

Chapter 5

INTERIM REPORT NO. 1

**A NORTHERN TERRITORY
CONSTITUTIONAL CONVENTION**



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

**SESSIONAL COMMITTEE ON
CONSTITUTIONAL DEVELOPMENT**

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FEBRUARY 1995



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Sessional Committee on Constitutional Development

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CONSTITUTIONAL CONVENTION

February 1995

An Interim Report prepared by the
Sessional Committee on Constitutional Development

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A. SUMMARY OF RECOMMENDATIONS

For the convenience of those considering this report the recommendations are consolidated below:

Recommendation 1: (p.10)

The Committee recommends that a Constitutional Convention be held in the Northern Territory.

Recommendation 2: (p.10)

The Committee recommends the enactment of legislation, at the appropriate time, to provide for the establishment of a Convention, to authorise and require it to carry out the task of framing a new constitution for the Northern Territory, that constitution to be adopted at a subsequent Northern Territory referendum, and to enable the Convention to be provided with the necessary powers and resources in order to carry out this task.

Recommendation 3: (p.11)

The Committee recommends not to have a wholly nominated Convention as it is inconsistent with the principle of representative democracy which principle should form the basis of a new Northern Territory constitution.

Recommendation 4: (p.11)

The Committee recommends that at least three quarters of the representatives that are on the Convention be elected and that the remainder be nominated.

Recommendation 5: (p.12)

The Committee recommends that:

1. Northern Territory groups or organisations be represented on the Convention by an appropriate method of nomination, as prescribed in the legislation, such as from the following:
 - * Northern Territory Aboriginal Groups (ATSIC Regional Councils in the Northern Territory, Land Councils);
 - * Nominees of Northern Territory Local and Community Government, through the Local Government Association of the Northern Territory;
 - * Employer Organisations in the Northern Territory;
 - * Trade Unions in the Northern Territory;
 - * Ethnic Organisations in the Northern Territory;
 - * Youth; and
 - * Aged.
2. Any failure to nominate should not invalidate the proceedings of the Convention:

Recommendation 6: (p.13)

The Committee recommends that in addition to the other elected and nominated members, the members of this Sessional Committee as at the time of the nomination date for the Convention be members of the Convention, together with the then Chief Minister and Leader of the Opposition.

Recommendation 7: (p.13)

The Committee recommends a system of multi-member electorates.

Recommendation 8: (p.14)

The Committee recommends:

1. a Convention with 10 electorates of 5 representatives to be elected in each; and
2. that an electoral distribution should be carried out within the 20% tolerance rule, and subject thereto, be designed to give some particular emphasis to the interests of non-urban and Aboriginal communities.

Recommendation 9: (p.14)

The Committee recommends that:

1. persons nominating for election to the Convention be required to have resided in the Northern Territory for a period of six months prior to nomination and otherwise be on the roll for elections to the Northern Territory Legislative Assembly; and
2. voters for nominees to the Convention be required to be on the roll for elections to the Northern Territory Legislative Assembly.

Recommendation 10: (p.15)

The Committee recommends that:

1. there not be a fixed maximum number of sitting days for the Convention and that the fixing of a final reporting date toward the end of 1997 should be sufficient; and
2. if the Convention then considers it is getting close to resolution but is not yet able to finalise the draft constitution, it should have power to request an extension of time from the Administrator.

Recommendation 11: (p.16)

The Committee recommends that:

1. the Convention should be charged with preparing and adopting a new Northern Territory constitution;
2. it should be required to meet within the time after the election that is specified in the legislation;

3. the method and procedures whereby the Convention goes about its task should be left to the Convention, provided that the legislation should incorporate an initial set of standing orders to enable it to commence its work, subject to later variation by the Convention;
4. it should be required to meet in public; and
5. a quorum for the Convention should be fixed.

As to sub-recommendation 3 above, Mr Bailey has submitted a dissenting view in that he considers that the voting requirements in respect of issues brought before the Convention should be based on more than just a simple majority and that this requirement should be stipulated in the enabling Act.

Recommendation 12: (p.16)

The Committee recommends that:

1. the Convention be given the capacity to engage a clerk and other officers plus consultants and advisers, who should not have a right to speak or vote in the Convention; and
2. the Convention should, if it so requires, seek the assistance of the staff of the Sessional Committee and such other persons and resources made available by arrangement with the Speaker of the Legislative Assembly.

Recommendation 13: (p.16)

The Committee recommends that an adequate appropriation of funds be made to cover the expenses of the Convention, and that the Convention be subject to normal budgetary requirements, administered through the Legislative Assembly.

Recommendation 14: (p.17)

The Committee recommends that following the adoption of the new Northern Territory constitution that:

1. the Convention be required to report to the Administrator;
2. the report be required to be tabled in the Northern Territory Legislative Assembly and to be published;
3. the Legislative Assembly should then debate that Report, and should have power by resolution to refer any matter back to the Convention for further consideration and report back; and
4. subject thereto, the constitution as adopted should be required to be submitted to a referendum of Northern Territory voters within the time specified in the legislation.

Recommendation 15: (p.17)

The Committee recommends that there should be provision for the making of regulations as to all matters arising under the enabling Act, including as to the detailed method of nomination and election to the Convention and also as to the holding of the subsequent Northern Territory referendum, including the submission of the draft constitution in discreet parts to that referendum if thought appropriate by the Convention.

B. INTRODUCTION

1. *Terms of Reference*

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

Amendments to the Committee's original terms of reference were made when it was reconstituted on 28 April 1987. On 30 November 1989, the Legislative Assembly further resolved to amend the terms of reference by changing the Committee's status to a Sessional Committee. On 4 December 1990 and on 27 June 1994, it was against reconstituted with no further change to its terms of reference — see Appendix 1.

- (b) The original resolutions were passed in conjunction with proposals then being developed in the Northern Territory for a grant of Statehood to the Northern Territory within the Australian federal system. The terms of reference include, as a major aspect of the work of the Committee, a consideration of matters connected with a new State constitution.

2. *Purpose of this Interim Report*

- (a) The Committee is aware that the Chief Minister for the Northern Territory has publicly announced the target date for a grant of Statehood for the Northern Territory of 1 January 2001, the Centenary of Federation. Without necessarily endorsing this target date, the Committee has resolved upon a strategy and timetable for actioning its terms of reference which would facilitate the achievement of that target date, including as to the formulation and adoption of a new constitution for the Northern Territory.
- (b) Given the proposals for the establishment of a Territory Constitutional Convention as part of this strategy, and the need for legislation to be drafted at an appropriate time to set up that Constitutional Convention, the Committee has resolved to prepare this Interim Report with its recommendations as to how that Constitutional Convention should be established. This should facilitate the preparation and passage of the necessary legislation.
- (c) Before proceeding to a discussion of its specific recommendations, the Committee first considers some background issues as to the use of conventions in Australia and the USA.

3. *Discussion and Information Papers*

- (a) The Committee has prepared and issued a number of Discussion and Information Papers arising from these terms of reference. These included the *Discussion Paper on Representation in a Territory Constitutional Convention*¹, for ease of reference

¹ Northern Territory Legislative Assembly Select Committee on Constitutional Development, 1987, Legislative Assembly of the Northern Territory, Darwin.

called the "*Discussion Paper*" — a copy of which is set out in Appendix 2 of this Interim Report.

- (b) That *Discussion Paper* made it clear that both the Northern Territory Government and this Sessional Committee (then a Select Committee) advocated the holding of a Northern Territory Constitutional Convention to frame a new "home-grown" constitution for the Northern Territory after the Legislative Assembly of the Northern Territory had received and dealt with the final report of this Committee. Reference should also be made to the Committee's Information Paper No. 1, *Options for a Grant of Statehood*² in this regard. The view that there should be a Territory Constitutional Convention has since been maintained by the Sessional Committee. The new Territory constitution as adopted by that Constitutional Convention would then be submitted to a referendum of Northern Territory electors for approval, and if so approved, would be submitted to the Commonwealth as part of proposals for further Territory constitutional development, perhaps as a new State.

4. Submissions on the *Discussion Paper*

- (a) The list of persons and organisations that commented on the Committee's *Discussion Paper* is set out in Appendix 3 of this Interim Report.
- (b) None of these commentators were opposed to the concept of a Territory Constitutional Convention. Rather, the concept seems to be one that is capable of attracting wide community support and of creating a feeling that this is an opportunity for a wide cross section of that community to participate in the process of Northern Territory constitution making.
- (c) Several of the commentators referred to the need for some broad based system for determining membership on the Convention that reflected the different peoples and groups resident in the Northern Territory. Beyond that, the commentators concentrated on the issues of the method of selection of members of the Convention, qualifications of members, representation of particular groups on the Convention, the use of specialists and consultants and procedural matters.
- (d) The Committee in its *Discussion Paper* suggested that there were three basic ways to constitute the Convention membership -
 - (i) Wholly elected,
 - (ii) Wholly nominated; and
 - (iii) Partly elected/partly nominated.

The *Discussion Paper* discussed the advantages and disadvantages of each of these options.

- (e) Most of the commentators discussed these options, and most of them favoured a system of mixed elected/appointed members. A few of them suggested a specified breakup between the two, varying from equal numbers, to a 75%/25% division or a 2/3rds/1/3rd division, both favouring elected members. Only a few commentators

² Northern Territory Legislative Assembly Select Committee on Constitutional Development, 1987, Legislative Assembly of the Northern Territory, Darwin: p.6.

favoured a wholly elected Convention or a wholly nominated Convention. There was also some strong comments against a wholly nominated Convention.

- (f) Consistent with the view that the Convention should reflect a broad spectrum of Northern Territory views, a number of commentators made suggestions directed at achieving this. Thus the desirability for the representation of rural interests and remote communities, of Aboriginal peoples, of business interests, trade unions, local and community government, political parties, ethnic groups and professional groups (among others) were all mentioned, some of them by several commentators. Most commentators appeared to favour a limitation of representation to Territorians only, although a few expressly mentioned the possibility of interstate or even international representation as advisers or specialists. The possibility of a system of election by a system of proportional representation was referred to in passing, as was a system of single or multiple member electorates. Some commentators favoured restrictions on the participation of politicians, constitutional lawyers, academics and public servants, with the possibility of some of these being non-voting consultants. The desirability of equal male/female representation was also advocated.
- (g) Procedurally, some commentators stressed the need for the Convention to be adequately resourced, the need for it to be open to the public, the capacity for the Convention to determine its own procedures and to seek expert advice, the desirability of having prior public meetings in major centres, and the suggestion that the draft constitution emanating from the Convention be referred back to the Legislative Assembly for comments before going to a Northern Territory referendum.
- (h) The Committee is grateful for all of these expressions of views and has taken them into account in preparing this Interim Report.

C. BACKGROUND

1. *Constitutional Conventions in Australia*

- (a) It is useful to describe the past use of conventions in this country in the framing or reviewing of constitutions. This is a matter that was briefly referred to in the Committee's *Discussion Paper*, but it may assist in the implementation of the Committee's recommendations if this was done in somewhat more detail in this Report.
- (b) The constitutions of the Australian self-governing colonies (later the original States) were framed by the legislatures of each colony under Imperial Legislation. The method of constitutional conventions was not used.
- (c) In the case of the mechanisms used in the lead up to federation in 1901, the position is a little more complicated. There had been an Inter-colonial Convention in Sydney in 1883, which led to the passage of the Imperial *Federal Council of Australasia Act* of 1885 establishing the Federal Council. However, this scheme was a failure. Then following the Australasian Federation Conference in Melbourne of 1890, composed entirely of official Parliamentary delegates from the colonies. It was this Conference that resolved to call together a full-scale Convention, empowered by the various Colonial Legislatures "*to consider and report upon an adequate scheme for a Federal Constitution*". It further resolved that the Convention should consist of not more than 7 members from each of the self-governing colonies and not more than 4 members from each of the Crown colonies.
- (d) The National Australasian Convention began in Sydney in 1891, comprised entirely of delegates appointed pursuant to resolutions of the respective colonial legislatures, including New Zealand. It was at this Convention that drafting of a new federal constitution first began in earnest.
- (e) After 1891, there was then a delay of a few years before the matter was reactivated with a view to holding another Federal Convention on an elected basis. Eventually, empowering legislation was enacted in most of the Australian colonies for the election of delegates to the next Convention, with the task of framing a federal Constitution under the Crown in the form of a Bill for enactment by the Imperial Parliament. A copy of the New South Wales *Australasian Federation Enabling Act*, 1895, is set out in Appendix 4 of this Interim Report. The South Australian *Australasian Federation Enabling Act* (South Australia), 1895, No. 632, extending expressly to the Northern Territory, was in very similar terms.
- (f) Under these enabling Acts, elections were to be held for 10 representatives of each colony by qualified electors in that colony, with each colony as one electoral district. The principle of equality of representation was a feature. Any person elected or eligible for election to either colonial house of Parliament was eligible for election to this Convention. The enabling Acts further provided that the drafts of the constitution were to be submitted to the colonial legislatures for comment between Convention sittings. The final draft was to be submitted to a referendum of colonial voters on a simple 'yes' - 'no' basis before transmission to the Queen for enactment by the Imperial Parliament. The result of the elections (or selection by Parliament in WA)

in the 5 Colonies that first participated was that most of the delegates were colonial parliamentarians, but a few were not. The Convention first met in Adelaide in 1897.

- (h) The Adelaide Convention then appointed 3 select Committees dealing with constitutional machinery, finance and the judiciary. The delegates reassembled for the second session of the Convention in Sydney, together with the newly elected delegates from Western Australia. It then adjourned to its third session in Melbourne in 1898, which brought it to an end. From this emerged a draft constitution, which, subject to some last minute changes, was eventually accepted by the Australian voters and enacted into law by the Imperial Parliament in the *Commonwealth of Australia Constitution Act*, 1900, effective from 1 January 1901.
- (i) Since then, there has been a *Royal Commission on the Australian Constitution* (1929) and a *Joint Committee of the Commonwealth Parliament on Constitutional Review* (1959). In more recent times, the various Australian Parliaments resolved to join together in a Convention to review the Australian Constitution. The Convention of nominated delegates, including from the Northern Territory, first met in Sydney in 1973. It was later extended to include local government delegates. It continued to meet on various occasions up until 1985, by which time it had lost the support of the Federal Government.
- (j) In 1985, the Commonwealth Attorney-General announced the establishment of an appointed *Constitutional Commission* to review the Australian Constitution. It was assisted by 5 Advisory Committees. Its final Report was delivered in 1988. A few of its recommendations for change were then put to a national referendum in conjunction with some other proposals but all failed.
- (k) The conclusion to be reached is that while the mechanism of constitutional conventions has been used at a federal level, it has not been employed at a State level in Australia. But this does not lead the Committee to conclude that it is an inappropriate method at a State (or Territory) level.

2. *Constitutional Conventions in the USA*

- (a) The use of elected constitutional conventions for both constitution-making and also for constitutional revision has been a feature of the USA system at all levels. This is no doubt associated with the concept that political authority in that country is derived from the people.
- (b) The first wave of USA State constitutions, including those in the first year after independence, were drafted quickly, usually by the State legislatures. However, Pennsylvania's 1776 constitution was drafted by a separate convention elected for the purpose. The second wave of State constitutions were adopted in a more deliberate fashion, often using specifically elected conventions. Thus, for example, the convention that drafted the New York Constitution in 1777 took a period of 8 months. In Massachusetts, the process of constitution-making stretched from 1776 to 1780, leading to the unsuccessful legislatively proposed constitution of 1778 and ultimately the famous Massachusetts Constitution of 1780, the oldest USA constitution still in effect.

- (c) In 1787, a convention of States was held which resulted in the adoption of the current USA Constitution and its subsequent ratification by the States. That Constitution itself incorporates a mechanism for further conventions for the purposes of constitutional amendment, subject to ratification by three fourths of the States (Article V).
- (d) The most recent States to be admitted to the USA federation, Alaska (1959) and Hawaii (1959) both used the mechanism of elected constitutional conventions to draft their new State constitutions. A copy of the *Alaska Constitutional Convention Enabling Act* of 1955 is at Appendix 5 of this Interim Report. It provided for an elected Convention of 55 delegates, based on election districts with variable numbers, the elections to be conducted without any reference to political party affiliations. The Convention was limited to a maximum of 75 meeting days (with provision for adjournments). Its resultant constitution was required to be submitted to Territory electors for ratification and upon ratification was then submitted through the President to the Congress for its approval by an Enabling Congressional Act.
- (e) Commonly, USA State constitutions provide for constitutional conventions to be held for the purposes of constitutional revision, as well as other methods of revision. An example is in Article XVII of the Hawaii Constitution, a copy of which is set out in Appendix 6 of this Interim Report. Several such conventions have been held in Hawaii. In 1986, a provision for mandatory periodic conventions was rejected by the voters in Hawaii. Up to 1987, more than 230 State constitutional conventions had been convened.
- (f) The mechanism of a constitutional convention has also been used in USA territories. Thus the constitution of the Commonwealth of Puerto Rico was adopted by an elected convention in 1951 and was brought into operation. In 1982, voters in the District of Colombia approved an initiative to call a constitutional convention to turn the District into a new State and to adopt a new constitution. The constitution was adopted by the convention and ratified by District voters but has not been implemented by Congress.

D. A NORTHERN TERRITORY CONSTITUTIONAL CONVENTION

1. *Establishment of a Convention*

- (a) Given the view already expressed by the Committee elsewhere that the Northern Territory should adopt its own, "home grown" constitution, the Committee adheres to the view that a Territory Constitutional Convention is the most appropriate method to frame a constitution for the Northern Territory as the Northern Territory moves towards a grant of Statehood. It provides an excellent means by which a wide cross-section of the Northern Territory community can participate in framing their own fundamental rules as to how the Northern Territory and its government is to operate. Such a Convention would be assisted by the recommendations and publications of this Committee and by the subsequent deliberations of the Northern Territory Legislative Assembly on the Report of this Committee. The Convention's draft constitution would in turn be submitted to Northern Territory electors at a referendum before being presented to the Commonwealth for implementation by the national Parliament as part of further Northern Territory constitutional development. By this democratic method, it could fairly be said that it would be a "home-grown" constitution that reflected the needs and aspirations of Territorians generally.

Recommendation: 1

The Committee recommends that a Constitutional Convention be held in the Northern Territory.

- (b) Such a Convention will have to be established by legislation in order to carry out its task of framing the new constitution and to enable that constitution to be put to a Territory referendum.
- (c) There is a question whether it is within the legislative capacity of the Northern Territory Legislative Assembly to enact this legislation under the *Northern Territory (Self-Government) Act 1978*. The Committee believes that it is within that Assembly's legislative capacity to do so, although the Northern Territory Government may wish to consider this matter further. In this regard, the plenary grant of legislative power in section 6 of that Act is very broad. The legislation would merely enable the machinery of the Convention to be established and for it to carry out its task, but would not give legal effect to the resultant constitution. The Committee recognises that only the national Parliament can legally implement that constitution.

Recommendation: 2

The Committee recommends the enactment of legislation, at the appropriate time, to provide for the establishment of a Convention, to authorise and require it to carry out the task of framing a new constitution for the Northern Territory, that constitution to be adopted at a subsequent Northern Territory referendum, and to enable the Convention to be provided with the necessary powers and resources in order to carry out this task.

2. *Composition of the Convention*

- (a) Having reviewed the comments on the Committee's previous *Discussion Paper* and having considered the matter generally, the Committee considers that it would not be appropriate to have a wholly nominated Convention. While the method of nomination may be a method of ensuring that specified interest groups in the community are involved, it would have the fatal flaw that it could not be said to be democratic in any sense. It is very likely that it would also meet with objections from those interest groups which failed to be nominated or which considered they were under-represented. It may also meet with objections from the Commonwealth Government, which must implement any proposals for further Northern Territory constitutional development.

Recommendation: 3

The Committee recommends not to have a wholly nominated Convention, as it is inconsistent with the principle of representative democracy, which principle should form the basis of the new Northern Territory constitution.

- (b) On the other hand, the Committee sees considerable advantages in the capacity to nominate representatives of key Northern Territory groups onto the Convention in conjunction with elected representatives. Such a mechanism was favoured by a majority of commentators. It ensures that those key groups having a vital interest in the future of the Northern Territory are not overlooked in the framing and adoption of the new constitution. The Committee identifies below some of the key Northern Territory groups which it considers should be so represented.
- (c) The Committee sees it as important and that it is consistent with the democratic principle to have a majority of elected representatives on the Convention. Several ratios were suggested by the commentators favouring a mixture of elected and nominated delegates, from equal numbers, to a two-thirds/one-third ratio and a three-quarters/one-quarter ratio.

Recommendation: 4

The Committee recommends that at least three-quarters of the representatives that are on the Convention be elected and that the remainder be nominated.

- (d) The key Territory interest groups or organisations that could nominate representatives on the Convention may include the following:
- * Northern Territory Aboriginal Groups (ATSIC Regional Councils in the Northern Territory, Land Councils).
 - * Nominees of Northern Territory Local and Community Government, through the Local Government Association of the Northern Territory.
 - * Employer Organisations in the Northern Territory.

- * Trade Unions in the Northern Territory.
- * Ethnic Organisations in the Northern Territory.
- * Youth.
- * Aged.

There may be other Northern Territory groups or organisations which consider that they should have automatic representation, but they should be required to first put up a compelling argument for nomination without election.

Recommendation: 5

The Committee recommends that

1. Northern Territory groups or organisations be represented on the Convention by an appropriate method of nomination, as prescribed in the legislation, such as from the following:
 - * Northern Territory Aboriginal Groups (ATSIC Regional Councils in the Northern Territory, Land Councils);
 - * Nominees of Northern Territory Local and Community Government, through the Local Government Association of the Northern Territory;
 - * Employer Organisations in the Northern Territory;
 - * Trade Unions in the Northern Territory;
 - * Ethnic Organisations in the Northern Territory;
 - * Youth; and
 - * Aged.
2. any failure to nominate should not invalidate the proceedings of the Convention.

- (e) There is also the question of the extent of the involvement in the Convention of members of the Northern Territory Legislative Assembly. One possibility is that those individual members should be able to stand for election to the Convention. There is also the question whether any of those members should be members of the Convention - for example, the Chief Minister and the Leader of the Opposition. Further, there is a good argument that the six members of the Sessional Committee on Constitutional Development, being a bipartisan Committee of members, made up of equal numbers of Government and Opposition members, should be members of the Convention. This Committee has been closely involved with the preparation of the draft Constitution.
- (f) There is a counter argument that politicians should not be permitted to stand for election or to be nominated to the Convention. Alternatively there is an argument that if they can stand, they should not be able to do so on the basis of their party affiliations. The Committee has considered whether these are realistic limitations in a

small jurisdiction like the Northern Territory, where the affiliations of politically active individuals are usually well known. The Committee considers that there should not be any exclusions of specific categories of persons from nomination.

Recommendation: 6

The Committee recommends that in addition to the other elected and nominated members, the members of this Sessional Committee together with the then Chief Minister and Leader of the Opposition, as at the time of the nomination date for the Convention, be members of the Convention,

- (g) As to the method of election of representatives, the Committee is aware of the need to ensure that urban, non-urban and Aboriginal communities are adequately represented. On the other hand, the Committee sees it as important to maintain the democratic principle and not to depart too far from the principle of one vote, one value. The present tolerance of 20% in the *Northern Territory (Self-Government) Act 1978* seems reasonable for this purpose.
- (h) The possibility for electoral mechanisms for the Convention vary from treating the whole of the Northern Territory as one electorate and using a system of proportional representation, to the use of multi-member or single member electorates.
- (i) The Committee considers that the method of one electorate for the whole of the Northern Territory is too unwieldy and would result in a very long ballot paper and confusion amongst voters. A system of single member electorates would, if a sufficient number of representatives was to be chosen, result in very small electorates, smaller than those of present Northern Territory Legislative Assembly electorates. It may also tend to result in a less representative cross-section of the community on the Convention. Accordingly the Committee feels that a system of multi-member electorates, of, say, 5 representatives per electorate would be appropriate. This should ensure that ballot papers are of a manageable size, while at the same time facilitating a more representative selection from the community.

Recommendation: 7

The Committee recommends a system of multi-member electorates.

- (j) As to the size of the total membership of the Convention, the Committee considers that the acceptable range is between 50 and 100 representatives. If existing Northern Territory Legislative Assembly electorates were to be used, this would result in 25 electorates of 5 representatives each, a total of 125 elected representatives. These, plus the nominated representatives on a three quarters/one quarter ratio, the members of the Sessional Committee including the then Chief Minister and Leader of the Opposition, would result in approximately a 174 member Convention. However, a smaller Convention could be based on a lesser number of electorates. For example, it would be possible to have 10 electorates of five representatives each, electing a total of 50 representatives, plus, say, 16 nominated representatives, the members of the Sessional Committee, including the then Chief Minister and Leader of the Opposition, making approximately a 74 member Convention. This total is more than the number of

delegates used for the Convention for the original USA Constitution and the Alaskan Constitution, but is still a manageable size.

- (k) On balance, the Committee favours a Convention with 10 electorates of five representatives to be elected in each. This would result in a Convention that would not be so large that it would be excessively difficult to manage, and not too small so as to be unrepresentative of a broad cross section of the Northern Territory community. It would also be less expensive to run than a much larger Convention. Furthermore, the Committee favours that an electoral distribution should be carried out for the Convention within the 20% tolerance rule, and subject thereto, be designed to give some particular emphasis to the interests of non-urban and Aboriginal communities.

Recommendation: 8

The Committee recommends:

1. a Convention with 10 electorates of 5 representatives to be elected in each; and
2. that an electoral distribution should be carried out within the 20% tolerance rule, and subject thereto, be designed to give some particular emphasis to the interests of non-urban and Aboriginal communities.

- (l) The Committee supports the view that women should be encouraged to equally participate in the Convention but does not make any recommendations designed to prescribe such equal participation in any way.
- (m) There is a question whether both the persons nominating to the Convention and voters should also be required to have resided in the Northern Territory for a reasonably long period, in order to eliminate persons with no permanent interest in the Northern Territory. The Committee refers by way of comparison to its tentative recommendations in its *Discussion Paper on A Proposed New State Constitution for the Northern Territory*³ of a 6 month residential requirement in the Northern Territory for persons nominating to the Northern Territory Parliament. The Committee feels that this is also a sufficient period of residence for nominees to the Convention, having regard to democratic principles.

Recommendation: 9

The Committee recommends that:

1. persons nominating for election to the Convention be required to have resided in the Northern Territory for a period of 6 months prior to nomination and otherwise be on the roll for elections to the Northern Territory Legislative Assembly; and
2. voters for persons nominating for election to the Convention be required to be on the roll for elections to the Northern Territory Legislative Assembly.

³ Northern Territory Legislative Assembly Select Committee on Constitutional Development, 1987, Legislative Assembly of the Northern Territory, Darwin: p.20.

3. *Procedural Issues*

- (a) The Committee, in developing its strategies designed to meet the target date of 2001, has adopted a possible timetable for a Convention to be held between mid 1996 and late 1997. This would mean that the Convention elections would have to be held in the first part of 1996. The Convention would meet from time to time during the following period as it determined, with power to adjourn from time to time.
- (b) In the *Alaska Constitutional Convention Enabling Act*, the Convention was limited to not more than 75 meeting days, but with power to adjourn for periods not exceeding 15 days at a time for the purpose of holding public meetings. This limitation was designed to ensure that the Convention concentrated on bringing its task to an end within a reasonable time by the adoption of a constitution.
- (c) The Committee sees some advantage in prescribing the maximum number of meeting days and a time limit within which the Convention must report with a new constitution. On the other hand, the Committee is aware of the complexities of the Convention's task, particularly in seeking a constitutional settlement acceptable to both Aboriginal and non-Aboriginal people in the Northern Territory, and does not want to be too prescriptive in limiting the Convention time-wise.

Recommendation: 10

The Committee recommends that:

- 1. there not be a fixed maximum number of sitting days for the Convention, and that the fixing of a final reporting date toward the end of 1997 should be sufficient; and
- 2. if the Convention then considers it is getting close to resolution but is not yet able to finalise the draft constitution, it should have power to request an extension of time from the Administrator.

- (d) At the same time, the Committee feels that the legislation should specify a date within which the Convention should commence work on the preparation of the new constitution and that the Convention should be provided with some initial standing orders. Thereafter, the Convention should be free to determine its own procedures, providing it meets in public and has a quorum.
- (e) Mr Bailey has a dissenting view as to the specification of the voting majority required for the Convention. He considers that the voting requirements in respect of issues brought before the Convention should be based on more than just a simple majority and that this requirement should be stipulated in the enabling Act.

Recommendation: 11

The Committee recommends that:

1. the Convention should be charged with preparing and adopting a new Northern Territory constitution;
2. it should be required to meet within the time after the election that is specified in the legislation;
3. the method and procedures whereby the Convention goes about its task should be left to the Convention, provided that the legislation should incorporate an initial set of standing orders to enable it to commence its work, subject to later variation by the Convention;
4. it should be required to meet in public; and
5. a quorum for the Convention should be fixed.

As to sub-recommendation 3 above, Mr Bailey has submitted a dissenting view in that he considers that the voting requirements in respect of issues brought before the Convention should be based on more than just a simple majority and that this requirement should be stipulated in the enabling Act.

- (f) The Convention will need to have the capacity to obtain administrative assistance and expert advice. In part, this could be provided through the Northern Territory Legislative Assembly, including the staff of the Sessional Committee. The expert advice could be obtained locally or elsewhere.

Recommendation: 12

The Committee recommends that:

1. the Convention be given the capacity to engage a clerk and other officers plus consultants and advisers, who should not have a right to speak or vote in the Convention; and
2. the Convention should, if it so requires, seek the assistance of the staff of the Sessional Committee and such other persons and resources made available by arrangement with the Speaker of the Northern Territory Legislative Assembly.

- (g) The Convention will require adequate funding within normal budgetary controls applicable to the Northern Territory Legislative Assembly.

Recommendation: 13

The Committee recommends that an adequate appropriation of funds be made to cover the expenses of the Convention, and that the Convention be subject to normal budgetary requirements, administered through the Northern Territory Legislative Assembly.

- (i) The legislation will need to prescribe the procedures following the completion of the new constitution by the Convention. These procedures should include the tabling and publication of the Convention's report and debate in the Northern Territory Legislative Assembly on that

report, with a possibility of a reference back to the Convention. It should also include the ultimate submission of the new constitution to a Territory referendum within a limited time.

Recommendation: 14

The Committee recommends that following adoption of the new Northern Territory constitution that:

1. the Convention be required to report to the Administrator;
2. the report be required to be tabled in the Northern Territory Legislative Assembly and to be published;
3. the Northern Territory Legislative Assembly should then debate that Report, and should have power by resolution to refer any matter back to the Convention for further consideration and report back; and
4. subject thereto, the constitution as adopted should be required to be submitted to a referendum of Northern Territory voters within the time specified in the legislation.

- (j) There will be a number of other matters necessary to implement the legislation, including details of electoral mechanisms and procedures. The Committee suggests that these be left to regulations under the legislation.

Recommendation: 15

The Committee recommends that there should be provision for the making of regulations as to all matters arising under the enabling Act, including as to the detailed method of nomination and election to the Convention and also as to the holding of the subsequent Northern Territory referendum, including the submission of the draft constitution in discreet parts to that referendum if thought appropriate by the Convention.

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E. APPENDICES

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APPENDIX 1
TERMS OF REFERENCE
(AS CONTAINED IN THE RESOLUTION OF
THE NORTHERN TERRITORY LEGISLATIVE ASSEMBLY)
JUNE 1994

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TERMS OF REFERENCE
(AS CONTAINED IN THE RESOLUTION OF
THE NORTHERN TERRITORY LEGISLATIVE ASSEMBLY
27 JUNE 1994)

THAT, WHEREAS this Assembly is of the opinion that when the Northern Territory of Australia becomes a new State it should do so as a member of the Federation in terms resulting in equality with the other States with its people having the same constitutional rights, privileges, entitlements and responsibilities as the people of the existing States;

AND WHEREAS insofar as it is constitutionally possible the equality should apply as on the date of the grant of statehood to the new State;

AND WHEREAS it is necessary to draft a new State constitution;

- (1) during the present session of this Assembly - a committee to be known as the Sessional Committee on Constitutional Development, be established to inquire into, report and make recommendations to the Legislative Assembly on:
 - (a) a constitution for the new State and the principles upon which it should be drawn, including:
 - (i) legislative powers;
 - (ii) executive powers;
 - (iii) judicial powers; and
 - (iv) the method to be adopted to have a draft new State constitution approved by or on behalf of the people of the Northern Territory;
 - (b) the issues, conditions and procedures pertinent to the entry of the Northern Territory into the Federation as a new State;
 - (c) such other constitutional and legal matters as may be referred to it by:
 - (i) relevant ministers, or
 - (ii) resolution of the Assembly.
- (2) the Committee undertake a role in promoting the awareness of constitutional issues to the Northern Territory and Australian populations;
- (3) unless otherwise ordered, the Committee consist of Mr Bailey, Mr Baldwin, Mr Hatton, Mrs Hickey, Mr Mitchell and Mr Rioli;
- (4) the Chief Minister and the Leader of the Opposition, although not Members of the Committee, may attend all meetings of the Committee; may question witnesses; and may participate in the deliberations of the Committee, but shall not vote;

- (5) the Chairman of the Committee may, from time to time, appoint a Member of the Committee to be the Deputy Chairman of the Committee and that the Member so appointed shall act as Chairman of the Committee at any time when there is no Chairman or when the Chairman is not present at a meeting of the Committee;
- (6) in the event of an equality of voting, the Chairman, or the Deputy Chairman when acting as Chairman, shall have a casting vote;
- (7) the Committee have power to appoint subcommittees and to refer to any such subcommittee any matter which the Committee is empowered to examine;
- (8) four Members of the Committee constitute a quorum of the Committee and two members of a subcommittee constitute a quorum of the subcommittee;
- (9) the Committee or any subcommittee have power to send for persons, papers and records, to adjourn from place to place, to meet and transact business in public or private session and to sit during any adjournment of the Assembly;
- (10) the Committee shall be empowered to print from day to day such papers and evidence as may be ordered by it and, unless otherwise ordered by the Committee, a daily Hansard shall be published of such proceedings of the Committee as take place in public;
- (11) the Committee have leave to report from time to time and any Member of the Committee have power to add a protest or dissent to any report;
- (12) the Committee report to the Assembly as soon as possible after 30 June each year on its activities during the preceding financial year;
- (13) unless otherwise ordered by the Committee, all documents received by the Committee during its inquiry shall remain in the custody of the Assembly provided that, on the application of a department or person, any document, if not likely to be further required, may, in the Speaker's discretion, be returned to the department or person from whom it was obtained;
- (14) members of the public and representatives of the news media may attend and report any public session of the Committee, unless otherwise ordered by the Committee;
- (15) the Committee may authorise the televising of public hearings of the Committee under such rules as the Speaker considers appropriate;
- (16) the Committee shall be provided with all necessary staff, facilities and resources and shall be empowered, with the approval of the Speaker, to appoint persons with specialist knowledge for the purposes of the Committee;
- (17) nothing in these Terms of Reference or in the Standing Orders shall be taken to limit or control the duties, powers or functions of any Minister of the Territory who is also a Member of the Sessional Committee;
- (18) the Committee be empowered to consider the minutes of proceedings, evidence taken and records of similar committees established in the previous Assembly; and

- (19) the foregoing provisions of this Resolution, so far as they are inconsistent with Standing Orders, have effect notwithstanding anything contained in the Standing Orders.

APPENDIX 2
DISCUSSION PAPER ON REPRESENTATION IN A
TERRITORY CONSTITUTIONAL CONVENTION
OCTOBER 1987

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LEGISLATIVE ASSEMBLY OF NORTHERN TERRITORY
SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

**DISCUSSION PAPER ON
REPRESENTATION IN A TERRITORY
CONSTITUTIONAL CONVENTION
OCTOBER 1987**

A. BACKGROUND

1. In the Chief Minister's policy statement, Towards Statehood, (28 August 1986), a three-stage process was proposed for the making of the new State constitution. The three stages were:
 - (i) The preparation of a draft constitution by the Select Committee on Constitutional Development;
 - (ii) The development and adoption of a proposed constitution by a Northern Territory Constitutional Convention for submission to a referendum; and
 - (iii) A referendum of Northern Territory electors to approve the constitution as ratified by the Convention.

The Chief Minister stressed the condition that the Convention must represent "a broad cross-section of community interests and opinions".

2. The Select Committee on Constitutional Development has also considered the constitution-making process and, in November 1986, endorsed the Chief Minister's proposal. It also undertook "to prepare for inclusion in its report to the Legislative Assembly [before June 1988] recommendations on representation at the proposed Constitutional Convention. To that end, discussion has taken place within the Committee but except for a decision that the preferred Convention size should be between fifty and sixty, the Committee has not yet determined its attitude to representation. Before any recommendation is made, the Committee wishes to receive public comment on the issue. This paper addresses the salient questions to be resolved.

B. REPRESENTATION

1. There are three basic ways to constitute the Convention membership. They are:
 - (i) Wholly-elected;
 - (ii) Wholly-nominated; and
 - (iii) Partly elected/partly nominated.

To the extent that it is elected, the question arises as to the electoral and voting systems which will be most appropriate. To the extent that it is nominated, salient questions are how the nomination process should be conducted and who should do the nominating.

2. (i) Wholly-elected conventions are the rule in the U.S.A. constitutional experience. Because of the electoral system devised (a combination of at-large and precinct contests) and the

deliberate avoidance of overt partisanship, the outcome usually produced an adequate representational profile and thus a broad political legitimacy and community acceptance. As opposed to the 1891 Convention which was wholly nominated by the respective colonial parliaments, the Australian Constitutional Convention (which substantially drafted the federal constitution) was also directly elected.

(ii) Advantages:

- a) Most "democratic" option;
- b) Confers political legitimacy and acceptability;
- c) May be required by Commonwealth government; and
- d) Depending on electoral system used, a fair representation could be achieved.

(iii) Disadvantages:

- a) Costly and time-consuming;
- b) If turnout low, representation may not be adequate;
- c) If electoral system ill-chosen, representation again may be deficient; and
- d) Suitable candidates may not offer for election.

3. The electoral system and voting procedure used will have to be chosen with the view of providing "a broad cross-section of community interests and opinion". It is unlikely that single-member constituencies would achieve that result as minority interests do not fare well under such circumstances. They would certainly do better at an "at-large" election using the Territory as one electorate (as with Senate elections) but it would probably, given the weight of "urban" voters and Darwin voters in particular, not produce a reasonable regional balance. Thus, the most appropriate system would be a series of multi-member electorates (of varying sizes) covering regional areas. Assuming a Convention of fifty-five members, Greater Darwin would return twenty-two members, Alice Springs eleven, Katherine four, Tennant Creek and Nhulunbuy two each, northern "rural" and southern "rural" seven each. A single transferable voting procedure [i.e. the full Senate variant] would enable a wide range of community opinion to be represented.

4. (i) A wholly-nominated convention also presents a number of advantages and disadvantages.

(ii) Advantages:

- a) Less costly to convene than a fully-elected convention;
- b) Allows for a deliberate choice of candidates thereby ensuring reasonable representation;
- c) May ensure participation of best-suited and qualified representatives; and
- d) Could allow involvement of "non-Territorians".

(iii) Disadvantages:

- a) Lacks the same legitimacy as a fully-elected Convention;
- b) May be unacceptable to Commonwealth Government;
- c) Likely to be criticised as "rigged" or unintentionally unrepresentative;
- d) Difficulty of ensuring places and balance for the myriad of Territory interests; and
- e) members may see themselves as "delegates" rather than "trustees" and represent their "sponsors" rather than the wider Territory concerns. In that circumstance, agreement on sensitive issues may be hard to reach and the resultant constitution could follow "the

lowest common denominator" approach which may prejudice its acceptance at a referendum.

- (iv) The Select Committee believes that, if the Convention is to be nominated, the final choice of nominees should be made by the Legislative Assembly on advice from the Select Committee. Nominations could be sought from designated groups or specific individuals. Public advertisement could also be employed to elicit nominations from the general community. It is important that all significant bodies of opinion (whether organised or not) obtain some degree of representation. To enable the Select Committee to identify all parties deserving or desirous of representation (and the extent of that representation) on the Convention, it seeks expressions of interest from such parties. Comment is also welcomed on the desirability and practicability of having non-Territorians or Territory parliamentarians as members. So too is the proportion of "specialists" (those nominated for their particular expertise, qualifications and experience) to "generalists" (those who have some broad appreciation of constitutional subjects).
 - (v) The type of membership should relate to the form in which the Convention operates. If it undertakes most of its business in plenary session, the membership appropriate-or such a style will be different from that of a Convention which conducts most of its business in specialist committees. A paper prepared by a Select Committee member is based around "specialist" membership. He proposed a structure of four committees to deal with legislative, executive, judicial and "other matters" aspects respectively. The Convention Chairman and the Committee Convenors are to be selected on the grounds of national eminence, capacity and acceptability. Committee membership which is to include two M.L.As, is to be chosen for its particular qualifications and a minority could come from outside the Territory. Any scheme which gives prominence to a strong committee structure will tend to require similar "specialist" members. Public comment on the form which the Convention should take is also sought. Particular attention should be given to the roles of committees and plenary sessions.
5. The third approach - the mixed model - offers a range of membership possibilities. At one extreme, there could be a predominance of elected members, at tile other a predominance of nominated. As a hybrid model, the mixed option has a combination of the advantages and disadvantages pertinent to the wholly-elected and wholly-nominated models. But, it does have the additional benefit, if the majority of members are elected, of allowing participation of key groups (such as the Legislative Assembly, land councils, local and community government organisations, or any other major body of opinion demonstratively excluded in the electoral process). In that way, nomination of a certain proportion of the Convention can ensure an adequate representation of Territory interests.

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APPENDIX 3
LIST OF SUBMISSIONS

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LIST OF SUBMISSIONS

| <u>Name</u> | <u>Organisation</u> |
|-------------------|--|
| | Women's Advisory Council |
| | NT Council of Govt. School Organisations |
| | NT BAR ASSOCIATION |
| Kevin ANDERSON | NT Community Government Association |
| Susan ANDRUSZKO | Darwin City Council |
| John ANTELLA | Darwin City Council |
| John ANTELLA | NT Local Government Association |
| Harry COEHN | Office Of Equal Opportunity |
| Mark CROSSIN | NT Trades and Labour Council |
| Raphael CROWE | NT Confederation of Industry / Commerce |
| Rod ELLIS | NT Trades and Labour Council |
| John FAWCETT | |
| John HAVNEN | |
| Phillip HOCKEY | |
| Anthony HOSKING | |
| Earl JAMES | |
| Sheila KEUNEN | |
| R G KIMBER | |
| Noel LYNAGH | NT Local Government Association |
| Peter McNAB | |
| Francis PERCEVAL | |
| Lynette POWIERZA | Office Of Equal Opportunity |
| John PUPUNGAMIRRI | |
| Maureen ROBERTS | |
| Sue SCHMOLKE | Women's Advisory Council |
| Jim THOMSON | |

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APPENDIX 4
AUSTRALIAN FEDERATION
ENABLING ACT, 1895 (NSW) NUMBER XXIV

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AUSTRALIAN FEDERATION ENABLING ACT, 1895 (NSW)
NUMBER XXIV

An Act to enable New South Wales take part in the framing, acceptance, and enactment of a Federal Constitution for Australia [23rd December, 1895.]

WHEREAS it is proposed that Legislative provision shall be made by the Colonies for the framing, acceptance, and enactment of a Federal Constitution for Australasia: And whereas it is desirable that New South Wales should be represented at the Convention, which it is proposed shall frame the said Constitution : Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the "Australasian Federation Enabling Act, 1895."

2. In this Act the following terms bear the meanings set opposite to them respectively -

"Colonies" — The Colonies of New South Wales, New Zealand, Queensland, Tasmania, Victoria, and Western Australia, and the Province of South Australia, including the Northern Territory.

"Constitution" — The Federal Constitution framed or accepted pursuant to this Act.

"Convention" — The Convention provided for by this Act..

"Governor" — The Governor, with the advice of the Executive Council.

"Prescribed " -- Prescribed by Regulation made under this Act.

"Proclamation" — Proclamation by the Governor published in the *Gazette*.

"Representatives of New South Wales" — The Representatives of New South Wales in the Convention.

3. The chief objects of this Act are to provide as follows:

- (I) For the representation of New South Wales at a Convention consisting of the Representative of each Colony represented, charged with the duty of framing a Federal Constitution for Australasia.
- (II) For submitting the Constitution so framed to the electors for the Legislative Assembly for acceptance or rejection by direct vote.
- (III) For transmitting the Constitution for enactment by the Imperial Parliament

4. This Act shall come into operation on a day to be fixed by proclamation, when two Colonies, in addition to New South Wales, have adopted legislation providing, in respect of those Colonies, for the election of the representatives of those Colonies at the Convention.

5. This Act is divided into four Parts, as follows:-

PART I.—*The Convention*

PART II —*The submission to the Electors.*

PART III — *The transmission for Legislative Enactment.*

PART IV — *Supplemental*

PART I

The Convention

6. The Convention shall consist of ten Representatives of each Colony represented.

7. The Convention shall be charged with the duty of framing for Australasia a Federal Constitution under the Crown in the form of a Bill for enactment by the Imperial Parliament

8. Every Member and every person eligible for membership of either House of Parliament shall be eligible for membership of the Convention as a Representative of New South Wales. And any one hundred or more electors duly qualified to vote for election of a Member of the Legislative Assembly shall be entitled in the prescribed manner to nominate any eligible person, whose consent in writing shall accompany such nomination for such membership, and after such nomination has closed, the list persons so nominated, with their residence and occupation, be advertised in the alphabetical order of their surnames at least three times in every newspaper published in the Colony.

9. The seat of a Representative of New South Wales shall be vacated—

- (I) By resignation under his hand addressed to the Governor.
- (II) By absence, without the leave of the Convention, from any five sittings thereof.
- (III) By any other circumstance, except absence from the Assembly, which in the case of a Member of the Legislative Assembly would vacate his seat in the Assembly.

10. The first vacancy occurring pursuant to the preceding section shall forthwith be filled by the appointment by the Governor of the candidate who, not being, nor having been, a Member of the Convention was highest on the Poll. Every subsequent appointment to be made in like manner.

11. Every person being the holder of an Elector's Right shall be qualified and entitled to vote for the election of Representatives of New South Wales.

12. The first election of Representatives of New South Wales shall take place on a day to be fixed by Proclamation, which day, as nearly may be conveniently practicable, shall be the same as the day of first election of Representatives of other Colonies.

13. The voting shall be taken throughout New South Wales as one Electoral District, and every voter shall vote for the full number of Representatives required, otherwise the vote shall be rejected as informal.

14. No person shall vote more than once at the election of Representatives of New South Wales.

15. If any question arises respecting the validity of an election or return the same shall be heard and determined by a Committee appointed by the Convention as prescribed. And Part V of the Parliamentary Electorates and Elections Act of 1893 shall *mututis mutandis*, apply in respect of the powers, duties, and proceedings of the said Committee acting under the authority of this section.

16. The result of every election for Representatives of New South Wales shall be reported to and certified by the Chief Secretary in manner prescribed, whose certificate shall be conclusive, except in proceedings for contesting the validity of the election.

17. When the first elections have been held in three or more Colonies, a meeting of the Convention shall be convened for such time and place as a majority of the Governors of such Colonies may decide, or in case of an equal division, as the Governor of the senior of such Colonies may fix.

18. The Convention may adopt Standing Orders, and may provide for keeping and publishing records and journals of its proceedings, and for the conduct of its business in such manner as may be thought fit; and in cases not otherwise provided for, the proceedings of the Convention shall be regulated by the Standing Orders and practice of the House of Commons so far as applicable.

19. The Convention shall at its first meeting, before proceeding to the despatch of any other business, elect a Member of the Convention to be the President thereof.

20. The President may resign his office, or he may be removed from office by a vote of the Convention; and upon his ceasing to be a member of the Convention his office shall become vacant.

21. In the case of the absence of the President the Convention may choose some other Member of the Convention to perform his duties during his absence.

22. Whenever a vacancy occurs in the office of President, such vacancy shall forthwith be filled by a fresh election.

23. The presence, exclusive of the President, of at least of the total number of the Members of the Convention shall be necessary to constitute a meeting of the Convention for the exercise of its powers.

24. The Convention may appoint Committees of its Members which shall report to the Convention.

25. Questions arising in the Convention shall be by a majority of the votes of the Members present, other than the President; and when on any division the votes are equal, but not otherwise, the President shall have a vote, and his vote shall decide the question.

26. When the Constitution has been framed by the Convention, copies thereof shall be supplied to the Members of the Convention, and the President shall declare the sitting of the Convention adjourned to a time and place to be fixed by the Convention, not being less than sixty nor more than one hundred and twenty days thereafter. And as soon as convenient the draft Constitution shall be submitted for consideration to each House of Parliament sitting in Committee of the Whole, and such amendments as may be desired by the Legislature, together with the draft Constitution, shall be remitted to the Convention through the Senior Representative.

27. On the reassembling of the Convention, the Constitution as framed prior to the adjournment shall be reconsidered together with such amendments as shall have been forwarded by the various Legislatures, and the Constitution framed shall be finally adopted with any amendments that may be agreed to.

28. So soon as the Convention has finally adopted a Federal Constitution as required by the preceding section, and has disposed of all incidental business, copies certified by the President shall be supplied in duplicate to the Members Convention, and the President shall declare the proceedings of the Convention closed.

29. The Representatives of New South Wales shall cease to hold office at the expiration of a period to be proclaimed by the Governor in the *Gazette*.

30. New South Wales shall contribute to the payment of the expenses of the meeting and proceedings of the Convention in the proportion which the population of New South Wales bears to the total population of the Colonies represented at the Convention and the Colonial Treasurer shall make such payment accordingly out of the Consolidated Revenue Fund.

PART II

The Submission to the Electors.

31. Within fourteen days after the close of the proceedings of the Convention, the certified copies of the Constitution shall be forwarded by the President of the Convention and by the Representatives of New South Wales or one of them to the Governor.

32. So soon as practicable after the close of the proceedings of the Convention, the question of the acceptance or rejection of the Constitution shall be referred and submitted to the vote of all persons in New South Wales qualified and entitled to vote for the election of Members of the Legislative Assembly.

The voting shall be taken throughout New South Wales as one Electoral District.

33. Each voter shall vote by ballot "Yes" or "No" on the question, in accordance with the direction on the Ballot paper in the Schedule hereto, and all votes shall be taken on the same day.

34. No person shall vote more than once on the question.

35. The majority of votes shall decide the question, and if the Constitution be thereby rejected, no further action shall be taken pursuant to this Act: Provided that any number of votes in the affirmative less than fifty thousand shall be equivalent to the rejection of the Bill.

PART III

The Transmission for Legislative Enactment.

36. If two Colonies, in addition to New South Wales, accept the Constitution, both Houses of Parliament may adopt Addresses to the Queen, praying that the Constitution may be passed into law by the Imperial Parliament upon receipt of similar addresses from the Parliaments of two such Colonies.

37. When Addresses have been agreed to pursuant to the preceding section, the same shall be transmitted to the Queen with a certified copy of the Constitution

PART IV

Supplemental

38. If any person votes or attempts to vote more than once contrary to sections fourteen or thirty-five he shall be liable to a penalty not exceeding fifty pounds, or, at the option of the Court, to imprisonment not exceeding six calendar months.

39. For the purpose of holding elections of Representatives of New South Wales, and of submitting the acceptance or rejection of the Constitution to the electors, the Governor may cause writs to be issued in such form and addressed as he thinks fit.

40. Unless and until otherwise prescribed, the laws relating to the conduct of elections for the Legislative Assembly, the proceedings before and at and subsequent to such elections, the trial of disputed elections, electoral offences, and all incidental matters, shall apply, *mutatis mutandis*, to the election of Representatives of New South Wales, and to the proceedings for submitting the acceptance or rejection of the Constitution to the electors.

41. The Governor may make regulations prescribing the mode of nominating candidates, of holding elections of Representatives of New South Wales, and submitting the acceptance or rejection of the Constitution to the electors, and generally for the purposes of carrying into effect such provisions of this Act as relate to New South Wales.

42. All such regulations shall be published in the *Gazette*, and on such publication shall have the force of law; and all such regulations shall be laid before both Houses of Parliament within fourteen days after the making thereof, or if Parliament be then sitting, or if Parliament be not then sitting, within fourteen days after the next meeting of Parliament.

43. Any such regulation may provide for the enforcement thereof by penalty not exceeding fifty pounds, or, at the option of the Court, by imprisonment not exceeding six calendar months.

44. Penalties imposed by, and offences against, the provisions of this Act, or any regulations made thereunder, may be recovered, heard, and determined by a Police or Stipendiary Magistrate, or any two Justices of the Peace in Petty Sessions.

THE SCHEDULE

AUSTRALASIAN FEDERAL CONSTITUTION.

Ballot Paper.

Are you in favour of the propped Federal Constitution Bill?

"YES"

"NO"

If you are in favour of the Bill strike out the above word "No."

If you are against the Bill strike out the above word "Yes."

APPENDIX 5
ALASKA CONSTITUTIONAL CONVENTION
ENABLING ACT - 1955

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Extract from the Alaska Constitutional Convention Enabling Act.

**Alaska Constitutional Convention Enabling Act
CHAPTER 46
SESSION LAWS OF ALASKA
1955**

AN ACT

To provide for the holding of a constitutional convention to prepare a constitution for the State of Alaska; to submit the constitution to the people for adoption or rejection; to prepare for the admission of Alaska as a State; to make an appropriation; and setting an effective date.

(C.S. for HB. 1)

Be it Enacted by the Legislature of the
Territory of Alaska:

Section 1. A constitutional convention, comprised of delegates elected by the legal voters of the Territory of Alaska, shall assemble at the University of Alaska, College, Alaska, on the 8th day of November, 1955, at ten o'clock a.m., or as soon thereafter as a quorum shall be present, for the purpose of preparing and agreeing upon a constitution for the proposed State of Alaska. The convention shall meet for not more than seventy-five days but may, at its discretion, recess for a period of not to exceed fifteen days for the purpose of holding public hearings in Alaska on proposed provisions of the constitution.

Section 2. Delegates to the convention shall possess the qualifications of legal voters of Alaska and shall have been residents of Alaska for not less than three years immediately preceding the first day of the convention. The holding of the office of delegate or any other office of the convention shall not constitute a disqualification for selection for or the holding of any other office, and the holding of any other office, except an appointive office under the Federal Government shall not constitute a disqualification for election to or the holding of office as a delegate or any other office of the convention.

Section 3. There are hereby created the following election districts from which delegates to the convention shall be elected. These election districts shall be comprised of the several recording districts of Alaska which shall be known as "local election districts", the judicial divisions of Alaska, and the Territory of Alaska at Large:

Election District No. 1—Ketchikan and Hyder Recording Districts.

Election District No. 2—Wrangell and Petersburg Recording Districts.

Election District No. 3—Sitka Recording District.

Election District No. 4—Juneau Recording District.

Election District No. 5—Haines and Skagway Recording Districts.

Election District No. 6—First Judicial Division.

Election District No. 7—Cape Nome and Wade Hampton Recording Districts.

Election District No. 8—Fairhaven and Noatak-Kobuk Recording Districts.

Election District No. 9—Second Judicial Division.

Election District No. 10—Cordova and McCarthy Recording Districts.

Election District No. 11—Valdez and Chitina Recording Districts.

Election District No. 12—Seward and Whittier Recording Districts.

Election District No. 13—Kenai, Homer and Seldovia Recording Districts.

Election District No. 14—Kodiak and Aleutian Islands Recording Districts.

Election District No. 15—Anchorage Recording Districts.

Election District No. 16—Palmer, Wasilla and Talkeetna Recording Districts.

Election District No. 17—Illiam, Kvichak and Bristol Bay Recording Districts.

Election District No. 18—Third of the Judicial Division.

Election District No. 19—Bethel, Kuskokwim, Mt. McKinley Innoko, Nulato, Nenana, Hot Springs, Rampart and Fort Gibbon Recording Districts.

Election District No. 20—Fairbanks Recording District

Election District No. 21—Fourth Judicial Division.
Election District No. 22—Territory of Alaska at Large.

Section. 4. The convention shall consist of fifty-five delegates apportioned among the election districts as follows:

Election District No. 1 — One Delegate.
Election District No. 2 — One Delegate.
Election District No. 3 — One Delegate
Election District No. 4 — One Delegate
Election District No. 5 — One Delegate
Election District No. 6 — Seven Delegates
Election District No. 7 — One Delegate
Election District No. 8 — One Delegate
Election District No. 9 — Four Delegates
Election District No. 10 — One Delegates
Election District No. 11 — One Delegate
Election District No. 12 — One Delegate
Election District No. 13 — One Delegate
Election District No. 14 — One Delegate
Election District No. 15 — One Delegate
Election District No. 16 — One Delegate
Election District No. 17 — One Delegate
Election District No. 18 — Twelve Delegates
Election District No. 19 — One Delegate
Election District No. 20 — One Delegate
Election District No. 21 — Eight Delegates
Election District No. 22 — Seven Delegates.

Section 5. A special election for the election of delegates shall be held throughout Alaska on September 13, 1955. The Governor of Alaska shall prepare and furnish all ballots, certificates, and forms necessary for the holding of the election, which shall in general be conducted, including the making of returns, the canvassing of ballots, and the ascertaining of results substantially in the manner fixed by the laws governing the election of legislators in general elections in Alaska, including rotation of names on the ballot. The Governor may employ such technical and other personnel as may be necessary to assist him in the preparation for and conduct of the election provided for herein. The governor may make such reasonable rules and regulations regarding the conduct of the election, the counting of ballots, the preparation, transmission and canvassing of returns, and other matters relating to the election, as may appear necessary and are consistent with the purposes of the special election provided for herein.

Section 6. Candidates for the office of delegate shall be nominated by petition filed in person or by

mail with the clerk of the court of the judicial division in which the candidate is a resident on or before May 10, 1955. Each petition shall be accompanied by a fee of ten dollars, except that the fee for candidates for election from the Territory at large shall be forty dollars. Each nominating petition shall be signed by legally qualified voters of Alaska residing within the election district in and for which the delegates nominated are to be elected equal in number to at least five per cent of the number of votes cast in the election district in the General Election of 1954, provided that no nominating petition need contain more than two hundred signatures nor may it contain less than fifty signatures, in any election district.

Section 7. Each nominating petition shall contain the name of not more than one candidate and shall set forth the name, place of residence and post office address of the candidate thereby nominated, that the nomination is for the office of delegate to the constitutional convention to be convened on November 8, 1955, that the petitioners are legally qualified to vote for such candidates and pledge themselves to support and vote for the person named in such petition, and that this petition, together with all other petitions theretofore signed by them, does not nominate a greater number of candidates than the number of delegates to be elected in the election district for which the nominations are made. Every voter signing a nominating petition shall add to his signature his place of residence, post office address, and street number, if any. No voter shall sign a petition or petitions for a greater number of candidates than are to be elected in the election district in which he resides, except that any petitioner may sign not more than seven petitions of candidates for election as delegates from the district composed of the Territory of Alaska at large, in addition to the petition or petitions of candidates from the petitioner's local and judicial election districts. It is the intent of this Act that qualified petitioners may sign not more nominating petitions than there are delegates authorized from the local and judicial election districts in which the petitioner resides, and in addition may sign not more than seven nominating petitions for candidates seeking election from the Territory at Large.

Section 8. Each nominating petition shall, before it may be filed with the clerk of the court, contain an acceptance of such nomination in writing, signed and verified by an oath or affirmation of the candidate

therein nominated, upon or annexed to such petition. Such acceptance shall certify that the candidate shall have been a resident of the election district for which he is nominated for at least one year and that he is a qualified voter in the election district for which he is nominated. Such acceptance shall also certify that the nominee consents to enter as a candidate at the ensuing special election for the election of delegates to a constitutional convention, and that if elected he agrees to take office and serve as a delegate from the election district in which he is nominated.

Section 9. If any delegate from any election district shall die, resign, or otherwise become disqualified from serving, or if a vacancy occurs for any reason whatsoever, the vacancy shall be filled by the candidate not theretofore certified as elected who received the next highest number of votes amongst the candidates in the election district in which the vacancy occurred. If a vacancy should again occur in such district, it shall be filled in like manner from amongst the remaining candidates. Any election contest which results in a tie shall be resolved by the drawing of lots between the competing candidates, and the loser of the drawing shall be considered second only to the winner and shall hold such standing among the balance of the winning candidates.

Section 10. All nominating petitions and their acceptances shall when filed be and remain open for public inspection during regular business hours, at the office where filed until May 20, 1955; thereafter they shall be transmitted to the Governor of Alaska for determination of the candidates nominated and for permanent filing in the office of the Secretary of Alaska. Determination of the validity of petitions shall be made initially by the Governor of Alaska, and recourse by candidates believing themselves aggrieved may be had by appeal from the determination of the Governor to the canvassing board, the decision of which shall be final. Objections to petitions may be raised by any qualified voter of the election district from which the candidate is nominated, and such objection must be stated in writing to the Governor of Alaska on or before May 25, 1955. Not later than May 31, 1955, the Governor shall make his determination as to the candidates nominated from each election district and shall thereupon certify the names designated for placement on the ballot for each such district.

Section 11. The election of delegates shall be conducted without any reference to the political party affiliations of the candidates, and the ballots used shall be nonpartisan in every respect. A separate ballot shall be prepared for each local election district, and each such ballot shall contain (a) the names of the candidates running for the office of delegate from that district, (b) the names of the candidates running for the office of delegate from the judicial division election district in which the local election district is situated, and (c) the names of the candidates running for the office of delegate from the district which comprises the Territory at Large.

Section 12. The candidate or candidates receiving the greatest number of votes in the election district for which nominated shall be deemed elected for that district, and the Governor of Alaska shall issue to them certificates of election in the manner otherwise prescribed by law for persons elected to the Legislature of Alaska.

Section 13. The Governor of Alaska shall open the convention and preside until temporary officers are selected. The convention shall be the judge of the qualifications of its members, their election, or appointment. It shall have the power by vote of a majority of the delegates to which the body is entitled to choose a president and secretary and all other appropriate officers, to prescribe their functions, powers and duties, and to make rules and regulations for the conduct of its business. Following its organization the convention shall declare on behalf of the people of the proposed State that they adopt the Constitution of the United States; thereafter, the convention shall proceed to prepare a constitution, which shall be republican in form and shall contain the provisions expressly required by any Act of the Congress of the United States providing for the admission of Alaska as a State, and a State government for the proposed States, and for this purpose the convention shall have power to make ordinances and to take all measures necessary or proper in preparation for the admission of Alaska as a State of the Union.

Section 14. After a constitution and State government have been framed, the convention shall provide by ordinance for submission of the constitution, and such ordinances as may properly be submitted, to the people of the proposed State for ratification or rejection at an election to be held at a date to be fixed by the convention not less than forty

nor later than one hundred twenty days from the date of adjournment of the convention, at which election the persons entitled to vote for delegates under this Act shall be entitled to vote on the ratification or rejection of the constitution and the ordinances submitted, under such rules and regulations as the convention may prescribe. The returns of this election shall be made to the Governor of Alaska and shall be canvassed substantially in the manner now provided by law for the canvass of votes cast in Territorial Elections.

Section 15. The convention shall provide by ordinance that after the constitution and ordinances submitted shall have been ratified by the people of the Territory by a majority of the legal votes cast thereon, the Governor shall forthwith submit a certified copy of the same through the President of the United States to the Congress for approval or disapproval, together with a statement of the votes cast thereon.

Section 16. The convention shall provide by ordinance that in case of the ratification of the constitution by the people and of its approval by the Congress, or by the President, as may be provided in the Enabling Act, there shall be a process of election, at such time and in such manner as the convention may prescribe, in which the qualified voters of Alaska shall choose officers for a full State government, including a governor, members of the legislature, such other officers as the constitution shall prescribe, and the authorized number of Representatives and Senators in the Congress of the United States. The persons elected hereunder shall assume their offices, and the State government shall become in effect, at the time and in the manner that the Congress may provide in enabling the admission of Alaska as a State.

Section 17. Until the admission of Alaska as a State, all of the officers of the Territory shall continue

to discharge the duties of their respective offices in and for the Territory of Alaska, and the laws of the Territory shall also remain in force and effect.

Section 18. The convention shall have power to incur such expenses as may be necessary, including but not limited to expenses for employment of such clerical, technical, and professional personnel as it may require, in order to exercise the powers conferred and to perform the duties imposed by this Act.

Section 19. The delegates shall receive a per diem of twenty dollars for each day in attendance at, including time spent going to and returning from, the convention; and they shall be reimbursed for their actual travel costs incurred in attending upon their duties as delegates. In addition they shall receive for their services the sum of fifteen dollars per day as compensation for each day's attendance while the convention is in session.

Section 20. There is hereby appropriated the sum of \$300,000, or so much thereof as may be necessary, for defraying the expenses of the elections provided for herein and the expenses of the convention, including compensation of the delegates, and for all other purposes of this Act. The disbursements for all costs attributable to the elections of delegates to the convention, not to exceed \$60,000, shall be made upon vouchers certified by the Governor of Alaska. All other disbursements of monies appropriated vouchers certified by the president of the convention.

Section 21. This Act shall be in effect on and after its passage and approval, or upon its becoming law without such approval.

Approved March 19, 1955

APPENDIX 6
THE CONSTITUTION OF THE STATE OF HAWAII
ARTICLE XVII

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THE CONSTITUTION OF THE STATE OF HAWAII

ARTICLE XVII

REVISION AND AMENDMENT

METHODS OF PROPOSAL

SECTION 1. Revisions of or amendments to this constitution may be proposed by constitutional convention or by the legislature.

CONSTITUTIONAL CONVENTION

SECTION 2. The legislature may submit to the electorate at any general or special election the question, "Shall there be a convention to propose a revision of or amendments to the Constitution?" If any nine-year period shall elapse during which the question shall not have been submitted, the lieutenant governor shall certify the question, to be voted on at the first general election following the expiration of such period.

ELECTION OF DELEGATES

If a majority of the ballots cast upon such a question be in the affirmative, delegates to the convention shall be chosen at the next regular election unless the legislature shall provide for the election of delegates at a special election

Notwithstanding any provision in this constitution to the contrary, other than Section 3 of Article XVI, any qualified voter of the district concerned shall be eligible to membership in the convention.

The legislature shall provide for the number of delegates to the convention. the areas from which they shall be elected and the manner in which the convention shall convene. The legislatures shall also provide for the necessary facilities and equipment for the convention. The convention shall have the same powers and privileges. as nearly as practicable. as provided for the convention of 1978.

MEETING

The constitutional convention shall convene not less than five months prior to the next regularly scheduled general election.

ORGANIZATION; PROCEDURE

The convention shall determine its own organization and rules of procedure. It shall be the sole judge of the elections, returns and qualifications of its members and. by a two-thirds vote may suspend or remove any member for cause. The governor shall fill any vacancy by appointment of a qualified voter from the district concerned.

RATIFICATION; APPROPRIATIONS

The convention shall provide for the time and manner in which the proposed constitutional revision or amendments shall be submitted to a vote of the electorate: provided that each amendment shall be submitted in the form of a question embracing but one subject and provided further, that each question shall have designate spaces to mark YES or NO on the amendment.

At least thirty days prior to the submission of any proposed or amendments, the convention shall make available for public inspection, a full text of the proposed amendments. Every. public library, office of the clerk of each county. and the chief election officer shall be provided such texts and shall make them available for public inspection. The full text of any proposed revision or amendments shall also be made available for inspection at every polling place on the day of the election at which such revision. or amendments are submitted.

The convention shall as provided by law, be responsible for a program of voter education concerning each proposed revision or amendment to submitted to the electorate.

The revision of amendments shall be effective only if approved at a general election by a majority of all the votes tallied upon the question, this majority constituting at least fifty per cent of the total vote cast at the election, or at a special election by a majority of all the votes tallied upon the question, this majority constituting at least thirty per cent of the total number of registered voters.

The provisions of this section shall be self-executing, but the legislature shall make the necessary appropriations and may enact legislation to facilitate their operation.

AMENDMENTS PROPOSED BY LEGISLATURE

SECTION 3. The legislature may propose amendments to the constitution by adopting the same in the manner required for legislation, by a two-thirds vote of each house on final reading at any session, after either or both houses shall have given the governor at least ten days written notice of the final form of the proposed amendment, or, with or without such notice, by a majority vote of each house on final reading at each of two successive sessions.

Upon such adoption, the proposed amendments shall be entered upon the journals, with the ayes and noes, and published once in each of four successive weeks in at least one newspaper of general circulation in each senatorial district whereto such a newspaper is published within the two months period immediately preceding the next general election.

At such general election the proposed amendments shall be submitted to the electorate for approval or rejection upon a separate ballot.

The conditions of and requirements for ratification of such proposed amendments shall be the same as provided in section 2 of this article for ratification at a general election.

VETO

SECTION 4. No proposal for amendment of the constitution adopted in either manner provided by this article shall be subject to veto by the governor.

CONFLICTING REVISIONS OR AMENDMENTS

SECTION 5. If a revision or amendment: proposed by a constitutional convention is in conflict with a revision or amendment proposed by the legislature and both are submitted to the electorate at the same election and both are approved, then the revision or amendment proposed by the convention shall prevail. If conflicting revisions or amendments are proposed by the same body and are submitted to the electorate at the same election and both are approved, then the revision or amendment receiving the highest number of votes shall prevail.