ID card) and in each and every case increased the powers of the bureaucracy and Parliament over the citizens of this land. This fact alone should convince the critics of CIR that the people have a lot more common sense than they assumed. It also shows that they will not be influenced by false propaganda and big spending institutions. The ID card debate cost this nation millions of dollars that the government had no right to spend on false propaganda. I also wish to point out that the Government is now introducing an even more sinister type of ID card through the back door in the form of the 'Tax File No' and 'Medicare card'. This is in direct contravention of the wishes of the people. But then this government has in the past flouted the constitution on a regular basis and continues to do so to this very minute. (I am prepared to substantiate that claim).

Page 20 #7

Do you really think that is an option? It is very close to what we have at the present time or worse. In other words, not a democracy at all.

Page 20 #8

- a. Only naturalised citizens of at least 5 years standing.
- b. Between 4% and 6% and here I am referring to the "initiating" of action only. Any greater percentage will be discouraging. Apart from that, if the people at a later referendum initiate a different percentage then so be it.
- c. The petition containing the identical wording of the proposal.
- d. By sample confirmation of authenticity.
- e. Depending on the issue and area being affected. Not all issues will be related to the whole State, it could well be an issue affecting only a small area of a local government, in which case 60 days should be sufficient time. Whereas an issue affecting the whole State, considering the vast distances between some centres of population, may well need as much as 3-4 months or more.
- f. On separate forms.
- g. Definitely.
- h. Definitely.
- i. If 51% rejected a proposal it should be able to be brought up again within 3 years. If the same or identical proposal is again rejected by 51% it should not be able to be brought up for 6 years. If the proposal is rejected in the first instance by more than 90% of the people 6 years and proportional for any percentage in between.
- j. Yes.
- k. Yes. But only if a concept or principle is the proposal. I consider CIR a concept where the details can be worked out at a later stage. If we had CIR we would have the foundations on which we could built a true democracy; Government by the people for the people.

Page 21

That appears to be a fair proposal.

Page 22 - General comment on Item F

I again thank you for the opportunity to have an input and I am pleased to participate in your debate. Whilst I and thousands of other cannot understand your reluctance to fully support the concept of CIR you obviously have some doubts. What can we say to convince you. Our present system is, to put it mildly, a mess. It only gives token resemblance to a democracy. The people have absolutely no influence in the decision-making process of Parliament. (Please read the comment of Mr Hutton, MP). What you are suggesting on p. 23 #5 is no better than what we have now.

Why do you on the one hand 'see some merit in a system involving the public' and then give the final say back to Parliament. If the people were satisfied with Parliament's performance and decision-making then any proposals initiated by a minority would be rejected when it came to the referendum where EVERYONE had his say.

You seem to confuse the initiative with the final referendum and that is a common problem when people talk about CIR. Any individual or a minority group can only 'initiate' a proposal and after meeting the requirements of sufficient support for his/her/their proposal the issue will be decided by the people at a referendum. It is **NOT** minorities running Parliament, as I am sure you are aware.

We have in power a federal minority government, a government that only received 39% of the total vote at the last election and at the present time would not have a hope in hell of getting back in. Do you honestly think that if we had CIR at Federal level and the people demanded a referendum to dismiss this government that this proposal would be supported by the Parliament?

Or, imagine a proposal that would make our members of Parliament equal before the law and require them to abide by the same laws that they are imposing on the rest of the population, for instance the "Trade Practices Act", "False Advertising". Do you honestly think that such proposal would receive parliamentary support?

That is what you are suggesting in #5.

Page 27 #(i) #5

I would be in favour of some form of a "Bill of Rights" for **ALL** Australians, not just the rights of minority groups and Aboriginal citizens. Mr Hawke's policy of "Multiculturalism" suggests that, we the white Australians have no culture and must accept the cultures, customs and religions of other races, for those other cultures are superior. His policy is divisive, it is tearing this nation apart.

Certainly we should have some special provisions for the "Tribal Aboriginal" and set aside sufficient land for them but not for every individual who claims he has a drop of Aboriginal blood in him. These individuals are half casts in the truest sense of the word and are not recognised by the "True Aboriginal" as part of their race.

Nor do I consider it fair that we, the white people, have fewer rights than all these half casts who claim to be Aboriginals. They are not prepared to live under "Tribal rule" and abide by "Tribal Law" they want the best of both worlds. They want to be protected from tribal law by the white man's law and have all the privileges but none of the responsibilities of the whites. They demand the handouts of our social security system, claiming it as a right, and then insult the people that feed them by flying their own flag. This land is no more their (the Aboriginals) than it is our (the white man) it belongs to all of us. Mr Hawke and his Cabinet even maintain that it belongs to the Asian people. How he

combines that thought with his policy that the land belongs to the Aboriginals and at the same time gives it away, is his normal style of contradiction.

This is one country, and hopefully remains so, we should all be equal before the law, we should all have the same rights and obligations.

In conclusion

I hope to persuade you, supporting the concept of CIR. You appear to labour under the fear that CIR will totally override Parliament. Nothing could be further from the truth. First of all, wherever CIR is part of the constitution or legislation it has never been thrown out. It would be easy for citizens in those countries or States to initiate a referendum abolishing CIR. Please ask yourselves this question: "Why has this not happened?" Nor is there any evidence to support the often quoted argument that it undermines Parliament, again nothing could be further from the truth. What it does do in the long term is, make our politicians **RE-present** the people wishes, and the emphasis here is on the **RE**. It would make individual members of Parliament represent the members of the constituency rather than regurgitate the party line.

One thing I am sure CIR would do if introduced federally is, it would initially produce a flood of demands for the repealing of unpopular existing legislation and settle once and for all the questions on 'immigration policy' on the 'death penalty' on 'Aboriginal land rights' and on the acceptance of various United Nations Charters and their position in our legislation. I could think of another 100 issues which are dividing this nation and need urgent attention.

CIR would force our politicians to address these issues, consider the will of the people they are supposed to represent, and perhaps for once stop all their childish bickering, back stabbing and time wasting whilst in Parliament.

Over the last decade we have been sliding further and further towards a 'Totalitarian Government' where the hidden agenda and paramount aim of the present Government is nothing less than 'Total control'.

Are we prepared to ensure a style of Government from which the Eastern block countries of Europe and Russia are just now emerging from, after 75 years of oppression.

Please look upon CIR as the only concept that will save this country from a dictatorship in the long term.

Hoping that you will consider my submissions for they have taken me a lot of time and effort to compile and reflect my genuine concern for our diminishing democracy.

Let the Northern Territory be the first State of Australia that has a Constitution truly representing the people's wishes and guaranteeing them an eternal Democracy.

Horst PFEIFER

SUBMISSION 65A

HORST PFEIFER

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**SESSIONAL COMMITTEE ON CONSTITUTIONAL DEVELOPMENT
LIST OF STANDARD QUESTIONS
TERMS OF REFERENCE**

1. The terms of reference of the Sessional Committee stipulate that the Northern Territory as a new State should, insofar as it is constitutionally possible, be equal with existing States as on the grant of Statehood.

ANSWER:

Yes.

Do you agree that the Northern Territory, as a new State, should be constitutionally equal with existing States?

ANSWER:

Yes.

2. The Sessional Committee is of the view that the new State Constitution should be prepared by Territorians and adopted by them in a Territory referendum.

Do you agree?

ANSWER:

And if CIR is not included in the Constitution that the people be asked if they want it included.

-
3. Should persons outside the Territory be consulted in the preparation of the new State constitution?

ANSWER:

Yes.

4. Do you agree that a completely new constitution should be prepared for the Northern Territory as a new State, in place of the existing Northern Territory (Self-Government) Act?

ANSWER:

Yes.

THE LEGISLATURE

1. A new State must have a Parliament. Do you agree that Parliament should have the same powers (including legislative powers), privileges and rights as existing State Parliaments?

ANSWER:

Yes. Subject to CIR.

2. A new State must have a Governor as head of the State.

Do you agree that the Governor should have to assent to any legislation passed by the new State Parliament before it becomes law?

ANSWER:

Yes.

3. If the Governor must assent to legislation, should he/she also be able to refer legislation back to the new State Parliament with suggested amendments?

ANSWER:

Yes.

-
4. Once legislation has been passed by the new State Parliament and assented to by the Governor, should it be subject to disallowance by the Commonwealth or any one else?

ANSWER:

Only if it contravenes our Federal Constitution.

5. Once legislation has been passed by the new State Parliament, should the Governor have power to reserve the legislation for assent or otherwise by the Commonwealth or any one else, rather than the Governor assenting to it himself/herself?

ANSWER:

No.

6. It appears that a new State of Australia can only be created within the monarchical system applying in Australia with the Governor as the Monarch's representative. Traditionally the Monarch or his/her representative has been regarded as part of the legislature.

Do you think that this should apply to the Parliament of the new State?

ANSWER:

Yes. We need the protection of the Crown.

7. Should the existing Legislative Assembly of the Northern Territory be continued as the Parliament of the new State, or should a new legislative body be established as the Parliament of the new State and be elected upon the grant of Statehood?

ANSWER:

A new legislative body to be established as the Parliament of the new State and be elected upon the grant of Statehood.

8. Should the new State Parliament be unicameral or bicameral?

ANSWER:

No.

-
9. Should the number of members of the new State Parliament be fixed by the constitution or fixed by ordinary legislation?

ANSWER:

By the constitution.

10. Should the qualifications (and disqualifications) of new State members of Parliament be fixed by the constitution or fixed by ordinary legislation?

ANSWER:

Constitution.

11. What are your views on the following suggested qualifications for nominations as new State members of Parliament?

- (a) an Australian citizen;

ANSWER:

He should be honest. 5 years.

- (b) at least 18 years of age;

ANSWER:

--

- (c) entitled or qualified to vote for new State Parliament;

ANSWER:

--

- (d) of sound mind;

ANSWER:

--

- (e) a resident in the new State for a minimum of 6 months;

ANSWER:

If Australian citizen for 4 1/2 years.

- (f) not an undischarged bankrupt;

ANSWER:

--

- (g) not convicted and under sentence of imprisonment for one year or longer.

ANSWER:

If convicted for any indictable offence carrying a penalty of 12 months or more.

12. The Sessional Committee considers that a person should be able to nominate for election to the new State Parliament even if he/she holds an office of profit under the Crown, except for certain offices such as Governor, a judge and possibly local government alderman. However if the nominee is elected, his/her office of profit should automatically terminate. What do you think?

ANSWER:

OK.

13. What are your views on the following disqualifications for new State Members of Parliament?

- (a) acquires an office of profit under the Crown (including possibly as a local government alderman);

ANSWER:

Must resign.

- (b) becomes an undischarged bankrupt;
-

ANSWER:

Dismissed.

-
- (c) is convicted and sentenced to imprisonment for one year or longer;

ANSWER:

Is convicted for an indictable offence carrying a penalty of 12 months or more. To be dismissed from office.

-
- (d) ceases to be an Australian citizen;

ANSWER:

To be dismissed.

-
- (e) fails to attend new State Parliament for 7 consecutive Sitting days without permission;

ANSWER:

Must be given the chance to explain. Not automatic dismissal.

-
- (f) ceases to be entitled or qualified to become entitled to vote for new State Parliament;

ANSWER:

Dismissed.

-
- (g) takes any remuneration for services in the new State Parliament except in accordance with lawful entitlement, provided that no disqualification if a member inadvertently receives excess remuneration and who repays same.

ANSWER:

To be dismissed.

-
14. Should a member of the new State Parliament with an interest in a contract with the new State be prohibited from taking part in the debate or vote on the matter if it is before the new State Parliament?

ANSWER:

Must declare pecuniary interest. Can participate in debate - not vote.

15. The Sessional Committee favours a 4 year term of office for the new State Parliament. What is your view?

ANSWER:

OK.

16. Do you consider that there should be a provision in the new State constitution requiring Sittings of the new State Parliament at least each 6 months, or some other period?

ANSWER:

3 months.

17. Do you consider that there should be a partially fixed term of 3 years for the new State Parliament; that is, no dissolution unless a vote of no confidence carried or unless Premier has resigned or vacated office, with power for the Governor to dissolve if he cannot form another government having the confidence of the Parliament within a reasonable time.

ANSWER:

No.

18. Should the constitution of the new State contain electoral provisions or should this be left to ordinary legislation?

ANSWER:

Constitution.

19. If some electoral provisions should be contained in the new State constitution, what are your views in this respect on the following matters:

(a) a maximum tolerance in numbers of electors per electorate;

ANSWER:

Yes.

(b) qualifications of voters;

ANSWER:

Australians - naturalised after 5 years with no convictions of more than 12 months.

(c) issues of writs for elections and fixing the date of elections;

ANSWER:

Minimum 40 days.

(d) provisions for casual vacancies and by-elections;

ANSWER:

Yes.

(e) one person one vote;

ANSWER:

Yes.

(f) secret ballots;

ANSWER:

Definitely.

-
- (g) compulsory redistributions when electorates above or below tolerance.

ANSWER:

10%.

20. Should a single member electoral system be used - i.e. one member per electorate? If not, what form of electorate should be used?

ANSWER:

Electorates to be governed by population. Divide total population by member. If an electorate contains twice as many - then 2 members should be elected

21. Should Aboriginal Territorians participate in elections in the same way as other Territorians? If not, then how should Aboriginal Territorians participate?

ANSWER:

Yes, they should participate in the same way.

22. Should the nature of electorates be contained in the new State constitution or be left to ordinary legislation?

ANSWER:

--

23. If there is to be a tolerance per electorate, how is it to be fixed?

(a) as near as possible to equality;

ANSWER:

Yes.

(b) 10% tolerance;

ANSWER:

10% maximum.

(c) 20% tolerance.

ANSWER:

--

24. Should voter qualifications be contained in the new State constitution or left to ordinary legislation?

ANSWER:

State constitution.

25. What are your views on the following suggested qualification of voters?

ANSWER:

--

(a) a resident in the new State for a minimum of 3 months;

ANSWER:

6 months.

(b) Australian citizen;

ANSWER:

5 years.

(c) eligible to vote in Commonwealth elections;

ANSWER:

Subject to (b) no convictions of indictable offence carrying penalty of 12 months or more.

(d) not of unsound mind;

ANSWER:

No.

(e) not under sentence of imprisonment for 5 years or more (query should prisoners under sentence for less than 5 years be eligible to vote);

ANSWER:

No.

(f) not convicted of treason or treachery and without a pardon.

ANSWER:

Disqualified for life.

26. Should the issue of writs for elections and the fixing of dates for elections be the function of the Governor?

ANSWER:

No.

27. In the case of casual vacancies, should an election (general or by-election) be required to be held within 6 months of the casual vacancy?

ANSWER:

Yes.

28. Should each member of the new State Parliament be limited to one vote on each question? Should the Speaker have a casting vote in case of equal votes for and against?

ANSWER:

No.

29. Should the office of Speaker be established by the new State constitution?

ANSWER:

Yes.

30. Should the new State Parliament be required by the constitution to be elected directly by the electors in a representative manner?

ANSWER:

Yes.

THE EXECUTIVE: GENERAL DISCUSSION

1. Do you favour the Westminster system or the American Federal system of government for the Northern Territory?

ANSWER:

Westminster.

GOVERNOR AND THE CROWN

1. Bearing in mind the constitutional equality with existing States, do you consider that the composition of a new State Government, from time to time, is entirely a matter for the new State and its citizens, and is not a matter in which the Commonwealth has any legitimate role to play?

ANSWER:

Yes.

2. The Sessional Committee is of the view that direct links must be established between the new State government and the Monarch, at least in relation to the appointment and termination of appointment by the Monarch of the new State Governor? What do you think?

ANSWER:

-
-
3. Do you think that there should be some constitutional guarantee of the Governor's remuneration.

ANSWER:

Yes.

POWERS OF THE GOVERNOR

1. The Sessional Committee considers that, as a general rule, the representative of the Crown should be required as a matter of law to act in accordance with the advance of his or her Ministers. What do you think?

ANSWER:

Yes. Must have power of veto if proposals contravene constitution.

2. As part of the Governor's wider general responsibility of administering the government of the new State, should he or she be given the express constitutional duty of upholding and maintaining the new State constitution.

ANSWER:

Yes.

3. Where it is clear that the government retains the confidence of the Parliament should the Governor have the power to dismiss his or her Ministers or to dissolve the Parliament at any time or should this power only exist in the last year of the 4 year term and then only on the advice of his or her Ministers?

ANSWER:

No.

4. Where a vote of no confidence in the government has been carried by the Parliament should the Governor be free without advice to dismiss his or her existing Ministers and to invite another member to form a government?
-

ANSWER:

Yes.

5. If the Governor has been unable within a reasonable time to appoint a member who would, in his or her opinion, be able to form a new government which had the confidence of the Parliament, should he or she be free without advice to be able to dissolve the Parliament?

ANSWER:

Yes.

6. Should the same principles apply as in the previous two questions in the case where the Premier has resigned or has vacated his or her office?

ANSWER:

No.

7. Should the Governor, acting otherwise than in accordance with advice in exercising any of the above powers, be required to table written reasons to Parliament within a reasonable time?

ANSWER:

Yes.

PREMIER AND OTHER MINISTERS

1. Do you think the Premier and other Ministers of the new State should be chosen from members of the new State Parliament?

ANSWER:

From ALL elected members, including Opposition.

2. Do you think that the choice of the Premier should be a matter for the new State Governor?

ANSWER:

No. The people.

-
3. Do you think that the choice of other Ministers should also be a matter for the new State Governor after having received the advice of the Premier?

ANSWER:

--

4. Should individual Ministers be removed from office by the Governor when advised by the Premier?

ANSWER:

Yes.

5. Should the new State constitution provide that an appointment as Minister will automatically terminate if the Minister ceases to be a member of the Parliament?

ANSWER:

Yes.

6. If a Minister loses an election should he be entitled to remain as Minister up to the declaration of the poll?

ANSWER:

No.

7. Should Ministers and their respective functions, responsibilities and designations be a matter for the new State Governor after having received the advice of the Premier?

ANSWER:

--

8. Should Ministers' remuneration and other entitlements be left to new State legislation?

ANSWER:

No.

9. Should there be limitations placed in the new State constitution on the scope of the executive authority of the new State Governor and Ministers?

ANSWER:

Yes.

EXECUTIVE COUNCIL AND CABINET

1. Should membership of the Executive Council of the new State be limited to the Ministers?

ANSWER:

No. The best people in the land.

2. Should there be constitutional recognition to the institution of Cabinet?

ANSWER:

No.

FINANCIAL MATTERS

1. What, if any, financial provisions be contained in the new State constitution? For example:
- (a) provision for the establishment of a consolidated fund into which moneys belonging to the new State must be paid;

ANSWER:

Yes.

- (b) requirement that money can only be paid out of the consolidated fund in accordance with a statutory appropriation;

ANSWER:

Yes.

-
- (c) requirement that all money bills introduced into the Parliament should first be the subject of a recommendation by the Governor to the Parliament; and

ANSWER:

Public scrutiny.

- (d) a requirement that appropriation and taxation bills only deal with matters of appropriation and taxation respectively.

ANSWER:

Yes.

2. Should there be any external controls over the borrowing by the new State other than in accordance with the provisions and powers presently applicable to existing States?

ANSWER:

Prior notice to be given. People to be given power to veto as in Switzerland.

THE JUDICIARY

1. Should the new State constitution contain provisions as the Supreme Court of the new State?

ANSWER:

Yes.

2. Should any such constitutional provisions endeavour to guarantee the independence of the judiciary? If so, how?

ANSWER:

Only if they are subject to open disclosure - Not like the thieves that run the Victorian Law Institute.

-
3. Should the present system of appointing judges by the representative of the Monarch on the advice of Executive Council be retained? If not, what other method should be used? Should there be a convention that the Chief Justice and bodies representing the legal profession are consulted prior to appointments?

ANSWER:

No.

4. Should the existing method of removal of judges by address in the legislature only on the grounds of misbehaviour or incapacity be retained? If not, what other method should be used?

ANSWER:

Electors recall.

5. Should provisions as to appointment and removal of judges be contained in the new State constitution?

ANSWER:

Yes. CIR principles.

6. Should the new State constitution deal with matters of Court administration?

ANSWER:

Yes.

7. Should the new State constitution contain any provision as to judges performing non-judicial functions, and if so, what provisions?

ANSWER:

Should contain provision as to judges performing non-judicial functions.

-
8. Should the new State constitution contain provisions as to the separation of powers doctrine? e.g. by permitting a law to confer judicial power on a person or body outside the judiciary.

ANSWER:

Yes.

9. Should there be a constitutional guarantee against any reduction of a judge's terms and conditions of service during the judge's term of office?

ANSWER:

--

ENTRENCHMENT

1. Should the constitution of the new State be entrenched? i.e. should it only be amended by following some special procedure?

ANSWER:

Yes.

- (a) new State referendum;

ANSWER:

--

- (b) new State referendum with a special majority;

ANSWER:

Referendum.

- (c) a special majority of the new State Parliament; or

ANSWER:

--

- (d) some other method or combination of methods.

ANSWER:

--

2. Should different degrees of entrenchment be provided for different constitutional provisions? If so, for what matters is a higher degree of entrenchment required and what should be the level of entrenchment?

ANSWER:

If CIR is entrenched 75% vote required for removal.

3. In relation to the new State Parliament, should the following provisions be entrenched in the constitution?
- (a) the unicameral Parliament and its representative nature;

ANSWER:

--

- (b) the qualifications and disqualifications of members;

ANSWER:

Yes.

- (c) the tolerance between electorates;

ANSWER:

Yes.

- (d) the qualifications of voters;
-

ANSWER:

Yes.

-
- (e) the power of the Governor to assent or refuse assent to legislation, to dissolve Parliament (subject to any fixed term provisions), to issue writs for elections and fix dates for elections;

ANSWER:

Yes.

-
- (f) casual vacancies and by-elections;

ANSWER:

Yes.

-
- (g) one person one vote;

ANSWER:

Yes.

-
- (h) secret ballots;

ANSWER:

Yes.

-
- (i) wide legislative powers;

ANSWER:

--

-
- (j) limit of time between successive Sittings of the Parliament;

ANSWER:

Yes.

(k) office of Speaker.

ANSWER:

Yes.

4. In relation to the new State executive government, should the following provisions be entrenched in the constitution?

ANSWER:

--

(a) the Westminster system of responsible government;

ANSWER:

Yes.

(b) provision for Ministers to only be chosen from the new State Parliament;

ANSWER:

--

(c) Ministers to be appointed and dismissed by the Governor;

ANSWER:

(d) Governor to follow the advice of his or her Ministers except in limited circumstances;

ANSWER:

--

-
- (e) Governor to be appointed and the appointment to be terminated by the Monarch on the advice of the Premier.

ANSWER:

No.

5. In relation to the judiciary, should the following provisions be entrenched in the new State constitution?

- (a) the existence of the Supreme Court (including the Court of Appeal) and its jurisdiction;

ANSWER:

--

- (b) savings provisions to carry over the existing Northern Territory Supreme Court;

ANSWER:

--

- (c) appointment and removal of judges;

ANSWER:

Removal by referendum.

- (d) a guarantee against any reduction in judges' terms and conditions of service.

ANSWER:

--

6. Should local government be recognised in the new State constitution and entrenched? If so, how should it be recognised and to what extent should it be entrenched?

ANSWER:

Yes.

7. Should this extend to community government?

ANSWER:

--

8. Should the Aboriginal Land Rights (Northern Territory) Act of the Commonwealth be patriated and become part of new State law? If so, what, if any, changes to that Act should be made?

ANSWER:

Would like to read it.

9. Should there be guarantees of Aboriginal land ownership in the new State constitution? If so, to what extent should they be entrenched and what form should the guarantees take?

ANSWER:

Australians should be equal before the law.

10. Should the new State constitution go further and recognise Aboriginals other than as to land ownership, for example, their historical rights, language, social, cultural and religious customs and practices? If so, how should this be done? For example, should it be by an unenforceable preamble?

ANSWER:

Could I get more time for a reply.

11. Should the new State constitution emphasise equality before the law and non-discrimination for all residents of the new State, including Aboriginal residents?

ANSWER:

Yes.

-
12. Should the new State constitution contain guarantees of human rights? If so, what human rights? Should those human rights be entrenched and if so, to what extent?

ANSWER:

Yes. More time needed.

13. Alternatively, should human rights only be contained in a non-enforceable preamble to the new State constitution which merely acts as an aid to interpretation and administration?

ANSWER:

Human rights to be contained enforcedly.

14. If human rights are specified in the new State constitution, should they be capable of being overridden by later express legislation?

ANSWER:

Referendum only.

[Some enclosures to this Submission have not been included in this Volume.]

SUBMISSION NO. 66

MRS M WATSON

RMB 1825
Curr Road
TONGALA VIC 3621

8.11.91

TO:

The Executive Office

Dear Mr Gray

Having been given a photostat copy what appear to be an advertisement in the N T paper calling for interested people to express views on CIR. If this means people from other states, I would like to express my sincere desire to say I think CIR is our only hope of Australia getting out of the disastrous situation we are in.

The politicians do not have the answer, that is one thing we would all agree on. CIR has been so successful in Switzerland and it could work equally as well here if we did get the chance of having a vote on it to become law. The politicians would not be in favour of it because it would greatly restrict their power over the tax papers and all Australians who don't pay tax such as pensioners and unemployed.

We as the people do have the right to have a say on many of the controversial issues such as immigration. It would be the most contentious issue as with so many Australians out of work and yet we are still being large numbers in and with the housing shortage little wonder it causes so much bitterness.

Are we going to have a say on whether we retain our once very stable life or are we to be made a Republic?

Are we going to be allowed to keep the flag so many thousands of our gallant young soldiers died and fought for ?

How many Australians approve of our Government selling off huge amounts of Australian land to the Japanese, or , are fearful of so many of our big business enterprises sold to overseas buyers ?

Rural areas are so badly hit with farmers being forced off their land they are so desperately trying to make a living off, while the Government is allowing millions of tons of foodstuffs to be imported here all of which is produced here practically

There have been large rallies protesting to the Government yet they simply don't seem to care what happens to country people as there are not many voters for them there. Country hospitals in a lot of areas are being closed along with police stations and now Post Offices are their latest targets.

Referendums don't need to be so expensive, there would be no need to pay out huge sums of money to people to man the booths, there would be so many who would be glad to do it for free if only we could get a referendum on these urgent issues and let this government know they are completely out of touch with the needs of the people.

CIR is a must if we are to survive, the unions are so strong and militant, no government will go against their demands which are continual wage rises and more benefits for less work and we are all suffering from its terrible aftermath.

Let the Australian people speak up. Yes to CIR.

Yours sincerely

A A Watson

(Mrs M Watson)

SUBMISSION NO. 67

PEOPLE'S LAW

PO Box 528
MENTONE
VICTORIA 3194

11 November 1991

COMMENTS ON DISCUSSION PAPER NO. 3 - CIR

D Disadvantages

(a) It tends to undermine the system of representative government;

CIR does not undermine the system of representative government but rather acts as an adjunct to government. We believe it is the current system of government that is continually being undermined by vested interest groups and party discipline.

(b) It devalues the role of the legislature and can result in a loss of respect for democratic institutions;

CIR's veto provision makes the legislature more accountable to the wishes of the people and can lead to a renewed faith in the democratic ideal. We believe CIR can reverse the declining respect for democratic institutions, and politicians who are often thought to be more committed to their own career advancement.

(c) It is inflexible and lacks the deliberative aspect of representative democracy;

CIR extends the deliberative aspect of representative democracy to the electorate as a whole.

(d) It tends to over-simplify issues;

In any referendum, an issue should be put as clearly as possible. However, that does not mean the issue is not debated in detail by the community prior to the referendum. A citizens initiative is no different in this respect than a referendum sponsored by the government of the day.

(e) It may serve sectional interests and can be manipulated by special interest, single interest or ideological groups, media etc;

Under CIR issues are decided by the majority of voters. One of its greatest advantages is that it is not as easily manipulated by sectional interests as the present system.

(f) It can result in confusion between multiple proposals;

Citizen initiated referendum regulations can stipulate that a referendum may only deal with one proposal at a time. In this respect it is less confusing than the current system, in which voters are asked at election time to make decisions on a multiplicity of proposals.

(g) It can result in excessive numbers of ballots, with the associated effect on the electors and high costs;

If the signature requirements for a referendum are sufficiently high then the number of ballots will not be excessive. In regard to cost, this could be further defrayed by holding a CIR at the same time as an ordinary election. The Swiss experience, however, suggests that CIR may actually reduce the cost of government in various ways.

(h) Some issues put to referendum may be too complicated or technical for the average voter to sensibly express a view on;

If in the eyes of a voter an issue is thought to be too complicated or technical for them to give an opinion (just as they might have difficulty with some issues on which they are expected to adjudicate at election time) then we believe they should not be forced to cast a vote, i.e. optional voting.

(j) It may threaten unpopular minority groups;

CIR regulations could stipulate that any proposals contravening any ratified international convention on human rights may not be subject to a citizen initiated referendum.

(k) It may produce defective constitutional provisions or legislation;

Prior to a petition being circulated, the proposal being made under a CIR can be scrutinised by the Parliamentary Counsel and amendments can be made to ensure that the proposal does not produce defective constitutional provisions or legislation.

E COMMENTS ON OPTIONS

People's Law favours the right of both citizens and parliament to initiate constitutional change.

We believe that it should be mandatory for a referendum to be held on all constitutional change.

We also support the idea (as outlined in options 3 and 6) of a small committee composed of both parliamentarians and suitably qualified persons from outside parliament to oversee and consider all constitutional and legislative veto initiatives by citizens and proposals by Parliament.

The committee should not be able to alter the thrust of the citizen initiative petition but (as you suggest) it should conduct public hearings, receive submissions and make recommendations on the proposal that would both improve its practical application and clarify its effect in law. Once this process has been undertaken the petition could be presented to Parliament for consideration and only if the Parliament takes no action within a specified time need it be referred for a referendum.

We also reject the idea of allowing for the recall of any person appointed by government to public office.

In response to the subsidiary questions raised in a point 8 we have outlined the following reply:

- (a) Any person who is registered and qualified to vote for members of the Legislative Assembly
- (b) 5% of the above voters
- (c) A prescribed petition form as laid down by Parliament in the regulations (a copy of a sample is enclosed)
- (d) By checking on the electoral rolls
- (e) Within eighteen months of the petition being circulated
- (f) Yes - each proposed amendment must be the subject of a separate initiative request
- (g) No - exclusions should include:
 - (i) laws relating to revenue or funds for the running of the State
 - (ii) laws naming a person for appointment to any office or removal from any office, i.e. recall
 - (iii) any proposed legislation that clearly conflicts with an existing Commonwealth law or treaty ratified under the External Affairs provisions of the Australian Constitution
- (h) Yes, subject to (g) above
- (i) Yes - five year restriction on another CIR on the same section of the constitution or similar law
- (j) Yes - if parliament decides to hold a referendum of its own
- (k) The procedures for any such provision should be clearly addressed in the CIR legislation

SUMMARY

People's Law recommends the following options for inclusion in the new constitution:

- . Mandatory referendums for all constitutional change
- . The right of citizens to petition through indirect CIR for the veto of proposed legislative and policy change and the repeal of existing legislation and policy
- . The exclusion of any recall provision.

Form A

Initiative and Referendum Act 1991

PROPOSED LAW FOR REFERENDUM OF THE ELECTORS

Petition No.

Closing Date:

TITLE: [INSERT FULL TITLE]

Summary: [Insert full text, or summary not exceeding 100 words]

THIS PETITION has been registered and may be signed by electors.

.....

Electoral Commissioner

If you wish to vote on the above proposal either to approve or disapprove, you may complete and sign this form. The full text of the proposal is available for your inspection from an Approved Witness, or from the Electoral Office or a Court House.

PETITION

To: The Honourable the Speaker of the Legislative Assembly, Parliament House.

We, the undersigned electors petition that the proposed law or measure be submitted to referendum of the electors for their approval or disapproval by ballot.

ELECTORATE: Subdivision:

Date of Signatures

| Roll No | SURNAME | Given Names | Address as Enrolled | Signature |
|---------|---------|-------------|------------------------|-----------|
|---------|---------|-------------|------------------------|-----------|

.....

.....

(attach further sheets showing title of Petition and signature of declaring witness)

DECLARATION OF APPROVED WITNESS TO SIGNATURES OF ELECTORS

I am authorised to witness the signatures of electors to this petition. Each signature was written in my presence on the date shown. This petition comprises [] pages and contains [] signatures. I declare the foregoing to be true and correct.

.....

Signature of declarant Full name Address of declarant

DECLARED before me at this 19 .

.....

Signature of person authorised to witness signatures:

Qualification (see below)

The Authorised Witness must make this declaration before an approved witness: (see below):

SUBMISSION NO. 68

SONYA FLEMING

PO Box 38704
WINNELLIE NT 0821

Ph: 271544

The Executive Officer
Sessional Committee on Constitutional Development
GPO Box 3721
DARWIN NT 0801

Dear Sir

SUBMISSION ON CITIZENS' INITIATED REFERENDUMS

In the context of the proposed new State constitution, I am not in favour of the 'Citizens Initiated Referendums' being incorporated as I believe the disadvantages outweigh the advantages.

I believe that there are sufficient and reasonable avenues through which citizens can participate in the processes of representative democracy. Individuals are free to join a political party and work within its framework to influence its policies and structures, as well as by petitioning incumbent governments.

The claim often put forward that "Citizen Initiated Referendums" provide educational benefits and greater participation of the community at large in the political process is one that does not appear to be borne out in Switzerland, the home of 'participatory democracy' (Dr Colin Hughes 'Commonwealth Constitution, Methods of Initiating Amendments', October 1983 pp47-71). If electoral turnout is a measure of political apathy and involvement then Dr Hughes study indicates that direct democracy has not been working very well even in Switzerland with its largely homogeneous population.

The present political system may seem to be remote from the ordinary citizen, however, I am of the opinion that a State constitution which involves regular and free elections at which electors can choose from contending candidates on the basis of alternative and coherent sets of policies which reflect different views on social, economic and political matters provides for stable and accountable government.

I believe that "Citizen Initiated Referendums" by simplifying issues could be very de-stabilising to elected governments, and could in the worst case scenario result in undermining an elected governments platform therefore making it impossible for the government to maintain accountable and responsible government.

Of the Options presented in "Discussion Paper No. 3", I can see some merit in Option 6. I can see merit in the establishment of a small Committee to which citizens' petitions and also proposals from the Parliament could be referred which could consider and invite public comments on proposals before reporting back to the Parliament with any recommendations. I would see this as a refinement and broadening of the present method of citizen petition which I fully support and which could be empowered to consider such matters as referendums for constitutional change, legislative change or veto, government policy change, or the recall of elected and appointed public officials. My preference would be for such an ad-hoc committee or committees, comprising a balance of elected representatives and other experts, to be appointed by the parliament from time to time to deal with such petitions and proposals. For greatest effectiveness there should be some set time limit, say 90 days, for the committee to make its recommendations back to Parliament.

Yours sincerely

SONYA FLEMING.

SUBMISSION NO. 69

JOHN SOSSO

13 November 1991

Mr R J Gray
Secretary
Committee on Constitutional Development
Legislative Assembly of the Northern Territory
GPO Box 3721
DARWIN NT 0801

Dear Mr Gray

Thank you for forwarding me Discussion Paper No. 3 issued by the Sessional Committee on Constitutional Development regarding citizens' initiated referendums (CIR).

Having read the Discussion Paper forwarded there appears to be a number of issues which can fruitfully be addressed, commencing with the more fundamental questions as to the merits or otherwise of introducing a system of citizens' initiated referendums into the proposed Northern Territory Constitution, and flowing from that the technical problems which would arise and which need to be addressed should such a step be taken.

IS CIR COMPATIBLE WITH REPRESENTATIVE GOVERNMENT?

It seems to me in addressing this complex and fundamental issue, the first matter that has to be resolved is whether CIR is compatible with representative government.

This very question was raised in the United States in the last years of the 19th century as well as in Queensland in the 1915-1920 period when various political groups were attempting to introduce CIR. In the United States it was claimed that CIR would result in the destruction of the "republican" system of government pertaining in the American States.

Almost a century of experience of CIR in 23 of the American States would indicate that the concerns raised by the opponents of CIR were unfounded, or, at least, unduly alarmist.

There is nothing inherently incompatible, in my view, between CIR and the system of government which we know.

If a system of representative government is to remain vibrant and sustainable it must be truly representative. The pure form of representative government enunciated by Edmund Burke in his

speech to the Electors of Bristol in 1774 has not, and never has been, a reality. Perhaps the closest to the "pure type" of representative government was the House of Commons in the period 1867-1906 when there was an expanded franchise but the party system had not yet solidified to the extent to which that block-voting became the norm and the ability of private members to initiate legislation to advance the interests of their constituents had become almost impossible.

The fact of the matter is that as the 20th century has progressed with human society becoming ever more complex and governments ever larger, the ability of private members to initiate legislation has inexorably declined. This decline has been hastened by the rise of the party system and the imposition of strict party discipline in Parliament.

Although Governments may have fallen regularly in the 19th century in the United Kingdom and in the Australian colonies because of want of confidence motions, this is no longer the case. Almost certainly it is advantageous that this is not the case because the economic well-being of a community depends upon stable government and consistent policy making. Party discipline and the party system for all their faults have ensured that there has been stability in government and that the electoral mandate given to a particular party has been able to be put into effect.

The doctrine of the electoral mandate reaches its ultimate extent in unicameral systems. The Northern Territory, like Queensland, has a unicameral Parliament. For those who argue that there should be checks and balances on Parliament the only effective check, apart, arguably, from an Upper House is CIR. A committee system, though having many benefits, is not a realistic check on governments. On major policy issues Committee members must adopt party policy.

Accordingly, then, a pertinent factor which I believe the Committee should take into account is that as the Northern Territory Parliament is a unicameral one and that as it, like all Parliaments in modern Westminster systems, is dominated by political parties which enforce strict discipline on their members, that there must be some check, or to put it another way, some "safety valve" otherwise than at three yearly elections.

As members of the Committee would realise when people cast their ballots at elections they normally vote on the basis of how they perceive a political party will advance their interests whether they be economic, social or philosophical. Normally people vote for a political party despite the fact that it may have policies which they disagree with.

Nevertheless, the way the doctrine of the electoral mandate operates would lead one to believe that as soon as a person votes for a particular political party they automatically endorse each and every policy of that party. That of course is a nonsense, but Australian electors are deprived of the choice of being able to express their views on issues of importance to them which is approached differently by the party of their choice.

Of particular significance in this regard are conscience issues. Questions such as the decriminalisation of homosexuality, marijuana, the availability of abortion, whether capital punishment should be re-introduced, or whether euthanasia should be legalised are all issues on which members of the community and political parties are divided. It is incorrect to assume that because a person votes, for example, for the Country Liberal Party or the Labor Party, that he/she necessarily has a particular view on any of these social issues.

Properly drafted, legislation permitting CIR would bolster representative government by providing a safety valve which could ensure that members of the community could vote for the political party of their choice and yet not be disenfranchised when it came to issues of importance and conscience for them. For the present situation is that when a matter is too difficult, and has no particular political advantage for any of the parties, it is put on the "back burner". Political "hot potatoes" come up all the time, and it is understandable that the political parties do not wish to face them head-on. Divisive social issues are not matters upon which political parties are structured to deal with in a sensible and systematic fashion.

There needs to be a mechanism in place which allows the voting public to be able to express their views on issues and as a result to feel that they are "part of" the system.

The experience of other jurisdictions would seem to indicate that CIR achieves the following goals:

- 1 It helps to minimise community alienation from the system;
- 2 It ensures that issues of importance to the voting public which are not of themselves strict party political ones, can be addressed in a comprehensive fashion;
- 3 It ensures that political parties which are established to advance particular economic and philosophical interests are not riven asunder on questions of social policy which have no particular bearing on their *raison d'etre*; and
- 4 It ensures that the body politic is kept vibrant by ensuring that there is an interested and relatively satisfied voting public.

All of the above comments on CIR are predicted on a sensible system being put in place. If a system of CIR was put in place which had a threshold for the holding of referendums which was too low, which did not ensure that such referendums were held simultaneously with other elections, and allowed constant referendums on the same issues to take place, then a number of the advantages would disappear.

As I have said my understanding of how CIR operates in other jurisdictions would lead one to the view that CIR would be useful adjunct to a representative system of government. My understanding of how CIR operates elsewhere also leads me to believe that put in place in a sensible and constructive way, it will ensure that our system of representative government will be strengthened rather than weakened and that the party system as we know it will be advanced rather than side-tracked.

In an editorial in the *Economist* of March 22, 1986, headed "Of the People or By the People?" the following points of view were expressed:

"In practice rather than theory, referendums have usually produced rather good - and surprisingly unbigoted - results ... The trouble with representative democracy is that it is not always that representative. In Britain, "free" votes in Parliament are rare. On some big social issues, such as abortion and the death penalty, many Parliamentarians' conscience are at odds with the pressures of their constituency parties or of lobby groups that might unseat them. There has been occasions when all Britain's three main parties have agreed on

something (to begin with, on the EEC) against the wishes of many Britons. In America, the California result against property taxes in 1978 took place in the teeth of opposition from both parties in the legislature. The referendum in America (mainly in the western States) has been a good way of over-riding legislatures too much influenced by powerful men or corporations whom nobody has elected to anything.

The charge that referendums encourage bigotry is not easy to sustain. To prevent referendums from becoming bigots' charters, an entrenched Bill of Rights (as in the United States) or constitution itself can be invoked to ensure that the popular will articulated by referendum does not trample on individual rights and liberties. The frivolous referendum is avoided by requiring a reasonably large number of voters to sign a petition asking for a vote.

Referendums can either pass judgment on laws already enacted by the legislature, or require the legislature to create laws that had occurred to other people, but not to it. A referendum system can be modified to taste. It may be desirable not to use for the more technical sort of fiscal or defence decisions. The size of the "yes" or the "no" "vote" may decide whether the voters' answer is put into effect. The important thing is that the question of whether to consult the people should not be left to Parliamentarians. The people, if enough of them want it, should be able to insist.

The point of referendums is to make democracy more democratic. That does not mean the abolition of representative government. Parliaments can still help to set out the arguments for the people to judge upon. That way, representative government becomes more representative. And people, by having responsibility given to them, become less apathetic - and more responsible."

In conclusion, I would suggest that CIR is compatible with representative government, and may in fact strength rather than weaken it.

THE TRACK RECORD OF CIR

A survey of the American literature on the experience of CIR indicates that a majority of commentators believe that it has been a success.

After surveying the results of the first 25 years of CIR in California E.A. Cottrell said (45):

"Our country is seriously imperiled by the apparent apathy of enfranchised men and women. Direct legislation was adopted with the belief and confidence that the real cure for the ills of government was a more immediate participation by the average citizen in all governmental processes. Democracy in a republican form of government depends for its continuance on public opinion able to cope intelligently with the problems which present themselves for solution. Emotionalism and misrepresentation must be avoided. Our institutions rest for their final security on the intelligence and self-restraint of those who are tolerant of the other fellow's opinion and liberty. Direction legislation in California has presented as many good proposals as bad. But the most important part of the process is that the issues are separately and thoroughly stated. They are more easily studied and are voted upon more directly and accurately than as if they were lumped in a party platform and voted wholesale. The bizarre

schemes whose weaknesses are exposed by the searchlight of publicity and discussion are given a hearing along with the minor corrections and oversights of former laws, as well as the fundamental constituent provisions. If it were not for this perennial mixture of the good and the bad, we might not have the same high participation in elections and our institutions would suffer from apathy and disuse. It is always amusing to Californians to see the frantic efforts of various sections of the country attempting to interest voters in their duty at the polls and raising the percentage of votes cast to total registration to around 50, compared with the 60 to 76 to which their state is accustomed.

California, in her twenty-five years of experience with direct legislation, both in state and in local affairs, has proved that the people are thoroughly interested in registering and voting their opinions on matters of vital concern. Students of government would probably agree after an examination of this experience that Theodore Roosevelt was prophetic in saying, "The majority of the plain people will day in and day out make fewer mistakes in governing themselves than any smaller body of men will make in trying to govern them."

E.A. Cottrell, 'Twenty-five years of Direction Legislation in California', The Public Opinion Quarterly, January 1939 30 at 45.

A more recent and far more sophisticated analysis was carried out by Professor Charles Price. His conclusion was as follows:

"the most important overall conclusion of this study is to question the prevailing negative assessment of initiatives held by politicians, not unexpectedly, and academics and journalists as well. The various conventional wisdom views of the initiative were all discarded, and the familiar litany of other criticisms of the initiative process were found to be, at least, open to question. The findings of this study, and the California experiences with initiatives over the last several years, have led this writer to question the prevailing negative assessment of initiatives. The initiative does provide a last resort to the public to bypass a recalcitrant legislature and/or governor. I Indeed, legislatures may very well find it to their advantage to present propositions to voters because of the inevitability of the initiative effort. It is hoped that other political scientists will reconsider this direct democratic technique and its potential. Clearly, initiatives do allow for decisive decisions on particularly sensitive, hard to resolve, issues."

C.M. Price, 'The Initiative: A Comparative State Analysis and Reassessment of a Western Phenomenon', (1975) 28 Western Political Quarterly 243 at 261-262.

See also La Palomara and Hagan, 'Direct Legislation: An Appraisal and a Suggestion' (1950) 45 American Political Science Review 400, Hahn and Morton, 'Initiative and Referendum - Do They Encourage or Impair Better State Government' (1977) 5 Florida State University Law Review 925 and E.C. Lee, 'California' in Butler and Ranney (ed) Referendums: A Comparative Study of Practice and Theory (1978) pp 87-122.

This is not to say that there are no studies which have been very critical of the initiative e.g. Bell 'The Referendum: Democracy's Barrier to Racial Equality' (1978) 54 Washington Law Review, and Sirico, 'The Constitutionality of the Initiative and Referendum' (1980) 65 Iowa Law Review 637.

However, most commentators have noted that initiated laws have been no worse - nor more radical - or conservative - overall than those passed by the legislatures of the various States. In short, the initiative has ensured that the legislation of the various States allowing it, has more closely mirrored the views of the electors of these States - whether those views be liberal or conservative. Although it should be noted that those States with the most extensive and oldest "political honesty" laws and generally laws regulating unfair electoral practices, are those with the initiative and those laws are brought about by the initiative e.g. California and Florida, especially the Californian Political Reform Act of 1974.

When CIR was first proposed in the late 19th century, it was put forward by people who were then categorised as "radicals" or "progressives". The system of CIR was strongly opposed by conservative political groups, and between 1915 and 1919 in Queensland Bills to introduce CIR were rejected on three separate occasions by the conservative dominated Legislative Council. Likewise, in almost every American State between 1898, when South Dakota introduced it, and 1918 when Massachusetts followed suit, conservative groups claimed that the introduction of such a system would lead to a proliferation of referendums of a radical nature which would destroy the body politic and lead to the destruction of State Parliaments. For example, one legal commentator said in 1908: "It is hardly possible to offer any satisfactory explanation for this legislation so radical in its nature, was adopted by so overwhelmingly a vote in so conservative a state as the State of Oregon .. (It) practically does away with a written constitution". Platt, 'Some Experiments in Direct Legislation' (1908) 18 Yale Law Journal 40 at 41-2.

In 1932 Professor Munro said:

"The adoption of the initiative and referendum was urged a quarter of a century ago by the progressive elements, who took for granted that if the people were allowed to legislate directly they would give their assent to progressive measures. On this basis the conservatives fought the movement in its early stages, while liberals welcomed the initiative and referendum as weapons with which to curtail the political power of vested interests. But direct legislation has not proved to be revolutionary: on the contrary, it has at least of equal value as a bulwark of conservatism."

Experience elsewhere would indicate that the initiative is neither a radical nor conservative tool. Rather the initiative is a mechanism whereby the prevailing views of the community can be reflected in legislation. Sometimes the views of the community are conservative and sometimes they are radical, and quite often they change on a particular issue one way or the other.

For example, taking the issue of capital punishment. Normally it is assumed that the initiative would lead to the automatic reintroduction of the death penalty in Australia. I do not pass judgment on whether that would either be a good or a bad thing, but I do note that in the United States there have been, since 1932, seven initiatives on the matter. In two of the initiatives the opponents of capital punishment were in the majority whereas in five cases the supporters of capital punishment were in the majority. The initiative has only resulted in three American States reintroducing the death penalty (California in 1972, Washington in 1975 and Oregon in 1978) and in almost all States where the death penalty is either in force or has been abolished it has been as a result of Parliamentary action rather than as a result of the collection of referendum petitions and the holding of a referendum. Interestingly, Oregon abolished capital punishment in 1964 by means of an initiated

referendum, but reintroduced it by the same means in 1978 and 1984 - see *Oregon v Quinn* (1981) 623 P. 2d 630 for an examination of the history of capital punishment in Oregon.

Likewise, there have been relatively few referendums in the United States on question such as the legalisation of marijuana (the only one I am aware of is Alaska in 1990), prostitution, homosexuality or the like. Where referendums have occurred on these issues the result has normally been a confirmation of the prevailing social mores of the day.

Nevertheless, the American voting public has tendered to exhibit remarkable tolerance when it comes to initiatives dealing with issues such as discrimination against various groups whether they be racial minorities, homosexuals or religious groups. Initiatives put forward which were aimed at, for example, ensuring that aids sufferers be licensed, have been comprehensively defeated in those jurisdictions where they have been held.

For those persons in the United States concerned about the proliferation of firearms, recent referendum experience would indicate that the initiative has been the only way pursuant to which sensible gun control laws have been able to be brought into force. Simultaneously with the 1988 Presidential and Congressional Elections a citizens' initiated referendum was held in Maryland on legislation restricting the manufacture and sale of cheap hand guns. Voters, by a large margin, supported the law. This was the first time in more than two decades that legislation restricting gun ownership had been passed despite the outright opposition of the National Rifle Association; which Association spent \$5 million opposing the proposed legislation.

Once again I make no comment on the desirability or otherwise of gun control measures, but I do point out that the relevance of this is that sometimes issues can reach a stalemated fashion in Parliaments due to the fact that they are either too difficult to handle or the fact that pressure groups become too powerful. As I indicated earlier, CIR has operated as a safety valve and resulted in issues that otherwise would not have been addressed to be able to addressed and to be comprehensively resolved.

Another point which ought to be borne in mind is the legitimacy of a referendum as compared to an Act of Parliament.

I draw the attention of members of the Committee to the experience in the United Kingdom with membership of the EEC. Prior to 1975 the United Kingdom, had on three separate occasions applied for membership of the EEC. In 1962 and in 1967 membership was rejected, but eventually in 1973 it was accepted. During that period of time there were serious divisions within both the Conservative and Labour Parties on the question. Likewise, there were serious divisions within the British community on membership of the EEC.

Eventually in 1975 a referendum was held on British membership of the Community and by a two to one margin the British public supported membership.

The critical point about this is that following the referendum the divisions which had plagued both the Labour Party and the Conservative Party were overcome.

From that date onwards serious debate within the British community and within the political parties was not on the question of whether Britain should remain in the Community, but the terms on which

Britain should remain in the Community. Interestingly this debate is still continuing as the Community develops and matures.

Likewise, in 1979 in the United Kingdom there were referendums on whether there should be devolved Parliaments in Wales and in Scotland. Overwhelmingly the electorate in Wales voted against devolution, and although a narrow majority favoured a devolved Parliament in Scotland, due to the provisions in the legislation enabling the referendum, it was deemed that that was not sufficient.

The point is that following the 1979 Scottish referendum the heat went out of the argument of those that were supporting devolution, and as a result the debate on the devolution took a backseat for more than a decade. Only now is devolution for Scotland back on the political agenda - however, devolution for Wales is, in effect, a dead issue. Following the 1979 referendum the debate was no longer about home rule, but about a Welsh language TV channel.

What I am therefore submitting is that a referendum results in the community as a whole expressing a view. The fact that the community has an opportunity to express a view ensures that a referendum result has greater legitimacy than an Act of Parliament.

This may not always be the case, but usually it is. Therefore, to reject a system which allows people to initiative referendums would see to me to be somewhat myopic as it results in a valuable tool for social harmony being dispensed with.

Usually in a society when political issues become so socially divisive that the boil over into political life, referendums are held. The 1975 British referendum on the European Community is one example. Some Australian examples are the 1916 and 1917 referendums on Conscription, the 1951 referendum on the banning of the Communist Party, the 1976 NSW, 1975 and 1983 Western Australian, 1982 South Australian and the forthcoming 1991 Queensland referendum on daylight saving, the 1968 Tasmanian referendum on the Wrest Point Casino and 1982 referendum on the Franklin Dam and numerous referendums in most States on liquor law reform proposals.

The heart of the debate on CIR is whether members of Parliament believe in the good sense of the people they represent.

It has been stated on many times that if Parliamentarians believe that the voting public is either too stupid, too bigoted, too hasty or too uninterested, then they will oppose citizens' initiated referendums.

I tend to take a more charitable view both of Parliamentarians and of the public. People often are uninterested in politics because they do not feel that they have a part to play in it. Apathy runs rife in Australian because often the view is expressed "what can I do?".

By bringing in a sensible form of CIR Parliamentarians will achieve the dual advantage of ensuring that there is a more educated and interested voting public and at the same time minimising the public's distrust of, if not open hostility towards, Parliament and Parliamentarians.

The real problem facing Australia today is that people do not feel that they "own" the system or in fact have any meaningful part to play. Voting becomes a mechanical thing and Parliamentarians are seen to be a part of the political game.

If members of the public are given an opportunity, apart from voting for one block of politicians in one party or another block of politicians in another party mechanically on election day, to have an initiatory role, an innovatory role, and an ability to mould the system to suit their goals, their aspirations, their values, their hopes and to overcome their fears, then what will result is a system of democracy which is healthier, stronger and one in which those persons who hold and direct the steering wheels of power, namely the Parliamentarians, are given greater respect and trust by the community they are elected to represent.

THE RECALL

One matter which the Committee is investigating is whether members of the public should be able, by signing petitions, to "recall" members of Parliament.

The point of view that I have expressed above about initiated referendums is that it can operate and should operate as a mechanism to bolster representative government and democracy. A recall system on the other hand has not worked well in those representative systems of government which have introduced it, and to my mind runs counter to the idea of the electoral mandate and to the Parliamentary system of government.

It was introduced, albeit ever so shortly, in Alberta by the Social Credit Government in the 1930s. As soon as enough electors signed a petition to recall a Social Credit Member of Parliament it was quickly repealed and has never been re-enacted.

The recall is in force in many American States, but the system of responsible government applying in Australia does not exist.

Likewise, in the United States there is a history of directly electing Governors, Members of Parliament, as well as members of the judiciary. This is not the case in Australia and although the system of recall can work in a system whereby all levels of government are elected, it does not sensibly fit into a system where the executive is chosen from Parliament and the independence of the judiciary is guaranteed by appointments until 70 years of age.

Once a Member of Parliament is elected for a term he should be able to serve it out unless he resigns, commits a breach of law or is voted out by the Parliament as a whole. A Member of Parliament once elected should be able to represent his constituents and if they are unhappy with his performance they can vote him out at the next election.

It seems to me that the recall would result in Members of Parliament never being able to initiate or vote on legislation which may be contrary to their electors wishes without fear of their terms being cut short.

Provided that there is a safety valve in the form of initiated referendums Members of Parliament should be able to exercise their consciences or follow the dictates of their party and vote for a particular piece of legislation or a series of legislative initiatives. To enable people to collect petitions to bring a Member of Parliament back to the people before the end of his term would interfere in his ability to represent his party and the community and weaken the Parliamentary system.

Accordingly, I would strongly suggest that the proposal to introduce a system of recall be rejected outright.

COMMITTEE OF PETITIONS

In the discussion Paper the Committee outlines an alternative proposal, namely a Committee which would consider proposals for change from the public. This Committee would conduct public hearings and receive submissions. The Committee, of course, would comprise only Members of Parliament and it would have the final say as to what would happen by means of reporting to Parliament with its recommendations. Only the Parliament would have the power to hold a referendum, if that was so desired.

Although this proposal does certainly advance the issue by ensuring that when members of the public are concerned about an issue and collect signatures on a petition there is some existing Parliamentary mechanism which can consider and address it, it does not deal head-on with the major problem.

The major problem in the Australian community is the fact that electors feel that they have no ability to be able to initiate change. The fact that Members of Parliament would be considering matters and making a report to Parliament as a whole which in turn may then either ignore the issue, reject it or modify it, does not overcome the basic problem with the existing system. The major problem is not that Parliamentary government does not work, it is just that it does not work as well as it could.

Many people feel that the party system has let them down by stifling debate and that Parliament is not operating the way that it should.

The best means of dealing with these concerns is not to tinker with Parliament itself, by attempting to devise solutions which are inappropriate in a modern, complex, technological society, but rather to provide alternative means which can bolster Parliament. One of the alternative means which can bolster Parliament is the ability of persons very concerned about an issue to collect petitions for the holding of a referendum.

The fact that there is an appropriate law in place which ensures that petitions can be collected in an orderly fashion, and that a sufficient number of petitions are needed before a referendum can be held, that the law pursuant to which the referendum is held is appropriately drafted, that the referendum can only be held at a time which minimises inconvenience and taxpayers expenses, are ways of ensuring that CIR will operate satisfactorily.

With respect to the Committee it appears to me that the solution put forward, although certainly an advance over what presently exists in Australian jurisdictions, is a solution devised by Parliamentarians for Parliamentarians. I do not presume to suggest to the Committee that it has lost sight of the reason that is leading people to call for CIR, but I suggest it should keep in mind that there is a want of confidence at the moment in the political system and radical measures are needed to ensure that the system that we know and which works, arguably from a purely technical point of view, quite well, is sustained and strengthened.

Accordingly, whilst I applaud the Committee for suggesting mechanisms whereby people can have a more constructive and initiatory role in the Parliamentary process, I submit that the proposal put forward does not go far enough and does not deal with the concerns which are out there in the

community. I suggest, in short, that the solution put forward is not a sustainable one and which in the longer term would only lead to greater public dissatisfaction with Parliament and Parliamentarians, rather than less. For by putting in place a mechanism which arguably is intended to ensure that alienation is minimised by letting people have a say, but still leaving it in the hands of Parliament to determine if anything happens, will only raise people's expectations and then shatter them.

I turn now to some of the technical issues raised in Part E of the Discussion Paper.

WHO MAY SIGN?

Any person enrolled as an elector should be able to sign a petition. No restrictions should be placed on electors being able to participate in the referendum process.

The only logical restriction would be if local referendums were allowed, and there was a limit on persons to a geographical region or other restrictive class, however, in my view, the referendum process should not be open to local referendums.

The only logical restriction would be if local referendums were allowed, and there was a limit on persons to a geographical region or other restrictive class, however, in my view, the referendum process should not be open to local referendums.

The setting of the signature requirement is of critical importance to the initiative. If too high a figure is set, then the process becomes a sham because it becomes effectively impossible for people to be able to initiate a referendum.

On the other hand, if too low a figure is set, such as arguable is the case in Switzerland, then referendums could be initiated by groups on matters of no concern to the general public and as a result the system could be brought into disrepute.

However, I suggest that the question of how many signatures are required should be dealt with at two separate stages.

If the initiative process is to work effectively a system should be put in place to ensure that the petitions sent out for people to sign are checked at the outset to ensure that misleading questions are not put to people and that the petitions are in an appropriate form.

As the initiative process, if introduced, would form part of the legislative process as a whole, great care needs to be taken to ensure that each step of the process is meticulously followed to ensure that there is as much information given to the electors as possible so that the system becomes an informed and constructive one.

I suggest that an appropriate way of approaching this process is for a petition signed by, using the Northern Territory as a yardstick, 250 persons to the appropriate Minister responsible for electoral matters. The petition would need to be accompanied with a fee of, for example, \$1,000 or such greater sum as could be prescribed from time to time by the Regulations. The initial petition would contain the name and address and place of residence of each signatory as well as any other information which would facilitate identification of the signatories.

The petition at the initiatory stage would also contain a copy of a Bill which the petitioners wish to be submitted to the electors or a statement signed by a person known as the "promoter" which clearly and fully explains the substance and intendment of the proposal to which the petition relates.

The Minister would then satisfy himself that the petition was on a matter which would not be excluded by the legislation and would then cause the petition to be put into a form which would include an accurate and succinct statement of not more than a prescribed number of words (e.g. 100), of the effect of the law proposed by the petition.

The Minister would publish in the Gazette notification of the date of the issue of the formal petition and this would be the date which the petition process would start on.

This two step process is necessary for a number of reasons.

Firstly, it ensures that formal petitions which are given to people are not misleading.

Secondly, it ensures that the time limit set for the collecting of petitions is absolutely certified by inclusion in the Gazette.

Thirdly, it ensures that petitions are not circulated which would generally be contrary to the legislation, and, finally it ensures that frivolous petitions are not circulated by making it mandatory up front for the petitioners to forward a sum of \$1,000. The purpose of this is not to restrict petitions to wealth groups but to make it clear that the petitioning process has a cost for the government and that petitioners pay their fair share of the costs.

Once this stage has passed then the formal collecting of petitions would take place.

In my view a petition on a piece of legislation should require the signature of 5% of electors before it could be put to a referendum.

There is no "magic" in setting a figure of 5%, but I consider this to be a reasonable figure in larger jurisdictions as it would take into account the fact that this would place a significant burden on promoters of a petition drive, but at the same time not set the benchmark at too high a level so as either to deter ordinary citizens collecting petitions and open the process only to wealth pressure groups.

I set out below the petition requirements in certain American States for the holding of a statutory initiative (as distinct from a constitutional one):

| STATE | PETITION REQUIREMENT |
|--------------|---|
| Alaska | 10% of those voting at the last general election and resident in at least 2/3 of election districts |
| Arizona | 10% of qualified electors |
| Arkansas | 8% of those voting at the last general election for governor |
| California | 5% of votes cast at the last general election for secretary of state |

| | |
|---------------|--|
| Idaho | 10% of votes cast at last general election |
| Massachusetts | 3% of votes cast at last general election for governor |
| Michigan | 8% of votes cast at last general election for governor |
| Missouri | 5% of voters in each of 2/3 Congressional districts |
| Montana | 8% of legal voters |
| Nebraska | 7% of votes cast at last general election for governor |
| Nevada | 10% of voters at last general election |
| North Dakota | 2% of voters |
| Oklahoma | 8% of total vote for state office receiving the largest number of votes at the last general election |
| Oregon | 6% of votes cast at last general election for governor |
| South Dakota | 5% of votes cast at last general election for governor |
| Utah | 10% of electors |
| Washington | 8% of votes cast at last general election for governor |

Turning to recent Australian CIR Bills (using that term liberally), the Referendums (Repeal of Acts, and Regulations) Bill 1988 (WA), introduced by the Leader of the Opposition, requires the petition to be signed by not less than 8% of electors - CI 6(1)(b).

The Legislative Initiative Bill 1989 introduced into the Senate on 12 April 1989 by Senator Macklin set a 2.5% petition requirement.

Finally, the Constitution (Citizen-Initiated Referendum) Bill 1988 introduced into the NSW Legislature Council by the Rev. Nile set a petition requirement of 3% - CI 7(1).

As I have not sighted the Tasmanian Bill recently debated in the Lower House, I am unaware of the petition requirements mandated therein.

Based on overseas experience, the setting of a benchmark much below 5% could lead to the holding of frivolous referendums while on the other hand if a figure of 10% or above was set, the referendum process would become most difficult, if not impossible.

For example, the three American States with a 10% benchmark have had very few initiatives. In the period 1989-1976 only 11 petitions qualified in Idaho, 11 in Nevada and 6 in Utah. In the period 1962-1972 only 1 initiative drive in each of these States was able to meet the 10% qualifying limit in the prescribed time period.

As I have said I believe a 5% benchmark is the best, but I recognise that a figure between 5% and 10% would be feasible, provided that the period of time set for the collecting of the petitions was not artificially short.

If a figure above 5% was to be set then the period of time for the collecting of petitions would need to be increased in accordance with each percentage point required to ensure that the system remains realistic and does not become monopolised by pressure groups and political parties which have the resources and manpower available to conduct petition drives.

WHAT MUST THEY SIGN?

As I have indicated electors who are asked to sign a petition for the holding of a referendum, should be presented with a petition which has been checked by the Electoral Office and which contains a succinct, understandable and non-misleading statement as to the purpose of the petition.

If the serious step to a referendum is to be countenanced, electors who are the trigger for that occurring must not be placed in a position of signing misleading or nebulous petitions.

The question whether the petitions themselves should be printed on paper supplied by the government, or paper supplied by the petitioners, is dependent on whether petitioners should be asked to pay an up front fee.

I have suggested an up front fee is desirable. If this up front fee was paid then the paper, the basis of the petitions, could be supplied by the Electoral Office.

As I have indicated, the up front payment of a fee by the promoters of a petition not only would ensure that the costs for the Electoral Office are met, so far as the printing of petition forms are concerned, but also would act as a salutary break on persons who may otherwise be inclined to start a petition drive on frivolous or non-serious matters.

HOW ARE SIGNATURES AUTHENTICATED?

It would be necessary for the promoter of the petition to forward to the Chief Electoral Officer at the expiry of the period pursuant to which the signatures are collected, all signatures in support of the formal petition.

The question as to how they should be authenticated raises two questions.

Firstly, the mechanical question whether authentication would occur at the head office of the Chief Electoral Officer or in sub offices. This type of question would only arise in those jurisdictions where such procedures is available. I doubt if this would be the case in the Northern Territory and as such I do not intend to proceed discussing this particular matter.

Secondly, a more pertinent question is whether the Electoral Office would be required to check each individual signature to determine if the person signing a matter is an elector, and secondly, whether the same name appears twice.

In larger jurisdictions the requirement that each individual signature be checked is unrealistic because of the time entailed and the cost involved.

In the United States most jurisdictions have brought in a system of random sampling. Certainly this is the case in California and it has worked for many years quite successfully.

The size of the sample to be taken would depend on the nature of the jurisdiction involved. In a larger jurisdiction a sample should be no less than 5%.

In the case of the Northern Territory where the number of voters involved is smaller I would suggest that a system of random samples could still be introduced, but that the sample should be not less than 20% of signatures submitted. This greater than occurs in the various jurisdictions in the United States, but having regard to the population of the Northern Territory, I do not believe that this requirement would be either onerous or unrealistic.

DURING WHAT PERIOD MUST SIGNATURES BE COLLECTED?

In Switzerland there is generally a period of 18 months in which persons have the ability to collect petition. The setting of a time period is of importance because it ensures that "stale" petitions are not circulated and also ensures that petitions are kept relevant and are not collected on matters which are no longer of topical interest.

In California a period of 150 days is set and in other American States the period ranges from a few months to in excess of 12 months.

The period of time for collecting petitions is inextricably intertwined with the percentage set. If a large percentage is set for signatures, then logically a longer period of time for the collecting of such signatures is needed.

In my opinion a period of six months could possibly be unfair. The reason I say this is that if a percentage of between 5-10% is set only those groups which either have the money or manpower available to conduct drives would be able to collect the signatures in that time. In other words, if too short a period and too high a percentage was set, those members of the community who are presently alienated from the system would be "shut out" of the process.

On the other hand, as I have said, to set too long a period of time would be detrimental as it would allow the circulation of petitions on matters which can quickly lose public significance.

In my opinion, if a figure of 5% was set then a period of between six and eight months would be reasonable. If, however, a percentage requirement of 10% was set then a 12 month period of time would be required if the process is to work appropriately.

Accordingly then, I suggest that if a 5% figure is struck for the number of electors who are required to sign a petition before a referendum can be held, then a six month period for the collecting of signatures be allowed. For each percentage above that figure I would suggest that consideration be given to increasing the time period to allow those signatures to be collected by one month. This is only a rule of thumb, but I think it does highlight the fact that some flexibility is needed and that all

parts of the process have to be taken into account when considering matters such as this rather than each question be considered in isolation.

It also needs to be kept in mind that in jurisdictions such as the Northern Territory where isolation and the tyranny of distance come into play, special care needs to be taken to ensure that persons in remote and isolated areas are not disadvantaged by the setting of inadequate time periods so that they are not able to fully participate in the process.

MAY ANY PART OF THE NEW STATE CONSTITUTION BE AMENDED BY INITIATIVE?

Subject to my comments below the answer to this question is undoubtedly yes. However, one fact must be kept in mind. The initiative process can never ignore the role of the Crown or attempt to abolish the Crown. This legal point is made abundantly clear by the Privy Council decision of *In re The Initiative and Referendum Act* [1919] A.C. 935.

In that case the Privy Council was considering The Initiative and Referendum Act of Manitoba which allowed the enactment of initiated laws following their approval at a referendum, and by-passed the Lieutenant Governor.

The Privy Council held that the legislation was invalid since it would render the Lieutenant Governor powerless to prevent a Bill approved by the people at a referendum from coming into force.

Viscount Haldane said (at 944):

"Their Lordships are of the opinion that the language of the Act cannot be construed otherwise than as intended seriously to affect the position of the Lieutenant-Governor as an integral part of the Legislature, and to detract from rights which are important in the legal theory of that position. Or if the Act is valid it compels him to submit a proposed law to a body of voters totally distinct from the Legislature of which he is the constitutional head, and renders him powerless to prevent it from becoming an actual law of approved by a majority of these voters."

In short, the position of the Crown cannot be ignored, and any system which did so would be unconstitutional.

MAY ANY LEGISLATION BE ENACTED BY INITIATIVE?

As I have previously indicated my view is that the initiative process would serve as a useful adjunct to the Parliamentary process. It is not my view that the initiative represents a threat to representative government, because in my view it would not be the co-equal of Parliamentary government.

It is not the co-equal of Parliamentary government for a number of reasons.

Firstly, constitutionally it cannot be the co-equal of Parliamentary government because Parliament would be delegating all of its powers to another legislative body, which is impermissible.

Secondly, the referendum process of itself has a number of inherent limitations. Most importantly the referendum process only allows a set question or Bill to be put to the people. It does not encompass for the give and take of the Parliamentary process and as such should be used in particular and discrete circumstances.

Thirdly, the referendum process involves all of the electors of a community being required to consider the matter, and as such it may not be appropriate in cases of purely local significance.

Finally, there are some matters which are so fundamental to the ongoing economic stability of a society, that whatever the political merits of a referendum may be, realistically these should not be subject to the process. I refer in particular to the budget and the appropriation process as illustrations of this principle.

Consequently, I set out hereunder a number of limitations which I believe are desirable to ensure that the initiative process operates as a useful adjunct to the Parliamentary system of government.

1 Appropriation of moneys of the Crown

Almost every American State which allows CIR exempts from the process appropriation bills. This exemption is necessary for the efficient functioning of government and to ensure that the macro-economic policies of a government are not jeopardised by "one off" measures. Additionally, if a budget bill was subject to CIR the process in effect would become a "recall" for the Government as a whole.

The purpose of CIR is to improve the quality of legislation and the responsiveness of government. It is not intended to supplant or destroy governments, and as such the appropriation process should remain exempt.

2 Private and Special Interest Legislation

Initiatives which are aimed at, and only affect, the interests of a particular locality or a particular person should be excluded from the process.

Some American States exclude the initiative or the referendum when the Bill, the subject of the petition drive, has only localised operation.

CIR should be limited to measures aimed at the Territory or State as a whole. Private bills may only attract sectional interest and in any event it is inappropriate for the community as a whole, by means of a referendum, to determine legislation affecting only a small segment of the population.

Of course sometimes matters of local operation can and do interest the population generally (e.g. environmental matters), but the more appropriate means of dealing with such issues are either by private bills or administrative action.

Likewise, legislation aimed at a single person, whether to assist or harm him/her, is a singularly inappropriate use of CIR.

3 The Composition and Entitlements of the Judiciary

The independence and integrity of the judiciary are issues central to the respect of the rule of law and the maintenance of a stable liberal democratic society. Whilst it would be unlikely that there would ever be a CIR petition aimed at the judiciary, nevertheless it is important that the status of the judiciary be recognised and that CIR be excluded from this area to ensure that one of the pillars of the separation of powers (the judiciary) remains outside the realm of the "hurly burly" of petition drives.

Additionally, it would be totally inappropriate that the very judiciary, the subject of a petition drive, should determine the legality of the petition process.

4 The Constitution and Procedures of Parliament

As previously explained, in my view, CIR should be seen as bolstering and advancing parliamentary democracy not undermining it or competing with it.

To allow initiatives on the constitution of parliament or its procedures would ensure that CIR became a method for changing the nature of parliamentary government, rather than dealing with the measures that emanate from it (i.e. statutes).

I believe that electoral laws should be subject to CIR (i.e. issues such as whether voting should be compulsory or not, limits on campaign expenditures, etc), but the constitution of parliament (i.e. unicameral or bicameral) and the procedures of parliament (its standing orders and laws relating to its committees and privileges) are matters solely for Parliament itself.

5 Matters which are Beyond the Constitutional Powers of Parliament to Enact

It could be a waste of time and taxpayers money if referendums were held on issues which had no legal effect. A referendum on a Bill which had no legal force (e.g. on immigration, foreign affairs, tariffs, telecommunications, etc), but rather was intended to enable the voters to express their opinion on an issue would be an abuse of process and bring the whole CIR process into disrepute.

SHOULD THERE BE ANY RESTRICTION AGAINST REPEATING UNSUCCESSFUL INITIATIVES?

Although in theory the case can be made for not restricting in any way the resubmission of unsuccessful petitioned referendums, in my view there should be a restriction placed on promoters of such measures.

The referendum process is a difficult, time-consuming and costly one. If at the end of this process the electorate decide against a measure, then the matter should rest for a period of time.

This is not to say that the supporters of the defeated measure are disenfranchised, for they have their inherent right to lobby the Government and the Opposition to introduce appropriate legislation.

The initiative process could be compromised by single interest groups who refuse to accept the will of the people. For example, it is clear that on an issue such as abortion that there are some people who would continually seek to have the matter resubmitted at referendums until they were successful. The practicalities of the matter may interest such persons less than the perceived morals of their cause.

In my view, if a referendum has been defeated there should be a limitation on the petitioning of a similar law for a period of five years. The Minister would determine if it was the same measure, subject to the Supreme Court determining that he had not made an error of law.

SHOULD THERE BE PROVISION FOR WITHDRAWING AN INITIATIVE?

It is clear that there should be some provision for withdrawing an initiative. It may be that in the interim Parliament has enacted a law substantially along the lines of the proposed measure to be put to the referendum, or it could be that once a petition drive has been launched an indication is given by the Government that legislation will be introduced. It may even come to pass that the reason for the referendum has disappeared - e.g. a proposed course of action is not proceeded with.

In addition, it could be that there is another petition which has collected the required number of signatures which achieve the same objects.

Many other examples can be given, but in my view the power to withdraw an initiative should like with the promoter of the petition. If he/she informs either the Minister for the Electoral Commissioner in writing and pursuant to the prescribed for that the petition is withdrawn, then that should be sufficient. However, discretion should like with the Minister to hold the referendum if he/she considers it desirable. One example of this would be if the actions of the promoter are repudiated by a substantial body of persons who support the petition.

In a process such as this there needs to be one focal point for the initial decision (i.e. the promoter), but also the flexibility to ensure that the exigencies that can arise can be dealt with in an appropriate and rational way.

SHOULD THERE BE PROVISION FOR AN UNFORMULATED PROPOSAL?

Unformulated proposals should not be allowed. If people are required to vote on a measure, they should have put before them exactly what they are voting on. It is not good enough for a "catch-cry" or a potentially misleading question to be the subject of a referendum. The initiative process is intended to assist Parliament and not be a community wide public opinion poll.

OTHER ISSUES

1 Role of the Parliamentary Counsel

When a referendum is held, the people are asked to vote on a proposed law. Accordingly, it is necessary for that law to be carefully drafted.

Statutes passed by Parliaments in Australia are drafted by Parliamentary Counsel. This ensures that there is consistency in drafting style and that problems of legal interpretation and

the risk of unintended legal decisions undermining the rationale of the legislation are minimised.

Any CIR Bill, then, should be drafted by the Parliamentary Counsel.

An immediate problem which needs to be addressed is who would give the appropriate instructions. The last thing that Parliamentary Counsel would wish would be to be subjected to conflicting instructions from enthusiastic amateurs.

The Parliamentary Counsel should be empowered to:

- 1 accept instructions only from the responsibility promoter or one other person nominated in writing by the responsible promoter;
- 2 select an appropriate title for the law proposed by the formal petition; and
- 3 include in the Bill all transitional, machinery and ancillary provisions necessary to make the proposed law a practical measure.

A provision should also be inserted to ensure that the above would not be construed:

- 1 to prevent the Parliamentary Counsel from entering into discussion with such persons as the Parliamentary Counsel considers appropriate in relation to the preparation of a draft Bill;
- or
- 2 to require the Parliamentary Counsel to accept or have regard to instructions supplied which in the Parliamentary Counsel's opinion are contrary to, inconsistent with or beyond the ambit of the formal petition.

Provision should also be made that only after the formal petitions have been collected is the promoter entitled to contact the Parliamentary Counsel, and the Parliamentary Counsel be required to commence the drafting process.

In addition, it would be appropriate for Parliamentary Counsel to be empowered, upon being satisfied that the Bill as drafted adequately provides for the law proposed in the formal petition, to certify that fact to the Minister, and that a certificate of the Parliamentary Counsel along these lines would be a condition precedent for the holding of a referendum.

Obviously the promoter would also need to be satisfied with the Bill, but the point I am making is that it is critical to the success of CIR that legislation enacted pursuant to the process be properly drafted and that the petition be properly reflected in the Bill submitted to the people.

2 Timing of the Referendum

The success of the CIR process is also dependent on the timing of the referendums. Inconvenience and unnecessary expenditure of taxpayers money should be avoided.

In my opinion a referendum should only be held simultaneously with State/Territory elections and, if possible, with local authority elections (if they are held on the same day).

It would also be desirable for a referendum to be held at the same time as a Federal election, but pursuant to section 143 of the Commonwealth Referendum (Machinery Provisions) Act 1984 this is not possible at the moment.

The Constitutional Commission in its First Report recommended that section 394(1) of the Commonwealth Electoral Act 1918 which prevents simultaneous Federal and State elections, be abolished. A similar argument (if not a more cogent one) can be raised for repealing section 143. In the past there have been examples of State referendums and Federal elections on the same day. In 1917 a Queensland Referendum on abolishing Legislative Council was held on the same day as the Federal election.

The point I wish to make is that one of the main arguments against CIR is that it would be too expensive. Of course, the holding of a referendum is an expensive exercise, but such costs can be significantly minimised if the referendum process is held in conjunction with an election.

From recent experience in Queensland it would be fair to say that a referendum held independently of a State or local authority election is considerably more costly. If the referendum is held in conjunction, for example, with a local authority or Federal election so that arrangements can be made with polling officials for counting the referendum votes, then savings of approximately 50% can be made. If the referendum is held in conjunction with a State/Territory elections the savings would be greater still.

The only time that a CIR referendum should be held independently of an election day, would be if the promoter of the referendum requested it and this was accepted by the Governor in Council.

Restricting referendums to set days would not unduly infringe the rights of any person, but in fact would ensure that there would be some certainty in the process (i.e. petitioners would have a date to work towards), and would also bring a discipline into the process which may otherwise be lacking.

3 Role of the Parliament

There are a number of ways that Parliament can become involved in the process. One only has to look at the American situation with indirect referendums to devise schemes to ensure that there is a filtering process before a referendum is held.

In my view, however, the whole object of CIR is to allow people to have matters of concern decided by the people at referendums, and not for Parliament to sidetrack an issue.

Of more relevance, both the constitutional and practical reasons, is whether Parliament should have a role after the referendum has been held.

If it was considered desirable, and I personally do not agree with it, provision could be made for a Bill passed by the people to be presented to Parliament on the first sitting day thereafter. Parliament would be given an opportunity on that day, and that day only, to disallow the Bill prior to it being present to Governor for assent.

This process would ensure:

- 1 that no argument could be raised that there had been an unfettered delegation of power to another legislative body (i.e. the people a referendum);
- 2 that Parliament would have a final say in the process; and
- 3 overcome any lingering doubts that Parliamentary sovereignty was endangered by the process.

This option, in my view, should only be exercised if two thirds of all those members of Parliament actually disallowed a Bill. It would be unwise to allow a bare majority of members present and voting to veto a Bill after it has gone through all the CIR requirements and which had been approved by the community. To allow this would bring Parliament into disrepute.

CONCLUSION

As I indicated at the outset the experience of CIR overseas has generally been positive. It has not proved to be the panacea of all of the problems confronting Parliamentary democracies, and not all laws passed as a result have been good.

Moreover, it has made life more difficult in some ways for some politicians, political parties and interest groups and it has a cost element as well.

However, overall, the CIR process has resulted in significant advantages for both citizens of the communities which have it as well as their legislatures.

Apart from the practical benefits of CIR, there are other less tangible ones. Most significantly it ensures a more interested and a more participatory electorate. At a time of great public apathy if not alienation with our system of Government, it is surely time for new ideas to be considered, especially if in this case the "new" idea is more than 100 years old and has a proven track record overseas.

Perhaps it says a lot that between 1890 and 1920 when there was far less educated and sophisticated electorate, that the Labor Party, progressive groups and many concerned citizens supported CIR. Now, 90 years later, when many of the conditions which the opponents of CIR raised have disappeared or not arisen, we still do not have this alternative.

The only thing that really has changed in the meantime is the growth of cynicism amongst the voting public, and a resistance by political parties to change the system by devolving powers to the electorate.

To say that CIR would be dangerous is to say that the electorate cannot be trusted. To say this is to deny democracy itself and the system of Government which allows Parliaments to function. I personally believe and have faith in the inherent good sense, decency and intelligence of the vast majority of Australians.

The walls of Parliamentary democracy won't come tumbling down if CIR is introduced, but perhaps the public alienation existing with our system of Parliamentary Government will be breached because the public will know that in a significant and practical way politicians recognise their worth and are prepared to delegate real power to them on important matters of conscience.

Yours sincerely

JOHN SOSSO.

SUBMISSION NO. 70

AUSTRALIAN RECOVERY MOVEMENT

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**FROM THE OFFICE OF: CHAIRMAN
Phone: (07) 359 5875**

12 November 1991

The Executive Officer
Sessional Committee on Constitutional Development
GPO Box 3721
DARWIN NT 0801

Dear Sir

re: Citizens' Initiated Referendums

In response to the advertisement in the "The Weekend Australian" of 12-13 October 1991 re Citizens' Initiated Referendums, the Committee of The Australian Recovery Movement has decided to express our views on this most important part of the democratic process and to forward sundry material in support thereof.

We assume that you have at your disposal some copies of the learned treatise on the subject by Professor Geoffrey Walker entitled "Initiative and Referendum: The People's Law". Professor Walker is currently the Dean of the Faculty of Law at the University of Queensland, but I understand that he will be going overseas for one year early in 1992. This book covers probably all the pros and cons on the subject and is a MUST for anyone wishing to be conversant on the subject.

The Australian Recovery Movement has copies of various Private Members' Bills that have been presented to Houses of Parliament in New South Wales, in Tasmania and in both Houses of Parliament in Canberra, and we understand that a Bill has been prepared in the past in Queensland but never presented. All of these have good points, but usually fall short of the Swiss model when it concerns the scope of subjects on which Initiative or Referendums may be called. I have been in contact with the Swiss Consul in Sydney and the Swiss Ambassador's office in Canberra and have been assured that there are NO restrictions on the subject matter of either the Initiative or the Referendum in Switzerland. We in the Australian Recovery Movement feel most strongly on this point, that the electors must be entitled to have their direct say on any matter on which the Parliaments may enact legislation, on the basis that the individual parliamentarians are elected to

re-present the will of the electors who put them there, and that all knowledge does not reside in politicians. If given the chance, electors will confirm that fact.

Among other enclosures, I am enclosing two copies of the submission which the Australian Recovery Movement made to the Queensland Electoral and Administrative Review Commission. Part of this submission refers particularly to C.I.R. but other parts concern other electoral matters which could be of interest to your Committee.

The Constitutional Centenary Conference 1991 issued one report and we are enclosing the summary on "Popular Initiative" from that report for your information.

One group promoting C.I.R. in Western Australia has distributed to the public leaflets entitled "What is C.I.R." and "Do you need C.I.R.!", copies of which are enclosed for your information.

Other enclosures are pages from "The Book of The States" 1988-89 Edition as supplied to the Australian Recovery Movement by Professor Geoffrey Walker, which columnises various aspects of C.I.R. etc, as they apply in the various States of the U.S.A. We found the information contained therein to be very interesting and informative.

As the implementation of C.I.R., Voters' Veto and Right of Recall into the Statute Books of all Australian States and the Commonwealth, are the most important, immediate aims of the Australian Recovery Movement, we place our services and research at your disposal should you so desire.

Yours sincerely

(M Goldstiver)
CHAIRMAN

8. POPULAR INITIATIVE

Recommendation of the Advisory Committee:

The Committee recommends a referendum to consider amendment of the Constitution to provide that any proposed amendment to the Constitution which is supported by at least 500,000 petitioners shall be put to referendum as it were a referendum proposal put forward by the Parliament.

The Queensland Government Response:

The Queensland Government strongly supports the Advisory Committee's recommendation that the People have a direct say in determining what constitutional amendments are put to the vote as well as voting on them.

The history of constitutional reform since 1901 has been bleak if one looks at the number of proposals that have been defeated compared with those that have been accepted.

The reason for this is clear.

Almost all of the constitutional reform proposals rejected entailed greater powers for the Commonwealth and less power for the States. The Australian People believe in the checks and balances inherent in our federal system and have repeatedly rejected these proposals.

Some other proposals whilst not centering more power in Canberra have also not met with the voters support. In 1916 and 1917 proposals to introduce Conscription and in 1951 to outlaw the Communist Party were rejected.

These examples illustrate and highlight the fact that the voter's' are discerning in what they will support and are jealous of the liberties and rights which all Australians enjoy.

True constitutional reform will only come in this nation when there is a "freeing-up" of the mechanisms for putting reform measures to the Australian People. As long as the sole power to initiate reforms lies with the Federal Parliament, there will not be the range and type of constitutional reform proposals that are necessary in any true Federal democracy.

It must be appreciated that the Constitution is not a document solely for the Commonwealth Parliament; it is the fundamental law of our nation and is of direct interest and concern to all States and to all citizens.

The degree of apathy which your Commission discovered exists regarding the Constitution can be attributed to many factors. One of the more significant, however, is the fact that the People have no direct say as to how the Constitution should be changed or modified to meet their aspirations or needs.

The Federal Parliament is not the fount of all wisdom, and like any Parliament is anxious to ensure that its rights and privileges are not only protected but also expanded. For that reason there is an inherent bias for amendments of a certain nature, namely those that give it more power.

The Queensland Government believes that the adoption of popular initiative will :-

- (a) lead to more amendments to the Constitution being accepted at referendums;
- (b) lead to a wider range of amendments being proposed; and
- (c) involve the People directly in the political process thereby making them better citizens, of course, leads to a healthier democracy.

Criticisms of popular initiative usually emanate from politicians who argue that the People are incapable of determining complex matters. This is not an argument against popular initiative, it is the rehashing of an argument raised in the nineteenth century against democracy itself.

Almost ninety years of United States experience indicates that popular initiative has not been misused, has not been detrimental to Parliamentary Government, has not been dominated by a few special-interest groups, has not been a drain on the public purse, and has produced many reforms measures that all rational persons would applaud.

It is submitted that the question of popular initiative is of fundamental importance and should meet with the approval of the Commission.

A few drafting matters, however should also be considered.

A figure of 500,000 as being the requisite number of electors for the initiative of a referendum is of itself unobjectionable. However, as the electorate grows this figure could well be regarded as an artificially low benchmark.

It is suggested that a floating or relative benchmark is more appropriate, and the 5% of the electors figure debated at the 1985 Constitutional Convention is favoured.

Secondly, the 1985 resolution was also clear on when a referendum should be put to the People. The Commission may care to consider this matter further.

Finally, smaller States might be concerned that voter initiative could be used mainly in the larger States because of the relative ease of getting a number of petitions necessary. Whilst Queensland does not believe that this is a problem, to alleviate any concerns it may well be desirable to provide that no more than one half of the petitions may emanate from any one State.

This would ensure also that any measures put to the People have a degree of support throughout the Commonwealth and are not just single issues of concern to one State only.

WHAT IS C.I.R. ?

C.I.R., or Citizens Initiated Referenda, is the answer to a problem. What problem? The Westminster System was designed to limit the **Power of the Government**, by ensuring that the Elector's Representatives did what the voters told them to do. Politicians however do not like that, and for a long time have been trying to invert, not to say subvert, the Constitution, so that it becomes instead a limit to the **Freedom of the Electors**.

This is the Problem.

To try and solve it we have taken on single issues, one at a time, and about them we have written letters to the Politicians and the Newsmedia, we have signed Petitions indicating what we want, and we have even organised Demonstrations to make it clear and what have we gained? It must be obvious to everyone by now that Politicians simply hold the Electors in contempt.

That is where C.I.R. comes in.

In the first place C.I.R. is not limited to any single issue, it can be used for ALL issues. In the second place C.I.R. is a legal mechanism that once established cannot be side-stepped by the Politicians or the Government.

C.I.R. is a concept that has been in use in Switzerland for over 100 years, and has since spread to Countries such as the United States, Canada, Austria and Italy. It is **composed of three parts: Voters Veto, Citizens Initiative, and Recall.**

Voters Veto is used when the Electors want to defeat the proposal for a new Law, or to repeal an existing one. They collect a prescribed number of signatures on a special Petition and the Government **has** to organise a Referendum on that law. The Majority Vote decides the issue, effectively taking it out of the hands of Politicians and Pressure Minorities.

Citizens Initiative is used when the Electors want to propose a new Law themselves. They collect again a prescribed number of signatures, somewhat larger this time and the Government has to submit the proposal to the judgement of the people. What the People then say becomes Law.

Recall is a slightly different matter, and is used when the Electors want to bring to account a non-elected Official, such as a Senior Public Servant, a Judge, or for Australia, even a Governor General. On the collection of signatures numbering about 10% of the Electors on the Rolls at a specified previous Election, the Government has to have a Referendum on the tenure of office of the relevant Official. If the People vote for a dismissal, then the Official is dismissed. The Recall can also be applied to elected

Officials, by forcing them to an early election.

C.I.R. is therefore a binding way of making the Majority Will of the Electors known to their Representatives. It is in fact the only way, all others being liable to control by vocal and/or manipulative Minorities.

DO YOU NEED C.I.R.?

As yourself some Questions

Would you like to reject some existing or proposed Laws, even when all the Parties have approved them?

Would you like to participate more in the framing of our laws, without the need to join any Political Party?

Would you like to see unsuitable non-elected Officials, such as corrupt Public Servants or Judges, dismissed by the Electors?

If your answers to the above Questions are YES, you will want to have a means of control over our elected Representatives, faster and simpler to use than having to wait for an Election. The principals of C.I.R. may be just what you need.

What is C.I.R.?

C.I.R. or Citizens Initiated Referenda, is a concept born in Switzerland more than 100 years ago, and still successfully in use there. It is a legal mechanism, within the Swiss Federal Cantonal Constitutions, which enables the Electors to force the Government to hold a Referendum on any contentious issue, Constitutional or otherwise, if they are able to collect a prescribed number of Electors' signatures on a Petition. The results of such Referenda are then binding on the Government for a prescribed number of years.

There are basically three types of Referenda under Swiss Law.

For simplicity we can call the most used of these, Voters Veto. On the collection of signatures representing about 2% of the number of Electors on the Roll at a specified previous Election, the Government has to hold a Referendum on any existing or proposed Legislation; if the result is NO, that Legislation is repealed. Would you like to try it on the Up-graded Tax File Number ?

The next type can be called **Citizens Initiative**. On the collection of signatures representing about 4% of the number of Electors on the Roll, at a specified previous Election, the Government has to hold a Referendum on any Legislation proposed by the Electors themselves; if the result is YES, that Legislation is enacted. What about a new law forbidding the Federal and State Governments from calling early Elections ?

The third and final type may be called the **Recall**. On the collection of signatures representing about 10% of the number of Electors on the Roll at a specified previous Election, the Government has to hold a Referendum on the office tenure of a non-elected Official, such as a Senior Public Servant, a High Court Judge, or a State Governor for example; if the result is Go, the Official question is dismissed. Any Governor-General in mind for the next Australian Recall Referendum?

The Recall can also be applied to elected Members of Parliament, by forcing them to an early Election. The principle is that Politicians should not be allowed to call early Elections at their convenience, but that the Electors themselves should be entitled to an early recall of their Representatives if they prove unsatisfactory.

Under Swiss Law there are two things, in addition to Constitutional Changes, that are automatically submitted to Referendum, without the need to collect any signatures. International Treaties, Agreements, and Covenants are one; the Annual Budget is the other. Would you like to have a binding vote on the next Federal Budget ?

The International Experience

Switzerland today is recognised as one of the most stable Countries in the World, with high standards of living, no National Debt, less than 1% unemployment, about 1% inflation, 5% average interest rates, and a maximum rate of Tax of 29%. Would you like to secede from Canberra and join the Swiss Federation?

They started last century as a divided group of poor Communities, with different languages and no National Resources to speak of, yet they managed to create an Industrial Society of well known fame, and they have today a sound Economy while everybody else is riddled with debt.

The Swiss Electors have systematically shown collective good sense, and again and again have said No to some of the Politicians' fancies which, for lack of a C.I.R. mechanism, have been implemented in Australia. For example, the Swiss have never accepted the dictates of International Organisations that their Politicians wanted to foist on them; as late as 1986 they voted against joining the United Nations, and in spite of all pressures they are not members of the European Community.

Besides Switzerland, C.I.R. has also been adopted by 24 of the American States, by Local Government in Canada, by Austria, and by Italy, with varying degrees of success, depending on how close they have come to the Swiss model.

In Italy, where political debate had always been highly emotional, the introduction of C.I.R. in the mid-seventies transformed a permanently unstable Government into a stable one, and such tricky issues as divorce, abortion, anti-terrorist laws, and indexed pay rises, have since been peacefully decided by Referendum.

The International Experience is that the more moderate and reasonable the approach, whether on a Veto, an Initiative, or a Recall, the more likely it is to succeed, It is interesting to note that heavy advertising tends to have a negative effect, the Electors mistrusting the reasons behind the large expenditure of money. Thus C.I.R. seems to be bad news for the power brokers, the lobby groups, and the **vaunted influence of the newsmedia.**

The Opponents Objections

Politicians usually come down like a ton of bricks on the concept of C.I.R. and on anyone advocating it. They claim that C.I.R. threatens the Representative Parliamentary System, that it will cost too much, that it will benefit the Right, that it will benefit the Left, that it will give the power to Money and the Media, that the ordinary Elector is incompetent to make such important decisions, and that a tyranny of the majority will occur. Of course, they prefer a tyranny of the minority, provided that they are a part of that minority!

Their arrangements however, once cleaned of all unproved statements, can be reduced to the following two: first that C.I.R. curtails the power of the elected Politicians to do what they like, and second that if the Electors get a taste of it they probably will want more. I dont know about you, but to me these are the best arguments of all in favour of the concept.

How do we Get It?

In Australia we should have C.I.R. for use at Federal, State and Local Government levels. The relevant Legislation should be included in our Federal and State Constitutions, so that Politicians cannot change it without the consent of the Electors. It is good to know that no great alteration of these Constitutions is required, in order to have C.I.R. adopted.

The way to get C.I.R. in is to have an Australia wide Referendum in relation to the Federal Government, where the Electors can vote Yes or No about it, and to have similar State Referenda in relation to the relevant Legislation applicable to State and Local Government matters. Such Referenda can be called for by Parliament, Federal or State, or by the Governor General or the State Governors.

In order to have Parliaments calling for a Referendum on C.I.R., we have to ignore all the Political parties, and vote only for those Candidates who are prepared to support such a Referendum. Once elected, we need to keep the pressure on them for them to act accordingly.

In order to lead the Governor-General or State Governors to call for the Referendum themselves, we have to keep writing **My Will** letters to them, asking them for it. This however, is much more difficult to organise, and unless the pressure is overwhelming it will not be effective, given the current political climate in Australia.

Of course, we should press the campaign both ways to such an extent that refusal will become untenable; but the first step is to have every Elector in Australia ware of what C.I.R. is, and what it can do for us.

Only united will we be able to win, so if you find that you really need C.I.R., pass this message on to any Elector you know who is not aware of it, because

C.I.R. IS THE ANSWER

Recommended Reading: Initiative and Referendum: The People's Law, by Prof Geoffrey Walker.

IS YOUR ENVIRONMENT SAFE?

Increasing Interest Rates may well destroy forever your dream of living in the environment of your own Home.

Increasing Violence in our Community may well suddenly destroy the environment in which you live, and even destroy your own Life.

Increasing Control of everything by Governments, from Business to Sport, may well destroy in the end the environment of your Individual Freedom.

Like many of us, you may have tried to do something about it in the past, but so far, whatever our successes, they have not been enough to stem the tide.

What then can you do?

Well, there is a solution that has been in use in Switzerland for over 100 years, and was also adopted by 24 States in the USA, by Local Government in Canada, by Austria and by Italy.

It is called Citizens Initiated Referenda, or C.I.R. for short.

In the Countries where this system is in use, if a prescribed number of Electors sign a special form of Petition in relation to an issue, the Government has to hold a Referendum on that issue, and abide by the Referendum results.

This is a simple way to"

Veto bad Laws

Initiate good Laws

Recall unsuitable Government Officials

Of course, the Politicians and their friends hate C.I.R., and will try to discredit anyone proposing the concept.

Anything that gives power to the People, by taking it away from the Politicians, is automatically labelled extremist and right wing.

But for Good government by the People for the People

C.I.R. IS THE ANSWER

The peaceful solution to Controversial Issues,
where the Majority decides, not a Pressure Minority.

THE INDIVIDUAL FREEDOM PHILOSOPHY

The Individual Freedom Philosophy is that Man must be Free, in order to have a life worth living, but that if he is to live in a Community with other Men, that Freedom cannot be absolute.

It follows that, in order to live peacefully and profitably in Society, Man has to adopt a Cooperative Behaviour, and not do to others what he would not like them to do to him.

The Basic Principles derived from the above Philosophy are the following:

1. Freedom for the Individual is an essential requirement in any just Society.
2. The Freedom of each Individual is of necessity limited by the equal Freedom of all other Individuals living in the same Society.
3. No Individual or Organization can be allowed the use of force, except in individual or collective self-defence.
4. Relations between Individuals must be based on freely agreed trade.
5. Education is also an essential requirement in any just Society.
6. The majority of Human Beings are capable of thinking and capable of looking after themselves.
7. Every Individual is entitled to own the product of his work.
8. Every Individual must be responsible for his own actions, therefore, he who causes damage must pay for it.
9. No Individuals or Organizations, Governments included, can give or use what does not belong to them, without the consent of the rightful owners.
10. Laws and Money are instruments created to serve the Community, not the other way round.
11. Governments are Organizations created to serve the Community, not the other way round.
12. In order to maintain the necessary independence, required by their role as Arbiters of Conflicting Community Interests, Governments cannot compete with the Citizens in any of their Activities.

C WORLD ASSOCIATION OF FREE PEOPLE, February 1989.

[Some of the enclosures to this Submission have not been included in this Volume].