

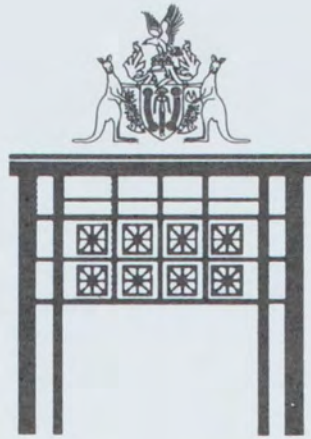
LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Sessional Committee on Constitutional Development

**Additional Provisions to the Exposure Draft
on a new Constitution for the
Northern Territory**

November 1995

Presented and Ordered
to be printed by the
Legislative Assembly
of the
Northern Territory
on 30 November 1995



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Sessional Committee on Constitutional Development

Additional provisions to the Exposure Draft on a new Constitution for the Northern Territory

November 1995

A document incorporating additional provisions to the Exposure Draft Constitution
for the Northern Territory tabled in the Legislative Assembly on 22 June, 1995,
prepared by the
Sessional Committee on Constitutional Development.



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Legislative Assembly of the Northern Territory

Additional provisions to the Exposure Draft on a new Constitution for the Northern Territory

November 1992

A document prepared by the Northern Territory Government
for the Legislative Assembly of the Northern Territory
in accordance with the provisions of the Northern Territory
Constitution Act 1978.

***Exposure Draft Northern Territory Constitution
Additional Provisions***

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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.

On 22 June an *Exposure Draft on Parts 1 to 7 on a new Constitution for the Northern Territory* was tabled in the Legislative Assembly. That Exposure Draft encapsulated the main elements of a proposed constitution for the Northern Territory.

Since that time, the Committee has proceeded in formulating additional provisions to that Exposure Draft and this document now includes some of the essential elements not canvassed in the earlier document. The additional provisions include the following:

- the amendment procedures to the Constitution and Organic laws;
- the establishment of a Standing Committee on the Constitution and Organic Laws;
- the constitutional recognition of the diverse peoples that make up the Northern Territory in respect of their language, social, cultural and religious matters; including
- the recognition of Aboriginal people of the Northern Territory to be self-determining in exercising control over all facets of their daily lives; and
- the constitutional recognition of the system of local government, including its role and function as a local governing body.

This document does not include provisions relating to the transitional arrangements and definitions, apart from defining 'Aboriginal self-determination'. Other matters may yet be included.

The format of the additional provisions follows that of the earlier document, that is, they are 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 additional provisions canvassed in this document do not represent the final views of the Committee, however, the document is issued for the purpose of receiving public comment and submissions before the Committee settles the draft constitution and finally reports to the Legislative Assembly.

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.

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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:

- "(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:

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- * *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 - Parts 1 to 7: A new Constitution for the Northern Territory and Tabling Statement.*

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TABLING STATEMENT

delivered in the Northern Territory Legislative Assembly

on 30 November 1995

by the

Hon. Steve Hatton, MLA

Chairman, Sessional Committee on Constitutional Development

Mr Speaker, I lay on the table a Paper entitled 'Additional Provisions to the Exposure Draft on a new Constitution for the Northern Territory'.

Mr Speaker, I move that the Paper be printed.

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

Mr Speaker, on 22 June 1995, I laid on the table the 'Exposure Draft Parts 1 to 7: A new Constitution for the Northern Territory'. That document was the culmination of almost ten years of hard work and co-operation from both sides of the House that are represented on this Committee.

That Exposure Draft encapsulated the main elements of a proposed constitution for the Northern Territory and for the first time in Australia's constitutional history recognised the major role of Aboriginal people in the foundation of this Country and to the contribution that they have made as an integral and valued part of the Territory community.

The additional provisions to the Exposure Draft is also the culmination of the strong bipartisan effort in making a draft constitution for the Northern Territory a reality.

Mr Speaker, I would like to place on public record the contribution of past and present members of this House, in particular, the former Member for Arnhem, whose important contribution to the process of constitution-making in the Northern Territory and his striving for reconciliation between Aboriginal and non-Aboriginal people will not be forgotten.

The former Member for Arnhem's ideals, intentions and vision for a united, harmonious and tolerant Northern Territory run through the pages of this document and the Exposure

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Draft. I believe that there is no more fitting way than to uphold his vision for his people than through what is expressed in these documents.

Mr Speaker, the Committee has been proceeding with the preparation of a draft constitution, and on 22 June 1995, an Exposure Draft Constitution was tabled. During those sittings, I informed the House that there would be additional clauses to be released for public comment as they were completed. Since that time, the Committee has proceeded to formulate additional provisions to that Exposure Draft and this document includes some of the essential elements that were not canvassed in the earlier document.

Mr Speaker, I wish to speak on the additional provisions. Firstly, the amendment procedures to the Constitution and Organic laws. Any amendment to the Constitution and Organic laws will require a special procedure in order to effect any change. These special measures are:

- an enactment of a Bill to amend the Constitution or an Organic law. The procedure for the passage of the Bill through the House will require it to sit for a period of at least two calendar months between voting on its second and third readings;
- during the intervening period the Bill will be submitted to a Standing Committee on the Constitution and Organic Laws which will consider and report on the proposed amendment; and
- once the Bill proposing the amendment to the Constitution has passed through the House, and upon the assent by the Governor, it shall be put to a referendum of electors of the Northern Territory qualified to vote at an election of the members of the Parliament. A referendum question must be carried at the referendum to which it is put, by valid affirmative votes equal to, or more than 50% of the total number of valid votes cast at the referendum.

It is important to note that a referendum is required, only in respect of amending the Constitution. Any amendment to an Organic law will not require it to go through the referendum stage, however, all of the other elements that are in place to amend the Constitution would apply.

Mr Speaker, I mentioned earlier the Standing Committee on the Constitution and Organic Laws and I would like to elaborate briefly in respect of its establishment. The Committee considered a number of alternatives regarding citizens' initiated referendums which ranged from constitutional change, legislative change or veto, changes in government

Exposure Draft Northern Territory Constitution Additional Provisions

policy, and to the recall of elected and appointed officials. In considering these issues the Committee accepted that there is some merit in the various alternatives, but it was not convinced that the advantages outweighed the disadvantages.

However, the Committee did see merit in a system which facilitates at reasonable intervals, public involvement and debate for constitutional review, providing that the final decision as to whether any proposals for constitutional change that is to be put to a referendum, is left with the new State Parliament.

The new provision in the Constitution reflects this position through the establishment of the Standing Committee. Its powers and functions would be provided by the Standing Orders of the Parliament and its membership would comprise of Members of Parliament and such other persons as specified in the Standing Orders.

The new provision also provides for a procedure in receiving petitions from persons in the Northern Territory requesting an amendment to this Constitution or an Organic law. For the Standing Committee to consider a request by petition, the petition requires that it be signed by ten (10) per cent of the electors qualified to vote at the election of the members of the Parliament.

Mr Speaker, another important addition to the Exposure Draft, is the inclusion of a new preamble and new expressed provisions recognising the diverse backgrounds and cultures of the people who reside in the Northern Territory in not unreasonably denying them the right -

- to use, speak and understand their own language; and
- to observe and practice their own social and cultural customs and traditions, beliefs, ceremonies or religion.

The Committee in proposing certain expressed constitutional rights, has recognised the special multicultural nature of the Northern Territory and the harmonious relationships among its people. The Committee has been acutely conscious of the importance in maintaining and improving this relationship for the common benefit of all Territorians and their descendants into the future.

The new preamble also reflects the recognition of the Aboriginal people of the Northern Territory to be self-determining in exercising control over all facets of their daily lives. In giving strength to this preamble a new expressed provision headed 'Aboriginal

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self-determination' is now included under Part 7 of the Exposure Draft Constitution. This provision recognises the special place that Aboriginal people have in the Northern Territory and it provides a mechanism for Parliament through enactment to enhance the activity of Aboriginal people in exercising control over their daily affairs in order to safeguard, strengthen and develop their language, social and cultural customs and traditions, religion or beliefs, economies and identities.

In considering the special place of Aboriginal people of the Northern Territory, the Committee was conscious of the need to reflect this recognition not only in the Preamble acknowledging Aboriginal occupation of this Country prior to European settlement, but also through expressed enforceable provisions within the Constitution that addressed land rights, the protection of sacred sites, the recognition of Aboriginal customary law and Aboriginal self-determination.

Nowhere in any Australian jurisdiction has the above additional provisions been included in any constitutional document to this extent. The Committee has considered these issues long and hard, and it has resolved that they should be included in a Northern Territory constitution under a framework of a united, harmonious and tolerant society.

Mr Speaker, the Committee has also considered the inclusion in the Exposure Draft, the constitutional recognition of the system of local government. As with all State Constitutions in Australia local government is now recognised as the third sphere of government. The Committee considered the various submissions and State Constitutions as to what would effectively apply within the Northern Territory. Apart from mainstream local government, the Committee also took into account those local governing bodies established within Aboriginal communities.

This additional provision on local government provides for a measure of autonomy and the important elements that Parliament shall take into account when legislating in respect of local governing bodies. These are -

- the general competency powers and functions in respect to their -
 - i. objectives, powers, functions and responsibilities;
 - ii. rating and any other forms of revenue, expenditure and fiscal accountability;
 - iii. membership;
 - iv. boundaries; and

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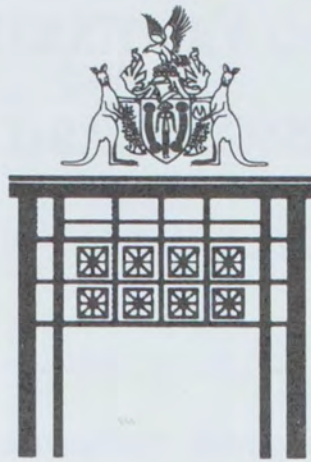
- protection from dismissal without having a public enquiry as to the reasons for its dismissal.

Mr Speaker, in closing, the Exposure Draft and the additional provisions are based on the premise that the Northern Territory is to be placed on an equal footing with existing States as a pre-condition to any grant of Statehood. They serve not only as a notification to all Australians the intent of the Northern Territory to be an equal partner with the States, within the Australian federation, but they also reflect the developing constitutional issues that could be addressed and developed as a model that other Australian jurisdictions could follow.

The Northern Territory has taken on the challenge to develop a constitution that reflects all aspects of modern day Northern Territory society and its values. Only through the process of collaboration and consultation with the citizens of the Northern Territory, the Commonwealth and the States, can Statehood for the Northern Territory become a reality.

Let us work towards that end.

Mr Speaker, I commend the additional provisions to the Exposure Draft Constitution for the Northern Territory to Honourable Members.



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

**Sessional Committee on
Constitutional Development**

**ADDITIONAL PROVISIONS TO THE
EXPOSURE DRAFT ON A NEW
CONSTITUTION FOR THE NORTHERN
TERRITORY**

November 1995

NORTHERN TERRITORY OF AUSTRALIA
EXPOSURE DRAFT CONSTITUTION
[ADDITIONAL PROVISIONS]

Please Note: Only those subject matters that are in **[bold type]** are canvassed in this document. Please refer to the Exposure Draft tabled in the Legislative Assembly on 22 June, 1995 in respect of those subject matters not canvassed in this document.

PREAMBLE

Preamble 15(new addition)

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 (new addition)

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

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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
- 7.3 ABORIGINAL SELF-DETERMINATION (new addition)

PART 8 - RIGHTS IN RESPECT OF LANGUAGE, RELIGION, SOCIAL AND CULTURAL MATTERS (new addition)

PART 9 - LOCAL GOVERNING BODIES (new addition)

PART [number to be determined] - DEFINITIONS (new addition)

"Aboriginal self-determination"

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PREAMBLE

Please Note: The original Preamble 15 in the Exposure Draft will be renumbered to Preamble 16

15. The people of the Northern Territory are concerned to preserve a harmonious and tolerant and united multicultural society, and to this end, it is desirable that no person should be unreasonably denied the right to use his or her own language in communicating with others speaking or understanding the same language, to observe and practice his or her own social and cultural customs and traditions in common with others of the same tradition, and to manifest his or her own religion or belief in worship, ceremony, observance, practice or teaching, and that within the framework of such a society, the people of the Northern Territory recognise that the Aboriginal people of the Northern Territory are entitled, under and in accordance with this Constitution and the laws of the Northern Territory, to self-determination in the control of their daily affairs.

Purpose of the Clause: Preamble 15

Provides for the recognition of the diverse backgrounds and cultures of the people who reside in the Northern Territory and for the preservation of a harmonious, tolerant and united multicultural society, recognises that no person be unreasonably denied the right -

- to use, speak and understand the languages with which they are familiar; and
- to practice their own social and cultural customs, traditions, religion or beliefs.

The preamble also recognises the special position that Aboriginal people have in the Northern Territory and that they are entitled, under and in accordance with this Constitution and the laws of the Northern Territory, to self-determination in the control of their daily affairs.

Variations:

(a) Republic: No Change.

(b) Pre—Statehood: No Change.

Reference to Discussion and Information Papers: See definition of 'Aboriginal self-determination' in this document and see also *Discussion Paper on A Proposed New State Constitution for the Northern Territory*, 1987: (Part T), *Discussion Paper No. 4, Recognition of Aboriginal Customary Law*, 1992: p.43, and *Discussion Paper No. 8, A Northern Territory Bill of Rights?*: p51

Division 2 - Amendment of the Constitution and Organic Laws

2.4 CONSTITUTIONAL AMENDMENT

- (1) This Constitution may only be amended in accordance with the provisions of this section, and not otherwise.
- (2) Subject to section 2.6(4) an amendment to this Constitution shall not take effect unless a Bill for an Act of Parliament has first been enacted by the Parliament,

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- 3.7 QUALIFICATIONS OF ELECTORS
- 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

PART 5 - FINANCE

- 5.1 INTERPRETATION
- 5.2 PUBLIC MONEYS

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setting out the precise terms of the proposed amendment and providing for the question of its adoption to be submitted to a referendum of electors of the Northern Territory on that proposed amendment. That Bill shall not be taken to have been enacted unless:-

- (a) there was a period of at least two calendar months between voting on its second reading and voting on its third reading;
 - (b) if the Bill was amended in Committee other than by way of minor drafting or consequential amendments, there was a period of at least two calendar months between voting on the last amendment to the Bill and voting on its third reading as amended; and
 - (c) there was an opportunity in its second reading for debate on its merits.
- (3) The Speaker shall present to the Governor for assent a Bill passed in accordance with this section, and on so doing must certify to the Governor whether the requirements of subsection (2) have been complied with.
- (4) A certificate referred to in subsection (3) shall state the date on which the votes on the second and third readings of the Bill were taken, the date of voting on the last amendment of the Bill (if any) in Committee and the date or dates upon which opportunity for debate on the merits of the Bill in its second reading occurred, and is, in the absence of proof to the contrary, conclusive evidence of the matters so stated.
- (5) Upon assent by the Governor to the Bill, the question of the adoption of the proposed amendment shall, not earlier than three calendar months after that date of assent and not later than 12 calendar months after that date, be submitted to a referendum of electors of the Northern Territory qualified to vote at an election of the members of the Parliament.
- (6) Except where otherwise provided in this Constitution a referendum question must be carried at the referendum to which it is put by valid affirmative votes equal to or more than 50% of the total number of valid votes cast at the referendum.
- (7) The Speaker shall present to the Governor a certificate as to the results of a referendum held in accordance with this section, and on doing so must certify to the Governor whether the requirements of this section as to the referendum have been complied with.
- (8) The certificate referred to in subsection (7) shall state:-
- (a) the date or dates on or over which the referendum was held;
 - (b) the number of valid votes cast at the referendum; and
 - (c) the numbers of valid affirmative votes cast at the referendum;
- and is, in the absence of proof to the contrary, conclusive evidence of the matters so stated.
- (9) Upon the referendum question being carried in accordance with this section, the amendment shall be effective on the date that the Speaker presents the certificate to the Governor under subsection (7), or on such other date as is specified in the amendment.

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Purpose of the Clause: 2.4 Constitutional Amendment

This clause is a new insertion into the Exposure Draft and it continues on from Clause 2.3. It provides for an amendment procedure to this Constitution. Although somewhat detailed the salient points are:

- The amendment procedure provides for a Bill for an Act of the Parliament to amend this Constitution and it shall not be enacted unless there has been a period of least two (2) calendar months between voting on its second reading and voting on its third reading.
- Before the Bill proceeds to the third reading, it shall be submitted to a Standing Committee established by this Constitution — see Clause 2.6 — to consider and report on the proposed amendment to the Parliament.
- Subsequent to the third reading, the Speaker shall certify to the Governor, prior to his or her assent to the Bill, that the procedures have been complied with in accordance with this Constitution.
- Upon the assent of the Governor, the adoption of the propose amendment shall be put to a referendum of electors of the Northern Territory qualified to vote at an election of the members of the Parliament.
- The referendum to adopt the proposed amendment must be held no earlier than three (3) months and no later than twelve months after assent has been given by the Governor.
- Except where it is provided in this Constitution, a referendum question must be carried at the referendum to which it is put, by valid affirmative votes equal to or more than 50% of the total number of valid votes cast at the referendum.

Variations:

(a) Republic: No Change.

(b) Pre—Statehood: No Change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New State Constitution for the Northern Territory*, 1987: (Part E: pp 36-37).

2.5 AMENDMENT OF ORGANIC LAWS

- (1) An Organic Law may only be amended either by an amendment of this Constitution under section 2.4 or by a Bill enacted in accordance with the provisions of this section, and not otherwise.
- (2) Subject to sections 2.3(6) and 2.6(4), a Bill for an Act of Parliament for the amendment, in whole or part, of an existing Organic Law, and whether by way of an amendment of a provision of that Organic Law or by the insertion of a new provision in that Organic Law, shall not take effect as an amendment of that Organic Law unless it is enacted by the Parliament in the same manner as required by section 2.3 for the enactment of an Act of the Parliament which itself expressly states that it is an Organic Law and which would, upon assent, be an Organic Law.

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Purpose of the Clause: 2.5 Amendment of Organic Laws

This clause is a new insertion into the Exposure Draft and it provides for an amendment procedure to the Organic laws that have been declared by this Constitution to be an Organic law or to an Act of Parliament which expressly states that it is an Organic law — see Clause 2.3. The amendment procedures follow closely to those procedures required to amend this Constitution, however, any amendment(s) or insertion(s) to an Organic law do not require that they be put to a referendum for adoption.

Variations:

(a) Republic: No Change.

(b) Pre—Statehood: No Change.

The use of Organic laws was raised in Discussion Paper No. 6, *Aboriginal Rights and Issues - Options for Entrenchment*, 1993: for Aboriginal Land Rights: pp 15-16; 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.

2.6 STANDING COMMITTEE ON THE CONSTITUTION AND ORGANIC LAWS

- (1) The Parliament shall appoint a Standing Committee to be known as the Standing Committee on the Constitution and Organic Laws.
- (2) The powers, functions, privileges and procedures of the Committee shall be as provided in the Standing Rules and Orders of the Parliament.
- (3) The Committee shall be composed of such members of the Parliament and other persons, holding office on such terms and conditions, as are specified in the Standing Rules and Orders of the Parliament.
- (4) A Bill for an Act to amend this Constitution or to amend an Organic Law shall not proceed to a second reading in the Parliament unless the proposal contained in the Bill has first been considered by the Committee and the Committee has reported on the proposal to the Parliament.
- (5) The Committee may receive and consider a petition from persons from the Northern Territory requesting an amendment of this Constitution or of an Organic Law, and the Committee may report to the Parliament thereon.
- (6) The Committee shall consider a reference from the Parliament by way of a resolution of Parliament, following the introduction of the Bill into the Parliament proposing an amendment of this Constitution or of an Organic Law or on any other matter, and the Committee shall report to the Parliament thereon as soon as practicable thereafter.
- (7) The Committee shall receive and consider a petition from persons from the Northern Territory if the petition is signed by at least ten (10) per cent of the numbers of electors qualified to vote at an election of members of the Parliament and on the roll for such an election at the time the petition is presented to the

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Committee, the petition requesting an amendment of this Constitution or of an Organic Law, and the Committee shall report to the Parliament on any such petition as soon as practicable thereafter.

- (8) The Committee shall not be restricted to the subject matter of any petition or any resolution in making its report to the Parliament, but may consider any other options and all matters incidental to or consequential upon that subject matter or those options.
- (9) Where the Committee, in its report, makes recommendations to the Parliament for the amendment of the Constitution, and the recommended amendment deals with 2 or more separate and distinct subject matters, then the Committee shall also recommend that the question of the adoption of the proposed amendment at a subsequent referendum shall be dealt with by way of separate questions for each such separate and distinct subject matter.
- (10) The reports of the Committee shall be tabled in the Parliament.

Purpose of the Clause: 2.6 Standing Committee on the Constitution and Organic Laws

Provides for the establishment of a Standing Constitutional Committee for the purpose of considering and reporting to the Parliament on proposals to amend this Constitution or an Organic law. The Committee's powers and functions are provided by the Standing Orders of the Parliament and its membership is comprised of members of Parliament and such other persons as specified in the Standing Orders. This clause also provides for a procedure in receiving petitions from persons in the Northern Territory requesting an amendment of this Constitution or an Organic law. For the Standing Committee to be required to consider a request by petition, the petition requires that it be signed by ten (10) per cent of the electors qualified to vote at the election of the members 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 State Constitution for the Northern Territory, 1987: (Parts E and P)*, and also *Discussion Paper No. 3 Citizens' Initiated Referendums, 1991 (Parts E and F)*.

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PART 7 - ABORIGINAL RIGHTS

7.3 ABORIGINAL SELF-DETERMINATION.

Subject to this Constitution, an Act of the Parliament may provide for the grant of Aboriginal self-determination and for all matters incidental thereto.

Purpose of the Clause: 7.3 Aboriginal self-determination

Provides a positive mechanism for Parliament through enactment in recognising the special place that Aboriginal people have in the Northern Territory which could take effect through a wide variety of processes that would formally recognise and enhance the control over their daily lives in order to safeguard, strengthen and develop their language, social and cultural customs and traditions, religion or beliefs, economies and identities.

Variations:

(a) Republic: No Change.

(b) Pre—Statehood: No Change.

Reference to Discussion and Information Papers: See Discussion Paper No 6, *Aboriginal Rights and Issues - Options for Entrenchment*, 1993: in particular Part F. See also Parts 2 and 7 of the *Exposure Draft Constitution*, *A new Constitution for the Northern Territory*, 1995, and the new provisions relating to Aboriginal matters and language, social, cultural and religious matters in this document.

**PART 8 - RIGHTS IN RESPECT OF LANGUAGE, SOCIAL, CULTURAL AND
RELIGIOUS MATTERS**

8.1 LANGUAGE, SOCIAL, CULTURAL AND RELIGIOUS MATTERS

- (1) Notwithstanding anything in the laws of the Northern Territory other than as provided in sub-sections (2) and (3), a person shall not be denied the right —
 - (a) to use his or her own language in his or her communications with other people speaking or understanding the same language;
 - (b) to observe and practice his or her own social and cultural customs and traditions in his or her relations with other people of the same tradition; and
 - (c) to manifest his or her religion or belief in worship, ceremony, observance, practice or teaching.
- (2) The rights in paragraphs (a), (b) and (c) of subsection (1) shall be subject to this Constitution, any Organic law and any reasonable regulation imposed by an Act of the Parliament in the public interest.
- (3) The rights in paragraphs (b) and (c) of subsection (1) shall only operate to the extent that they are not repugnant to the general principles of humanity as contained in any international agreement to which Australia is a party.

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Purpose of the Clause: 8.1 Language, social, cultural and religious matters

Provides an expressed provision in the Constitution recognising that the people of the Northern Territory come from very diverse backgrounds and cultures and that they should not be unreasonably denied the right to use and speak and understand their own language and to observe and practice their own social and cultural customs and traditions, beliefs, ceremonies or religion.

Variations:

(a) Republic: No Change.

(b) Pre—Statehood: No Change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New State Constitution for the Northern Territory*, 1987: (Part T). See also Discussion Paper No. 4, *Recognition of Aboriginal Customary Law*, 1992: p.43, Discussion Paper No. 8, *A Northern Territory Bill of Rights*:? p51. See also previous comments under **Preamble 1**.

PART 9 LOCAL GOVERNING BODIES

9.1 LOCAL GOVERNMENT

- (1) Subject to this Constitution, an Organic law or an Act of the Parliament there shall continue to be a system of local government in the Northern Territory under which local governing bodies are constituted with such powers as the Parliament considers necessary for the peace, order and good government of those areas of the Northern Territory that are from time to time subject to that system of local government;
- (2) The manner in which local governing bodies are constituted, and the nature and extent of their powers, functions, duties and responsibilities and all matters incidental thereto, shall be determined by or under this Constitution, or an Organic law or Acts of the Parliament from time to time in force;
- (3) Notwithstanding subsection (2) the Parliament shall, when enacting legislation in respect of local governing bodies, provide for -
 - (a) general competency powers and functions in respect to their -
 - (i) objectives, powers, functions and responsibilities;
 - (ii) rating and any other forms of revenue, expenditure and fiscal accountability;
 - (iii) membership;
 - (iv) boundaries; and
 - (b) protection from dismissal of a local governing body without public enquiry.

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Purpose of the Clause: 9.1 Local Government

Provides for the constitutional recognition of the local government system in the Northern Territory and that the responsibilities, powers and functions are determined by this Constitution, an Organic law or by an Act of the Parliament. It also provides for a measure of autonomy within this framework when Parliament enacts legislation in respect of these bodies, that it shall take into account:

- the general competency powers and functions in respect to their -
 - (i) objectives, powers, functions and responsibilities;
 - (ii) rating and any other forms of revenue, expenditure and fiscal accountability;
 - (iii) membership;
 - (iv) boundaries; and
- to protect a local governing body from dismissal without having a public enquiry as to the reasons for its dismissal.

Variations:

(a) Republic: No Change.

(b) Pre—Statehood: No Change.

Reference to Discussion and Information Papers: See *Discussion Paper on A Proposed New State Constitution for the Northern Territory*, 1987: (Parts R & S) See also *Discussion Paper No. 6, Aboriginal Rights and Issues - Options for Entrenchment*, 1993: pp 34-35, and also *Discussion Paper No. 9 Constitutional recognition of Local Government*, 1995: pp 11-15.

PART [number to be determined] DEFINITIONS

"Aboriginal self-determination"

"Aboriginal self-determination" means the activity of Aboriginal people in the Northern Territory exercising control over their daily lives in order to safeguard, strengthen and develop their language, social and cultural customs and traditions, religion or beliefs, economies and identities.

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Additional Provisions**

Purpose of the Definition: "Aboriginal self-determination"

This definition is a statement of what Aboriginal self-determination means in respect of the provisions that relate to Aboriginal matters under this Constitution. It provides for clarification of the special place that Aboriginal people have in the Northern Territory particularly relating to the exercise of control over their daily lives, in order to safeguard, strengthen and develop their language, social and cultural customs and traditions, religion or beliefs, economies and identities. It also acts as a linkage between the various mechanisms that reflect the processes relating to Aboriginal self-determination in the Northern Territory that operate within the framework of this Constitution.

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, Discussion Paper No 6, *Aboriginal Rights and Issues - Options for Entrenchment*, 1993: in particular Part F. See also Parts 2 and 7 of the *Exposure Draft Constitution*, *A new Constitution for the Northern Territory*, 1995, and the new provisions relating to Aboriginal matters and language, social, cultural and religious matters in this document.

