

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

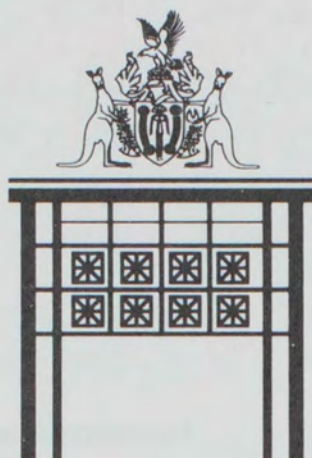
**Sessional Committee on
Constitutional Development**

Discussion Paper No. 9

**Constitutional Recognition
of Local Government**

JUNE 1995

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Northern Territory on
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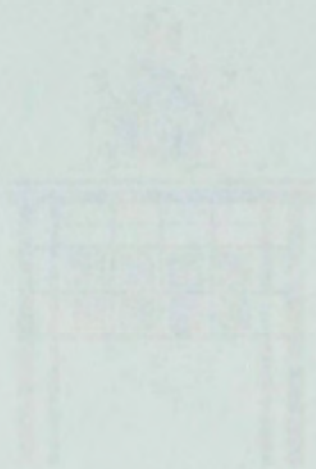
Sessional Committee on Constitutional Development

Discussion Paper No. 9

Constitutional Recognition of Local Government

JUNE 1995

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



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

2. Second Committee on Constitutional Development

Discussion Paper No. 2

Constitutional Recognition
of Local Government

JUNE 1965

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

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A. EXECUTIVE SUMMARY

1. This Paper looks at the question whether local government in the Northern Territory should be entrenched in a new Northern Territory constitution, and if so, the options for such entrenchment and the extent to which it should be entrenched, if at all.
2. The Paper raises a number of matters that could be considered for constitutional entrenchment in a new constitution for the Northern Territory. Although not an exhaustive list these matters could include the following:
 - the status of local government as the third sphere of government;
 - the protection of local government councils against arbitrary dismissal;
 - the guaranteeing of a central core of powers and functions to local government or at least a requirement of consultation before any change to those powers and functions;
 - the guarantee of direct franchise for local government elections; and
 - the protection of local government boundaries.
3. The paper highlights recent comparative developments in the other States of Australia that extend to recognition of local government under normal legislative parameters to constitutionally entrenched provisions and whether the Northern Territory could use those examples in framing local government provisions in a new Northern Territory constitution.
4. The Committee stresses that this is still an options paper and the views expressed herein do not necessarily represent the final views of the Committee. The paper is issued to invite further comment before the Committee makes its report to the Legislative Assembly.

B. INTRODUCTION

1. *Terms of reference*

On 28 August 1985, the Legislative Assembly of the Northern Territory of Australia by resolution established the Select Committee on Constitutional Development. Amendments to the Committee's 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 again on 27 June 1994, it was reconstituted with no further change to its terms of reference.

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

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 and Information papers*

The Committee has prepared and issued a number of papers arising from its terms of reference, as follows:

- *A Discussion Paper on a Proposed New State Constitution for the Northern Territory*, plus an illustrated booklet of the same name.
- *A Discussion Paper on Representation in a Territory Constitutional Convention*.
- Discussion Paper No 3, *Citizens' Initiated Referendums*.
- Discussion Paper No 4, *Recognition of Aboriginal Customary Law*.
- Discussion Paper No 5, *The Merits or Otherwise of Bringing an NT Constitution into Force Before Statehood*.
- Discussion Paper No 6, *Aboriginal Rights and Issues Options For Entrenchment*.
- Discussion Paper No 7, *An Australian Republic? Implications for the Northern Territory*.
- Discussion Paper No 8, *A Northern Territory Bill of Rights?*
- Information Paper No 1, *Options for a Grant of Statehood*.
- Information Paper No 2, *Entrenchment of a New State Constitution*.
- Interim Report No 1, *A Northern Territory Constitutional Convention*.

3. *Purpose of this Paper*

- (a) This Paper looks at the question whether local government in the Northern Territory should be entrenched in a new State constitution, and if so, the options for such entrenchment and the extent to which it should be entrenched, if at all.
- (b) In this paper, the term "local government", as applied to the Northern Territory, refers to both municipal and community government under the *Local Government Act*. The term "municipal government" encompasses cities, towns, and shires.
- (c) The Committee stresses that this is still an options paper and the views expressed herein do not necessarily represent the final views of the Committee. The paper is issued to invite further comment before the Committee makes its report to the Legislative Assembly.

4. *Background to this Paper and Previous Submissions*

- (a) The subject of this paper was considered briefly in the Committee's Discussion Paper on *A Proposed New State Constitution for the Northern Territory*¹ of October 1987,

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

for ease of reference called the *Discussion Paper*. It will be observed that the Committee on that occasion was conscious of the fact that vast areas of the Northern Territory were not within any local government area. Other areas were covered by community government schemes, a particular form of local government in the Northern Territory. Any decision to extend local government was, it said, appropriately a matter for the new State in consultation with the local residents. Any constitutional recognition of local government must take into account the special situation of the Northern Territory and the associated difficulties of administration.²

- (b) Subject to those considerations, the Committee favoured in that *Discussion Paper* some constitutional provisions for the recognition of local government in

² 1987. Northern Territory Legislative Assembly Select Committee on Constitutional Development. *Discussion Paper on A Proposed New Constitution for the Northern Territory*, Legislative Assembly of the Northern Territory, Darwin: 90-92

- "1. Arguments have been advanced in the Northern Territory proposing the constitutional entrenchment of the position of local government. At present, local government derives its existence, powers and status from the Local Government Act of the Territory and has no such entrenched position. The self-governing Northern Territory has both legislative power (through the Legislative Assembly) and executive authority (through Ministers of the Territory Government) in relation to all aspects of local government in the Territory.
2. Previous attempts to have local government recognised in the Commonwealth Constitution through the Constitutional Convention have so far brought no results, although the matter is presently under consideration by the Constitutional Commission. However four States have proceeded to recognise local government in their own constitutions - New South Wales, Victoria, South Australia and Western Australia.
3. Of these States, only the Victorian provision goes further than merely providing for formal recognition. The constitution of Victoria requires the existence of a general system of local government throughout the State (with some exceptions). Local government bodies are to be elected and are protected from dismissal except by Act of Parliament. Limitations are placed on suspension of local government bodies. The constitutional provisions have a limited degree of entrenchment (see discussion above) but subject thereto, ultimate control remains with the Victorian Parliament and Government.
4. The Northern Territory Local Government Association has previously indicated that any provision for constitutional recognition should be in accordance with the following principles:
 - (a) general competence and autonomy for each local government body to act for the peace, order and good government of its area;
 - (b) secure financial basis;
 - (c) proper recognition of the elected member role;
 - (d) protection from dismissal of individual local government bodies without public inquiry; and
 - (e) due consultation prior to any changes to powers, functions, duties, responsibilities and financial resources.

These principles have been adopted from the policy of the Local Government Association and Shires Association Executives, endorsed by the Australian Council of Local Government Associations. They were considered in the 1984 Local Government Report of the Structure of Government Sub-Committee to the Australian Constitutional Convention.

5. The Select Committee notes the special situation of the Northern Territory, where vast areas are not within any local government area. Other areas are covered by community government schemes. Any decision to extend local government or community government is appropriately a matter for the new State in consultation with the local residents. Constitutional recognition of local government must take into account the special situation of the Territory and the associated difficulties of administration.
6. Subject to these considerations, the Select Committee favours some constitutional provisions for the recognition of local government in the new State. It invites public comment on the nature of those provisions."

the new State, but it did not specify what form they should or could take. It invited public comment on the nature of those provisions.

- (c) As a result of that invitation, a number of submissions were received by the Committee, including from municipal and community government bodies and associations in the Northern Territory, some Northern Territory organisations and a number of individuals. Of these, all favoured at least some minimal recognition of local government in a new State constitution. A few thought that the new constitution should say no more than this, the detail being left to ordinary legislation. Several sought more detailed protections.
- (d) The Northern Territory Local Government Association, with the broad support of the Northern Territory Community Government Association (but extending to community government), together with similar comments by several other commentators, maintained its position for a more detailed form of constitutional recognition as indicated in the *Discussion Paper*.

One commentator thought that a local government body should not be able to be dismissed until after an enquiry and then a referendum with at least a two-thirds majority. The Tangentyere Council Inc. maintained its view that constitutional recognition should extend to Aboriginal local government bodies, which should be able to coexist with and within the boundaries of other local government bodies, and that the structure of the Aboriginal local government provisions should accord with Aboriginal tradition.

- (e) A list of those who made submissions on this aspect of the *Discussion Paper* is in Appendix 1.
- (f) In the Committee's Discussion Paper No. 6,³ under the heading of *Self-Determination*, the Committee had cause to consider the existing position as to local government in so far as it was relevant to Aboriginal Territorians. It noted that while a number of Aboriginal communities had opted for community government, many others had chosen other mechanisms for the legal organisation of their community under both Northern Territory law and Commonwealth law.⁴

³ 1993. Northern Territory Legislative Assembly Sessional Committee on Constitutional Development., *Discussion Paper No. 6 - Aboriginal Rights and Issues Options for Entrenchment.*, Legislative Assembly of the Northern Territory, Darwin: 23-26

⁴ 1993. Northern Territory Legislative Assembly Sessional Committee on Constitutional Development. *Discussion Paper No. 6 - Aboriginal Rights and Issues Options for Entrenchment*, Legislative Assembly of the Northern Territory, Darwin: 26-27

"(f) At a wider Territory level, various arrangements exist for encouraging Aboriginal participation in the community as a whole and for ameliorating their existing disadvantages. This includes a variety of programs and services designed for Aboriginal people and aimed at addressing any inequality. Many of the latter are federally sponsored but others are Territory Government initiatives.

(g) It is theoretically open to particular Aboriginal communities in the Territory to seek greater local control through the formation of a local government municipality under the Local Government Act. So far, this has not occurred. It is doubtful that this existing form of local government in the Territory is an appropriate structure to implement Aboriginal self-determination.

- (g) Only a few of the commentators on Discussion Paper No 6 specifically referred to local and community government. One felt that Aboriginal people could best be served by keeping relevant municipal powers with the Federal Government. However this will be the case in any event, in that existing Commonwealth legislation will presumably continue to operate, whatever may be included in the new Northern Territory Constitution. The Tangentyere Council Inc. advocated that Aboriginal traditions as applied to local government should override democratic requirements as to local government.
- (h) The Committee in Discussion Paper No. 6 looked at the community government option as one possible form of securing a measure of autonomy to Aboriginal communities. It felt that a more secure constitutional position for community government would not of itself necessarily guarantee a much greater degree of local autonomy for those communities, but that it did provide one framework upon which such greater autonomy could be constructed by other means. It invited submissions — see Appendix 2.

-
- (h) The Local Government Act was amended in 1978 to introduce the concept of community government (see Part VIII of that Act). This form of government is not directed specifically at Aboriginal communities, although it has most commonly been utilised by those communities. It requires a minimum of 10 residents of an area outside an ordinary local government municipality to apply to the relevant Territory Minister for the establishment of a community government. A draft scheme is then prepared and advertised, and the Minister is obliged to consult with the residents of the area. The Minister may then approve the draft, with or without amendments.
 - (i) The community government scheme operates as a simplified form of local government under an elected council. The functions of a community government are expressed in the scheme and can cover a wide range of matters (see section 270). A community government can also make by-laws on a wide range of matters and can by those by-laws provide for the imposition of fines for breach (see section 292). By-laws are subject to tabling and disallowance action in the Legislative Assembly (Interpretation Act, section 63).
 - (j) A list of those communities in the Territory that have adopted this form of government, and the functions covered by each community government scheme, are set out in Appendix 4 to this Paper.
 - (k) There has been some debate and difference of views about the extent to which community government has been successful in achieving a degree of autonomy in Aboriginal communities under that scheme.
 - (l) In the Committee's first Discussion Paper on a "Proposed new State Constitution for the Northern Territory" (October 1987), the Committee noted the special situation of the Northern Territory, with vast areas not within any local government area. Some areas were covered by community government schemes but most areas were not subject to either. The Committee raised the question of the constitutional entrenchment of local government, but did not consider it in detail.
 - (m) A number of Aboriginal communities have chosen to use other mechanisms for the legal organisation of their community. In some cases they have used the mechanism of an incorporated association or trading association under Territory law (see the Associations Incorporation Act). In other cases, they have sought incorporation as an Aboriginal Council or Association under Commonwealth law (Aboriginal Councils and Associations Act 1976). A list of the various communities in the Territory established under Commonwealth legislation, and the manner in which those communities are established, is set out in Appendix 5 to this paper. A comparable list of those Aboriginal bodies incorporated under Northern Territory law is not available, but it is understood the number is significant.
 - (n) Some of these communities are located on Aboriginal land or community living areas, while others are not. In the case of some Aboriginal organisations (other than community government), their area of operation can overlap with that of an ordinary local government municipality (for example, the Tangentyere Council Inc. of Alice Springs)."

C. EXISTING POSITION IN AUSTRALIA

1. *Australia generally*

- (a) The constitutional status of local government in Australia has traditionally been determined by the States. This was a carry over from pre-federation days, when this was a matter within the province of the former Australian colonies and their governments. The Commonwealth has no constitutional power with respect to local government except by indirect means; eg, by the use of financial grants to the States for the purpose of local government. An attempt to alter the Australian Constitution by national referendum in 1988 to recognise local government as the third sphere of government in this country failed.
- (b) However local government as the third sphere of government is now recognised in all of the Constitutions of the States (see below), although the extent of such recognition and the protection thereby offered, varies from State to State.

2. *Northern Territory*

- (a) At present in the Northern Territory, there is no constitutional recognition of local government. The legal capacity to establish local government in the Northern Territory and the powers, responsibilities and other legal incidents of that local government are dependant upon an ordinary Act of the Northern Territory Legislative Assembly, the *Local Government Act*. That Act provides for the establishment of two forms of local government municipal and community government.
- (b) The subject of local government gets no mention in the *Northern Territory (Self Government) Act 1978*, the main Commonwealth Act giving rise to Self-Government. The subject of "local government" is mentioned in Regulation 4(1) of the Northern Territory (Self-Government) Regulations, but this only has effect to ensure that Ministers of the Northern Territory, being the Ministers that form the Northern Territory Government and are chosen from among the members of the Legislative Assembly, have executive authority with respect to the subject of local government. There is no right to a grant of local government except in so far as ordinary Northern Territory legislation confers it. Nor is there any guarantee that local government, once granted, will be continued except in so far as ordinary Northern Territory legislation or the common law so provides. There is similarly no constitutional guarantee that the powers of any existing local government body in the Northern Territory will continue into the future.
- (c) The absence of any constitutional protections means that local government does not have as secure a legal position in the Northern Territory as does the Commonwealth Government as the first sphere of government and to a lesser extent the Northern Territory Government as the second sphere.

- (d) It is to be noted, however, that the grant of Northern Territory Self-Government itself, by which the Northern Territory Government is established and operates separately from the Commonwealth, does not have any greater legal protection beyond that of an ordinary Commonwealth Act. This is different from the States, the continued existence of which are guaranteed by the Australian Constitution.
- (e) Local government, as the third sphere of government in the Northern Territory, has had a history almost as long as European settlement. It began with the proclamation in 1874 of the District of Palmerston under a *South Australian District Councils Act* as then operating in the Northern Territory (the Northern Territory then being part of South Australia).
- (f) Following the surrender of the Northern Territory by South Australia and its acceptance by the Commonwealth as a Territory of the Commonwealth in 1911, new Territory legislation, the Darwin Town Council Ordinance, was enacted in 1915, providing for the continuance of local government in Darwin. The Darwin Council continued as the only local governing body in the Territory until it was abolished in 1937. It was not re-established as a municipality until 1957.
- (g) Since that time, a number of other local government bodies have been established in the Northern Territory under Northern Territory legislation. There are currently 6 municipalities in the Northern Territory. There are also 2 special purpose mining towns with a particular form of municipal arrangements.
- (h) In addition, under amendments to the *Local Government Act* in 1979, a new form of local government was introduced, being described as "community government". It was designed to meet the needs of smaller Northern Territory communities, both Aboriginal and non-Aboriginal. The provisions introduced a measure of flexibility in the design of community government schemes to meet the particular needs of the community in question. Such schemes, once approved, have effect as subordinate Northern Territory law, subject to disallowance by the Legislative Assembly. The first community government scheme became operational in 1980. Since that time, a number of communities have also adopted this model. There are currently 29 community governments in the Northern Territory, with another 18 currently under consideration.
- (i) Most of the Northern Territory remains outside of any local government arrangements because of the sparse population.
- (j) As pointed out in the Committee's Discussion Paper No 6, and as already mentioned above, a number of Aboriginal communities in the Northern Territory have chosen not to use local government under Northern Territory law as the mechanism for the legal organisation of their community. In some cases they have used an incorporated association or trading association under

Northern Territory law⁵ or have sought incorporation under Commonwealth law.⁶ For present purpose, this is of limited relevance, as this Paper is only concerned with the possible constitutional entrenchment of local government and not with constitutional recognition of other forms of community organisation. However it should be noted that there are currently 30 incorporated associations in the Northern Territory established under either Commonwealth law (4 Associations) or Northern Territory law (26 Associations) which are treated as local government bodies for the purposes of local government funding arrangements.

- (k) In some quarters it has been suggested that there could be some legal doubt as to whether local government under a Territory law is capable of operating on Aboriginal land under the *Aboriginal Land Rights (Northern Territory) Act 1976*. The Committee notes that the Northern Territory Government has taken the view that local government is capable of operating on Aboriginal land and has acted accordingly. The Committee is of the view that this is one area where there should be no doubt. This may be able to be resolved in any arrangements for the patriation of the *Aboriginal Land Rights (Northern Territory) Act 1976* to the new State as a new State law.

3. *New South Wales*

- (a) Part 8 of the NSW Constitution recognises the system of local government in that State, but the detail is left to State legislation. Thus while local government generally has constitutional status as the third sphere of government, the existence, continuance and powers of particular Councils are dependant on State legislation.
- (b) A copy of Part 8 is in Appendix 3.

4. *Victoria*

- (a) The *Victorian Constitution Act 1975* was amended by the *Constitution (Local Government) Act 1988* to insert a new Part IIA to give constitutional status to Local Government. It gives a somewhat greater measure of protection than NSW to an existing local government Council, providing that it cannot be dismissed except by an Act of Parliament relating to that Council.
- (b) Part IIA can only be changed by an Act of Parliament by an absolute majority of members in both houses of that Parliament.
- (c) A copy of Part IIA is at Appendix 4.

⁵ see the *Associations Incorporation Act*.

⁶ see the *Aboriginal Councils and Associations Act 1976*.

5. *Queensland*

- (a) The *Constitution Act* of Queensland was amended by the *Constitution Act Amendment Act* 1989, to insert sections 54—56. These give a measure of constitutional protection to existing Councils, requiring any dissolution of a Council to be confirmed by motion in the State Parliament. It also requires notice of any bill in the Parliament which will affect local government to be given to the Local Government Association.
- (b) These new provisions are entrenched, in the sense that a bill for the abolition of local government in the State must be passed at a State referendum.
- (c) A copy of these sections is at Appendix 5.

6. *South Australia*

- (a) The *Constitution Act of South Australia* was amended by the *Constitution Act Amendment Act*, 1980, to insert a new Part IIA in the Constitution on Local Government. It is in similar terms to that of NSW. It is also entrenched in the sense that an amendment to Part IIA requires an absolute majority of all members of both houses of Parliament.
- (b) A copy of Part IIA is at Appendix 6.

7. *Western Australia*

- (a) The *Constitution Act* of WA was amended in 1979 to insert a new Part IIIB in the Constitution in terms somewhat similar to that of NSW.
- (b) A copy of Part IIIB is at Appendix 7.

8. *Tasmania*

- (a) The *Constitution Act of Tasmania* was amended by the *Constitution Amendment (Recognition of Local Government) Act* 1988 to insert a new Part IVA in the Constitution on Local Government. It entrenches the division of the State into municipal areas such that this division cannot be altered unless the Local Government Advisory Board under the *Local Government Act* so recommends.
- (b) A copy of Part IVA is at Appendix 8.

D. OPTIONS

1. General

- (a) Local government has had a long and proud history in Australia. In earlier times, it exercised a wide range of local functions and powers at a time when central government was not so all encompassing as it is today. Many of its essential functions were gradually taken over by the States in the interests of uniformity and efficiency. But local government survived in Australia and remains strong in most places. It continues to exhibit four main characteristics of democratic government, namely:
- * it is multi-functionary;
 - * it exercises autonomy in its legal decision making;
 - * it imposes and collects its own taxes or rates;
 - * it is comprised of elected representatives.
- (b) However because of local government's subordinate constitutional position, there was and still largely is potential for having its position as the third sphere of government eroded, reducing its powers and limiting its discretions.
- (c) There are clear arguments for retaining local government in Australia as an independent sphere of government. It is that level of government that is closest to the citizen and hence is usually more accessible to the citizen. There are strong arguments that purely local issues requiring a decision are best resolved at the local level. Its existence accommodates the view that says that it is desirable to have the greatest possible degree of decentralisation in the business of government.
- (d) If anything, local government has increased in importance since federation in Australia. This has been assisted by the allocation by the Commonwealth through the States and the Northern Territory to local government of a portion of Commonwealth financial grants. Much of the Australian landmass is subject to local government, although this applies to only a small proportion of the area of the Northern Territory.
- (e) Constitutional entrenchment offers one way of securing a measure of protection to local government. However the value of such a method of protection depends upon the nature and scope of the constitutional provisions and the degree to which they are entrenched in a constitution.
- (f) Matters that could be considered for constitutional entrenchment in a new constitution for the Northern Territory include the status of local government as the third sphere of government, the protection of local government councils against arbitrary dismissal, the guaranteeing of a central core of powers and

functions to local government or at least a requirement of consultation before any change to those powers and functions, the guarantee of direct franchise for local government elections and the protection of local government boundaries.

- (g) As to the issue of the degree of entrenchment, the Committee has already expressed the view that the new constitution for the Northern Territory should be entrenched, in that it should only be able to be changed by a successful referendum of Northern Territory voters. It follows that if a decision is taken that local government is to be given constitutional status in a new Northern Territory constitution, it will acquire a real measure of protection which will be difficult to alter later.
- (h) On one view, this might be considered to have disadvantages. The rigid nature of any such constitutional entrenchment would prevent later changes by Parliament by ordinary legislation where thought necessary or desirable. On one view, such flexibility is desirable to ensure an adequate level of supervision by the State concerned. The opposite view is that such rigid provisions are necessary to protect the constitutional status and autonomy of local government and to prevent changes by ordinary State legislation which may be perceived as being detrimental to local government.
- (i) It is noticed that any such perceived disadvantages have not dissuaded the States from taking action to constitutionalise local government in their own State constitutions, although the extent of the protections thereby conferred varies from State to State, as discussed above.
- (j) There may in fact be good arguments from a State perspective for entrenching local government in a State constitution. By doing so, local government is confirmed as being within the overall State structure, even if with a degree of autonomy. This should indicate to the Commonwealth that it is not a matter for which the Commonwealth has any direct constitutional responsibility. Given the protection of State constitutions contained in section 106 of the Australian Constitution, this tends to confirm local government as a State responsibility. The fact that local government is protected by all State constitutions also provides a reason as to why there may be no need for a change to the Australian Constitution on this subject.

2. *Particular Northern Territory Considerations*

- (a) As indicated in the Committee's Discussion Paper,⁷ the fact that local government has not yet been extended to most of the area of the Northern Territory, and the sparse population of much of the Northern Territory, are factors that must be taken into account in any proposal to constitutionalise local government in a new Northern Territory constitution. It might be thought

⁷ 1987. Northern Territory Legislative Assembly Select Committee on Constitutional Development, *Discussion Paper on A Proposed New Constitution for the Northern Territory* - Legislative Assembly of the Northern Territory, Darwin: Part R; and see also Appendix 2.

as a result that there should be no right to a grant of local government. Rather, a decision should be taken by the Northern Territory Government in each case where a new grant of local government is sought as to whether that grant is justified in the particular circumstances of that case. This is the current position under the *Local Government Act*.

- (b) On the other hand, once local government is established in a locality in the Northern Territory, there is then a question whether it should receive a measure of constitutional protection in any new Northern Territory constitution.
- (c) There may be a view that the desirability of such constitutional protection may not be as great in the Northern Territory as elsewhere in Australia. This may in part be indicated by the relatively small population of the Northern Territory, and as a consequence, the small number of electors for each seat of the Northern Territory legislature (presently the Legislative Assembly). This means that, by and large, the members of that legislature are more accessible to the electors they represent and arguably those members are more able to remain in touch with local issues. Whether as a result this diminishes the importance of, or the need for, local government as an autonomous third sphere of government in the Northern Territory, is a matter for consideration.
- (d) If local government is seen as one avenue for granting a greater measure of autonomy for Aboriginal communities and as a suitable vehicle (but not necessarily the sole vehicle) for implementing a form of self-determination within the overall framework of the Northern Territory, then the arguments for constitutional entrenchment of local government may acquire more force. Depending on the extent of entrenchment, this should ensure that the Aboriginal autonomy thereby conferred cannot be altered by an ordinary Act of the Northern Territory Parliament.
- (e) The Committee wishes to assess the strength of feeling in support of local government in the Northern Territory as part of assessing whether there is a need for any such constitutional protections.

3. *Constitutional Options*

- (a) The simplest form of any constitutional entrenchment would be to merely recognise local government in the Northern Territory in its new constitution as the third sphere of government, but to leave the detail to ordinary Northern Territory legislation. This is the position in the States of NSW and WA. This would in effect create a non justiciable form of recognition, in that there would be no right to a grant of local government in a particular case, and once granted, there would be no constitutional guarantee of its continuance or powers.
- (b) This position could be supplemented by a constitutional provision that there must continue to be a system of local government in the Northern Territory, and that there can be no change to this position without a constitutional

amendment. This is basically the position in South Australia, in that case requiring an absolute majority of both houses of State Parliament for there to cease to be a system of local government in that State. A similar provision in Queensland requires a State referendum to abolish the system of local government in that State.

- (c) A further provision in the Queensland Constitution could also be considered; that is, that any Bill in the State Parliament which affects local government is to be referred to the Local Government Association first for consultation before passage.
- (d) None of these provisions would, if incorporated in a new Northern Territory constitution, offer specific guarantees to a particular local government body in the Northern Territory.
- (e) The Committee has already indicated the difficulties in the Northern Territory with any conferral of a right to a grant of local government where none presently exists. The Committee notes that no State constitution confers such a right.
- (f) However once such a grant has been made, there are a range of possibilities for entrenching guarantees in respect of the particular body. These include
 - (i) A statement of general competence for any local government body to act for the peace, order and good government of its area in relation to the powers, functions, duties and responsibilities conferred upon it, providing presumably that it does not act inconsistently with any Northern Territory law. Any change in this respect by a later Northern Territory law could be required to be subject to prior consultation with local government in some way.

There is a related question whether there is a need to give the existing local government provisions some additional constitutional status, such that they cannot be unilaterally altered later by an ordinary Act of Parliament to change the powers, functions, duties or responsibilities of local government. This is discussed below in relation to organic laws.

- (ii) A statement that the Northern Territory law on local government shall provide for members of local government to be directly elected. This in turn raises the question whether this should be mandatory for Aboriginal community organisations that desire a method of selection of their representatives more in line with their customs.
 - (iii) A provision limiting the power of the State to dismiss the members of an existing local government body and to appoint an administrator. Such a provision is contained in the Victorian Constitution, requiring an Act of Parliament for any dismissal. In Queensland, the State Constitution requires a motion in State Parliament to confirm the dissolution of a council. It would be possible to go further and require a

public inquiry before any dismissal, as advocated by the Northern Territory Local Government Association, and possibly also a local referendum, presumably with a power of suspension in urgent cases of misconduct in the interim.

- (iv) A provision protecting the boundaries of a local government body from change. In the Tasmanian Constitution, this requires a prior recommendation of the Local Government Advisory Board.
- (g) A further option for consideration is whether the whole or part of the existing *Local Government Act* should become an organic law under the new Northern Territory constitution, such that it could not thereafter be changed by an ordinary Act of Parliament. Instead it would require a special majority of the Parliament for any change to that Act, in accordance with the general provisions for organic laws. This would have the value of entrenching the status of local government generally in the Northern Territory, possibly as an alternative to incorporation of local government in the new Northern Territory constitution. It would not of itself, however, provide guarantees to particular local government bodies beyond the provisions of the Act.
- (h) A further option again, calculated to protect particular local government bodies and to ensure their autonomy, would be to give that particular grant of local government some constitutional status as part of any wider grant of self-determination under an agreement entered into between the Northern Territory Government and the relevant Aboriginal body.⁸ This could be seen as of particular value to Aboriginal communities contemplating this form of local organisation as part of any wider local or regional agreement.
- (i) There may be other options for constitutional recognition. The Committee would welcome comments and suggestions.
- (j) The alternative is no constitutional recognition at all, leaving local government to be dealt with by ordinary Northern Territory legislation.
- (k) The Committee stresses that it has not yet decided to favour any of these options, and invites comments and submissions.

⁸ 1993. Northern Territory Legislative Assembly Sessional Committee on Constitutional Development. Discussion Paper No. 6 - *Aboriginal Rights and Issues Options for Entrenchment*, Legislative Assembly of the Northern Territory, Darwin: 33.

any such an, although public inquiry, including, as suggested by the Northern
of such an inquiry, the Government should also be able to have a local
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(iv) A provision protecting the boundaries of a local government body from
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(v) A further option for consideration is whether the whole or part of the existing
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LIST OF PERSONS AND ORGANISATIONS WHO HAVE COMMENTED ON THE DISCUSSION PAPER ON A PROPOSED NEW CONSTITUTION FOR THE NORTHERN TERRITORY

Kevin ANDERSON	Terrace Creek Town Council
Steve ANDRUSZKO	Alton Sydney Town Council
John ANTELLA	Women's Advisory Council
John ANTELLA	NT Local Government Association
Kevin FLETCHER	Timganyne Council Pty.
Jim FORSCUTT	Timganyne Council Pty.
Mark HOCKEY	NT Community Government Association
Pat JAMES	Darwin City Council
Sheila KELLEN	NT Local Government Association
Paul MURPHY	Darwin City Council

APPENDIX 1

LIST OF PERSONS AND ORGANISATIONS WHO HAVE COMMENTED ON THE DISCUSSION PAPER ON A PROPOSED NEW CONSTITUTION FOR THE NORTHERN TERRITORY

Mick MURPHY	Women's Advisory Council
Francis PERCEVAL	Women's Advisory Council, Groote Eylandt
Ken PUSTER	
Sam STIMOLKE	
Jim THORSON	
Wendy WHILEY	

APPENDIX I

LIST OF PERSONS AND ORGANIZATIONS WHO HAVE COMMENTED ON THE
DISCUSSION PAPER ON A PROPOSED NEW CONSTITUTION FOR THE
NORTHERN TERRITORY

**LIST OF PERSONS AND ORGANISATIONS WHO HAVE COMMENTED ON THE
DISCUSSION PAPER ON A PROPOSED NEW CONSTITUTION FOR THE
NORTHERN TERRITORY**

Kevin ANDERSON	Tennant Creek Town Council
Susan ANDRUSZKO	Alice Springs Town Council
John ANTELLA	Women's Advisory Council
John ANTELLA	NT Local Government Association
Kevin FLETCHER	Tangentyere Council Inc.
Jim FORSCUTT	Tangentyere Council Inc.
Phillip HOCKEY	NT Community Government Association
Earl JAMES	Darwin City Council
Sheila KEUNEN	NT Local Government Association
R G KIMBER	Darwin City Council
Noel LYNAGH	
Mick MARTIN	NT Local Government Association
Francis PERCEVAL	Jabiru Town Councils
Ken PORTER	
Sue SCHMOLKE	Women's Advisory Council
Jim THOMSON	
Wendy WHILEY	Women's Advisory Council, Groote Eylandt

LIST OF PERSONS AND ORGANISATIONS WHO HAVE COMMENTED ON THE
DISCUSSION PAPER ON A PROPOSED NEW CONSTITUTION FOR THE
NORTHERN TERRITORY

Tennant Creek Town Council	Kevin ANDERSON
Alice Springs Town Council	Susan ANDRUSKO
Women's Advisory Council	John ANTILLA
NT Local Government Association	John ANTILLA
Tangentyere Council Inc.	Kevin FLETCHER
Tangentyere Council Inc.	Jim FORSCOTT
NT Community Government Association	Philip HOCKEY
Darwin City Council	Earl JAMES
NT Local Government Association	Sheila KERNEN
Darwin City Council	R G KIMBER
	Noel LYNAGH
NT Local Government Association	Mick MARTIN
Johns Town Councils	Francis PERCEVAL
	Ken PORTER
Women's Advisory Council	Sue SCHMOLKE
Women's Advisory Council, Groote Eylandt	Jim THOMSON
	Wendy WHELEY

EXTRACT FROM: 1993 Northern Territory Legislative Assembly Sessional Committee on Constitutional Development - Discussion Paper No. 6 - *Aboriginal Rights and Issues Options for Enhancing the Legislative Assembly of the Northern Territory*, Darwin 34-37

*5 Community Government Options

(a) The Commission in its 1991 Discussion Paper on a 'Proposed New State Constitution for the Northern Territory' (October 1991) made the point that because of the special situation of the Northern Territory, there should be no obligation to have a form of local government (including community government) for all parts of the Territory. Any decision to create local government was regarded as a matter for the new State in consultation with the local residents.

(b) On the other hand, arguably there should be a right to apply for a grant of local government (including community government) and to have the application fairly considered. Such a right would be reasonably interpreted.

(c) Once local government (including community government) is established in any area, the question arises of whether that form of government should be constitutionally entrenched in some way, such that it cannot be arbitrarily abolished or its powers reduced. The Commission in its 1991 Discussion Paper raised the question of constitutional entrenchment, but pointed out that this must take into account the special situation of the Territory and the practical difficulties of administration. Subject to these considerations, it said it favoured some constitutional provisions for the new State.

APPENDIX 2

COMMUNITY GOVERNMENT - OPTIONS

(d) An alternative approach to the question of local government (including community government) in a new state would be, or perhaps as a supplement to it, would be to provide for an 'Optional' form of local government - an 'optional' form of local and community government to be made by the new State Parliament after negotiations with Aboriginal and other communities directly affected. Such a law could be made subject to special consultation requirements.

(e) There may also be grounds for revisiting the present provisions of the Local Government Act as to community government, to transfer Territory or new State governmental control and oversight, and to enhance the powers of community government within its agreed charter and boundaries. This has been discussed above. Whether such amendments would make community government a more acceptable option for Aboriginal self-governance is a matter for consideration.

(f) Public comments have already been received by the Commission on the matter of community government and its constitutional arrangements. Mr Kevin Anderson of the former Northern Territory Community Government Association stated:

"I would say that the introduction of local government structures in the Northern Territory has been one of the greatest upsurges lately by the government of the day in the Northern Territory, perceived by the population. We believe that it has given people a more substantial opportunity to manage their own affairs and, obviously, our concern with our consultation of a future Northern Territory state is that it should protect the process which have been devised through legislation which incorporates various communities as legitimate partners in the third

APPENDIX 2
COMMUNITY GOVERNMENT - OPTIONS

EXTRACT FROM: 1993. Northern Territory Legislative Assembly Sessional Committee on Constitutional Development. Discussion Paper No. 6 - *Aboriginal Rights and Issues Options for Entrenchment*, Legislative Assembly of the Northern Territory, Darwin: 34-37.

"5. Community Government - Options

- (a) The Committee, in its first Discussion Paper on a "Proposed New State Constitution for the Northern Territory" (October 1987) made the point that because of the special situation of the Northern Territory, there should be no obligation to have a form of local government (including community government) for all parts of the Territory. Any decision to extend local government was appropriately a matter for the new State in consultation with the local residents.
- (b) On the other hand, arguably there should be a right to apply for a grant of local government (including community government) and to have the application fairly considered. Such a right could be constitutionally entrenched.
- (c) Once local government (including community government) is established in any area, the question arises of whether that form of government should be constitutionally entrenched in some way, such that it cannot be arbitrarily abolished or its powers reduced. The Committee in its first Discussion Paper raised the question of constitutional entrenchment, but pointed out that this must take into account the special situation of the Territory and the associated difficulties of administration. Subject to these considerations, the Committee said it favoured some constitutional provisions for the recognition of local government in the new State.
- (d) An alternative to entrenchment of the position of local government (including community government) in a new constitution, or perhaps as a supplement to it, would be to provide for an Organic Law - as described in Item D.2.2.1, (f) above - on local and community government, to be made by the new State Parliament after negotiations with Aboriginal and other communities directly involved. Such a law could be made subject to special amendment requirements.
- (e) There may also be grounds for reviewing the present provisions of the Local Government Act as to community government, to minimise Territory or new State governmental controls and oversight and to maximise the powers of community government within its agreed charter and functions. This has been discussed above. Whether such amendments would make community government a more acceptable option for Aboriginal self-determination is a matter for consideration.
- (f) Public comments have already been received by the Committee on the matter of community government and its constitutional entrenchment. Mr Kevin Anderson of the former Northern Territory Community Government Association stated:

"I would say that the introduction of local government into remote communities in the Northern Territory has been one of the greatest initiatives taken by the government of the day in the Northern Territory, supported by the opposition. We believe that it has given people in remote communities an unprecedented opportunity to manage their own affairs and, obviously, our concern with any constitution of a future Northern Territory state is that it should protect the powers which have been devolved through legislation which incorporates remote communities as legitimate partners in the third

tier of government. For that reason, our submission states that we would like to see any future constitution enshrine protection clauses of local government generally in the Territory. We do not wish to see any discrimination in terms of the way the community government is treated, as opposed to municipal government. We see them both as legitimate types of local government and do not subscribe to any distinction which sees municipal government as a superior form of 'traditional' local government. We believe that all local governing bodies in the Territory, whether in remote locations or in major municipalities, are equal under the law. We would like to see that guaranteed in the constitution.

Our submission argues for constitutional recognition in accordance with 5 principles, these being:

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

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

- Therefore it is submitted that if the Committee wishes to proceed with formulating a constitutional recognition of local government it should include specific reference to the situation of Aboriginal Town Campers by:
- ensuring that an Aboriginal local governing body can exist within another local governing body's boundary;
- to overcome any doubt about the limitations of the Racial Discrimination Act, specifically allow the Aboriginal local governing bodies to limit membership to Aborigines;
- specifically allow aspects of the constitutions of Aboriginal local governing bodies which are drafted according to Aboriginal tradition to override requirements on other local governing bodies for democratic elections where there is a conflict."

(h) It would not be possible, by a Territory or new State constitution or by a Territory or new State law, to exclude the operation of the Aboriginal Councils and Associations Act 1976 of the Commonwealth in the Territory. Even if community government was to be given a more secure constitutional position in the Territory, some Aboriginal communities may still prefer to establish or continue their legal organisation under that Act.

- (i) A more secure constitutional position for community government will not of itself necessarily guarantee a much greater degree of local autonomy for Aboriginal communities. However it does provide one framework upon which such greater autonomy can be constructed by other means.
- (j) The Committee would welcome comments on the nature and extent of any constitutional guarantees of local government (including community government) and how these may be best designed to facilitate a real measure of autonomy for Aboriginal communities.
- (k) Where community government is established over an area of Aboriginal land, issues arise as to how the powers and functions of that community government can be reconciled with the powers and functions of the traditional Aboriginal owners and custodians of that land. The Committee would also welcome comment on this issue.
- (l) The Committee also welcome comment on whether there are any alternatives to community government for Aboriginal communities (other than under the Aboriginal Councils and Associations Act). Options include a possible expanded role for the traditional Aboriginal owners and custodians of Aboriginal land, as well as possible new forms of government on a local or regional basis. The latter was recently advocated in the Final Report of the Legislation Review Committee of Queensland relating to the "Management of Aboriginal and Torres Strait Islander Communities" (November 1991)."

are (2) At present, the Government of the Territory of Northern Territory is not of itself in a position to exercise a number of powers which are necessary for Aboriginal self-government. It is necessary that the Government of the Territory should be able to exercise these powers in order to be able to exercise its powers in relation to the Territory.

(3) The Commission would wish to see the Government of the Territory in a position to exercise these powers in order to be able to exercise its powers in relation to the Territory. It is necessary that the Government of the Territory should be able to exercise these powers in order to be able to exercise its powers in relation to the Territory.

(4) It is necessary that the Government of the Territory should be able to exercise these powers in order to be able to exercise its powers in relation to the Territory. It is necessary that the Government of the Territory should be able to exercise these powers in order to be able to exercise its powers in relation to the Territory.

(5) The Commission also wishes to see the Government of the Territory in a position to exercise these powers in order to be able to exercise its powers in relation to the Territory. It is necessary that the Government of the Territory should be able to exercise these powers in order to be able to exercise its powers in relation to the Territory.

(6) It is necessary that the Government of the Territory should be able to exercise these powers in order to be able to exercise its powers in relation to the Territory. It is necessary that the Government of the Territory should be able to exercise these powers in order to be able to exercise its powers in relation to the Territory.

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(8) It is necessary that the Government of the Territory should be able to exercise these powers in order to be able to exercise its powers in relation to the Territory. It is necessary that the Government of the Territory should be able to exercise these powers in order to be able to exercise its powers in relation to the Territory.

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(10) It is necessary that the Government of the Territory should be able to exercise these powers in order to be able to exercise its powers in relation to the Territory. It is necessary that the Government of the Territory should be able to exercise these powers in order to be able to exercise its powers in relation to the Territory.

(11) It is necessary that the Government of the Territory should be able to exercise these powers in order to be able to exercise its powers in relation to the Territory. It is necessary that the Government of the Territory should be able to exercise these powers in order to be able to exercise its powers in relation to the Territory.

APPENDIX 3
NEW SOUTH WALES

NEW SOUTH WALES

PART 3 - LOCAL GOVERNMENT

Local Government

51. (1) There shall continue to be a system of local governments for the State under which duly elected or duly appointed local government bodies are constituted with responsibilities for acting for the better government of those parts of the State that are from time to time subject to that system of local government.

(2) The manner in which local government bodies are constituted and the nature and extent of their powers, authorities, duties and functions shall be as determined by or in accordance with laws of the Legislature.

(3) The reference in subsection (2) to laws of the Legislature shall be read as a reference to laws that have been enacted by the Legislature, whether before or after the commencement of this section, and the

APPENDIX 3

NEW SOUTH WALES

(4) For the purposes of this section, the Lands Commissioner, the Lord Howe Island Board, and an administration with all or any of the functions of a local government body, shall be deemed to be local government bodies.

PART 2 - LOCAL GOVERNMENT

Local Government

21. (1) There shall continue to be a system of local government for the State under which duly elected or duly appointed local government bodies are constituted with responsibilities for acting for the better government of those parts of the State that are from time to time subject to that system of local government.

(2) The manner in which local government bodies are constituted and the nature and extent of their powers, authorities, duties and functions shall be as determined by or in accordance with laws of the Legislature.

(3) The reference in subsection (2) to laws of the Legislature shall be read as a reference to laws that have been enacted by the Legislature, whether before or after the commencement of this section, and that are for the time being in force.

(4) For the purposes of this section, the Western Lands Commissioner, the Lord Howe Island Board, and an administrator with all or any of the functions of a local government body, shall be deemed to be local government bodies.

NEW SOUTH WALES

PART 8 - LOCAL GOVERNMENT

Local Government

51. (1) There shall continue to be a system of local government for the State under which duly elected or duly appointed local government bodies are constituted with responsibilities for acting for the better government of those parts of the State that are from time to time subject to that system of local government.

(2) The manner in which local government bodies are constituted and the nature and extent of their powers, authorities, duties and functions shall be as determined by or in accordance with laws of the Legislature.

(3) The reference in subsection (2) to laws of the Legislature shall be read as a reference to laws that have been enacted by the Legislature, whether before or after the commencement of this section, and that are for the time being in force.

(4) For the purposes of this section, the Western Lands Commissioner, the Lord Howe Island Board, and an administrator with all or any of the functions of a local government body, shall be deemed to be local government bodies.

APPENDIX 4

VICTORIA

VICTORIA

Constitution (Local Government) Act

1958

Purpose of Act

1. The purpose of this Act is to—

- (a) ensure that there continues to be a democratically elected system of local government in Victoria; and
- (b) identify the areas in which Parliament can make laws relating to local government; and
- (c) provide that a Council cannot be dissolved except by an Act of Parliament.

Comments

2. The Act covers interpretation.

APPENDIX 4

Part IIA of Constitution Act 1972 substituted

1. For Part IIA of the Constitution

VICTORIA

"PART IIA—LOCAL GOVERNMENT"

Local government

"74A. (1) There is to continue to be a system of local government for Victoria consisting of democratically elected Councils having the functions and powers that the Parliament considers are necessary to ensure the peace, order and good government of each municipal district.

(2) An elected Council does not have to be constituted in respect of any area in Victoria—

- (a) which is not significantly and permanently populated; or
- (b) in which the functions of local government are carried out by or under arrangements made by a public statutory body which is carrying on large-scale operations in the area."

Local government laws

"74B. (1) Parliament may make any laws it considers necessary for or with respect to—

- (a) the constitution of Councils; and
- (b) the objectives, functions, powers, duties and responsibilities of Councils; and
- (c) entitlement to vote and eligibility for elections of Councils; and

- (d) the conduct of and voting at elections of Councils; and
- (e) the counting of votes at elections of Councils; and
- (f) the qualifications to be a Councillor; and
- (g) the disqualification of a person from being or continuing to be a Councillor; and
- (h) the powers, duties and responsibilities of Councillors and Council staff; and
- (i) any other act, matter or thing relating to local administration.

(2) A Council cannot be dismissed except by an Act of Parliament relating to the Council.

(3) Parliament may make laws for or with respect to—

- (a) the suspension of a Council; and
- (b) the administration of a Council during a period in which the Council is suspended or dismissed; and
- (c) the re-instatement of a Council which has been suspended; and
- (d) the election of a Council if a suspended Council is-reinstated; and
- (e) the election of a Council where a Council has been dismissed."

VICTORIA

Constitution (Local Government) Act 1988

Purpose of Act.

1. The purpose of this Act is to—
 - (a) ensure that there continues to be a democratically elected system of local government in Victoria; and
 - (b) identify the areas in which Parliament can make laws relating to local government; and
 - (c) provide that a Council cannot be dismissed except by an Act of Parliament.

Commencement.

2. This Act comes into operation on a day to be proclaimed.

Part IIA of *Constitution Act* 1975 substituted.

3. For Part IIA of the *Constitution Act* 1975 substitute:

"PART IIA—LOCAL GOVERNMENT"

Local government.

"74A. (1) There is to continue to be a system of local government for Victoria consisting of democratically elected Councils having the functions and powers that the Parliament considers are necessary to ensure the peace, order and good government of each municipal district.

(2) An elected Council does not have to be constituted in respect of any area in Victoria—

- (a) which is not significantly and permanently populated; or
- (b) in which the functions of local government are carried out by or under arrangements made by a public statutory body which is carrying on large-scale operations in the area."

Local government laws.

"74B. (1) Parliament may make any laws it considers necessary for or with respect to—

- (a) the constitution of Councils; and
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- (c) entitlement to vote and enrolment for elections of Councils; and

- (d) the conduct of and voting at elections of Councils, and
- (e) the counting of votes at elections of Councils, and
- (f) the qualifications to be a Councillor, and
- (g) the disqualification of a person from being or continuing to be a Councillor, and
- (h) the powers, duties and responsibilities of Councillors and Council staff, and
- (i) any other act, matter or thing relating to local administration.

(3) A Council cannot be dissolved except by an Act of Parliament relating to the Council.

(4) Parliament may make laws for or with respect to—

- (a) the suspension of a Council, and
- (b) the administration of a Council during a period in which the Council is suspended or dissolved, and
- (c) the re-constitution of a Council which has been suspended, and
- (d) the election of a Council if a Council has been dissolved, and
- (e) the election of a Council if a Council has been dissolved.

APPENDIX 2

QUESTIONS

government body concerned until the Legislative Assembly, or the motion of the member of the Assembly for the time being responsible for local government in the State, within a period of 14 sitting days from such tabling confirms the dissolution of the council of the local government body.

(3) Where the Legislative Assembly confirms the dissolution of the council of a local government body, the instrument takes effect according to its terms as a dissolution of the council of the local government body concerned.

(4) Where the Legislative Assembly—

- (a) refuses to affirm the motion referred to in subsection (2);
or
- (b) fails, within the period of 14 sitting days, to affirm the motion referred to in subsection (2),

the instrument to dissolve the council of the local government body thereupon ceases to have effect and—

- (c) the suspension from office of the duly elected members of the council of the local government body thereupon ceases and they are reinstated in their respective offices; and
- (d) the appointment of the person or persons appointed to exercise the powers, authorities, duties and functions of the council of the local government body thereupon terminates.

(5) Any person or persons appointed (but not duly elected) according to law to carry out the powers, authorities, duties and functions of a council of a local government body whose members are, pursuant to this section, suspended from office is or are authorized to carry out those powers authorities, duties and functions during the period of suspension.

(6) In this section, the expression "local government body" means a body constituted by duly elected members and charged with carrying on the functions of local government.

56. Procedure on Bills affecting local government. (1) A member of the Legislative Assembly who is to be in charge of the passage in the Assembly of a Bill that is the responsibility of the member of the Assembly for the time being responsible for local government in the State and that, if enacted by the Parliament, would affect local government bodies generally, or any of them, if he considers compliance with this subsection is practicable in the particular case must cause a summary of the Bill to be given to an association that represents local government bodies in the State a reasonable time before he (or a member on his behalf) moves for leave of the Assembly to bring in the Bill.

(2) A Bill for an Act whereby the whole of the State would cease to have a system of local government that conforms to that prescribed by section 54 (1) must not be presented to Her Majesty or the Governor for assent unless, on a day, appointed by Order in Council, no earlier than six months and no later than one month before the Bill is introduced in the Assembly a proposal that the State should cease to have such a system of local government has been approved by majority vote of the electors of the State voting on the proposal.

QUEENSLAND

When such proposal is submitted to the electors of the State the vote shall be taken in such manner as the Parliament prescribes.

In this subsection "electors of the State" means the persons qualified to vote at a general election of members of the Assembly according to the provisions of the Electoral Act 1983-1985 or of any Act in substitution therefor.

(2) Where a proposal is submitted to the electors of the State in accordance with the provisions of the Electoral Act 1983-1985 or of any Act in substitution therefor, the proposal shall be subject to the provisions of that Act.

(3) Where a proposal is submitted to the electors of the State in accordance with the provisions of the Electoral Act 1983-1985 or of any Act in substitution therefor, the proposal shall be subject to the provisions of that Act.

(4) Where a proposal is submitted to the electors of the State in accordance with the provisions of the Electoral Act 1983-1985 or of any Act in substitution therefor, the proposal shall be subject to the provisions of that Act.

(5) Where a proposal is submitted to the electors of the State in accordance with the provisions of the Electoral Act 1983-1985 or of any Act in substitution therefor, the proposal shall be subject to the provisions of that Act.

(6) Where a proposal is submitted to the electors of the State in accordance with the provisions of the Electoral Act 1983-1985 or of any Act in substitution therefor, the proposal shall be subject to the provisions of that Act.

(7) Where a proposal is submitted to the electors of the State in accordance with the provisions of the Electoral Act 1983-1985 or of any Act in substitution therefor, the proposal shall be subject to the provisions of that Act.

(8) Where a proposal is submitted to the electors of the State in accordance with the provisions of the Electoral Act 1983-1985 or of any Act in substitution therefor, the proposal shall be subject to the provisions of that Act.

QUEENSLAND

LOCAL GOVERNMENT

54. System of local government. (1) There must be and continue to be a system of local government in Queensland under which duly elected local government bodies are constituted each being charged with the good rule and government of that part of Queensland from time to time subject to that system of local government and committed to the jurisdiction of that local government body.

(2) The manner in which local government bodies are constituted and the nature and extent of their powers, authorities, duties and functions are as determined by and in accordance with the laws of the Parliament of Queensland.

(3) Nothing in this section affects the operation of laws of the Parliament of Queensland with respect to the carrying out of the powers, authorities, duties and functions of a local government body by a person or persons appointed where—

- (a) the council of the local government body has been dissolved;
or
- (b) the council of a local government body is unable to be duly elected,

until such time as the council of a local government body has been duly elected.

(4) The reference in subsections (2) and (3) to the laws of the Parliament of Queensland is a reference to the laws enacted by that Parliament, before or after the passing of the Constitution Act Amendment Act 1989, and for the time being in force.

(5) For the purposes of this section a Joint Local Authority Board and any person or persons appointed to carry out the powers, authorities, duties and functions of a council of a local government body as an Administrator are deemed to be the council of a local government body.

55. Manner of appointing persons to exercise powers authorities, duties and functions of local government (1) A body constituted or deemed to be constituted by one or more persons appointed (but not duly elected) after the commencement of the *Constitution Act Amendment Act 1989* to carry out the powers, authorities, duties and functions of a council of a local government body is not a council of a local government body appointed in accordance with section 54 (3)(a) and, notwithstanding the provisions of any Act, such person or persons is or are not authorized to carry out powers, authorities, duties and functions of a council of a local government body unless the power conferred by law to dissolve the council of a local government body constituted or deemed to be constituted by such person or persons has been exercised in accordance with this section.

(2) The instrument that purports to dissolve the council of a local government body or a copy of the instrument must be tabled in the Legislative Assembly within 14 sitting days after the instrument has been made and, to the extent that it so purports, the instrument takes effect merely a suspension from office of the duly elected members of the council of the local

APPENDIX
SOUTH AUSTRALIA

A Bill assented to consequent upon its presentation in contravention of this subsection is of no effect as an Act.

When such proposal is submitted to the electors of the State the vote must be taken in such manner as the Parliament prescribes.

Any of the electors of the State is entitled to bring proceedings in the Supreme Court for a declaration, injunction or other remedy to enforce the provisions of this subsection either before or after a Bill of a kind received to in this subsection is presented for assent.

In this subsection "electors of the State" means the persons qualified to vote at a general election of members of the Assembly according to the provisions of the *Elections Act 1983-1985* or of any Act in substitution therefor."

SOUTH AUSTRALIA

Constitutional guarantee of continuance of local government in this State

64A (1) There shall continue to be a system of local government in this State under which elected local governing bodies are constituted with such powers as the Parliament considers necessary for the better government of those areas of the State that are from time to time subject to that system of local government.

(2) The manner in which local governing bodies are constituted, and the nature and extent of their power, functions, duties and responsibilities shall be determined by or under Acts of the Parliament from time to time in force.

(3) No Bill by virtue of which this State would cease to have a system of local government that conforms with subsection (1) of this section shall be presented to Her Majesty or the Governor for assent unless the Bill has been passed by an absolute majority of the members of each House of Parliament.

SOUTH AUSTRALIA

Constitutional guarantee of continuance of local government in this State

64A. (1) There shall continue to be a system of local government in this State under which elected local governing bodies are constituted with such powers as the Parliament considers necessary for the better government of those areas of the State that are open to this subject to that system of local government.

(2) The manner in which local governing bodies are constituted, and the nature and extent of their powers, functions, duties and responsibilities shall be determined by or under Acts of the Parliament from time to time in force.

(3) No Bill by which this State would cease to have a system of local government that conforms with subsection (1) of this section shall be presented to Her Majesty or the Governor for assent unless the Bill has been passed by an absolute majority of the members of each House of Parliament.

APPENDIX 6

SOUTH AUSTRALIA

APPENDIX 1
WESTERN AUSTRALIA

PART III — LOCAL GOVERNMENT

Electoral local governing bodies

21. (1) The Legislature shall maintain a system of local governing bodies elected and constituted in such manner as the Legislature may from time to time provide.
- (2) Each elected local governing body shall have such powers as the Legislature may from time to time provide being such powers as the Legislature considers necessary for the better government of the area in respect of which the body is constituted.

Certain laws not affected

22. Section 22 does not affect the operation of any law —
- (a) prescribing circumstances in which the offices of members of a local governing body shall become and remain vacant; or
- (b) providing for the administration of any area of the State —
- (i) to which the system maintained under that section does not for the time being extend; or
- (ii) when the offices of all the members of the local governing body for that area are vacant; or
- (c) limiting or otherwise affecting the operation of a law relating to local government; or
- (d) conferring any power relating to local government on a person other than a duly constituted local governing body.

SOUTH AUSTRALIA

Constitutional guarantee of continuance of local government in this State

64A. (1) There shall continue to be a system of local government in this State under which elected local governing bodies are constituted with such powers as the Parliament considers necessary for the better government of those areas of the State that are from time to time subject to that system of local government.

(2) The manner in which local governing bodies are constituted, and the nature and extent of their powers, functions, duties and responsibilities shall be determined by or under Acts of the Parliament from time to time in force.

(3) No Bill by virtue of which this State would cease to have a system of local government that conforms with subsection (1) of this section shall be presented to Her Majesty or the Governor for assent unless the Bill has been passed by an absolute majority of the members of each House of Parliament.

APPENDIX 8
TASMANIA

WESTERN AUSTRALIA

Constitution Act 1932

PART III — LOCAL GOVERNMENT

Elected local governing bodies

52. (1) The Legislature shall maintain a system of local governing bodies elected and constituted in such manner as the Legislature may from time to time provide.

(2) Each elected local governing body shall have such powers as the Legislature may from time to time provide being such powers as the Legislature considers necessary for the better government of the area in respect of which the body is constituted.

Certain laws not affected

APPENDIX 7

53. Section 52 does not affect the operation of any law —

WESTERN AUSTRALIA

- (a) providing for the election or the election of members of a local governing body shall become and remain vacant, or
- (b) providing for the administration of any area of the State —
 - (i) to which the system mentioned under that section does not for the time being extend, or
 - (ii) when the offices of all the members of the local governing body for that area are vacant, or
- (c) limiting or otherwise affecting the operation of a law relating to local government, or
- (d) conferring any power relating to local government on a person other than a duly constituted local governing body.

WESTERN AUSTRALIA

Constitution Act 1889

PART IIIB — LOCAL GOVERNMENT

Elected local governing bodies

52. (1) The Legislature shall maintain a system of local governing bodies elected and constituted in such manner as the Legislature may from time to time provide.

(2) Each elected local governing body shall have such powers as the Legislature may from time to time provide being such powers as the Legislature considers necessary for the better government of the area in respect of which the body is constituted.

Certain laws not affected

53. Section 52 does not affect the operation of any law —

- (a) prescribing circumstances in which the offices of members of a local governing body shall become and remain vacant; or
- (b) providing for the administration of any area of the State —
 - (i) to which the system maintained under that section does not for the time being extend; or
 - (ii) when the offices of all the members of the local governing body for that area are vacant; or
- (c) limiting or otherwise affecting the operation of a law relating to local government; or
- (d) conferring any power relating to local government on a person other than a duly constituted local governing body.

TASMANIA

PART IV

LOCAL GOVERNMENT

45A—(1) There shall be in Tasmania a system of local government with municipal councils.

(2) Each municipal council shall have as its members such persons as may be appointed by the Governor in Council, being such persons as may be recommended by the Governor in Council.

45B—Section 45A does not apply to the Council of the City of Hobart.

(a) presenting a petition to the Governor in Council, signed by a majority of the members of the Council, for the purpose of obtaining a resolution of the Council in relation to the petition.

(b) presenting a petition to the Governor in Council, signed by a majority of the members of the Council, for the purpose of obtaining a resolution of the Council in relation to the petition.

APPENDIX 8

TASMANIA

(c) to which the Council has agreed to refer the petition, and the Council has agreed to refer the petition to the Governor in Council.

(d) with the object of obtaining a resolution of the Council in relation to the petition.

(e) conferring any power relating to local government on a person who is not a member of the Council.

45C—Any provision of the Constitution of Tasmania which is inconsistent with the provisions of this Act shall be deemed to be repealed.

TASMANIA

PART IVA

LOCAL GOVERNMENT

45A—(1) There shall be in Tasmania a system of local government with municipal councils elected in such manner as Parliament may from time to time provide.

(2) Each municipality shall have such powers as Parliament may from time to time provide, being such powers as Parliament considers necessary for the welfare and good government of the area in respect of which the municipality is constituted.

45B—Section 45A does not affect the operation of any law—

- (a) prescribing circumstances in which the offices of members of a municipal council shall become and remain vacant;
- (b) providing for the administration of any area of the State—
 - (i) to which the system referred to in that section does not for the time being extend; or
 - (ii) when the offices of all the members of the municipal council for that area are vacant; or
- (c) conferring any power relating to local government on a person other than a municipal council.

45C— Any division of Tasmania into municipal areas shall not be altered unless the Local Government Advisory Board established by the *Local Government Act 1962* so recommends.

**Sessional Committee on Constitutional Development — Discussion Paper No. 9 — Constitutional
Recognition of Local Government**