

## **Chapter 3**

### **DISCUSSION PAPER NO. 3**

#### **CITIZENS' INITIATED REFERENDUMS**



**LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY**

---

**SESSIONAL COMMITTEE ON CONSTITUTIONAL DEVELOPMENT**

**DISCUSSION PAPER NO. 3**

**CITIZENS' INITIATED REFERENDUMS**

---

**AUGUST 1991**



**LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY**

**DISCUSSION PAPER NO. 3**

**CITIZENS' INITIATED REFERENDUMS**

**AUGUST 1991**

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

# CONTENTS

	<b>Page No.</b>
<b>CHAPTER 3</b>	<b>1</b>
<b>A. INTRODUCTION</b>	<b>3-1</b>
1. Terms of Reference	3-1
2. Discussion Papers	3-2
3. Committee Procedure	3-3
4. What are Citizens' Initiated Referendums ?	3-4
<b>B. THE POSITION ELSEWHERE</b>	<b>3-5</b>
1. Switzerland	3-5
2. United States of America	3-7
<b>C. PROPOSALS IN AUSTRALIA</b>	<b>3-8</b>
1. Early Proposals	3-8
2. Recent Interest and Proposals	3-9
<b>D. ADVANTAGES AND DISADVANTAGES</b>	<b>3-11</b>
1. Advantages:	3-11
2. Disadvantages	3-11
<b>E. OPTIONS</b>	<b>3-12</b>
<b>F. THE COMMITTEE'S TENTATIVE VIEWS</b>	<b>3-14</b>
<b>APPENDIX 1</b>	<b>3-17</b>
<b>RELEVANT EXTRACT FROM DISCUSSION PAPER: "Proposed New State Constitution for the Northern Territory" - PART A, 3(b)</b>	<b>3-17</b>
<b>APPENDIX 2</b>	<b>3-21</b>
<b>RELEVANT EXTRACT FROM INFORMATION PAPER N0.2: "Options for a Grant of Statehood" -PART C, 5(iii)</b>	<b>3-21</b>
<b>APPENDIX 3</b>	<b>3-25</b>
<b>RELEVANT EXTRACT FROM DISCUSSION PAPER: "Proposed New State Constitution for the Northern Territory" - PART B(d) and (f)</b>	<b>3-25</b>
<b>APPENDIX 4</b>	<b>3-29</b>
<b>RELEVANT EXTRACTS FROM DISCUSSION PAPER: "Proposed New State Constitution for the Northern Territory" - PART B (h)</b>	<b>3-29</b>
<b>APPENDIX 5</b>	<b>3-33</b>
<b>RELEVANT EXTRACT FROM DISCUSSION PAPER: "Proposed New State Constitution for the Northern Territory" - PART P(d) and (e)</b>	<b>3-33</b>



## A. INTRODUCTION

### 1. *Terms of Reference*

On 28 August 1985, the Legislative Assembly of the Northern Territory of Australia by resolution established the Select Committee on Constitutional Development. Amendments to the Committee's term of reference were made when the Committee was reconstituted on 28 April 1987. On 30 November 1989, the Legislative Assembly further resolved to amend the terms of reference by changing the Committee's status to a sessional committee. On 4 December 1990 the Committee was again reconstituted with no further change to its terms and references.

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

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

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

## 2. *Discussion Papers*

- (a) The Committee has already issued a number of papers, including two discussion papers for public comment, as follows -

- . A Discussion Paper on a "Proposed New State Constitution for the Northern Territory".
- . A Discussion Paper on "Representation in a Territory Constitutional Convention".

The purpose of these papers was to invite public comment with a view to assisting the Committee to make recommendations on a new State constitution and the procedure for adopting it.

- (b) This Discussion Paper constitutes the third in the series, and deals with the question whether there should be provision in the new State constitution for citizens' initiated referendums for any purpose, including a method of changing that constitution.
- (c) The Committee has already given some consideration to the use of referendums in relation to the new State constitution. It took the view in its first Discussion Paper that the proposed new State constitution, once it had been ratified by the Territory Constitutional Convention, should be submitted to a referendum of Northern Territory electors (see Appendices 1 and 2).
- (d) The same Discussion Paper dealt in variety of matters that could be included in the new State constitution, including the enactment of new State legislation and the method for changing that constitution once it was in force. Inherent in the Committee's thinking was the view that any new State constitution must reflect sound democratic principles. The Committee recommended that there be a new State Parliament, elected on a representative basis, with the same rights, powers and privileges as existing State Parliaments, including as to the enactment of legislation (see Appendix 3). The representative of the Crown in the new State was to be given the function of assenting or withholding assent to new legislation enacted by that Parliament (see Appendix 4), but no other requirements were contemplated for effective law making.

The Committee also took the view that, generally speaking, there should be some degree of entrenchment of the whole of the new State constitution. Entrenchment should comprise or include the requirement that any proposed change to the constitution should be supported by a specified majority of new State electors at a referendum, with certain minimal provisions dealing with referendums in the constitution itself (see Appendix 5).

- (e) The Committee did not, in that Discussion Paper, deal in detail with the mechanics for enacting new State legislation or the requirements of such a referendum. It did not expressly raise the possibility of having citizens' initiated referendums for any purpose.

### 3. *Committee Procedure*

- (a) The Committee has adopted, as a fundamental aspect of its procedure in actioning its terms of reference, the conduct of a comprehensive program of community consultations within the Northern Territory on matters that could be dealt with in a new State constitution.
- (b) To this end, the Committee has already held a number of community visits and public hearings at various locations throughout the Territory. It has also invited public submissions on its terms of reference and received a large number of both written and oral submissions. The procedures are set out in more detail in the Committee's latest Annual Report for 1989/90. The consultations will continue into the future as circumstances permit.
- (c) In the course of its earlier proceedings, the Committee received eight submissions which dealt with the subject of citizens' initiated referendums-
  - (i) Mr Patrick Gough, in a written submission dated 28 March 1989 expressed the view that a petition signed by 20% of the voters on the electoral roll should be sufficient to veto existing laws by way of referendum.
  - (ii) Mr de Sachan at the public meeting held at Batchelor on 31 March 1989 orally submitted that there was a need for citizen initiated referendums to recall elected members of Parliament. He considered that a percentage from anywhere between 10% to 50% of the total electors by way of petition should be required to initiate the recall.
  - (iii) Mr Marshall also orally submitted at the above meeting in Batchelor supporting Mr De Sachan's view but wanted it extended to appointed and public service officials.
  - (iv) Mr Alistair Wyvill representing the Northern Territory Bar Association on 3 April 1989 submitted in respect of constitutional change that there be a "right of a certain percentage of voters to require by petition that a referendum be held in respect of the amendment the subject of the petition".
  - (v) Mr Bain, at the public meeting held at Tennant Creek on 17 April 1989, orally submitted that the Swiss concept of should be included in the new State constitution. He proposed that there be three different categories. One would be to initiate new laws, one would be to veto existing laws, and one would be to recall officials. He expressed the view that because of the political party system, members of a legislature were no longer true representatives of the people but representatives of the party hierarchy.



He therefore concluded that there was a need for citizens' initiated referendum to enable citizens express their views. He also considered that only a small percentage of petitioners should be required to initiate such a referendum, although he would accept that a majority of electors would have to vote in favour of it to give it legal effect.

- (vi) Mr David Shannon in a written submission dated 20 June 1989 advocated citizen referendums for constitutional change, voter recall on elected members of Parliament and legislative veto.

In respect of constitutional amendment he considered that 20% of the electors as petitioners would be required to initiate a referendum. However, if a petition had more than 50% of the electors, the proposed amendment would become law without having to go to a referendum.

- (vii) Mr Colin Gray, of People's Law, in a written submission dated April 1991, argued that the new State constitution should only be able to be amended if the Parliament or if 5% of the residents qualified to vote request the amendment, to be followed in either case by a referendum.

- (viii) Independent member of the House of Representatives, Mr Ted Mack, has also advocated citizen's initiative to propose constitutional amendments and the making of legislation. Further detail on Mr Mack's submission is outlined on page 15 of this paper.

- (d) The Committee has considered these submissions and the procedures and proposals that have been adopted or made elsewhere. The possible options for such a system in a new State and their respective merits and disadvantages are canvassed in this Discussion Paper. The Committee invites public comment on these and related issues.

#### **4. *What are Citizens' Initiated Referendums ?***

- (a) The principles of democracy are based on the right of the citizen to play an active role in the government of his or her own community. How this is to be achieved will vary from community to community. There is no absolute concept in terms of secular thought as to what constitutes the ideal form of democracy.
- (b) Dissatisfaction with decision-making in government by elected or appointed officials is sometimes reflected in the demands for more direct forms of citizens' participation in the business of government. There are a number of ways in which this might be achieved. There are both merits and disadvantages with all such ideas.
- (c) Although in most democratic systems, generally speaking the right to initiate and pass legislation is exercised by some representative form of legislature, in some foreign jurisdictions the right to initiate legislation is also granted to their

citizens. This may also extend to the initiation of constitutional amendments. Alternatively, the right to veto legislation that has already been passed by the legislature may also be given to the citizens.

The method generally used to express the opinions of the citizens on these matters is by way of a referendum consequent upon a petition of a specified number of citizens. All these methods for citizen participation are, for the purposes of this Paper, described as citizens' initiated referendums.

- (d) In Australia, there is already some provision for citizens' referendums. Under the Commonwealth Constitution section 128, proposed changes to that Constitution, once they have been passed by the Commonwealth Parliament, must be approved at a national referendum of a majority of electors in a majority of States as well as a majority of electors Australia-wide.

There is debate as to whether a constitutional amendment proposed by the Senate, but twice rejected by the House of Representatives, must still be put by the Governor-General to the electorate at referendum or whether the Governor-General, on the advice of his/her Ministers, has a discretion to put it. Some State constitutions also provide for some forms of constitutional change by way of a State referendum. However, the electors in Australia have no power to directly initiate proposals for constitutional or legislative change.

- (e) No Australian law presently provides for a citizens' right of veto of ordinary legislation. Referendums on specific proposals outside of constitutional change are rare.
- (f) Some foreign jurisdictions also provide for the use of citizens' initiated referendums for the removal from office of specified public officials. For example, in the USA, this procedure, known as recall, is available in some 15 States as well as in some counties/municipalities. The signature requirements for citizens to initiate a recall are generally much more than for citizens' initiated referendums as to legislation.

## **B. THE POSITION ELSEWHERE**

Provisions exist for citizens' initiated referendums in a number of countries. For example, in Austria, Italy and Liechtenstein, the electorate has the right to initiate legislative proposals. Switzerland and a number of States of the USA also have relevant provisions. This Paper will concentrate on these last two countries.

### ***1. Switzerland***

- (a) The use of the referendum extends back to the end of the Middle Ages in several Swiss Cantons. It re-emerged at the beginning of the Nineteenth Century upon a vote for the Swiss federal Constitution, but was initially restricted to a total revision of that Constitution. In 1874 the referendum

system was extended to allow optional referendums on federal laws or decrees. In 1891, this system was further extended to any partial revision of the Constitution.

- (b) Under Articles 118-121 of the Swiss federal Constitution, 100,000 Swiss voters may demand a total revision of that Constitution. In that event, the question must be submitted to a referendum. In the case of a majority vote, both legislative bodies are to be re-elected anew to undertake the revision. This procedure has rarely been used.
- (c) Under Article 89 of the Swiss federal Constitution, 50,000 Swiss voters, or eight Cantons, may require that a new federal law or decree be submitted to a referendum. The 50,000 signatures must be collected within 90 days of the decision. Many Cantons also have referendum provisions for the approval of their legislation. However, at a federal level, there is no power in citizens' to initiate new federal legislation, only to veto it. If citizens wish to enact new laws, it can only be done by initiating changes to the federal Constitution (see (d) below). The result has been that that Constitution has become a lengthy document.
- (d) Under Article 121, 50,000 Swiss voters may initiate proposed changes to the existing Swiss federal Constitution. Each proposal must be the subject of a separate initiative request.

If the federal Assembly agrees with the proposal to change the Constitution, it may prepare a specific partial revision and submit it to referendum. If the Assembly does not agree with it, the general proposal must still be submitted to a referendum. If successful, the Assembly must undertake a revision of the Constitution in accordance with the proposal.

If the proposal to change the Constitution contains a specific draft amendment and the Assembly agrees with it, it must also be submitted to referendum. If the Assembly disagrees with it, the draft must still be submitted to referendum, but the Assembly may also prepare and submit its own draft at the same time.

- (e) The referendum to revise or change the federal Constitution, to be successful, requires a majority of Swiss citizens casting a vote in favour and also a majority of Cantons in favour (Article 123).
- (f) There have been over three hundred referendums in Switzerland, and generally speaking, they have had a good success rate. Proposals by the legislature have been more successful than those demanded over parliamentary proposals. Proposals to veto legislation or decrees have almost always failed, although the threat of referendum remains a potent force. The system is said to enjoy great popularity, although there is some opposition. The referendum campaigns themselves, and the methods employed in them, have raised some doubts about direct democratic methods.

The large number of proposals and the frequency of voting, the complicated nature of some proposals, the pressure of vested interests and the tensions that can sometimes be aroused are said to be some of the negative features of the system.

## **2. *United States of America***

- (a) Although there is no provision for citizens' initiated referendums at a federal level, the constituent States of the federation have from an early time used citizens' referendums, firstly to approve their own State constitutions, and since then by way of a variety of experiments. Many States now have entrenched provisions for citizens' initiated referendums. The methods used vary, and include the "direct initiative", by which a specified number of electors can require a proposal to be put to referendum, and the "indirect initiative", by which - a specified number of electors must first send their proposals to the State legislature, and only if that legislature fails to act within a specified time does the proposal go to referendum.
- (b) Nearly one-half of the States, as well as several territories, provide for the citizens' initiative to veto new State laws or the citizens' initiative for the making of new laws. The procedure to make new laws, for example, is generally that the proponents file a copy of the proposal with a government official to give it a title and short description. Petitioners then have a specified time to collect the required number of signatures. The time varies from between 75 days to four years and the required number of signatures varies from between 2% and 20% of the electors or of the voters at the last election.
- (c) Some 17 States permit amendment of their State constitutions by citizens' initiative. The procedure is very similar to that for citizens' initiated legislation, except that the signature requirements for constitutional initiatives is higher in a number of the States than it is for legislative initiatives. In at least one State, the topics that can be subject of the constitutional initiative are limited (basically taxation on property).
- (d) In no case is a successful State initiative subject to veto by the State Governor, but in most States the legislature can amend or repeal a successful statutory initiative, in some cases only by a special majority. In practice, this rarely occurs, at least in the first few years after the initiative succeeds.
- (e) The procedure for verifying the authenticity of the signatures on a citizens' petition varies. Some States require verification of all signatures, others employ a random sampling method. One State presumes the authenticity of the signatures unless there is reason to believe otherwise.
- (f) Proposals have been made for a federal citizens' initiative in the USA, but none have so far been adopted.
- (g) A case often cited as an example of the use of citizens' initiated referendums is that of the State of California. To amend that State's Constitution, the

signature of 8% of the total voters for all candidates for Governor at the last election is required on the initiative petition. The referendum must be carried by a majority vote. To initiate proposals for new State legislation or to veto State legislation, the signature of 5% of the voters cast in the last general election for Governor are required on the citizens' petition. The initiative is of the direct type, no legislative intervention being required. Initiatives must deal with a single subject. California also has provision for recall of all elected officials.

- (h) The most famous initiative in California was Proposition 13, a constitutional initiative, which was approved at the polls on 6 June 1978 (Article XIII A). It stipulates that the maximum amount of any ad valorem tax on real property shall not exceed 1% of the full cash value of the property. State legislative changes to increase revenues require the approval of 2/3rds of all members of each House. No new real property tax or property sales transaction taxes may be levied. Cities, counties and special districts are also restricted in their taxing powers.

The validity of Proposition 13 was upheld by the California Supreme Court, although various special taxes and fees have also since been upheld without violating that Proposition. There has also been more levying of new user charges and increased existing user charges.

Some examples of other subjects that have been raised in citizens' petitions include electoral re-apportionment, environmental controls (including nuclear power plants) and the death penalty.

- (i) There are views for and against the use of citizens' initiative in USA. The degree of use has been influenced by constitutional theory based on the sovereignty of the people. Hence citizens' participation in the business of democratic government is generally given a high value. The citizens' initiative apparently remains popular and in common use. The use of the indirect initiative is an interesting variation which many consider has merit. However, there is understood to be wide political opposition to the use of the initiative.

## **C. PROPOSALS IN AUSTRALIA**

### ***1. Early Proposals***

- (a) The Australian Labor Party, not long after its formation in the late 19th Century, proposed the adoption of the initiative and referendum, and there was some support for the idea beyond that Party. A Popular Initiative and Referendum Bill on the indirect model was introduced by a Labor Government into the Queensland Parliament in 1915, but was blocked in the Upper House. It was finally dropped in 1919. Leave was also given to introduce an Initiative and Referendum Bill into the federal House of Representatives in 1914, but interest waned with the Great War.

- (b) Labor support for the proposal continued after the Great War. However, interest gradually faded and the policy was finally removed from the Labor platform in 1963.

## **2. *Recent Interest and Proposals***

- (a) Interest in the citizens' initiative was revived in Australia during the late 1970's. In 1978, Senator Mason of the Australia Democrats raised the idea of a citizens' initiative. In 1979, Senator Mason circulated a petition for a federal constitutional amendment to permit the initiative. He followed this with a private bill, the Constitution Alteration (Electors' Initiative) Bill 1980 in the Senate, designed to give power, by petition with the signatures of 250,000 electors, to require an Australia-wide referendum to be held on a proposed law, including by way of amendment of the federal Constitution.
- (b) Senator Mason reintroduced the Bill in 1981 and 1982. He received support from Senator Macklin, but the Bill was defeated in 1983.
- (c) A proposal in similar terms was placed on the agenda for the 1983 Australian Constitutional Convention, but was referred to the Standing Committee of the Convention for consideration and report to the next Plenary Session.
- (d) Then followed a paper by Dr Colin Hughes entitled "Commonwealth Constitution: Methods of Initiating Amendments" (October 1983), which included a lengthy discussion of the popular initiative. Senator Macklin subsequently prepared a paper for the Constitutional Amendment Sub-Committee of the Convention entitled "The Case for a Popular Initiative" (May 1984). The Constitutional Amendment Sub-Committee, in its June 1984 Report to the Standing Committee, recommended that a similar proposal be listed on the agenda for the Brisbane meeting of the Constitutional Convention in 1985. The proposal was defeated at that Convention.
- (e) In 1985, the Queensland National Party recommended the adoption of a voter initiative at federal level.
- (f) In 1987, Professor Walker of Queensland University published his book "Initiative and Referendum: The People's Law" (The Centre for Independent Studies) in which he advocated the need for direct legislation as a supplement to the representative institutions of liberal democratic societies. He saw this as an opportunity to revitalise the idea of democracy in the minds of ordinary people so that they would remain fit for, and capable of, self-government. Professor Walker has continued to advocate the idea in his other writings.
- (g) Also in 1987, the Advisory Committee to the Constitutional Commission on Individual and Democratic Rights recommended an amendment to the federal Constitution to provide for further amendments thereof by referendum on a petition of 500,000 voters. It advocated deferral of the idea of voter initiated legislation until there had been an opportunity to consider the operation of its voter initiated constitutional referendums.

- (h) The federal Liberal Party in the same year also pledged itself to examine the possibility of introducing a voter initiated referendum. A proposal to similar effect was supported by Shadow Minister for Employment, Training and Youth Affairs, Mr Peter Shack.
- (i) In 1987, Senator Macklin introduced a package of bills into the Senate, including the Constitution Alteration (Electors' Initiative) Bill. That Bill required a petition signed by not less than 5% of the total number of Australian electors. Senator Macklin supported his proposals with a media campaign. The Bill was debated, but on the motion of Senator Puplick it was resolved not to proceed with it at that time.
- (j) In April 1988, Shadow Attorney-General, Mr Peter Reith issued a green paper on voter-initiated laws. His proposal was to amend the federal Constitution to allow voters, on their petition of at least 5% of the number of formal votes at the last federal election, to propose legislation. The Parliament was to be given time to examine it and propose an alternative. It was then to be put to referendum. He did not favour extending this to amendments to the Constitution.
- (k) The Constitutional Commission, in its Final Report in 1988, recommended by a majority against any citizens' initiative to alter the federal Constitution by referendum, and unanimously recommended against any citizens' initiative to legislate by referendum.
- (l) In 1989, Senator Macklin introduced the Constitution Alteration (Electors' Initiative) Bill and the Legislative Initiative Bill, which together comprised a more detailed proposal for the citizens' initiative for federal legislation or to alter the Constitution. The Bills were not passed. However, on 9 May 1990 the Bills were restored to the Notice Paper.
- (m) Independent member of the House of Representatives, Mr Ted Mack, has recently advocated an amendment of the federal Constitution to permit citizens' initiated referendums for both legislation and constitutional change. He has introduced the Constitution Alteration (Alteration of the Constitution the Initiative of the Electors Bill 1990 and the Constitution Alteration (Making of Laws on the Initiative of the Electors) Bill
- (n) This year, Mr Neil Robson MHA, a member of the Tasmanian State Liberal Party, put before the Tasmanian Parliament the Citizen - Initiated Referendum (Elector Initiated Repeals) Bill 1991.

The purpose of the proposed Act was to reserve the right of the people to initiate referendums by way of petition to veto legislation.

In order to call for a referendum, a petition signed by at least 18 000 electors of which 20% or more are enrolled to vote in each of 3 electoral divisions of the

House of Assembly, Tasmania's Lower House of Parliament, would be required.

The Bill failed by one vote to pass.

- (o) The Litchfield Shire Council in the Northern Territory has recently announced a scheme to allow local electors to raise issues for submission to a community vote, either with support of 250 electors at a public meeting or with the signatures of 750 electors on a petition. This would be the first such scheme to operate in the Northern Territory.
- (p) The proposals for citizens' initiated referendums have now attracted a ground swell of support throughout Australia, ranging from supporters of the far right of the political spectrum to those of the opposite political persuasion.

## **D. ADVANTAGES AND DISADVANTAGES**

### **1. *Advantages:***

Some of the arguments in favour of having citizens' initiated referendums are -

- (a) it gives the citizen a real and direct say in the business of government;
- (b) it enables the citizen to exercise a real degree of control over the members of Parliament between elections and hence enhances accountability;
- (c) it encourages the citizen to take an interest in public issues and reduces the alleged sense of alienation;
- (d) it can be used to overcome legislative inertia and the discipline resulting from party politics;
- (e) it provides a mechanism for open debate based on policies rather than personalities, dealing with issues that might not otherwise be adequately considered on their merits; and
- (f) it gives laws passed by the process a form of legitimacy not otherwise applicable.

### **2. *Disadvantages***

Some of the disadvantages of citizens' initiated referendums are -

- (a) it tends to undermine the system of representative government;
- (b) it devalues the role of the legislature and can result in a loss of respect for democratic institutions;



- (c) it is inflexible and lacks the deliberative aspect of representative democracy;
- (d) it tends to over-simplify issues;
- (e) it may serve sectional interests and can be manipulated by special interest, single interest or ideological groups, media, etc;
- (f) it can result in confusion between multiple proposals;
- (g) it can result in excessive numbers of ballots, with the associated effect on electors and high costs;
- (h) Some issues put to referendum may be too complicated or technical for the average voter to sensibly express a view on;
- (i) it may threaten unpopular minority groups; and
- (j) it may produce defective constitutional provisions or legislation.

## **E. OPTIONS**

1. It would appear that there are a number of options for consideration in the context of a new State constitution. These range from mandatory referendums for constitutional change, legislative change or veto, government policy change or for recall of elected and appointed public officials. Each could follow a citizens' petition, either on the direct or indirect model, as discussed below. The alternative is to have no provision for citizens' initiative at all.
2. The option on the direct model is to require a referendum to be held on a citizens' initiated petition, without any intervention or participation by the Parliament.
3. Alternatively, on the indirect model, such a petition could be required to be considered by the Parliament and only if that Parliament takes no action within a specified time need it be referred to a referendum.
4. As a further variation to 3 above, the Parliament could also be given the option of putting its own alternative proposal to the referendum.
5. An alternative, considered but rejected by the Constitutional Commission in its Final Report (see Part C, para 2(k) above), was for mandatory referendums following the report of a standing convention or commission where certain conditions are satisfied. This option, as applied to the new State, could be akin to the proposed constitutional convention advocated by the Committee as part of the procedure for the adoption of a new State constitution (see Discussion Paper on "Representation in a Territory Constitutional Convention", October 1987).

6. Another suggestion would be to establish a small Committee, to which citizens' petitions and also proposals from the Parliament could be referred.

This Committee could take the following form:

- (a) A standing expert committee; or
- (b) A standing parliamentary committee; or
- (c) An ad-hoc committee appointed by the parliament from time to time.

This Committee could consider and invite public comments on proposals before reporting back to the Parliament with any recommendations. Such a Committee would not of itself be able to initiate referendums.

The alternative to all the above options is to not have anything in the new State constitution giving citizens any direct role as to legislation or constitutional change. The initiative would remain in all cases with the Parliament, which could either legislate or call a referendum for constitutional change as it thought fit. The public would continue to have access to individual members of Parliament or could petition Parliament directly, but could not compel action to be taken.

If provision is to be made in the new State constitution for citizens' initiated referendums, a number of subsidiary questions arise for determination, including the following:

- (a) Who may sign?
- (b) How many signatures are required?
- (c) What must they sign?
- (d) How are signatures to be authenticated?
- (e) During what period must signatures be collected?
- (f) Must issues be kept in separate proposals?
- (g) May any part of the new State constitution be amended by initiative?
- (h) May any legislation be enacted by initiative?
- (i) Should there be any restriction against repeating unsuccessful initiatives?
- (j) Should there be provision for withdrawing an initiative?
- (k) Should there be provision for an unformulated proposal?

(These questions are adapted from those in the paper by Dr Colin Hughes entitled "Commonwealth Constitution: Methods of Initiating Amendments" - October 1983).

9. Another question raised in respect of citizen initiatives is to the timing of holding a referendum.

In the case of California, for example, a citizen's initiated referendum to alter its Constitution or to veto legislation, must be put at the same time as a general election, unless the Governor decides to hold a special referendum. However, an election on a recall petition must be held not less than 60 and not more than 80 days from the date of certification of sufficient signatures on the petition.

## **F. THE COMMITTEE'S TENTATIVE VIEWS**

1. The Committee has carefully weighed the competing arguments as to citizens' initiated referendums in the context of the proposed new State constitution.

The four subject matters that could be dealt with by a Citizens' Initiated Referendum as stated in Part E, paragraph 1 above, are:

- (a) Constitutional change;
- (b) Legislative change or veto;
- (c) Government policy change;
- (d) Recall of elected and appointed public officials.

The purpose of this paper is to stimulate debate on the form and conduct of Citizens' Initiated Referendums and whether they should be included in a new State Constitution.

At this stage, whilst the Committee accepts that there is some merit in these various options, it is not convinced that their advantages outweigh their disadvantages. It welcomes comment.

2. The Committee considers it to be of greater importance to try to enhance the status of Parliament and the representative parliamentary process, with a view to achieving effective and responsible government in the new State. It is not convinced that this is totally compatible with citizens' initiatives which can compel the holding of referendums.
3. Further, in the particular situation of the Northern Territory, with its vast area and limited population, there may well be a number of difficulties with a system that enabled any small group of citizens to require the holding of frequent new State referendums.
4. Although the Committee favours the use of a Constitutional Convention to frame the new State constitution prior to its submission to a Territory referendum and the grant of Statehood, it does not see this as an appropriate or necessary mechanism for on-going constitutional change. To convert such a large body into a standing body as referred to in Part E, paragraph 5, would neither be practical nor cost-effective. It could be perceived as undermining the role of the new State Parliament.

5. The Committee does, however, see some merit in a system which facilitates, at reasonable intervals, public involvement and debate in proposals for constitutional review, providing that the final decision as to whether any proposal for constitutional change is to be put to a referendum is left with the new State Parliament.
6. One alternative raised in Part E, paragraph 6 is to establish a small committee of expert to examine and evaluate proposals for change from either the Parliament or the public.

It would be required to consider and report on references from the Parliament and could also consider proposals for change from the public. It would conduct public hearings and submissions.

If it was to take the form of a standing committee of experts or an ad-hoc committee appointed by Parliament from time to time, it could include persons from outside the Parliament as well as within.

If it was a standing parliamentary committee, it would comprise members of Parliament only.

It would be necessary to decide whether it should deal with proposals for constitutional change only or with proposals for legislative change, legislative veto, government policy change or recall of elected or appointed public officials.

BLANK PAGE

**APPENDIX 1**  
**RELEVANT EXTRACT FROM**  
**DISCUSSION PAPER:**

**"Proposed New State Constitution for the**  
**Northern Territory"**  
**- PART A, 3(b)**

**BLANK PAGE**

**Part A, 3(b) Discussion Paper: Proposed New State Constitution for the Northern Territory**

"(b) The select Committee, empowered by its terms of reference, adopted at its meeting of 3 November 1986, the following procedure

- (i) Four draft discussion papers will be prepared for consideration by the Committee on the following subjects:
  - . the Legislature - Composition, Function and Power;
  - . the Executive and its relationship with the Crown and the Legislature;
  - . the Judiciary; and
  - . other entrenched provisions to be included in the constitution, including a possible Bill of Rights and possible special provisions relating to the Aboriginal citizens of the Northern Territory such as their individual rights and land tenure;
- (ii) Following finalisation by the Committee of these documents, copies will be forwarded to appropriate communities, councils, groups and individuals throughout the Territory and the Committee will engage in a process of community consultation throughout the Territory to obtain the comments and views on the issues raised or alternative submissions. Any person can, upon request, be put on the Committee's mailing list and may make oral or written submissions to the Committee.
- (iii) Following such consultation, the Committee will prepare a draft constitution for inclusion in its Report to the Legislative Assembly, which draft shall contain, where necessary, other options; and
- (iv) The Committee will prepare for inclusion in its Report to the Legislative Assembly recommendations on representation at the proposed Constitutional Convention.



BLANK PAGE

## **APPENDIX 2**

### **RELEVANT EXTRACT FROM INFORMATION PAPER N0.2:**

**"Options for a Grant of Statehood"**

**-PART C, 5(iii)**

**BLANK PAGE**

## **PART C, 5(iii) - Information Paper No. 2: "Options for a Grant of Statehood"**

---

- "(iii) the constitution as ratified by the Convention will be submitted to a referendum of Northern Territory electors for approval. This will be a subsequent referendum to that mentioned in paragraph 2 above.

The ability to legally adopt a new State constitution is dependant upon a specific grant of powers by the Commonwealth".

BLANK PAGE

**APPENDIX 3**  
**RELEVANT EXTRACT FROM DISCUSSION PAPER:**

**"Proposed New State Constitution for the  
Northern Territory"  
- PART B(d) and (f)**

BLANK PAGE

**PART B (d) and (f) Discussion Paper: "Proposed New State Constitution for the Northern Territory"**

---

- "(d) The Constitution also contemplates that a State Parliament will be representative in nature, with at least an elected legislature. However, the method of election is not specified and allows considerable scope for innovation. Possibilities that might be considered are single and multiple electorates, common rolls and separate rolls, single and plural voting, equality of electorates, special electorates, etc. The views of the Committee on some of these matters are discussed below.
- (f) The Select Committee considers that the legislative powers of the new State Parliament in respect of the new State should be as extensive as possible, that is, that it should have the same powers as other State Parliaments, subject only to the limitations flowing from the Commonwealth Constitution and the Australia Act."



BLANK PAGE

**APPENDIX 4**  
**RELEVANT EXTRACTS FROM DISCUSSION PAPER:**

**"Proposed New State Constitution for  
the Northern Territory"  
- PART B (h)**

**BLANK PAGE**

**PART B (h) - Discussion Paper : "Proposed new State Constitution for the Northern Territory"**

---

- "(h) Given the monarchical system, and given the prerogative powers of the Crown with respect to the passage of legislation, it seems that the role of the representative of the Monarch in assenting to legislation enacted by the Parliament of a State (including that of a new State) cannot be dispensed with. This is implicit in Section 9 of the Australia Act 1986. The Select Committee is unanimously of the view that the representative of the Monarch should at least have the function of assenting to legislation or withholding assent. The Committee differs as to whether that representative should have power to suggest amendments back to the new State Parliament.

One view is that the representative should have this power, in the same way as Governors of the existing States. The other view disagrees, based on the premise that the Parliament should have control over its own legislative processes and that it should not be possible for the executive to seek a reconsideration of legislation by referral back once it is passed. It should do so by following normal legislative processes".

BLANK PAGE

**APPENDIX 5**  
**RELEVANT EXTRACT FROM DISCUSSION PAPER:**

**"Proposed New State Constitution for  
the Northern Territory  
- PART P(d) and (e)**

**BLANK PAGE**

**PART P (d) and (e) - Discussion Paper: "Proposed new State Constitution for the Northern Territory**

---

- "(d) The Select Committee further stated in Part E above, and adheres to the view, that generally speaking it favours some degree of entrenchment of the whole of the new State constitution. The constitution should be a document that is accorded special status in the law and should only deal with those matters considered to be of vital importance in the functioning of the new State and its institutions. Matters of lesser importance should be relegated to ordinary legislation.
- (e) The Select Committee also stated in Part E above, and adheres to the view, that entrenchment would comprise or include the requirement that any proposed change be submitted to and be supported by a specified majority of new State electors at a referendum. It may be considered appropriate that for certain provisions, any change may require more than a simple majority of voters in any referendum. Certain minimal provisions will be necessary dealing with referendums in the new State constitution".