

**Sessional Committee on Constitutional Development — Exposure Draft - Parts 1 to 7: A New Constitution
for the Northern Territory and Tabling Statement**

ORIGINAL PAPER

No. 1867

Laid on the Table

22 / 06 / 95

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

**Sessional Committee on
Constitutional Development**

Exposure Draft - Parts 1 to 7:

**A new Constitution
for the Northern Territory
and
Tabling Statement**

JUNE 1995

Presented and
Ordered to be Printed
by the Legislative
Assembly of the
Northern Territory on
22 June 1995



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Sessional Committee on Constitutional Development

Exposure Draft - Parts 1 to 7:

A new Constitution
for the Northern Territory
and
Tabling Statement

June 1995

An Exposure Draft Constitution for the Northern Territory
prepared by the Sessional Committee on Constitutional Development.

Exposure Draft Northern Territory Constitution

have access to those sites in accordance with Aboriginal tradition and shall take into account the wishes of Aborigines relating to the extent to which those sites should be protected.

Purpose of the Clause 7.2

This clause, based on a provision of the *Aboriginal Land Rights (Northern Territory) Act* of the Commonwealth, will place the constitutional obligation on the new Parliament to have in place on an ongoing basis legislation by way of an Organic law to protect and prevent desecration to sacred sites in the Northern Territory. In relation to that legislation, there will be a constitutional guarantee that Aboriginal traditional access to sacred sites will be preserved and their wishes will be taken into account. A transitional provision in the new Constitution could declare that the existing Territory legislation on sacred sites is an Organic law.

Variations:

- | | |
|--------------------|-----------|
| (a) Republic: | No change |
| (b) Pre-Statehood: | No change |

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: Part S; and *Discussion Paper No 6, Aboriginal Rights and Issues - Options for Entrenchment*, 1993: Part E.

Exposure Draft Northern Territory Constitution

MEMBERSHIP OF THE COMMITTEE

The Hon. S P Hatton, MLA (Chairman)

Mrs M A Hickey, MLA (Deputy Chairperson)

Mr J D Bailey, MLA

Mr T D Baldwin, MLA

Mr W W Lanhupuy, MLA

Mr P A Mitchell, MLA

Committee Staff:

Mr Rick Gray (Secretary)

Mrs Yoga Harichandran (Administrative Assistant)

Mr Graham Nicholson (Legal Advisor)

otherwise upon terms and conditions not less favourable than for the compulsory acquisition of other land under a law of the Northern Territory.

- (7) Where an estate or interest in all or any part of Aboriginal land is compulsorily acquired under subsection(6), then upon the permanent cessation of the use of that acquired land for or in furtherance of any purpose which is for the benefit of the public (and whether it is the original purpose or otherwise), and if the land is still Aboriginal land, the estate or interest so acquired shall cease.
- (8) An Organic law may declare that any other law of the Northern Territory is capable of operating concurrently with the Aboriginal Land Rights (Northern Territory) Act as an Organic law, and upon such a declaration, those laws shall be interpreted and applied accordingly.

Purpose of the Clause 7.1

Provides for the patriation of the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth to the Northern Territory as a law of the Northern Territory in the form as at the commencement of the new Constitution, with such variations as are agreed with the Commonwealth. Thereafter the patriated Act can only be amended by a further Organic law passed in accordance with the restricted procedures in the new Constitution, but with a special majority requirement for which two alternatives are offered - two-thirds of all the members of the Parliament or three quarters of all those members. Even then, specific features of Aboriginal land rights are to be entrenched in the Constitution, beyond amendment even by an Organic law. These constitutional guarantees will prevent any disposal of the freehold in Aboriginal land once granted without a prior independent enquiry with a Supreme Court Judge, to make sure that all Aborigines with an interest are informed, that a majority of them have voluntarily consented and that any such disposal is in the interests of the Aborigines concerned. Otherwise the land must remain freehold Aboriginal land, although the existing provisions for disposal of lesser interests than freehold will remain. All compulsory acquisition of Aboriginal land will be excluded by the Constitution, except that the acquisition of interests less than freehold for a purpose benefiting the public will be permitted on just terms and on limited conditions. There will be power by an Organic law to declare specific laws of the Northern Territory as capable of operating concurrently with the *Aboriginal Land Rights (Northern Territory) Act*, thus removing current doubts in such matters as local government.

Variations:

- (a) Republic: No change
(b) Pre--Statehood: No change

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory, 1987: Part S*; and *Discussion Paper No 6, Aboriginal Rights and Issues - Options for Entrenchment, 1993: in particular Part D.*

7.2 PROTECTION OF ABORIGINAL SACRED SITES

An Organic law shall provide for the protection of, and the prevention of the desecration to, sacred sites in the Northern Territory, including sacred sites on Aboriginal land, and in particular it shall regulate or authorise the entry of persons on those sites, and that Organic law shall provide for the right of Aborigines to

Exposure Draft Northern Territory Constitution

PART 7 - ABORIGINAL RIGHTS

7.1 PROTECTION OF ABORIGINAL LAND RIGHTS

- (1) Subject to this Constitution, an Organic law shall be enacted by the Parliament entitled the Aboriginal Land Rights (Northern Territory) Act which shall contain provisions based on those contained in the Aboriginal Land Rights (Northern Territory) Act 1976 of the Commonwealth as in force immediately before the commencement of this Constitution, but with variations to give effect to that Act as a law of the Northern Territory and with such other variations as are determined by the Parliament, being in either case variations in a form agreed to by the Commonwealth.
- (2) Upon the enactment of an Organic law in accordance with subsection (1), that Organic law may only be amended by a further Organic law in accordance with section [amendment procedures yet to be determined], and the affirmative votes required for such an amendment under that section shall be equal to or more than ([alternative 1 - two-thirds] or [alternative 2 - three-quarter]).
- (3) Notwithstanding anything in the Aboriginal Land Rights (Northern Territory) Act as an Organic law, an estate or interest in freehold in Aboriginal land shall not be capable of being sold, assigned, mortgaged, charged, surrendered, extinguished, or otherwise disposed of unless a court or body established by an Organic law is first satisfied after enquiry that all Aborigines having an estate or interest in that land, being of full legal capacity, have been adequately informed of, and a majority of them have voluntarily consented to, the proposed transaction and that the proposed transaction is otherwise in the interests of all Aborigines having an estate or interest in, or residing on, that land.
- (4) An Organic law shall provide that the court or body referred to in subsection (3) shall comprise or include in its membership a judge of the Supreme Court of the Northern Territory and that it shall have power to conduct such enquiries as it considers necessary and to issue a summons for the attendance of witnesses and/or for the production of documents.
- (5) Notwithstanding anything in the Aboriginal Land Rights (Northern Territory) Act as an Organic law, but subject to subsection (6), Aboriginal land shall not be resumed, compulsorily acquired or forfeited by or under a law of the Northern Territory,
- (6) An Organic law may provide for the compulsory acquisition of an estate or interest in all or any part of Aboriginal land where that estate or interest is less than a freehold estate or interest, providing that the acquisition is on just terms and for or in furtherance of any purpose which is for the benefit of the public (other than as a park) and whether or not that purpose is to be effected by the Northern Territory or by any other person or body, and

Exposure Draft Northern Territory Constitution

CONTENTS	PAGE
INTRODUCTION	1
TERMS OF REFERENCE	1
DISCUSSION AND INFORMATION PAPERS AND REPORTS	2
TABLING STATEMENT	3
EXPOSURE DRAFT - PARTS 1 TO 7: A NEW CONSTITUTION FOR THE NORTHERN TERRITORY	7

Purpose of the Clause: 6.2

Provides for the appointment and removal of the Chief Justice and Judges of the Supreme Court of the Northern Territory in strictly limited circumstances, designed to preserve the independence of the judiciary.

6.2 (1) Provides for the Chief Justice to be appointed by the Governor acting upon the advice of the Executive Council after consultation with bodies representing the legal profession.

6.2 (2) Provides for Judges of the Court to be appointed by the Governor acting upon the advice of the Executive Council after consultation with the Chief Justice and with bodies representing the legal profession.

6.2 (3) Provides for a Judge to be removed from office by the Governor upon a motion in the Parliament to remove a Judge on the grounds of proved misbehaviour or incapacity.

6.2 (4) Provides for the retirement age of a Judge to be 70 years of age or such greater age as prescribed in legislation passed by the Parliament.

6.2 (5) and (6) Provides for the remuneration, terms and conditions of appointment of a Judge of the Supreme Court of the Northern Territory not to be reduced during a term of office.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: pp71-74, 78-79.

6.3 DOCTRINE OF SEPARATION OF POWERS

Nothing in this Constitution prevents the passing by the Parliament of an Act -

- (a) conferring judicial authority on a person or body outside the Judiciary; or
- (b) providing for the establishment by or in accordance with an Act, or by the consent of the parties, of arbitral, conciliatory or other tribunals, whether *ad hoc* or otherwise, outside the Judiciary,

on such terms and conditions as the Parliament thinks fit.

Purpose of the Clause: 6.3

Provides for the Parliament, on such terms and conditions it thinks fit, to confer judicial authority on a person or bodies outside the Judiciary and for the establishment, whether by legislation or by consent of parties of arbitral, conciliation or other tribunals, whether *ad hoc* or otherwise, outside the Judiciary. Thus the strict separation of powers doctrine, not applicable in the States, will also not be applicable in the Northern Territory to prevent the exercise of judicial power by specialised tribunals established by legislation. However, this will not affect the independence of the Supreme Court under the preceding provision.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: pp75-77.

Exposure Draft Northern Territory Constitution

interpretation but only at the instance of the Governor in his or her sole discretion, the Speaker of the Parliament on the resolution of Parliament, the Executive Council or the Premier.

Purpose of the Clause: 6.1 (4)

Provides an extension of the jurisdiction of the Supreme Court of the Northern Territory to advise on matters arising under this Constitution or involving its interpretation. It can only do so when matters are submitted to the Court by the Governor in his or her discretion, the Speaker of the Parliament on the resolution of Parliament, the Executive Council or the Premier. Thus in controversial constitutional issues, for example, there will be power for the Supreme Court in open court, if necessary on an urgent application, to rule on the constitutionality of a proposed Governmental course of action before it is taken.

Variations:

- (a) Republic: No change.
- (b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: No discussion, but note the duty of the Governor to maintain the new Constitution - see *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: p54. Thus the Governor and others specified will be able to seek the advice of the Supreme Court in public sittings before any decision by the Government is taken to act in a way that might be unconstitutional.

6.2 APPOINTMENT, REMOVAL AND REMUNERATION OF JUDGES OF THE SUPREME COURT

- (1) The Chief Justice of the Supreme Court shall be appointed by the Governor in accordance with the advice of the Executive Council, after consultation with such bodies representing the legal profession in the Northern Territory as the Governor thinks fit.
- (2) The Judges of the Supreme Court other than the Chief Justice shall be appointed by the Governor in accordance with the advice of the Executive Council, after consultation with the Chief Justice and such bodies representing the legal profession in the Northern Territory as the Governor thinks fit.
- (3) A Judge of the Supreme Court shall not be removed from office except by the Governor on an address from the Parliament praying for the Judge's removal on the grounds of proved misbehaviour or incapacity.
- (4) A Judge of the Supreme Court shall retire from office at the age of 70 years, or such greater age as is prescribed by an Act.
- (5) Judges of the Supreme Court and the members of other courts established in pursuance of section 6.1(1) shall be paid out of the Consolidated Revenue Account of the Northern Territory such remuneration, and be employed on such terms and conditions, as provided by or under an Act.
- (6) The remuneration or terms or conditions of appointment of a Judge shall not be reduced while the Judge continues in office.

Exposure Draft Northern Territory Constitution

INTRODUCTION

The Northern Territory Legislative Assembly Sessional Committee on Constitutional Development, formerly a Select Committee, in responses to its terms of reference, has been working for some years on matters that could be dealt with in a new constitution for the Northern Territory.

The Committee has been proceeding with the preparation of a draft constitution in the light of the various submissions and comments made to it.

The work reached the point where an exposure draft of the main elements of the proposed constitution has been prepared. That exposure draft follows this introduction. It is annotated with an explanation of each clause, with variations that would be required in the event that a republican system of government was to be adopted, and if the constitution was to be brought into operation before any grant of Statehood to the Territory. Cross references to the Committee's issued papers are also included for ease of reference.

The exposure draft does not include some essential provisions not yet finalised, such as the amendment procedures, transitional arrangements and definitions. Other matters may yet be included.

This exposure draft is issued for public comment and submissions before the Committee settles the draft constitution and finally reports to the Legislative Assembly. It does not represent the final views of the Committee. In some cases, it offers one or more alternatives where members have not been able to agree on a particular position.

Following final report to the Legislative Assembly, the further procedure for adoption of the Constitution previously, outlined in the Committee's issued papers are envisaged. These include a Territory Constitutional Convention and Territory referendum.

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 on 27 June 1994, it was again 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 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.

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

Exposure Draft Northern Territory Constitution

- "(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."

DISCUSSION AND INFORMATION PAPERS AND REPORTS

The Committee has prepared and issued a number of papers and an interim report 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?*
- * Discussion Paper No. 9, *Constitutional Recognition of Local Government*
- * 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*.

Exposure Draft Northern Territory Constitution

PART 5 - THE JUDICIARY

6.1 JUDICIAL POWER OF COURTS

- (1) The judicial power of the Northern Territory shall be vested in a superior court to be called the Supreme Court of the Northern Territory (including that Court exercising its jurisdiction as the Court of Appeal and the Court of Criminal Appeal) and in such other courts as the Parliament establishes by an Act.
- (2) The Supreme Court of the Northern Territory shall consist of a Chief Justice and such other Judges and officers as prescribed by an Act.

Purpose of the Clause: 6.1 - Sub-clauses (1) and (2)

6.1 (1) Provides that the judicial power of the Northern Territory shall reside in the Supreme Court of the Northern Territory, including the Supreme Court as the Court of Appeal or the Court of Criminal Appeal and in other courts established by the Parliament in legislation passed by the Parliament.

6.1 (2) Provides that the Supreme Court of the Northern Territory will consist of a Chief Justice and other judges and officers of the Court as prescribed in legislation passed by the Parliament.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: Parts N & O.

- (3) The Supreme Court (including in its appellate jurisdiction both civil and criminal in relation to appeals from another court) shall be a court of general jurisdiction in civil and criminal matters relating to the Northern Territory, including as to matters arising under this Constitution or involving its interpretation and, without limitation, its jurisdiction and that of other courts established in pursuance of subsection (1) is as prescribed by an Act or by an Act of the Commonwealth or of a State or Territory of the Commonwealth.

Purpose of the Clause: 6.1 (3)

Provides that the Supreme Court of the Northern Territory will be a court of general jurisdiction in civil and criminal matters relating to the Northern Territory, including matters involving the interpretation of this Constitution, and that jurisdiction may be conferred on the Territory courts by legislation of the Northern Territory, the Commonwealth and a State.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: Part O.

- (4) The jurisdiction of the Supreme Court under section (3) extends to an advisory jurisdiction in matters arising under this Constitution or involving its

Exposure Draft Northern Territory Constitution

Purpose of the Clause: 5.1

This is a definition clause. This definition might yet wind up in the general definitions provision

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory, 1987: Part K.*

5.2 PUBLIC MONEYS

- (1) The public moneys of the Northern Territory shall be available to defray the expenditure of the Northern Territory.
- (2) The receipt, expenditure and control of public moneys of the Northern Territory shall be regulated as provided by an Act.

Purpose of the Clause: 5.2

Provides that all money of the Northern Territory received and expended will be regulated by legislation passed by the Parliament and those moneys received will be available to defray the expenditure of the Northern Territory.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory, 1987: Part K.*

5.3 WITHDRAWAL OF PUBLIC MONEYS

- (1) No public moneys of the Northern Territory shall be issued or expended except as authorised by an Act.
- (2) The public moneys of the Northern Territory may be invested in such manner as provide by or under an Act.

Purpose of the Clause: 5.3

Provides that the use of public moneys is to be regulated by legislation passed by the Parliament.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory, 1987: Part K.*

Exposure Draft Northern Territory Constitution

TABLING STATEMENT

**delivered in the Northern Territory Legislative Assembly
on 22 June 1995
by the
Hon. Steve Hatton, MLA
Chairman, Sessional Committee on Constitutional Development**

I lay on the table an Exposure Draft of a proposed Northern Territory constitution.

I move that the paper be printed.

Mr Speaker, I move that the Assembly note the paper.

Mr Speaker, some years ago, this House took the bold initiative of establishing a Select Committee to draft a new constitution for the Northern Territory. This was a bipartisan Committee and I am pleased to say it still is a bipartisan Committee. Let me express my appreciation for the co-operation of both sides of this House that are represented on this Committee and for the excellent work of its past and present Members. Their contribution has been outstanding. The Committee has worked hard over the years, researching, preparing papers, holding hearings and a variety of other activities directed at promoting the cause of a new, homegrown Territory constitution. We have worked well together. The Members are committed to work towards the constitutional development of the Northern Territory, with the maximum involvement of the citizens of the Northern Territory in the process. This necessarily involves the preparation of a new constitution for a new Millennium. Our terms of reference require as much, and now you see the first fruits of our labours, the first draft of the essential parts of a new constitution.

Let me assure Honourable Members that this is only a first draft, not the final proposals of the Committee. It is not a complete draft. Additional draft clauses will be released for comment as they are completed.

The Exposure Draft takes into account the many comments and submissions received by the Committee in response to its previous invitations. It seeks to provoke discussion and further comment. Let the citizens of the Territory be assured that their wishes will be taken into account and given weight. It is a process that is not going to be rushed. It is an ongoing

Exposure Draft Northern Territory Constitution

process, seeking to achieve the maximum degree of consensus as to how the Northern Territory should be governed. We are all tired of having the future of the Northern Territory decided by people thousands of kilometres from this place. Let Territorians decide on this matter. Let us chart our own future within the Australian federation.

Mr Speaker, the essential aspects are there in this Exposure Draft for all to read — the legislature, the executive, the judiciary, the sources of law of the Northern Territory — there are 7 parts to this Exposure Draft, and further parts will be added later this year.

In particular, for the first time in Australia's constitutional history, we recite in the Exposure Draft the history and circumstances of the Aboriginal people of this Country. The first Preamble reads —

"Before the proclamation of the Colony of New South Wales in 1788 and since time immemorial all or most of the geographical area of Australia that now constitutes the Northern Territory of Australia (the Northern Territory) was occupied by various groups of Aboriginal people under an orderly and mutually recognised system of governance and laws by which they lived and defined their relationships between each other, with the land and with their natural and spiritual environment."

This recognises the major role of Aboriginal people in the foundation of this Country and the great contribution they have to make. They are an integral and valued part of the Territory community.

Mr Speaker, the Exposure Draft takes into account the possibility that Australia could become a Republic on or before the Northern Territory constitution comes into effect. In that event, the Exposure Draft indicates that certain changes will be required. Further information on this can be obtained by reference to the Committee's Discussion Paper no. 7, *An Australian Republic? Implications for the Northern Territory*.

In addition, if the constitution was to be brought into operation before a grant of Statehood to replace the *Northern Territory (Self-Government) Act 1978*; slight changes may also be required. The Exposure Draft also indicates these. The annotations on each clause are to assist public discussion and include a short description of each clause plus cross references to the Committee's Discussion and Information Papers and Reports.

Exposure Draft Northern Territory Constitution

Purpose of the Clause: 4.8

Provides for the tenure of office for a member of the Parliament who is a Minister and for the cessation of that tenure, governed by the following:

- (a) if he or she ceases to be a member of Parliament or has resigned;
- (b) if his or her appointment has been terminated by the Governor;
- (c) if he or she resigns in writing to the Governor and the resignation is accepted; or
- (d) where he or she has not been re-elected as a member of Parliament after a general election of the Parliament.

Variations:

- (a) Republic: No change.
- (b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory, 1987*: pp58-59 and also Part H.

4.9 OATH TO BE TAKEN BY MEMBERS OF EXECUTIVE COUNCIL AND MINISTERS

- (1) A member of the Executive Council shall, before entering on the duties of the member's office, make and subscribe an oath or affirmation in accordance with the form in Schedule 1.
- (2) A person who is appointed to a Ministerial Office shall, before entering on the duties of the office, make and subscribe an oath or affirmation in accordance with the form in Schedule 2.
- (3) An oath or affirmation under subsection (1) or (2) shall be made before the Governor or a person authorised by the Governor to administer such oaths or affirmations.

Purpose of the Clause: 4.9

Provides a member of the Executive Council and a person appointed to a ministerial office an oath or affirmation to make before the Governor as prescribed in a schedule to this Constitution.

Variations:

- (a) Republic: No change, although the form of oath may change.
- (b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: No discussion.

PART 5 - FINANCE

5.1 INTERPRETATION

In this Part "public moneys of the Northern Territory" means the revenues, loans and other moneys receive by or on behalf of the Northern Territory.

Exposure Draft Northern Territory Constitution

- (2) If a vote of no confidence in the Government has been carried in the Parliament by a majority of its members present and voting and the Governor considers that there is another member of the Parliament who commands or is likely to command the general support of the majority of the members of the Parliament on any matter, the Governor may terminate the appointment of the Premier, and may do so without the need to refer the matter to or act on the advice of the Executive Council or the Premier.
- (3) Subject to this Part, the Governor may, on the recommendation of the Premier -
- (a) appoint a member of the Parliament to a Ministerial Office; and
 - (b) at any time, terminate the appointment.

Purpose of the Clause: 4.7

4.7 (1) Provides for the Governor to appoint as Premier of the Northern Territory the member of the Parliament who in his or her sole opinion commands or is likely to command the general support of the majority of the members of the Parliament. Thus the Premier must be the person having the confidence of a majority of the Parliament to be the leader of the Government.

4.7 (2) When read with Clause 4.7(1), provides that where there is a vote of no confidence by the Parliament in the Government, the Governor may appoint another member of the Parliament who commands or is likely to command the general support of the majority of the members of the Parliament, to be Premier, and that the Governor can terminate the appointment of the existing Premier, without having to refer the matter to or act on the advice of the Executive Council or the Premier.

4.7 (3) Provides for the Governor on the recommendation of the Premier to appoint and terminate, at any time, a member of the Parliament to be a Minister of the Northern Territory.

Variations:

(a) Republic: No change.

(b) Pre-Statehood: No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory, 1987: Part I.*

4.8 TENURE OF OFFICE

The appointment of a person to a Ministerial Office takes effect on the day specified in the instrument of appointment and terminates when -

- (a) he or she ceases, by reason of his or her resignation or by reason of the provisions of section 3.15, to be a member of the Parliament;
- (b) his or her appointment is terminated under section 4.7 (3) by the Governor;
- (c) he or she resigns office by writing signed by him or her delivered to the Governor and the resignation is accepted by the Governor; or
- (d) the first sittings of the Parliament after a general election of the Parliament that takes place after the appointment takes effect, where the Minister is not re-elected as a member.

Exposure Draft Northern Territory Constitution

Moreover, the Committee recognises that there will be no major constitutional development in the Northern Territory without the support and recognition of the basic rights of Aboriginal people. However, there is a concern in Aboriginal society which values its various indigenous cultural circumstances, particularly land rights, sacred sites, and customary law; the concern being that these rights should be constitutionally protected, otherwise they could be at risk after Statehood.

This Exposure Draft reflects a recommendation to satisfy these concerns, whilst presuming the transfer of the *Aboriginal Land Rights (Northern Territory) Act 1976* to become a law of the Northern Territory.

Part of this proposal is to introduce the concept of organic laws into our new constitution. This type of law would have precedence over other statutory laws and would require a large majority of votes of Parliament — two thirds or three quarters of the Members of the House over two consecutive sittings with a minimum time gap of two months — to be enacted or amended.

Other matters are included in the Exposure Draft, such as the acquisition of less than freehold interests over Aboriginal land on just terms, for the public benefit. It also includes restrictions on voluntary dealings over freehold Aboriginal title after judicial enquiry. This can only happen after the Aboriginal people concerned have been fully informed and where there is a genuine desire on the part of those Aboriginal people to enter into the proposed transaction. Furthermore, the enquiry must be satisfied that the proposed transaction is also in the interests of those Aboriginal people concerned.

Issues associated with Aboriginal rights, including land rights, are clearly amongst the most sensitive issues associated with the development of our own constitution. The Committee's proposal is aimed at finding a means of addressing these issues in a way that can receive broad support from within the Northern Territory community.

This Exposure Draft is based on the premise that the Northern Territory is to be placed on an equal footing with existing States as a precondition to any grant of Statehood. Let us not accept any second class grant. Let us insist on our constitutional rights as a new State in the same way as existing States. This equality will be achieved in part by inviting all Territorians to participate in the process of adopting their own constitution. In other respects, equality will be

Exposure Draft Northern Territory Constitution

achieved by negotiating acceptable terms and conditions for Statehood with the Commonwealth Government. These negotiated matters may not all be dealt with in the Northern Territory constitution as such, but will be incorporated in a memorandum of agreement between the two Governments. One condition must, however, be accepted; namely, that the Commonwealth will accept the new constitution — as finally adopted by Territorians in a Constitutional Convention and as passed in a Territory referendum — without further change.

Mr Speaker, many changes to the Exposure Draft will no doubt be made in the future. Let us have open discussion on the matter. We do not seek to avoid debate, but rather seek to encourage it. The final document undoubtedly will have been considered in detail through the long process of Committee deliberations, Assembly debate and the Territory Constitutional Convention. Territorians must be allowed to frame their own constitution as a framework for a united and peaceful society into the 21st Century. It must be a document for all Territorians and they must have a sense of ownership of it. Let us have the vision to work towards that end.

Mr Speaker, I commend the Exposure Draft to Honourable Members.

Exposure Draft Northern Territory Constitution

Purpose of the Clause: 4.5

- 4.5 (1) Provides for the establishment of the Executive Council to advise the Governor of the Northern Territory.
- 4.5 (2) Provides for membership of the Executive Council will comprise of members of Parliament who hold the office of Minister for the Northern Territory.
- 4.5 (3) Provides for the Governor or his or her nominee to attend all meetings of the Executive Council and that the Governor or his or her nominee will preside at all meetings at which he or she is present.
- 4.5 (4) Provides for the Governor to introduce into a meeting of the Executive Council any matter for discussion.
- 4.5 (5) Provides for the Governor to call meetings of the Executive Council, but he or she must call a meeting of the Executive Council when requested by the Premier or Acting Premier.
- 4.5 (6) Provides for the Governor to be the only person who can convene a meeting of the Executive Council.
- 4.5 (7) Provides for the Executive Council to determine its own rules and procedures in conducting its meetings.

Variations:

- (a) Republic: No change.
- (b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory, 1987: Part J.*

4.6 MINISTERIAL OFFICE

There shall be such number of offices of Minister of the Northern Territory, having such respective designations, as the Governor, acting on the advice of the Premier, from time to time determines.

Purpose of the Clause: 4.6

Provides for the Governor, acting on the advice of the Premier, to determine from time to time the number of offices and designations of Minister of the Northern Territory.

Variations:

- (a) Republic: No change.
- (b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory, 1987: Part I.*

4.7 APPOINTMENT OF MINISTERS

- (1) The Governor shall, from time to time, appoint as the Premier of the Northern Territory the member of the Parliament who, in the Governor's sole opinion, commands or is likely to command the general support of the majority of members of the Parliament on any matter.

Exposure Draft Northern Territory Constitution

Purpose of the Clause: 4.4

- 4.4 (1) Provides for Parliament by resolution to appoint one or more persons to be Acting Governor, during any vacancy in the office of Governor or the Governor is absent from duty, or for any reason is unable to perform the powers and functions of that office.
- 4.4 (2) Provides for the appointment of Acting Governor can only be effected in accordance with the resolution made by Parliament.
- 4.4 (3) Provides for powers and functions of the Acting Governor to exercise all the powers and functions of the Governor.
- 4.4 (4) Provides for the Governor to exercise his powers and functions, when he or she is absent, even though there is an Acting Governor.
- 4.4 (5) Provides for any action done by the appointment of Acting Governor cannot be called into question on the grounds that the occasion for his or her so acting had not arisen or the action had ceased.

Variations:

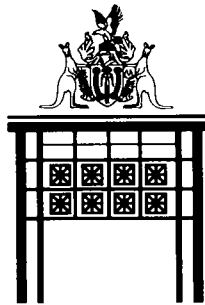
(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: No discussion.

4.5 EXECUTIVE COUNCIL

- (1) There shall be an Executive Council of the Northern Territory to advise the Governor in the government of the Northern Territory.
- (2) The Executive Council shall consist of the persons for the time being holding Ministerial office.
- (3) The Governor or his or her nominee is entitled to attend all meetings of the Executive Council, and shall preside at all meetings at which he or she is present.
- (4) The Governor may introduce into the Executive Council any matter for discussion in the Council.
- (5) The Governor may convene such meetings of the Executive Council as he or she thinks necessary but shall convene a meeting when requested by the Premier or acting Premier to do so.
- (6) A meeting of the Executive Council shall not be convened otherwise than by the Governor.
- (7) Subject to the preceding provisions of this section, the procedure of the Executive Council shall be as the Council determines.



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

**Sessional Committee on
Constitutional Development**

Exposure Draft - Parts 1 to 7:

**A new Constitution
for the Northern Territory**

June 1995

Exposure Draft Northern Territory Constitution

Exposure Draft Northern Territory Constitution

Purpose of the Clause: 4.3

Provides for the remuneration, terms and conditions of the Governor to be fixed by an Act of Parliament and not to be reduced during any term of office.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: p49.

4.4 ACTING GOVERNOR

- (1) The Parliament may, by resolution, appoint one or more persons to act in the office of Governor and to administer the government of the Northern Territory during any vacancy in the office of Governor or whenever the Governor is absent from duty or from the Northern Territory or is, for any other reason, unable to exercise and perform the powers and functions of office.
- (2) An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the resolution of the Parliament.
- (3) An Acting Governor administering the government of the Northern Territory has, and may exercise and perform, all the powers and functions of the Governor.
- (4) The exercise of a power or performance of a function by an Acting Governor during the absence of the Governor from the Northern Territory does not prevent the exercise of any of those powers or the performance of any of those functions by the Governor.
- (5) The appointment of an Acting Governor, and any act done by a person purporting to act under this section, shall not be called in question on the grounds that the occasion for his or her so acting had not arisen or had ceased.

Exposure Draft Northern Territory Constitution

Purpose of the Clause: 4.2

This establishes the new office of Governor to replace the Administrator under the *Northern Territory (Self-Government) Act*, 1978. It assumes that this change will be associated with a grant of statehood.

- 4.2 (1) Provides for the office of Governor for the Northern Territory, appointed by Her Majesty (the Queen of Australia) on the advice of the Premier in accordance with the provisions of the *Australia Act* 1986 and will hold office during Her Majesty's pleasure.
- 4.2 (2) Provides for duties of the Governor to uphold and maintain the provisions of this Constitution and to administer the government of the Northern Territory as the Head of State for the Northern Territory representing the Queen, in the same manner as a State Governor.
- 4.2 (3) Provides for the Governor to fulfil his or her duties in administering the government of the Northern Territory in accordance with advice of the Executive Council except as otherwise expressly provided for under this Constitution, an Organic Law, an Act of the Parliament or where it would not uphold and maintain the new Constitution. Thus the convention that the Governor acts on the advice of his/her responsible Ministers is elevated to a constitutional rule except in limited circumstances.
- 4.2 (4) Provides for the Governor to give reasons to Parliament if he or she has acted or has claimed to have acted contrary to the advice of the Executive Council or of a Minister of the Northern Territory and that a written statement detailing the reasons for the action taken be tabled in the Parliament.

Variations:

- (a) **Republic:** If Australia (including the Northern Territory) is a Republic, the appointment of the Head of State by the Queen will need to be replaced by some other method of appointment or election.
- (b) **Pre-Statehood:** If the new Constitution is to come into operation before a grant of Statehood, it may be necessary to continue the present method of appointment by the Governor General, to be replaced by appointment by the Queen from the grant of Statehood.

Reference to Discussion and Information Papers: See Discussion Paper No. 7, *An Australian Republic? Implications for the Northern Territory*; and Discussion Paper on *A Proposed New Constitution for the Northern Territory*, 1987: Parts G & H.

4.3 REMUNERATION AND OTHER TERMS AND CONDITIONS OF GOVERNOR

The Governor shall be paid out of the Public Account of the Northern Territory such remuneration, and shall be engaged on such terms and conditions, as fixed by or under an Act, which remuneration, terms and conditions shall not be reduced while the Governor continues in office.

Exposure Draft Northern Territory Constitution

NORTHERN TERRITORY OF AUSTRALIA

EXPOSURE DRAFT CONSTITUTION

PREAMBLE

PART 1 - THE NORTHERN TERRITORY

1. ESTABLISHMENT OF BODY POLITIC

PART 2 - THE LEGAL SYSTEM OF THE NORTHERN TERRITORY

Division 1 - Laws of the Northern Territory

2.1 THE LAWS

2.2 CONSTRUCTION OF LAWS

2.3 ORGANIC LAWS

Division 2 - Altering the Constitution and Organic Laws

[CLAUSES YET TO BE DRAFTED]

PART 3 - THE PARLIAMENT OF THE NORTHERN TERRITORY

Division 1 - Legislative Power

3.1 LEGISLATIVE POWER OF NORTHERN TERRITORY

3.2 ASSENT TO PROPOSED LAWS

3.3 PROPOSAL OF MONEY VOTES

3.4 APPROPRIATION AND TAXATION LAWS NOT TO DEAL WITH SUBJECTS OTHER THAN THOSE FOR WHICH APPROPRIATION MADE OR TAXATION IMPOSED

3.5 POWERS, PRIVILEGES AND IMMUNITIES OF PARLIAMENT

Division 2 - Constitution and Membership of Parliament

3.6 THE PARLIAMENT

3.7 QUALIFICATIONS OF ELECTORS

Exposure Draft Northern Territory Constitution

- 3.8 VOTING AT ELECTIONS
- 3.9 WRITS FOR ELECTIONS
- 3.10 TERM OF OFFICE OF MEMBER
- 3.11 DATE OF ELECTIONS
- 3.12 RESIGNATION OF MEMBERS OF PARLIAMENT
- 3.13 FILLING OF CASUAL VACANCY
- 3.14 QUALIFICATIONS FOR ELECTION
- 3.15 DISQUALIFICATIONS FOR MEMBERSHIP OF PARLIAMENT

Division 3 - Procedure of Parliament

- 3.16 SESSIONS OF PARLIAMENT
- 3.17 QUORUM
- 3.18 THE SPEAKER
- 3.19 ACTING SPEAKER
- 3.20 VOTING IN PARLIAMENT
- 3.21 VALIDATION OF ACTS OF PARLIAMENT
- 3.22 MINUTES OF PROCEEDINGS
- 3.23 STANDING RULES AND ORDERS

PART 4 - THE EXECUTIVE

- 4.1 EXTENT OF EXECUTIVE POWER
- 4.2 GOVERNOR
- 4.3 REMUNERATION AND OTHER TERMS AND CONDITIONS OF GOVERNOR
- 4.4 ACTING GOVERNOR
- 4.5 EXECUTIVE COUNCIL
- 4.6 MINISTERIAL OFFICE
- 4.7 APPOINTMENT OF MINISTERS
- 4.8 TENURE OF OFFICE
- 4.9 OATH TO BE TAKEN BY MEMBERS OF EXECUTIVE COUNCIL AND MINISTERS

Exposure Draft Northern Territory Constitution

Purpose of the Clause: 4.1

This clause establishes the extent of the executive power of the Northern Territory Government under the new Constitution. It provides for the powers, duties and functions of the Governor, the Executive Council and Ministers of the Northern Territory to extend to the execution and maintenance of the new Constitution and the laws of the Northern Territory, including the prerogatives of the Crown applicable to the Northern Territory.

Variations:

(a) **Republic:** The reference to prerogatives of the Crown will have to be changed to a reference to those powers, etc., that were previously comprehended within the prerogatives of the Crown. The draft assumes that the title "Governor" will be used, whether or not the Territory has a republican system, in a similar manner to the State Governors of the USA.

(b) **Pre—Statehood:** No change.

Reference to Discussion and Information Papers: In regard to the power of the Executive, see *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: Parts F & G.

4.2 GOVERNOR

- (1) There shall be a Governor of the Northern Territory who shall be appointed by Her Majesty on the advice of the Premier and who shall hold office during Her Majesty's pleasure.
- (2) Subject to this Constitution, the Governor is charged with the duty of -
 - (a) upholding and maintaining this Constitution; and
 - (b) administering the government of the Northern Territory.
- (3) Except as otherwise expressly provided in this Constitution or an Act, or where, in the Governor's opinion, to so act would be contrary to his or her duty under subsection (2)(a), the Governor shall act, in administering the government of the Northern Territory, only in accordance with the advice of the Executive Council.
- (4) If the Governor acts in or purportedly in administering the government of the Northern Territory otherwise than in accordance with the advice of the Executive Council or a Minister of the Northern Territory duly given, he or she shall, on the first sitting day of the Parliament after so acting, cause to be tabled in the Parliament a written statement of his or her reasons for so acting.

Exposure Draft Northern Territory Constitution

Purpose of the Clauses: 3.22

Provides that all proceeding of the Parliament will be minuted.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: No discussion, but see *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: p.35.

3.23 STANDING RULES AND ORDERS

The Parliament may make Standing Rules and Orders, not inconsistent with a law of the Northern Territory, relating to the order and conduct of its business and proceedings.

Purpose of the Clauses: 3.23

Provides that the Parliament for purpose of conducting its business and proceedings will makes rules and orders which will formally be called 'Standing Rules and Orders'.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: No discussion, but see *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: p.35.

PART 4 - THE EXECUTIVE

4.1 EXTENT OF EXECUTIVE POWER

The duties, powers, functions and authorities of the Governor, the Executive Council and the Ministers of the Northern Territory imposed or conferred by or under this Part extend to the execution and maintenance of this Constitution and the laws of the Northern Territory and to the exercise of the prerogatives of the Crown so far as they relate to those duties, powers, functions and authorities.

Exposure Draft Northern Territory Constitution

PART 5 - FINANCE

- 5.1 INTERPRETATION
- 5.2 PUBLIC MONEYS
- 5.3 WITHDRAWAL OF PUBLIC MONEYS

PART 6 - THE JUDICIARY

- 6.1 JUDICIAL POWER OF COURTS
- 6.2 APPOINTMENT, REMOVAL AND REMUNERATION OF JUDGES OF THE SUPREME COURT
- 6.3 DOCTRINE OF SEPARATION OF POWERS

PART 7 - ABORIGINAL RIGHTS

- 7.1 PROTECTION OF ABORIGINAL LAND RIGHTS
 - 7.2 PROTECTION OF ABORIGINAL SACRED SITES
-

Exposure Draft Northern Territory Constitution

Exposure Draft Northern Territory Constitution

Purpose of the Clause: 3.20

3.20 (1) Provides that under this Constitution questions that arise in the Parliament will be determined by a majority of votes.

3.20 (2) Provides that the Speaker or other member presiding at a meeting of the Parliament or of a Parliamentary Committee will in all cases be entitled to vote on a question and where the votes are equal, he or she shall have a casting vote.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: pp35-36.

3.21 VALIDATION OF ACTS OF PARLIAMENT

Where a person who has, whether before or after the commencement of this Constitution, purported to sit or vote as a member of the Parliament at a meeting of the Parliament or of a Committee of the Parliament -

- (a) was not a duly elected member by reason of his or her not having been qualified for election or of any other defect in the election of the person; or
- (b) had vacated office as a member,

all things done or purporting to have been done by the Parliament or that Committee shall be deemed to be as validly done as if the person had, when so sitting or voting, been a duly elected member of the Parliament or had not vacated office, as the case may be.

Purpose of the Clauses: 3.21

Provides that all actions by the Parliament, whether or not any member was duly elected by reason of his or her not being qualified for elections or has vacated his or her position as a member of Parliament, will be deemed as valid action as if that person had been duly elected as a member of the Parliament or had not vacated office.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: No discussion, but see *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: p.35.

3.22 MINUTES OF PROCEEDINGS

- (1) The Parliament shall cause minutes of its proceedings to be kept.
- (2) A copy of minutes kept under subsection (1) shall, on request made by any person, be made available for inspection by the person or, on payment of such fee, if any, as is fixed by or under an Act, be supplied to the person.

Exposure Draft Northern Territory Constitution

Purpose of the Clause: 3.18

3.18 (1) Provides for the Office of Speaker and that the office is to be filled by a member of the Parliament, chosen by other members of the Parliament.

3.18 (2) Provides for the Speaker to hold office until the Parliament first meets after a general election, he or she resigns in writing delivered to the Governor, ceases to be a member of the Parliament or is removed from office by the Parliament.

3.19 (3) Provides that the powers, functions and privileges of the Speaker will be incorporated in legislation passed by the Parliament.

"Law of the Territory" will be defined to include this Constitution, an Organic Law, an Act, subordinate legislation and the common law applicable in the Territory.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: pp36, 38.

3.19 ACTING SPEAKER

The Standing Rules and Orders of the Parliament may provide for the appointment of an Acting Speaker and for a further Acting Speaker in place of the Acting Speaker, and for all matters incidental to such an appointment.

Purpose of the Clause: 3.19

Provides that the Standing Rules and Orders of the Parliament will make provision for the appointment or otherwise of an Acting Speaker.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: pp36, 38.

3.20 VOTING IN PARLIAMENT

- (1) Subject to this Constitution, questions arising in the Parliament shall be determined by a majority of votes.
- (2) The Speaker or other member presiding at a meeting of the Parliament or of a Committee of the Parliament is, in all cases, entitled to vote and shall also, where there is an equality of votes on a question, have a casting vote.

Exposure Draft Northern Territory Constitution

PREAMBLE

It is normal for a Constitution to have a Preamble. The Preamble would be a part of the Constitution and could affect its meaning and interpretation, but would not in itself be directly enforceable.

1. Before the proclamation of the Colony of New South Wales in 1788 and since time immemorial all or most of the geographical area of Australia that now constitutes the Northern Territory of Australia (the Northern Territory) was occupied by various groups of Aboriginal people under an orderly and mutually recognised system of governance and laws by which they lived and defined their relationships between each other, with the land and with their natural and spiritual environment;

Purpose of the Clause: Preamble 1

Provide for the first time in Australia some constitutional recognition of the Aboriginal people, their system of governance and laws and their relationship with the land and with their natural and spiritual environment prior to European occupation. This follows from the rejection of the doctrine of *terra nullius* in the *Mabo* case. The draft Constitution that follows contains specific references to Aboriginal rights as existing at the present time.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: The possibility of a Preamble to the new Constitution as to Aboriginal Rights and Human Rights was raised in *Discussion Paper on A Proposed New State Constitution for the Northern Territory*, 1987: (Parts S & T). See also Discussion Paper No. 4, *Recognition of Aboriginal Customary Law*, 1992, p.43, Discussion Paper No. 6, *Aboriginal Rights and Issues - Options for Entrenchment*, 1993: p32, Discussion Paper No. 8, *A Northern Territory Bill of Rights?* p51.

2. In 1788, that part of Australia East of the 135th parallel of Longitude East was proclaimed a Colony of Great Britain as The Colony of New South Wales;
3. By Letters Patent of 1825, the boundaries of the Colony of New South Wales were extended to the 129th parallel of longitude East, thus encompassing all of the area of the Northern Territory;
4. The Northern Territory remained a part of the Colony of New South Wales (except for that period in 1846 when it became, and while it remained, part of The Colony of North Australia) until 1863 when, by Letters Patent, it became a part of the Province of South Australia;
5. The Province of South Australia became a State of the Commonwealth on the proclamation of the Commonwealth of Australia in 1901 under the Commonwealth of Australia Constitution Act of the Imperial Parliament;
6. The *Northern Territory Acceptance Act 1910* of the Commonwealth of Australia provided for the ratifying of an Agreement between the Commonwealth and the State of

Exposure Draft Northern Territory Constitution

South Australia for the surrender by that State to, and the acceptance by the Commonwealth of, the Northern Territory and provided for the acceptance by the Commonwealth of the Northern Territory;

7. By the Constitution of the Commonwealth it is provided that the Parliament of the Commonwealth may make laws for the government of any Territory surrendered by any State to and accepted by the Commonwealth;
8. The Parliament of the Commonwealth, by the *Northern Territory (Administration) Act 1910*, made provision for the government of the Northern Territory, and by the *Northern Territory Supreme Court Act 1961* provided for its Supreme Court;

Purpose of the Clause: Preamble 2 through to 8

Provides for a summary of the historical and constitutional development of the Northern Territory from 1788 to 1911 when the Northern Territory came under Commonwealth control as a territory of the Commonwealth. These parts of the Preamble largely follow the wording of the recitals in the Northern Territory (Administration) Act and in the Northern Territory (Self-Government) Act.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See previous comments under Preamble 1.

9. In 1978, because of the political and economic development of the Northern Territory, the Parliament of the Commonwealth, by the *Northern Territory (Self-Government) Act 1978*, conferred self-government on the Northern Territory and, for that purpose provided, among other things, for the establishment of separate political, representative and administrative institutions in the Northern Territory and gave the Northern Territory control over its own Treasury;

Purpose of the Clause: Preamble 9

Provides for the recognition of the Northern Territory in 1978 as self-governing Territory of the Commonwealth under the Northern Territory Self-Government) Act, establishing its own political, representative and administrative institutions, including its own Treasury. This Preamble basically follows the wording in that Act.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See previous comments under Preamble 1.

10. The self-government conferred on the Northern Territory by the *Northern Territory (Self-Government) Act 1978* was a limited grant of legislative and executive powers, the Commonwealth retaining certain reserve powers and a power to disallow Northern Territory legislation. There was also retained in the Parliament of the Commonwealth a plenary grant of legislative powers in respect of the Northern Territory under section 122 of the Constitution of the Commonwealth, unlimited by subject matter;

Exposure Draft Northern Territory Constitution

Purpose of the Clause: 3.17

Provides for the minimum number of members that are to be present in order for Parliament to validly conduct business and the Standing Rules and Orders of the Parliament will make provision in the event where there is not the sufficient number of members to form a quorum.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: No discussion, but see *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: p35.

3.18 THE SPEAKER

- (1) The Parliament shall, before proceeding to the dispatch of any other business, choose a member of the Parliament to be the Speaker of the Parliament and, as often as the office of Speaker becomes vacant, the Parliament shall again choose a member to be the Speaker.
- (2) The Speaker continues to hold office until -
 - (a) the Parliament first meets after a general election of members of the Parliament that takes place after he or she is chosen Speaker under subsection (1);
 - (b) he or she resigns office by writing signed by him or her delivered to the Governor;
 - (c) he or she ceases to be a member of the Parliament otherwise than by reason of the dissolution of the Parliament; or
 - (d) he or she is removed from office by the Parliament,whichever first occurs.
- (3) The Speaker has such functions, powers and privileges as are imposed or conferred on him or her by or under a law of the Territory.

Exposure Draft Northern Territory Constitution

Division 3 - Procedure of Parliament

3.16 SESSIONS OF PARLIAMENT

- (1) Subject to this section, the Governor may, by notice in the *Gazette*, appoint such times for holding the sessions of the Parliament as he or she thinks fit and may also, from time to time, in like manner, prorogue the Parliament.
- (2) At the written request of a majority of members of the Parliament, the Governor shall, by notice in the *Gazette*, appoint a time, being not later than 14 days after the day on which he or she receives the request, for holding a session of the Parliament.
- (3) The first sittings of the Parliament shall be commenced within 6 months after the declaration of the polls after a general election of members of the Parliament and thereafter shall be held not later than 6 months after the last day of the previous sittings.

Purpose of the Clause: 3.16

3.16 (1) Provides for the Governor to appoint such times for holding the sessions of Parliament and may from time to time terminate the session by prorogation without dissolving the Parliament.

3.16 (2) Provides for the majority of members of the Parliament to request the Governor to appoint a time, being no later than 14 days after the day on which he or she receives the request, for holding a session of the Parliament.

3.16 (3) Provides for sittings of the Parliament shall commence within 6 months after the declaration of the polls after a general election and within 6 months after the last day of the previous sittings.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: in regard to (1) and (2) above, no discussion, but see *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: p.35. As to (3) see *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: pp24-25, 38.

3.17 QUORUM

- (1) The quorum for a sitting of the Parliament is one third of the number of seats in the Parliament at the time.
- (2) The Standing Rules and Orders of the Parliament shall make provision for the action to be taken in the event of a lack of or loss of a quorum at any time.

Exposure Draft Northern Territory Constitution

Purpose of the Clause: Preamble 10

This preamble notes that under Self-Government, the Northern Territory was granted only limited legislative and executive powers and that under section 122 of the Australian Constitution the Commonwealth has still retained ultimate control of the Northern Territory over Northern Territory matters.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See previous comments under Preamble 1.

11. In 1979 the Parliament of the Commonwealth enacted the *Northern Territory Supreme Court (Repeal) Act 1979* and the Legislative Assembly of the Northern Territory enacted the *Supreme Court Act*;

Purpose of the Clause: Preamble 11

Provides that the Commonwealth in 1979 passed legislation allowing the Northern Territory to establish its own Supreme Court by a Territory Act, thus completing the transfer of the three traditional arms of government to the Northern Territory — legislature, executive and judiciary.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See previous comments under Preamble 1.

12. A Committee of the Legislative Assembly of the Northern Territory on the Constitutional Development of the Northern Territory was established in 1985, and produced and tabled various papers and reports in the Legislative Assembly, including a draft constitution for the Northern Territory;

Purpose of the Clause: Preamble 12

Provides for the recognition of the work done by the Northern Territory Legislative Assembly Sessional Committee (previously Select Committee) on Constitutional Development in promoting issues on constitutional development and the development of a draft constitution for the Northern Territory

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See previous comments under Preamble 1.

13. The Legislative Assembly of the Northern Territory, by the *Constitutional Convention Act 1996*, established a Convention comprising a broad representation of the community of the Northern Territory to receive and consider the recommendations of the Legislative Assembly on the establishing and form of a new Constitution for the Northern Territory and, on the x day of xxx 1998 that Convention, in accordance with

Exposure Draft Northern Territory Constitution

the Act, ratified a draft of that Constitution, in the following form, to be put to a referendum of the electors of the Northern Territory for approval;

Purpose of the Clause: Preamble 13

Provides for the recognition of the work done by a Constitutional Convention made up of participants from all walks of life in the Northern Territory in formulating a final Northern Territory constitution as put to the people of the Northern Territory in a referendum. Such a Convention was proposed by the Committee for the purpose of producing a settled draft of the new Constitution before it was put to a Northern Territory Referendum.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See previous comments under Preamble 1 and note the Interim Report No. 1, *A Northern Territory Constitutional Convention*, 1995.

14. On the approval of this Constitution at that referendum by a vote of more than the number of Northern Territory electors prescribed in legislation enacted by the Legislative Assembly of the Northern Territory, it is intended to submit the Constitution as so approved to the Commonwealth to be adopted as the Constitution of the Northern Territory and for the contemporaneous repeal of the *Northern Territory (Self-Government) Act 1978* of the Commonwealth;

Purpose of the Clause: Preamble 14

Provides for the recognition of the Northern Territory constitution as adopted by the people of the Northern Territory and voting in a referendum. It anticipates that the draft Constitution as settled by the Constitutional Convention will in fact be passed at that referendum, following the procedure originally proposed by the Committee.

Variations:

(a) Republic: No change. However, if Australia as a whole becomes a Republic, before the new Constitution comes into force, this may also need to be reflected in a new Preamble after this clause.

(b) Pre—Statehood: This clause has been drafted to formally recognise that the *Northern Territory (Self-Government) Act* will be repealed by the Commonwealth Parliament and that the new Constitution of the Northern Territory will be recognised by the Commonwealth Parliament either prior to a grant of Statehood or at the point of that grant.

Reference to Discussion and Information Papers: See previous comments under Preamble 1.

15. The people of the Northern Territory, voting at the referendum, have freely chosen to associate in accordance with this Constitution as free, diverse yet equal citizens and to be governed under it in accordance with democratic principles,

Exposure Draft Northern Territory Constitution

Purpose of the Clause: 3.15 (2)

Provides that a person elected to the new Parliament who previously held an Northern Territory office or appointment or was employed by the Northern Territory, other than an office, appointment or employment prescribed under clause 3.15(1), automatically ceases to hold same upon election to the new Parliament. This will enable the person to nominate and campaign, but continue to hold the existing office, appointment or employment if not elected.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: pp19-23.

- (3) A member of the Parliament vacates office if he or she -
- (a) becomes a person to whom any of the paragraphs of subsection (1) applies;
 - (b) ceases to be an Australian citizen;
 - (c) without the permission of the Parliament, fails to attend the Parliament for 7 consecutive sitting days of the Parliament;
 - (d) ceases to be entitled, or qualified to become entitled, to vote at elections of members of the Parliament; or
 - (e) takes or agrees to take, directly or indirectly, any remuneration, allowance or honorarium for services rendered in the Parliament, otherwise than in accordance with, or honestly believing it to be in accordance with, an Act that provides for remuneration and allowances to be paid to persons in respect of their services as members of the Parliament, members of the Executive Council or Ministers of the Northern Territory.

Purpose of the Clause: 3.15 (3)

Provides for the vacating of the office of a member of the new Parliament if a person is disqualified from the office in accordance with section 3.15(1), ceases to be an Australian citizen, has failed to attend Parliament without seeking leave for 7 consecutive days, ceases to be entitled or qualified to be entitled to vote at election of members of the Parliament; or takes or agrees to take, directly or indirectly any remuneration or allowance or honorarium for services, not entitled under law, to that person as a member of the Parliament.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: pp19-23.

Exposure Draft Northern Territory Constitution

Purpose of the Clause: 3.15 (1)

Provides for the criteria for persons who are disqualified from being a candidate for a member of the Parliament at the date of nominations.

A person cannot stand if -

- (a) he or she is a member of Parliament of a State or the Commonwealth;
- (b) is the Governor General of Australia, the Administrator or Governor of a State or Territory;
- (c) holds office as a judge under any law of the Commonwealth, State or Territory;
- (d) holds any public office that is prescribed by an Act of the new Parliament or otherwise is employed on remuneration by any public employer as prescribed by an Act of the new Parliament;
- (e) is an undischarged bankrupt; or
- (f) has been convicted under any law of the Commonwealth, State or Territory and is under sentence of imprisonment (including while on parole or a suspended sentence) for one year or longer.

Variations:

- (a) **Republic:** No change.
- (b) **Pre—Statehood:** No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: pp19-23.

- (2) A person elected as a member of the Parliament who, immediately before being so elected -

- (a) held an office or appointment (other than an office or appointment prescribed for the purposes of this section by an Act) under a law of the Northern Territory; or
- (b) not being the holder of an office or appointment under such a law, was employed by the Northern Territory or by a body corporate established for a public purpose by an Act (other than employment prescribed for the purposes of this section by an Act),

and who was entitled to any remuneration or allowance (other than reimbursement of expenses reasonably incurred) in respect of that office, appointment or employment, ceases, by force of this subsection, to hold such office, appointment or employment on being so elected.

Exposure Draft Northern Territory Constitution

Purpose of the Clause: Preamble 15

Provides that this document as adopted by the people of the Northern Territory voting at a referendum is to be the Constitution of the Northern Territory. It assumes that the referendum will be successful, although of course if it is not successful, the Constitution will not proceed to the next stage of implementation by the Commonwealth.

Variations:

(a) **Republic:** No change.

(b) **Pre—Statehood:** No change.

Reference to Discussion and Information Papers: See previous comments under Preamble 1.

NOW THEREFORE it is declared that this is the Constitution of the Northern Territory.

PART 1 - THE NORTHERN TERRITORY

1. ESTABLISHMENT OF BODY POLITIC

There is hereby established a body politic under the Crown in and for the Northern Territory of Australia by the name of the Northern Territory.

Purpose of the Clause: 1

This is a fundamental clause in the new Constitution. It provides for the establishment of a new political entity under the Crown for the Northern Territory of Australia and for the new name of the political body to be called the Northern Territory. This entity will be the new Government of the Northern Territory under the new Constitution and will replace the political entity established under the *Northern Territory (Self-Government) Act 1978*. If the Northern Territory also becomes a new State, this new political entity will be the new State Government for the Northern Territory.

Variations:

(a) **Republic:** Delete "under the Crown" in the clause.

(b) **Pre—Statehood:** No change.

Reference to Discussion and Information Papers: It is implicit in the various papers issued by the Committee that the new Constitution will establish a new Government for the Northern Territory, but with elements of continuity with the existing Northern Territory Government under the *Northern Territory (Self-Government) Act*. *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987, makes the point that while Australia remains formally monarchical in structure, the new Territory Government must be likewise be formally monarchical - see Part G. See also the Committee's Discussion Paper No. 7, *An Australian Republic? Implications for the Northern Territory*, 1994 in regard to the implications for the Northern Territory should Australia become a Republic.

Exposure Draft Northern Territory Constitution

PART 2 - THE LEGAL SYSTEM OF THE NORTHERN TERRITORY

Division 1 - Laws of the Northern Territory

2.1 THE LAWS

The laws of the Northern Territory consist of -

- (a) this Constitution;
- (b) the Organic Laws;
- (c) the Acts of the Parliament;
- (d) laws of the Northern Territory in force immediately before the commencement of, and continued in force by, this Constitution;
- (e) laws made under or adopted by or under this Constitution or any of those laws, including subordinate legislative enactments;
- (f) the common law of the Northern Territory; and
- (g) other laws recognised by this Constitution.

Purpose of the Clause: 2.1

This Clause defines what are the laws of the Northern Territory under the new Constitution. It includes a new category of Organic laws (see clause 2.3 below). It will also include Aboriginal customary law on the same basis as the common law in force in the Northern Territory.

Variations:

- (a) Republic: No change.
- (b) Pre-Statehood: No change.

Reference to Discussion and Information Papers: The subject of Northern Territory sources of law is discussed in Discussion Paper No. 4, *Recognition of Aboriginal Customary Law*, 1992: Part D. At page 4 of that Paper, the Committee noted that it is a fundamental principle that the public should be able to ascertain with some certainty what the laws are applicable to the Territory as part of the rule of law. It was not unreasonable to expect the new Constitution to specify the sources of law applying to the community.

2.1.1 ABORIGINAL CUSTOMARY LAW

Aboriginal customary law, to the extent of its existence in the Northern Territory immediately before the commencement of this Constitution —

Alternative 1	Alternative 2
(a) shall be recognised as a source of law in the Northern Territory, and	(a) shall be recognised as a source of law in the Northern Territory;
(b) apart from where it is implemented and enforced as part of the common law of the Northern Territory or the practice of the courts, shall not be implemented or enforced by the Northern Territory, its institutions (including	(b) may be implemented or enforced in respect of any person, but only under and in accordance with that Aboriginal customary law where that person considers that he or she is bound by that law;

Exposure Draft Northern Territory Constitution

3.15 DISQUALIFICATIONS FOR MEMBERSHIP OF PARLIAMENT

- (1) A person is not qualified to be a candidate for election as a member of the Parliament if, at the date of nomination -
 - (a) the person -
 - (i) is a member of either house of the Federal Parliament or of a State or Territory legislature (by whatever name called) of another State or Territory of the Commonwealth;
 - (ii) is the Governor-General, Administrator or head of government of the Commonwealth or the Governor, Administrator or head of government of a State or Territory of the Commonwealth; or
 - (iii) holds office, of whatever tenure, as a judge under a law of the Commonwealth or of a State or Territory of the Commonwealth;
 - (b) the person -
 - (i) holds an office or appointment, prescribed for the purpose of this section by an Act, under a law of the Commonwealth or a State or Territory of the Commonwealth; or
 - (ii) not being the holder of such an office or appointment, is employed by the Commonwealth, by a State or Territory of the Commonwealth or by a body corporate established for a public purpose by such a law, and prescribed for the purposes of this section by an Act, and he or she is entitled to any remuneration or allowance (other than reimbursement of expenses reasonably incurred) in respect of that employment;
 - (c) the person is an undischarged bankrupt; or
 - (d) the person has been convicted and is under sentence of imprisonment (including while on parole or under a suspended sentence) for one year or longer for an offence against the law of the Commonwealth or of a State or Territory of the Commonwealth.

Exposure Draft Northern Territory Constitution

Purpose of the Clause: 3.13

Alternative 1 - This provides for a by election for a casual vacancy under a single member electorate provision.

(Alternatives 2 & 3 - single/multi member electorates or equal multi member electorates)

A different clause for by-elections for casual vacancies is required where there are multi-member electorates. This leaves the method to be prescribed by an Act of the Parliament as the method will depend upon the exact nature of the multi-member electorate system chosen.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: pp30, 34.

3.14 QUALIFICATIONS FOR ELECTION

Subject to this Constitution a person is qualified to be a candidate for election as a member of the Parliament if, at the date of nomination, the person -

- (a) is an Australian citizen;
- (b) has attained the age of 18 years;
- (c) is entitled, or qualified to become entitled, to vote at elections of members of the Parliament; and
- (d) has been resident in the Northern Territory for not less than 6 calendar months.

Purpose of the Clause: 3.14

Provides for qualifications for persons who want to nominate as a candidate for elections as a member of the new Parliament. He or she has to be an Australian citizen, must be 18 years or over, must be entitled or qualified to vote at elections of members of the Parliament and must have been a resident in the Northern Territory for not less than 6 calendar months.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: pp19-23.

Exposure Draft Northern Territory Constitution

<p>judicial institutions), instrumentalities, officers (including law enforcement officers), employees or agents except to the extent that is expressly provided under this Constitution or by or under an Organic Law or an Act of the Parliament.</p>	<p>(c) may also be implemented or enforced in so far as it is part of the common law of the Northern Territory or in accordance with the practice of the courts;</p> <p>but subject to (b) and (c) above, shall not be implemented or enforced by the Northern Territory, its institutions (including judicial institutions), instrumentalities, officers (including law enforcement officers), employees or agents except to the extent that is expressly provided under this Constitution or by or under an Organic Law or an Act of the Parliament.</p>
---	--

Purpose of the Clause: 2.1.1

Provides for the first time for the recognition of current Aboriginal customary law as a source of law in the Northern Territory, for its continued implementation and enforcement among Aboriginal persons themselves by traditional Aboriginal methods and also pursuant to court decisions to the extent that it is already part of the common law or pursuant to existing court practice, but otherwise only as provided by this Constitution, an Organic Law, or an Act of the Parliament. Two alternatives are offered for consideration.

Alternative 1 - The first alternative omits any reference to the enforceability of Aboriginal customary law as between Aboriginal people themselves. It will be left to the courts to decide to what extent it will be given effect to as a source of law.

Alternative 2 - The second alternative includes reference to enforceability of Aboriginal customary law as between Aboriginal people themselves in accordance with that law, thus making it clear that it is an enforceable system of law in respect of those persons who consider themselves bound by it.

In addition, under either alternative, the existing law and practise will also continue.

Subject thereto, Northern Territory institutions and officers will only be able to enforce Aboriginal customary law in so far as the Constitution, an Organic Law or an Act of Parliament so permits.

Variations:

- (a) Republic:** No change.
- (b) Pre—Statehood:** No change.

Reference to Discussion and Information Papers: See Discussion Paper No. 4, *Recognition of Aboriginal Customary Law*, 1992; and Discussion Paper No. 6, *Aboriginal Rights and Issues - Options for Entrenchment*, 1993.

2.2 CONSTRUCTION OF LAWS

All Northern Territory Laws (other than this Constitution) shall be read and construed subject to -

- (a) in any case - this Constitution, the Commonwealth of Australia Constitution Act and the Constitution of the Commonwealth and the *Australia Act 1986*;
- (b) in the case of Acts of the Parliament and laws of the Northern Territory in force immediately before the commencement of, and continued in force by, this Constitution (but not including any subordinate legislative enactments made under such Acts or laws) - any relevant Organic Laws;

Exposure Draft Northern Territory Constitution

- (c) in the case of subordinate legislative enactments - the Organic Laws and the laws by or under which they were enacted or made; and
- (d) in the case of other laws in force in the Northern Territory - the laws mentioned in paragraphs (a), (b) and (c),

and so as not to exceed the authority to make them properly given, to the intent that where any such law would, but for this section, have been in excess of the authority so given shall nevertheless be a valid law to the extent to which it is not in excess of that authority.

Purpose of the Clause: 2.2

This provides for the priority of laws of the Northern Territory, giving the new Constitution (as well as the main federal constitutional documents) first priority as the fundamental law of the Northern Territory, with Organic laws second, Acts of the Parliament and previous Acts still in force third, subordinate legislation fourth, with common law and other sources of Northern Territory law (including Aboriginal customary law) equal next. This basically accords with the current priority of laws in the Northern Territory but gives the new Constitution a fundamental status, introduces a new category of Organic laws of special importance, and equates Aboriginal customary law with the common law.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See Discussion Paper No. 4, *Recognition of Aboriginal Customary Law*, 1992, as to the entrenched status of the new Constitution, and Information Paper No. 2, *Entrenchment of a New State Constitution*, 1989.

2.3 ORGANIC LAWS

- (1) For the purposes of this Constitution, an Organic Law is a law of the Northern Territory -
 - (a) that is declared by this Constitution to be an Organic Law;
 - (b) that is an Act of Parliament which itself expressly states that it is an Organic Law.
- (2) A Bill for an Act of Parliament that is expressly stated to be an Organic Law shall not when enacted take effect as an Organic Law unless -
 - (a) it was supported on its second and third readings by a division in each case in accordance with the Standing Rules and Orders of the Parliament with an affirmative vote equal to or more than a [to be left blank - refer to a NT Constitutional Convention] majority of the total number of members of the Parliament at the time of those respective divisions, and whether or not the Bill was amended;

Exposure Draft Northern Territory Constitution

Purpose of the Clause: 3.12

Provides for a member of the Parliament to resign from Parliament and that the resignation will be in writing and signed by the member. The resignation is to be delivered to the Speaker and if there is no Speaker or the Speaker is absent, be delivered to the Governor. When the member so resigns, the position of the office of the member becomes vacant.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: No discussion.

3.13 FILLING OF CASUAL VACANCY

Alternative 1 - Single Member Electoral Division	Alternative 2 - Single/Multi Member Electorates	Alternative 3 - Equal Multi Member Electorates
<p>Where a casual vacancy in the office of a member of the Parliament occurs earlier than 3 years and 6 months after the first meeting of the Parliament following the last general election, then, within 6 months after the vacancy occurring, unless writs for a general election of members of the Parliament are sooner issued, an election shall be held in the electoral division in respect of which the vacancy occurred, for the purpose of filling the vacant office for the remainder of the term of office of the member who last held the office.</p>	<p>Where a casual vacancy in the office of a member of the Parliament occurs earlier than 3 years and 6 months after the first meeting of the Parliament following the last general election, then, within 6 months after the vacancy occurring, unless writs for a general election of members of the Parliament are sooner issued, a replacement member shall be selected in the manner prescribed by an Act for the purpose of filling the vacant office for the remainder of the term of office of the member who last held the office.</p>	<p>Where a casual vacancy in the office of a member of the Parliament occurs earlier than 3 years and 6 months after the first meeting of the Parliament following the last general election, then, within 6 months after the vacancy occurring, unless writs for a general election of members of the Parliament are sooner issued, a replacement member shall be selected in the manner prescribed by an Act for the purpose of filling the vacant office for the remainder of the term of office of the member who last held the office.</p>

Exposure Draft Northern Territory Constitution

<p>to form a government,</p> <p>the Governor may dissolve the Parliament and may do so without the need to refer the matter to, or act on the advice of, the Executive Council or the Premier.</p>	<p>members of the Parliament, to form a government,</p> <p>the Governor may dissolve the Parliament and may do so without the need to refer the matter to, or act on the advice of, the Executive Council or the Premier.</p>	<p>to form a government,</p> <p>the Governor may dissolve the Parliament and may do so without the need to refer the matter to or act on the advice of the Executive Council or the Premier, and the general election shall be held as soon as the Governor considers it to be practicable thereafter but in any event not later than the Saturday referred to in subsection (2).</p>
<p>(6) No provision.</p>	<p>(6) Subject to subsection (5), the Governor may also dissolve the Parliament at any time after the expiration of the period of 3 years referred to in subsection (4), but only on the advice of the Executive Council or the Premier and not otherwise.</p>	<p>(6) No provision.</p>

Purpose of the Clause: 3.11 - Sub-clauses (5) and (6)

This specifies for the limited circumstances in which the Governor may appoint a new Premier or dissolve the Parliament otherwise than in accordance with the advice of the existing responsible Ministers. In other circumstances, the Governor will normally follow the advice of those responsible Ministers (see below). Three alternatives are provided, depending on whether the term of office is a maximum 4 year term, a 4 year term with a partially fixed term of 3 years, or a fixed 4 year term. In the case of the second alternative, a subclause (6) is also required in relation to dissolution in the last year of the 4 year term.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: pp23-28. As to the circumstances in which the Governor may decide to summon another person to be Premier or to dissolve Parliament, see the *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: pp54-55.

3.12 RESIGNATION OF MEMBERS OF PARLIAMENT

A member of the Parliament may resign office by writing signed by the member and delivered to the Speaker or, if there is no Speaker or the Speaker is absent from the Northern Territory, to the Governor, and on the receipt of the resignation by the Speaker or the Governor, as the case may be, the office of the member becomes vacant.

Exposure Draft Northern Territory Constitution

- (b) there was, a period of at least 2 calendar months between voting on its second reading and voting on its third reading;
 - (c) if the Bill was amended in Committee other than by way of minor drafting or consequential amendments, there was a period of at least 2 calendar months between voting on the last amendment to the Bill and voting on its third reading as amended; and
 - (d) there was an opportunity in its second reading for debate on its merits.
- (3) the Parliament may in a Bill for an Organic Law or by a Bill to be enacted in the same manner as an Organic Law increase (but not decrease) the percentage of affirmative votes specified in section 2.3 (2) in respect of an Organic Law or class of Organic Laws, and when enacted in accordance with this section it has effect accordingly.
- (4) The Speaker shall present to the Governor for assent an Organic Law passed in accordance with this section, and on doing so must certify to the Governor that the requirements of this section have been complied with.
- (5) The certificate referred to in subsection (4) shall state -
- (a) the date on which the votes on the second and third readings of the Bill were taken; and
 - (b) in relation to each vote -
 - (i) the total number of members of the Parliament at the time; and
 - (ii) the respective numbers of members of the Parliament voting for and against the proposal,and is, in the absence of proof to the contrary, conclusive evidence of the matters so stated.
- (6) Nothing in this section prevents an Organic Law from -
- (a) making any provision that might be made by an Act of the Parliament and which is expressly declared by that Organic Law as not being subject to the Organic Law procedures in this Constitution; or
 - (b) requiring any provision to be made by an Act of the Parliament that might otherwise be so made,
- but any such provision may be altered by the same majority that is required for any other Act of the Parliament;

Exposure Draft Northern Territory Constitution

Purpose of the Clause: 2.3

This introduces a new concept of Organic laws, having a superior constitutional status to ordinary Acts but less status than the Constitution itself. They will either be Organic laws declared by the new Constitution or Acts which are enacted by the Parliament in accordance with special procedures and declared to be Organic laws (e.g. the patriated *Aboriginal Land Rights (Northern Territory) Act*. Parliament will therefore decide which laws will become Organic by following this procedure. Subsequent amendments to Organic laws will be difficult to effect.

Variations:

- (a) Republic: No change.
(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: The possibility of using Organic laws was raised in Discussion Paper No. 6, *Aboriginal Rights and Issues - Options for Entrenchment*, 1993: for Aboriginal Land Rights: pp15-16; for a possible Bill of Rights in Discussion Paper No. 8, *A Northern Territory Bill of Rights?*, 1995: p.51; and for local government in Discussion Paper No. 9, *Constitutional Recognition of Local Government*, 1995.

Division 2 - Altering the Constitution and Organic Laws

[CLAUSES YET TO BE DRAFTED]

Exposure Draft Northern Territory Constitution

		(c) where the Governor, in his or her sole discretion, considers that there are exceptional circumstances for bringing forward the general election, and the general election shall be held not later than the Saturday referred to in subsection (2).
--	--	--

Purpose of the Clause: 3.11 - Sub-clauses (2) through to (4)

There are 3 options for consideration that provides for the term of office of the new Parliament:

Alternative 1 - Constitutionally, this would allow a maximum 4 year term subject to early dissolution such that a general election can be called by the Governor at any time;

Alternative 2 - Constitutionally this will allow a maximum 4 year term, but will require the Parliament to sit for at least a 3 year fixed term (which cannot be terminated earlier except in limited circumstance, see below);

Alternative 3 - Constitutionally this will require a 4 year fixed term of the Parliament.

Variations:

(a) Republic: No change

(b) Pre-Statehood: No change

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: pp23-28. The Committee favoured the partially fixed 4 year term, but offers 3 options.

Alternative 1 - No Fixed Term	Alternative 2 - Three Year Partial Fixed Term	Alternative 3 - Fixed Four Year Term
<p>(5) If -</p> <p>(a) the Premier resigns or vacates his or her office or a vote of no confidence in the Government has been carried in the Parliament by a majority of its members present and voting in the Parliament; and</p> <p>(b) the Governor has not been able, within such time as he or she considers reasonable, to appoint a member of the Parliament who the Governor considers commands or is likely to command the general support of a majority of members of the Parliament,</p>	<p>(5) If -</p> <p>(a) the Premier resigns or vacates his or her office or a vote of no confidence in the Government has been carried in the Parliament by a majority of its members present and voting in the Parliament; and</p> <p>(b) the Governor has not been able, within such time as he or she considers reasonable, to appoint a member of the Parliament who the Governor considers commands or is likely to command the general support of a majority of</p>	<p>(5) If -</p> <p>(a) the Premier resigns or vacates his or her office or a vote of no confidence in the Government has been carried in the Parliament by a majority of its members present and voting in the Parliament; and</p> <p>(b) the Governor has not been able, within such time as he or she considers reasonable, to appoint a member of the Parliament who the Governor considers commands or is likely to command the general support of a majority of members of the Parliament,</p>

Exposure Draft Northern Territory Constitution

Purpose of the Clause: 3.11 (1)

Provides the general rule that an election to the new Parliament shall be held on a date determined by the Governor on the advice of the Executive Council or Premier.

Variations:

(a) Republic: No change

(b) Pre-Statehood: No change

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory, 1987*: pp23-28.

Alternative 1 - No Fixed Term	Alternative 2 - Three Year Partial Fixed Term	Alternative 3 - Fixed Four Year Term
(2) The period from the date of a general election of members of the Parliament to the date of the next succeeding general election shall be not more than 4 Years.	(2) The period from the date of a general election of members of the Parliament to the date of the next succeeding general election shall be not more than 4 Years.	(2) Subject to subsection (4), the Parliament, unless sooner dissolved in accordance with this Constitution, shall expire on the expiration of the Friday immediately before the fourth anniversary of the polling day for the last general election of members of the Parliament, and the general election of members of the new Parliament shall be held on the first Saturday after that Friday.
(3) Subject to this Constitution, the Governor may dissolve the Parliament on the advice of the Executive Council or the Premier, but not otherwise.	(3) Subject to this Constitution, the Governor may dissolve the Parliament on the advice of the Executive Council or the Premier, but not otherwise.	(3) Except as provided in subsections (4) and (5), the Governor shall not dissolve the Parliament.
(4) No provision. (see (5) below)	(4) Except as provided in subsection (5), the Governor shall not dissolve the Parliament within a period of 3 years from the commencement of the first meeting of the Parliament after a general election of members of the Parliament.	(4) The Governor may dissolve Parliament within 2 months before it is due to expire under subsection (2) where- (a) the general election would otherwise be required to be held during the same period as a Commonwealth election; (b) the Parliament would otherwise expire on a public holiday; or (c) where the Governor, in his or her sole discretion, considers

Exposure Draft Northern Territory Constitution

PART 3 - THE PARLIAMENT OF THE NORTHERN TERRITORY

Division 1 - Legislative Power

3.1 LEGISLATIVE POWER OF NORTHERN TERRITORY

- (1) The legislative power of the Northern Territory is vested in the Parliament
- (2) Subject to this Constitution, the Parliament has power, with the assent of the Governor as provided by this Constitution, to make laws for the peace, order and good government of the Northern Territory.

Purpose of the Clause: 3.1

- 3.1(1) Provides that the legislative power of the Northern Territory belongs to the new Parliament of the Northern Territory as the central democratic institution of the Northern Territory.
- 3.1(2) Provides that under the Constitution the new Northern Territory Parliament has power, after the Governor has assented, to make laws on all subjects relating to the Northern Territory, subject only to the new Constitution itself.

Variations:

- (a) Republic: No change.
- (b) Pre-Statehood: No change.

Reference to Discussion and Information Papers: For further information on the legislative power of the Parliament of the Northern Territory, see *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: p9.

3.2 ASSENT TO PROPOSED LAWS

- (1) Every proposed law passed by the Parliament shall be presented to the Governor for assent.
- (2) On the presentation of a proposed law to the Governor for assent, the Governor shall, subject to this section, declare that he or she -
 - (a) assents to the proposed law; or
 - (b) withholds assent to the proposed law.
- (3) The Governor may return the proposed law to the Parliament with amendments that he or she recommends.
- (4) The Parliament shall consider the amendments recommended by the Governor and the proposed law, with those or any other amendments, or without amendments, may be again presented to the Governor for assent, and subsection (2) applies accordingly.

Exposure Draft Northern Territory Constitution

Purpose of the Clause: 3.2

- 3.2(1) Provides that every proposed law passed by the Parliament has to be presented to the Governor for his assent, before it can become law.
- 3.2(2) Provides power to the Governor to give his or her assent to the proposed law or he or she can withhold assent. Under subsequent provisions, the decision to assent will normally be exercised in accordance with the advice of the responsible Northern Territory Ministers.
- 3.2(3) Provides power for the Governor to return the proposed law back to the Parliament with amendments to the proposed law that he or she recommends. Again, this will normally be exercised in accordance with advice from the Executive Council.
- 3.2(4) provides for the Parliament that in the event the Governor has returned a proposed law with amendments if any, it may consider the proposed law with amendments if any before again presenting the proposed law to the Governor for his or her assent. This is consequential on the previous provision.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: As to the power of assent to laws, see *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: p10.

3.3 PROPOSAL OF MONEY VOTES

An Act, vote, resolution or question, the effect of which is to dispose of or charge any revenues, loans or other moneys received by or on behalf of the Northern Territory, shall not be proposed in the Parliament unless the purpose for which such revenues, loans or other moneys are to be disposed of or charged by reason of the Act, vote, resolution or question has, in the same session, been recommended by message of the Governor to the Parliament.

Purpose of the Clause: 3.3

Provides for Parliament that it cannot in the same session of Parliament pass laws or pass resolutions on money matters relating to the disposal of those monies or charge any revenues, loans or other monies received by the Northern Territory unless recommended by the Governor in a message to the Parliament. This ensures that the initiation of financial proposals must come from the responsible Ministers only through their advice to the Governor.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: p62.

Exposure Draft Northern Territory Constitution

3.9 WRITS FOR ELECTIONS

Writs for the election of members of the Parliament shall be issued by the Governor on the advice of the Executive Council or the Premier.

Purpose of the Clause: 3.9

Provides for the Governor acting on the advice of the Executive Council or the Premier to issue writs for election of members of the Parliament.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: In relation to the issue of electoral writs, the general proposal is that the Governor acts in accordance with the advice of his or her Ministers - see *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: pp34, 53.

3.10 TERM OF OFFICE OF MEMBER

Subject to this Constitution, the term of office of a member of the Parliament commences on the date of his or her election and ends immediately before the date of the next general election of members of the Parliament.

Purpose of the Clause: 3.10

Provides for the term of office of a member of Parliament commences on the date of his or her election and the term of office will cease immediately before the date of the next general election.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: As to term of office see *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: pp23-28.

3.11 DATE OF ELECTIONS

- (1) Subject to this Constitution, a general election of members of Parliament shall be held on a date determined by the Governor on the advice of the Executive Council or the Premier.

Exposure Draft Northern Territory Constitution

- (7) An oath or affirmation under subsection (6) shall be made before the Governor or a person authorised by the Governor to administer it.

Purpose of the Clause: 3.6 (6) and (7)

Provides that members of the Parliament will make an oath or affirmation of allegiance before the Governor or a person authorised by the Governor to administer it.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: No reference.

3.7 QUALIFICATIONS OF ELECTORS

All persons who are, under a law of the Commonwealth, qualified to vote at an election of a member of the House of Representatives of the Parliament of the Commonwealth for the Northern Territory and who have resided in the Northern Territory for not less than 3 calendar months immediately before the polling day of the election, are qualified to vote at an election of members of the Parliament.

Purpose of the Clause: 3.7

Provides a guarantee of the franchise for the new Parliament in that all persons who are entitled by law to vote at an election of a member of the House of Representatives and who have resided in the Northern Territory for 3 months can vote for the members of that Parliament.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: pp33-34.

3.8 VOTING AT ELECTIONS

Each person qualified to vote at an election of members of the Parliament is entitled to vote only once and the method of voting shall, as far as practicable, be by secret ballot as prescribed by an Act.

Purpose of the Clause: 3.8

Provides that a person who is qualified to vote at an election can only vote once and that as far as it practicable will be by secret ballot.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: pp34 & 38.

Exposure Draft Northern Territory Constitution

3.4 APPROPRIATION AND TAXATION LAWS NOT TO DEAL WITH SUBJECTS OTHER THAN THOSE FOR WHICH APPROPRIATION MADE OR TAXATION IMPOSED

- (1) A proposed law which provides for the appropriation of revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.
- (2) Laws imposing taxation and proposed laws which provide for the appropriation of revenue or moneys for purposes other than the ordinary annual services of the Government shall deal with no matter other than the imposition and collection of that taxation and the purposes in relation to which it is imposed, or the subject in relation to which the revenue or moneys are to be appropriated, as the case may be.

Purpose of the Clause: 3.4

3.4 (1) Provides that when Parliament deals with a proposed law on revenue or for moneys for the ordinary annual services of the Government that the proposed law can only deal with that matter.

3.4 (2) Provides that when Parliament deals with a proposed law that imposes taxes or appropriates revenue or moneys for other purposes over and above the annual services of Government, it can only deal with that matter. Other matters can't be added.

Variations:

(a) Republic: No change

(b) Pre—Statehood: No change

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: p62.

3.5 POWERS, PRIVILEGES AND IMMUNITIES OF PARLIAMENT

The power of the Parliament includes the power to make laws -

- (a) declaring the powers, privileges and immunities of the Parliament and of its members, committees and officers; and
- (b) providing for the manner in which powers, privileges and immunities so declared may be exercised or upheld.

Exposure Draft Northern Territory Constitution

Purpose of the Clause: 3.5

Provides for the Parliament to make laws as to the powers, privileges and immunities of Parliament and its officers, for example, how members of Parliament, Parliamentary Committee's and officers of the Parliament will conduct themselves in the course of every day business of Parliament.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: p9.

Division 2 - Constitution and Membership of Parliament

3.6 THE PARLIAMENT

- (1) There shall be a Parliament of the Northern Territory which shall consist of a single house.
- (2) The Parliament shall be constituted by such numbers of members as prescribed by an Act.
- (3) Subject to this Constitution, the members of the Parliament shall be directly elected as prescribed by an Act.

Purpose of the Clause: 3.6 - Sub-clauses (1) through to (3)

3.6 (1) Provides that there would be a new Parliament consisting of a single house.

3.6 (2) Provides for Parliament to pass legislation dealing with the number of members that Parliament will have.

3.6 (3) Provides for Parliament to make general electoral laws.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: - unicameral Parliament: pp15-18; - numbers of members: p18-19; - electoral laws: pp29-34.

Exposure Draft Northern Territory Constitution

Alternative 1 - Single Member Electorates	Alternative 2 - Single or Multi-Member Electorates	Alternative 3 - Equal Multi-Member Electorates
<p>(4) For the purposes of the election of members of the Parliament, the Northern Territory shall be divided into as many electoral divisions as there are members to be elected.</p> <p>(5) For the purposes of subsection (4), an electoral division shall contain a number of electors which is, as far as practicable and having regard to such factors as are prescribed by an Act, equal to the number in respect of each other electoral division.</p>	<p>(4) For the purpose of the election of members of the Parliament, the Northern Territory shall be divided into such electoral divisions, (whether as single or multi-member electoral divisions, or a combination of both) as prescribed by an Act.</p> <p>(5) For the purposes of subsection (4), an electoral division shall contain a number of electors which, when divided by the number of members to be elected for the electoral division, is, as far as practicable and having regard to such factors as are prescribed by an Act, equal to the number so calculated in respect of each other electoral division.</p>	<p>(4) For the purpose of the election of members of the Parliament, the Northern Territory shall be divided into such electoral divisions, each division to return 2 or more members, but the same number as each other division, as prescribed by an Act.</p> <p>(5) For the purposes of subsection (4), an electoral division shall contain a number of electors which is, as far as practicable and having regard to such factors as are prescribed by an Act, equal to the number in respect of each other electoral division.</p>

Purpose of the Clause: 3.6 - Sub-clauses (4) and (5)

3.6 (4) & (5) Provides for the nature of the electorates for the Parliament. Three alternatives are offered —

Alternative 1 - Constitutionally this will require single member electorates of approximately equal numbers of electors;

Alternative 2 - Constitutionally this gives Parliament the option of single or multi member electorates (or a combination), but still with approximately equal numbers of electors per member;

Alternative 3 - Constitutionally this will require multi member electorates with an equal number of members in each, but still with approximately equal numbers of electors per member.

Variations:

(a) Republic: No change.

(b) Pre—Statehood: No change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New Constitution for the Northern Territory*, 1987: on single/multi member electorates: pp31-33.

- (6) A member of the Parliament shall, before taking his or her seat, make and subscribe an oath or affirmation of allegiance in the form in Schedule 2 and also an oath or affirmation of office in the form in Schedule 3.