

Chapter 2

DISCUSSION PAPER ON REPRESENTATION IN A TERRITORY CONSTITUTIONAL CONVENTION



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

**SELECT COMMITTEE ON
CONSTITUTIONAL DEVELOPMENT**

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

OCTOBER 1987



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Select Committee on Constitutional Development

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A Territory Constitutional Convention**

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A paper issued for public comment by
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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 the 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.