

**LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY**

**Sessional Committee on Constitutional Development**

*Foundations for a Common Future:*

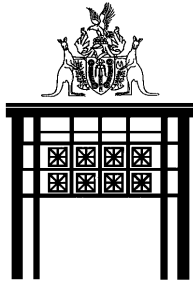
**The Report  
on Paragraph 1(a) of the Committee's  
Terms of Reference  
on a  
Final Draft Constitution  
for the Northern Territory**

**Volume 1**

**November 1996**

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Northern Territory on  
27 November 1996





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*Foundations for a Common Future:*

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on Paragraph 1(a) of the Committee's  
Terms of Reference  
on a  
Final Draft Constitution  
for the Northern Territory

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## **MEMBERS OF THE COMMITTEE**

### **Membership of the Committee as at 27 November 1996**

Honourable S P Hatton, MLA (Chairman)

Mr J L Ah Kit, MLA

Mr J D Bailey, MLA (Deputy Chairman)

Mr T D Baldwin, MLA

Mr P A Mitchell, MLA

Mr P H Toyne, MLA

#### **Committee Staff:**

Executive Officer: Mr Rick Gray

Legal Adviser: Mr Graham Nicholson

Administrative Assistant: Mrs Yoga Harichandran

**PLEASE NOTE:** *In accordance with the Committee's Terms of Reference, The Chief Minister and the Leader of the Opposition although not members of the Committee, may attend all meetings of the Committee, may question witnesses and may participate in deliberations of the Committee, but may not vote.*



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- 6. Discussion Paper No. 6 - Aboriginal Rights and Issues - Options for Entrenchment.**
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## Chapter 1      CHAIRMAN'S PREFACE



This Report represents the culmination of the work of the Sessional Committee on Constitutional Development over a period in excess of 10 years. It contains the Committee's final views on the content of a new Constitution for the Northern Territory as it progresses towards Statehood within the Australian federation. This is what this Committee was primarily charged with by resolution of the Legislative Assembly, and members of the Committee have dutifully discharged this obligation.

It has been no mere academic exercise. It is the product of exhaustive investigations and enquiry, lengthy debates, a vast amount of public participation and submissions from all sections of the Territory community. The drafting of the final document alone took some 18 months to complete. The draft Constitution contains the considered views of the Committee from both sides of the political spectrum as to what the new Constitution should contain. It is the starting point for further public debate and consideration on this most important issue.

The Committee has been forthright and bold in its recommendations. It has not shied away from innovation nor issues that may attract controversy within this diverse nation of ours. It has tackled head on some of the big issues facing Northern Territory society today in particular, and Australia generally. It is a process that should not be confined to a narrow party-political exercise.

We, as Territorians, have an opportunity that is unique in Australia's constitutional and legal history that will not likely come again, to frame a document that deals with the Territory's unique concerns and diverse needs. We have the opportunity to forge the foundations for our common future, a framework for freedom and harmony under the principle of democracy and the rule of law for the benefit of ourselves and our descendants. Public debate and input is an essential element in this exercise, otherwise it will not result in a lasting Constitutional document and the framers of the Territory's future will stand condemned by future generations of Territorians.

We need a vision of where the Territory will be in the next 100 years or so and how the best features of our already great society can be preserved and enhanced for the future. If we are to take our place as equals in the Australian federation, we need a constitutional framework that will last, one that will be equitable for all Territorians of whatever race, religion, culture or background. I believe this draft Constitution fulfils those requirements.

The recommendations in the draft Constitution should now be considered by the members of the Legislative Assembly and by Territorians generally, in whatever forums considered appropriate. All contributions to this debate are welcomed. I look forward to further participation in it.

In concluding, let me express my appreciation for the work of past and present members of the Committee and supporting staff.

**STEVE HATTON**  
**Chairman**



## **Chapter 2      SUMMARY OF RECOMMENDATIONS**

### **Recommendation: 1**

That a new Constitution be adopted for the Northern Territory to replace the *Northern Territory (Self-Government) Act*, to be prepared by Territorians having regard to the Committee's final draft Constitution attached to this Report.

### **Recommendation: 2**

That the draft Territory Constitution be referred to a Territory Constitutional Convention for finalisation and to a Territory referendum for approval.



## Chapter 3 INTRODUCTION

### A. ESTABLISHMENT OF COMMITTEE

On 28 August 1985, the Legislative Assembly by resolution, established the Select Committee on Constitutional Development. On 30 November 1989 the Legislative Assembly resolved to amend the Committee's Terms of Reference changing its status from a select committee to a sessional committee. The Sessional Committee was reconstituted on 27 June 1994, following the election in June 1994.

### B. TERMS OF REFERENCE

The original resolutions (see Appendix 1) 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 Committee's primary terms of reference are:

1. 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 power; 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;
  - (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. to undertake a role in promoting the awareness of constitutional issues to the Northern Territory and Australian populations.

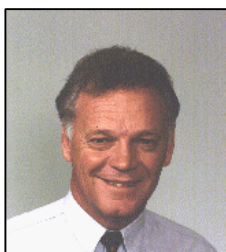
Appendix 2 shows the current Terms of Reference.

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## C. MEMBERSHIP OF THE COMMITTEE

Membership of the Committee comprises equal numbers of Government and Opposition members.

Committee Membership of the Seventh Assembly to 27 November 1996 is as follows:



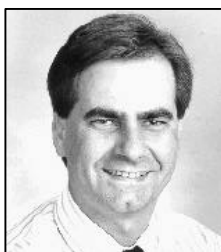
**Hon S P Hatton, MLA (Chairman)**

Country Liberal Party  
 Member for Nightcliff  
 Minister for Correctional Services  
 Minister for Parks and Wildlife  
 Minister for Sport and Recreation  
 Minister for Ethnic Affairs  
 First elected: 3 December 1983

**SCCD Membership:**

- (15 May 1986 - 7 March 1987)
- (28 April 1987 - 14 July 1988)
- (28 August 1988 - 5 October 1990)
- (4 December 1990 - 17 May 1994)
- Reappointed: 27 June 1994.

**Other Committees:** Nil.



**Mr J D Bailey, MLA (Deputy Chairman)**

Australian Labor Party  
 Member for Wanguri  
 First elected: 19 August 1989

**SCCD Membership:**

- (10 October 1989 - 5 October 1990)
- (4 December 1990 - 17 May 1994)
- Reappointed: 27 June 1994

**Other Committees:** Public Accounts, Environment.



**Mr J L Ah Kit, MLA**

Australian Labor Party  
 Member for Arnhem  
 First elected: 7 October 1995

**SCCD Membership:**

- Appointed: 10 October 1995

**Other Committees:** Subordinate Legislation and Tabled Papers.

**Mr T D Baldwin, MLA**

Country Liberal Party  
Member for Victoria River

First elected: 4 June 1994

**SCCD Membership:**

- Appointed : 27 June 1994

**Other Committees:** Publications.

**Mr B R Ede, MLA**

Australian Labor Party

The former Member for Stuart

First elected: 3 December 1983

**SCCD Membership:**

- (17 June 1986 - 7 March 1987)
- (28 April 1987 - 5 October 1990)
- Appointed 14 May 1996
- Lapsed on resignation - 23 August 1996.

**Mrs M A Hickey, MLA**

Australian Labor Party

Member for Barkly

First elected: 27 October 1990

**SCCD Membership:**

- (27 June 1994 - 14 May 1996).

**Mr W W Lanhupuy, MLA**

Australian Labor Party

The former Member for Arnhem

First elected: 3 December 1983

**SCCD Membership:**

- (28 August 1985 - 7 March 1987)
- (28 April 1987 - 5 October 1990)
- (4 December 1990 - 17 May 1994)
- Appointed 28 February 1995
- Lapsed on resignation - 28 August 1995.

**Mr P A Mitchell, MLA**

Country Liberal Party

Member for Millner

First elected: 4 June 1994

**SCCD Membership:**

- Appointed : 27 June 1994

**Other Committees:** Publications, Public Accounts, Environment.

**Mr M J Rioli, MLA**

Australian Labor Party

Member for Arafura

First elected: 7 November 1992

**SCCD Membership:**

- (27 June 1994 - 28 February 1995).

**Mr P H Toyne, MLA**

Australian Labor Party

Member for Stuart

First elected: 29 September 1996

**SCCD Membership:**

- Appointed : 9 October 1996

**Other Committees:** Public Accounts.

Details of members who have served on this Committee since its establishment on 28 August 1985 are shown in Appendix 3.

**D. FUNCTIONS OF THE COMMITTEE**

The Committee derives its authority from the *Northern Territory (Self Government) Act 1978* and the *Legislative Assembly (Powers and Privileges) Act*. Under its terms of reference, the Committee has power to appoint sub-committees and to refer to any such sub-committee any matter that it is empowered to examine. Four members of the Committee constitute a quorum of the Committee whilst two members of a sub-committee constitute a quorum of that sub-committee.

The Committee or any sub-committee also has the power:

- (a) to send for persons, papers and records;
- (b) to adjourn from place to place;



- (c) to meet and transact business in public or private session;
- (d) to sit during any adjournment of the Assembly;
- (e) to print from day to day such papers and evidence as may be ordered by it; and
- (f) unless otherwise ordered by the Committee, a daily *Hansard* shall be published of such proceedings of the Committee as they take place in public.

**E. SUB-COMMITTEE MEMBERSHIP**

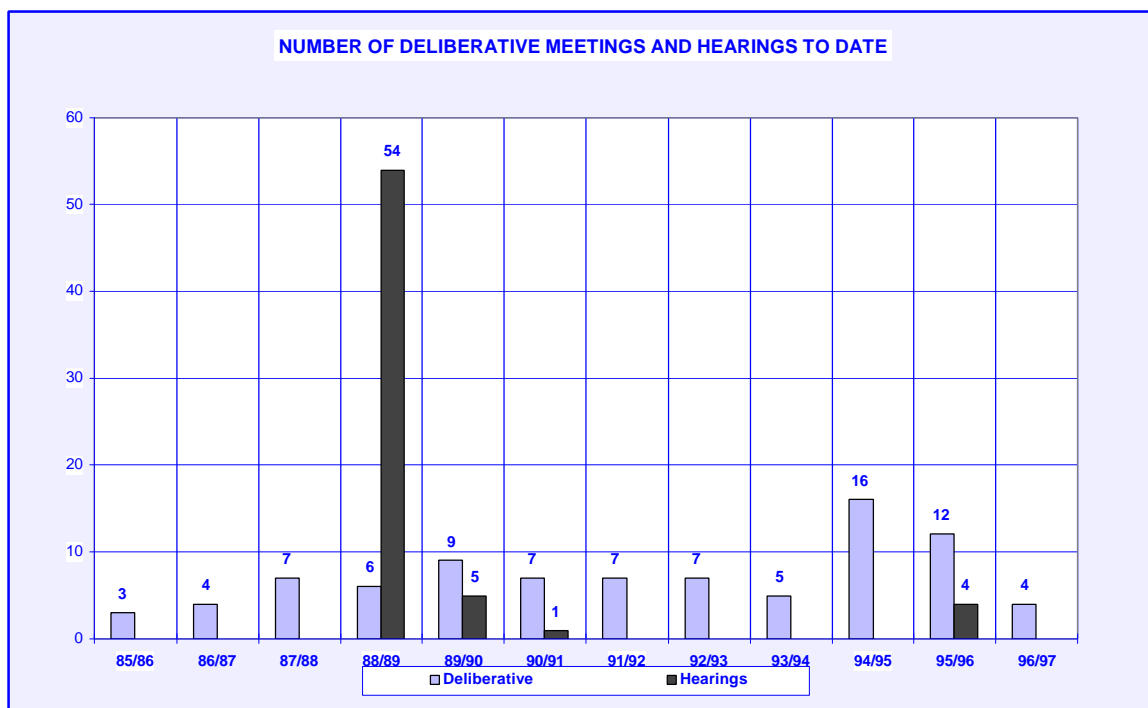
In taking on this large task the Committee resolved to form sub-committees to take evidence and to promote discussion and awareness of constitutional issues throughout the Northern Territory. The majority of sub-committee public hearings and meetings took place during 1989-90.

**F. HEARINGS AND MEETINGS**

From the beginning of this exercise in 1985 the Committee decided that the process of constitutional development would be an open, public participatory exercise. Given the importance of this new Constitution the Committee's approach in practice has been consistent with this philosophy.

Since its establishment the following Committee meetings and hearings have been held:

- Public Meetings and Hearings: 64
- Deliberative Meetings: 87.



**Figure Chapter 3-1: Deliberative Meetings and Public Hearings 1985 - 1996.**

Meetings of the Committee usually follow one of the following formats:

### **1. Public Hearings**

Hearings are open to the public, including the media. The media may report any public session of the Committee, unless otherwise ordered by the Committee. Submissions to the Committee can be in written form or presented orally.

The Committee may also authorise the televising of the hearings under such rules as the Speaker of the Legislative Assembly may consider. Transcripts of the proceedings are produced by *Hansard*.

### **2. Deliberative Meetings**

This format is used for private meetings of the Committee where "confidential" matters and the proceedings of the Committee may be discussed, together with general administrative business. Deliberative meetings are minuted but are not transcribed by *Hansard*.

Appendix 4 summarises the Committee's Deliberative Meetings from 1985 - 1996.

### **3. Briefings**

Briefings are not open to the public and are generally of a confidential nature and may go before, during or after a public hearing or be used in gathering general information by the Committee.

## **G. TAKING OF EVIDENCE**

Like all parliamentary committees, the Committee's effectiveness is largely reliant on the type and content of information developed, gathered or submitted during its deliberations. The source and content of information, in the written and oral submissions received by the Committee, can be of a professional and specialist nature on specific subjects, or the promotion and presentation of particular attitudes and trends and ideas.

Appendix 5 lists the individuals that have appeared before the Committee and Volume contains a synopsis of the evidence received.

## **H. PUBLIC SUBMISSIONS**

During the course of its deliberations the Committee has invited public comment and submissions on its Terms of Reference and on all the discussion papers it has prepared. Many written and oral submissions have been and are still being received by the Committee. To date 141 written submissions have been received. Apart from receiving written submissions the

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Committee has conducted public hearings throughout the Northern Territory and approximately 300 people have given direct oral evidence to it.

Appendix 6 provides the list of written submissions received as at 22 August 1996. For further reading of the evidence submitted to the Committee, the reader is referred to Volume 4 - *Written Submissions Received* and Volume 5, Parts A and B - *Hansard Transcripts of Public Hearings*.

## I. DISCUSSION AND INFORMATION PAPERS

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* (October, 1987), plus an illustrated booklet of the same name (October, 1988).
- \* *A Discussion Paper on Representation in a Territory Constitutional Convention* (October, 1987).
- \* Discussion Paper No. 3, *Citizens' Initiated Referendums* (August, 1991).
- \* Discussion Paper No. 4, *Recognition of Aboriginal Customary Law* (August, 1992).
- \* Discussion Paper No. 5, *The Merits or Otherwise of Bringing an NT Constitution into Force Before Statehood* (March, 1993).
- \* Discussion Paper No. 6, *Aboriginal Rights and Issues - Options for Entrenchment* (July, 1993).
- \* Discussion Paper No. 7, *An Australian Republic? Implications for the Northern Territory* (March, 1994).
- \* Discussion Paper No. 8, *A Northern Territory Bill of Rights?* (March, 1995)
- \* Discussion Paper No. 9, *Constitutional Recognition of Local Government* (June, 1995).
- \* Information Paper No. 1, *Options for a Grant of Statehood* (September, 1987).
- \* Information Paper No. 2, *Entrenchment of a New State Constitution* (October, 1989).
- \* Interim Report No. 1, *A Northern Territory Constitutional Convention* (February, 1995).
- \* *Exposure Draft - Parts 1 to 7: A New Constitution for the Northern Territory and Tabling Statement* (June, 1995).
- \* *Additional Provisions to the Exposure Draft on a New Constitution for the Northern Territory* (November, 1995).
- \* *Final Draft Constitution for the Northern Territory* (August, 1996)

For further reading of the Committee's publications see Volume 2, Parts A and B.



## Chapter 4 HISTORY OF THE PROCESS

### A. ORIGINS

The Committee on Constitutional Development was first established as a Select Committee by resolution of the Legislative Assembly of 28 August 1985, moved by the former member for Barkly and Chief Minister at the time, Ian Tuxworth, under the Chairmanship of the then Member for Araluen, Jim Robertson. The resolution had strong cross-party support, and the Committee has since its inception, been comprised of equal numbers of the two main political parties in the Legislative Assembly. The initial Terms of Reference were wide, but included, as the main aspect of the work of the Committee, the inquiry into and report with recommendations back to the Legislative Assembly on a new Constitution for a new State, on terms resulting in equality with the other States.

The Committee was specifically directed to consider not only the framework of the new Constitution, but also the principles upon which it should be drawn.

It was envisaged by the resolution that the Committee would be the main source of advice to the Legislative Assembly on the draft Constitution, and that the Committee would also make recommendations on the method to be adopted to have that draft Constitution approved by or on behalf of the people of the Northern Territory. The Committee has fulfilled both these aspects of its Terms of Reference.<sup>1</sup>

In its early days, the Committee had no full time staff or budget of its own but utilised the services of several part-time officers. As well, it worked in co-operation with the 'Statehood Executive Group' within the Department of the Chief Minister. Most of the work in the first few years was directed at producing some initial papers, which were released for public comment and submissions in 1987.

The Committee's processes underwent a change in 1988 when it acquired its own staff and budget. Prior to that time, the Chairmanship of the Committee had passed to the Member for Nightcliff and former Chief Minister, Steve Hatton, MLA. There was an expansion of activities, involving the establishment of sub-committees. An extensive round of public consultations throughout the Territory was undertaken by the Committee in 1989-90. In addition, further publications were issued by the Committee, and some promotional activities were undertaken pursuant to item 2 of the Committee's Terms of Reference.

On 24 August 1988, the Terms of Reference removed the full membership on the Committee of the Chief Minister and Leader of the Opposition, although they were still entitled to attend

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<sup>1</sup> See

(a) Appendix 7 (Final Draft Constitution); and

(b) Northern Territory Legislative Assembly Sessional Committee on Constitutional Development. 1995. *Interim Report No. 1, A Northern Territory Constitutional Convention*. Legislative Assembly of the Northern Territory, Darwin.

meetings. The equal numbers of Government and Opposition Members on the Committee was still retained.

In 1989, the Legislative Assembly resolved to amend the Committee's Terms of Reference to change it from a Select Committee (with a set time to report) to a Sessional Committee. In addition, the functions of the Committee were extended to other constitutional and legal matters referred to it either by a Minister or by resolution of the Legislative Assembly, and the promotional aspects of the Committee's work was extended from just Statehood issues to include constitutional issues generally.

On 31 May 1993, by reference from the Chief Minister, the Committee was asked to consider matters concerning the impact of the national debate on Republicanism and the implications it may have for the Northern Territory. The Committee subsequently issued in March 1994 Discussion Paper No. 7, *An Australian Republic? Implications for the Northern Territory*.

## **B. PUBLIC AWARENESS ON CONSTITUTIONAL ISSUES AND STATEHOOD**

A major aspect of the Committee's work under its Terms of Reference is the promotion of constitutional and Statehood issues.

Most of the work of the Committee has, so far, been undertaken in conjunction with proposals for a grant of Statehood. However, as pointed out in its Discussion Paper No. 5 - *The Merits or Otherwise of Bringing an NT Constitution into Force before Statehood*, the proposals for a new constitution for the Northern Territory do not necessarily have to be implemented contemporaneously with such a grant<sup>2</sup>.

In promoting constitutional awareness to the Australian population the Committee has developed an extensive mailing list of over 4000 addresses (of which approximately 900 are Northern Territory addresses), targeting specific groups including federal and state politicians and government departments, academic institutions, local governments, legal organisations, Aboriginal and ethnic organisations, pressure groups and private individuals who have requested information from the Committee. The Committee also has a comprehensive international mailing list.

The Committee has adopted, as a fundamental aspect of its procedure in actioning its Terms of Reference, the conduct of a comprehensive program of community consultations within the Northern Territory on matters that could be dealt with in a Territory or new State constitution. It has proceeded on the assumption that it is absolutely essential for Aboriginal people to be involved in the process of further constitutional development in the Northern Territory. Without such involvement, the prospects of achieving major constitutional reform are negligible. A range of submissions have been received on matters of concern to Aboriginal people during its community consultations, including matters of Aboriginal customary law, traditional rights to land, sacred sites and self-determination.

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<sup>2</sup> See Appendix 7.

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## 1. Aboriginal Communities

Aboriginal people comprise approximately 26 per cent of the Northern Territory's population. They have a strong and distinctive cultural heritage. Matters relating to land rights, sacred sites, self-determination, the maintenance of Aboriginal language and culture and the recognition of customary law are strongly supported within the Aboriginal community. Some of the representative organisations support regional-local autonomy and self determination, whilst others wish to achieve the recognition of their way of life within a Northern Territory constitutional and legal framework.

In addressing this issue at the outset of its deliberations, the Committee recognised that major constitutional development in the Northern Territory would not occur without the support and recognition of the basic rights of Aboriginal people in a Northern Territory Constitution.

The Committee has noted the fact that it is still within the living memory of Aboriginal people that during the assimilation era they were banned from using their own language, practising their own culture and their own religion. It became obvious to the Committee that the protection of such rights was critical in gaining the confidence of Aboriginal people in accepting proposals for the new Constitution and Statehood. Such protection should prevent the possibility of these rights being taken away again, not only for Aboriginal people but for all Territorians<sup>3</sup>.

It also became apparent to the Committee that if it was to develop a report and a draft constitution, it had to promote the awareness of constitutional issues in Northern Territory Aboriginal communities. One of the strategies adopted was to develop a plain English publication. Some 20,000 copies were printed. This was followed with an advertising program throughout the Northern Territory. The Committee then visited the major Aboriginal communities, utilising Aboriginal interpreters in promoting the plain English booklet as a guide. This program took two years to complete. Many of the participants spoke in their own language and these various languages were then translated into English and incorporated into *Hansard* (See Volume 5 Parts A and B).

The approach in addressing the concepts of constitutional development was of value and it has helped the Committee in understanding the complex issues that pervade Aboriginal communities. The members of the Committee were also able to develop a rapport between themselves — as politicians — and the people within those communities. This is quite an innovative approach and has not been utilised before by a Parliamentary Committee.

Recently, the Committee has re-established dialogue with the Aboriginal and Torres Strait Islander Commission (ATSIC) for the purpose of developing educational workshops on Northern Territory constitutional issues and Statehood with ATSIC Regional Councils commencing early in 1996.

The Committee has also continuing dialogue with Land Councils in the Northern Territory and to date has received submissions from Northern and Central Land Councils.

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<sup>3</sup> See Part 8 of the Final Draft Constitution.

## 2. Urban Areas

During 1989 the Committee approved a strategy in promoting the Committee's public awareness information program to Northern Territory urban centres. In 1991 the Committee approved the first stage of the program for 1991/92, the estimated cost of the programme was \$239,000. Unfortunately due to budget restraints the Committee was unable to carry out this program. However it attempted to take relevant issues to urban areas and has received many submissions from these areas.

In the course of developing the program, a case analysis was prepared utilising students from the Northern Territory University to respond to a survey questionnaire. The response from the survey had shown that the Committee in promoting constitutional awareness in the urban areas would need to take into account the following that:

- there should be a recognition of human rights, incorporating both individual and group rights, equality under the law, Aboriginal cultural and land rights;
- the relationship with the Northern Territory community and the issues on constitutional development has confirmed that the community must be involved in the process of developing a home-grown constitution;
- a Northern Territory constitution would need to reflect the multicultural and Aboriginal aspects of the Northern Territory;
- the community should also be involved in the mechanism to change a new constitution.

At that time, the Committee identified a number of strategies in promoting constitutional awareness that were desirable, not necessarily to be carried out by the Committee. These were:

- Further surveys should be conducted on specific constitutional subject matters;
- Full bipartisan support to the process be continued so as to engender community support and Federal government acceptance and involvement.
- The establishment of a Northern Territory Constitutional Convention be promoted very strongly<sup>4</sup>. The Committee sees this as the most crucial stage of the process as it will involve the community at large actually having a meaningful input by setting the course and laying the foundations for the future of the Northern Territory.

## 3. Ethnic Groups

The main ethnic communities in the Northern Territory comprise people from Chinese, Greek, Italian, Philippine, Malaysian, Indonesian, Portuguese, Timorese, Vietnamese and Thai origin. The Committee has adopted as part of its strategy in urban areas the targeting and consulting with ethnic organisations on Statehood and constitutional issues. In consultation with the Ethnic Communities Council and with the assistance of the Northern Territory Office of Ethnic Affairs the Committee's 'plain English booklet' has now been translated and printed into

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<sup>4</sup> Note that the Committee has recommended in its Interim Report No. 1 the establishment of Territory Constitutional Convention.



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seven languages (Chinese, Greek, Italian, Indonesian, Portuguese, Vietnamese and Thai). The program is still continuing.

#### 4. Other Promotional Approaches

A number of activities involving the promotion of constitutional issues has been conducted by the Committee. These include the following:

- Public hearings and meetings held in major centres throughout the Northern Territory;
- Meetings held with Northern Territory Aboriginal communities during 1989 and 1990; and
- A major impetus in promoting the work of the Committee and constitutional issues in the Northern Territory was the recent "**Constitutional Change in the 1990s**" conference held in Darwin in 1992 which was organised by the Committee. Requests for conference and Committee publications are still being sought. Interaction with specific constitutional forums such as the Constitutional Centenary Foundation has also provided valuable access for the Committee to a wide range of influential persons and organisations within Australia.
- The Committee also had a display stand at all major show venues throughout the Northern Territory in July 1995 as well as in earlier years. A promotional video has also been developed and was shown not only at the shows but is still being used as an educational tool to schools and other organisations in the Northern Territory.
- Other avenues that the Committee has utilised in promoting Northern Territory constitutional issues is through the continuing interaction with the Constitutional Centenary Foundation, and in attending and participating in major conferences that impinge on the work of this Committee in developing a new Territory or State constitution.

The Committee is aware that national consensus and support is an important element for the Northern Territory in gaining constitutional equality and Statehood within the Australian federation.

It also requires the necessary support of both Houses of the federal Parliament. If majority support is not forthcoming in both of these Houses, Territory constitutional development will not occur.

It is also acutely aware that support from Territorians through informed debate, consultation and input is just as important.



## **Chapter 5            KEY ISSUES AND COMMENTARY ON THE FINAL DRAFT CONSTITUTION FOR THE NORTHERN TERRITORY**

### **A.        THE FINAL DRAFT CONSTITUTION**

The Committee has now completed its work in relation to the preparation of the final draft Constitution for the Northern Territory. This document is set out at Appendix 8 of this Volume, with footnotes on each clause to assist the reader.

In addition, the final draft Constitution as tabled in the Legislative Assembly on 22 August 1996 was the subject of a tabling speech by the Chairman of the Committee, the Hon Steve Hatton, MLA, a copy of which is set out at Appendix 10, and which describes each discreet part of the draft Constitution. It is not proposed to repeat this analysis in this Report, although comment is made below on specific innovative aspects of the final draft Constitution.

Since that tabling action, the Committee has received further valuable assistance from the former Parliamentary Counsel for the Northern Territory, Mr Jim Dorling, who is currently serving with the Irish Government, and the Committee has adopted a number of his additional drafting comments. These have been incorporated in the final draft Constitution at Appendix 8 to this Volume.

### **B.        WHY HAVE A CONSTITUTION?**

There is no express statement in Australian constitutional law that expressly requires that each State of the Federation must have its own Constitution. However, it is envisaged by section 106 of the Commonwealth Constitution that there will be State Constitutions. It is in any event inevitable that each State, including a new State, will have in place a number of legal documents, however described, which are of a constitutional nature. This is because it is not possible to create a modern, self-governing entity with constitutional powers and authority without having some legal framework in place as to fundamental structure and composition in all the three traditional arms of government - legislature, executive and judicial.

The Self-governing Northern Territory, even though not yet a State, can point to the *Northern Territory (Self-Government) Act 1978* of the Commonwealth Parliament as a form of "constitution", even though it is only an ordinary Act of that Parliament, and even though it was never adopted or approved by the people of the Northern Territory.

Further, section 106 of the Commonwealth Constitution envisages that each State, including a new State, will have some document or documents in force which can be described as the State "Constitution", the continued existence of which is guaranteed by that section until altered in accordance with that State "Constitution". Thus the Commonwealth Constitution contains a significant measure of constitutional protection of State Constitutions. The

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Commonwealth Constitution also envisages in other sections that there will be a State Parliament, a State Executive Government and a State Supreme Court.

In performing its duties, the Committee is obliged by its Terms of Reference to not only prepare a draft new Constitution for the Northern Territory, but also to take into account that that draft Constitution would be the Constitution of the Northern Territory as a new State upon any future grant of Statehood. This applies whether the new Constitution is brought into operation before the grant of Statehood or only at the point of that grant. The Committee is therefore obliged to have regard to the relevant provisions in the Commonwealth Constitution which are relevant to a State (including a new State) Constitution.

In the Committee's *Discussion Paper on a Proposed New Constitution for the Northern Territory*<sup>1</sup> the Committee considered the need for a Constitution for the Northern Territory. It referred to section 106 of the Commonwealth Constitution and stated that there was a general consensus of view that the existence of a Constitution was a necessary pre-condition for Northern Territory Statehood. It would either be the existing constitution (in the case of the Northern Territory, the *Northern Territory (Self-Government) Act 1978*) or it could be a new Constitution specifically framed for the new State.

The Committee concluded that while many provisions of the *Northern Territory (Self-Government) Act 1978* may be suitable or adaptable for the new State Constitution, it could not serve as that Constitution without substantial modification<sup>2</sup>. The Committee further stated in that Discussion Paper that it considered that Statehood must provide for constitutional equality with the existing States, and that this could, in part, be achieved by the preparation and adoption of a new State Constitution to replace the *Northern Territory (Self-Government) Act*.

The view of all members of the Committee at that time was that the new State Constitution must be prepared by Territorians. It should not be imposed on the Northern Territory by outside agencies. Territorians must decide the form and content of their own Constitution.

The Committee remains strongly of the same view at the time of preparing of this Report. It makes the following recommendation:

**Recommendation: 1**

That a new Constitution be adopted for the Northern Territory to replace the *Northern Territory (Self-Government) Act*, to be prepared by Territorians having regard to the Committee's final draft Constitution attached to this Report.

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<sup>1</sup> see Northern Territory Legislative Assembly Sessional Committee on Constitutional Development. 1995. *Discussion Paper on A Proposed New State Constitution for the Northern Territory*, (Second Edition). Legislative Assembly of the Northern Territory, Darwin

<sup>2</sup> Northern Territory Legislative Assembly Sessional Committee on Constitutional Development. 1995. *Discussion Paper on A Proposed New State Constitution for the Northern Territory*, (Second Edition). Legislative Assembly of the Northern Territory, Darwin.

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## C. COMMENTS ON PARTICULAR FEATURES OF THE FINAL DRAFT CONSTITUTION.

The Committee wishes to comment on specific aspects of the final draft Constitution, as set out at Appendix 8 of this Report.

### 1. Preamble

The Committee proposes a lengthy Preamble to, and as part of, the new Constitution, for a number of reasons.

The Committee considers that it is important to set out the unique constitutional history and context of the Northern Territory and its peoples. The Constitution can only have an operation in the light of that history. It should be a document that reflects the diverse multi-cultural circumstances of the Northern Territory, not only as to its indigenous peoples, but also as to the many migrants from many countries that have come to make the Territory their home in the last 150 years or so. One of the great features of the Northern Territory is its cosmopolitan mix of peoples with their many cultures, but living in an open and tolerant democratic society. The Constitution would be a failure if it did not reflect and seek to preserve this feature of Northern Territory history and life. A Preamble is an excellent way in which to describe this feature and to set the scene within which the Constitution must operate. The Constitution should be interpreted and applied, not just as a cold legal document of government, but as a living instrument which provides a legal framework for reconciliation and partnership among its many peoples.

Thus the Preamble recites at its very beginning the history and circumstances of the indigenous people of the Territory, with their own unique system of governance and laws. This provision would be a first in Australian constitutional law, and provides proper recognition of the historic place of its indigenous people.

The Preamble then proceeds to recite the constitutional history of the Northern Territory from the time of first settlement by the non-indigenous inhabitants, initially as part of the Colony of New South Wales, then as a separate Colony in its own right, followed by annexation to the Province of South Australia and later as part of the original State of South Australia.

Subsequently, on 1 January 1911, the Preamble recites that the Northern Territory was surrendered by South Australia and accepted by the Commonwealth as a Commonwealth Territory. The Preamble then recites the fundamental change that occurred when Self-government was granted in 1978 by an ordinary Commonwealth Act, reserving certain powers to the Commonwealth.

Much of the wording of these Preambles has been taken from the wording of earlier constitutional documents on the Northern Territory - see the Preambles to the *Northern Territory Acceptance Act* 1910 of the Commonwealth and the *Northern Territory Self-Government Act* 1978 of the Commonwealth.

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The Preamble then recites the work of this Committee, and contains provisions that reflect the recommendations of this Committee that there be a representative Territory Constitutional Convention, established by Territory law, followed by a Territory referendum to adopt the new Constitution. It assumes that the referendum will be successful.

Finally, the Preamble makes a positive statement designed to recognise the unique, diverse nature of the Northern Territory and its peoples, in terms that parallel the wording of clauses 7.3 and 8 of the draft Constitution. This includes recognition of Aboriginal self-determination, granted under Territory law, but only within the wider framework of a harmonious, tolerant and united multicultural Territory society. The Preamble recites that Territorians have freely chosen to associate in accordance with the new Constitution as free, diverse yet equal citizens of the Territory, to be governed under it in accordance with democratic principles, within the federal system in Australia. It indicates that we (as Territorians) freely choose to be part of Australia and to be equal partners in this great nation along with the other States.

## **2. An Entrenched Constitution, with Organic Laws**

The Committee has had regard to the existing Australian State Constitutions, which are mostly the product of Self-government exercises of last Century, and most of which are in a non-entrenched form; that is, they are capable of amendment by an Act of the State Parliament concerned. In some cases, amendment of some parts of their Constitution requires a special majority of that State Parliament. The Committee also noted that in more recent times, most States have now further entrenched certain aspects of their State Constitutions, often requiring a State referendum for any amendment of those aspects. This has been done pursuant to the manner and form provisions, now contained in section 6 of the *Australia Act* 1986.

The Committee took the view that in the case of the Northern Territory, the whole of the new Constitution should be an entrenched document<sup>3</sup> reflecting the fact that it will be the most important law of the Northern Territory and one that is designed to establish the framework under which the Northern Territory would operate for a long time to come. It should certainly not be a document that could easily be changed by a unicameral Territory Parliament on a simple majority of the votes of its members.

In the final draft Constitution, the Committee has advocated that the whole of the new Constitution should only be capable of amendment after the proposal has been properly considered by the Parliament, with opportunity for public input, and then by a successful Territory referendum<sup>4</sup>. The proposal for a special committee of the Parliament to consider any proposals for such amendment is considered further at 5.1.3 below. The Committee has left for the consideration of the proposed Territory Constitutional Convention the question whether any aspects of the new Constitution should require a special majority at a referendum<sup>5</sup>

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<sup>3</sup> Northern Territory Legislative Assembly Sessional Committee on Constitutional Development. 1995. *Discussion Paper on A Proposed New State Constitution for the Northern Territory*, (Second Edition). Legislative Assembly of the Northern Territory, Darwin: Paragraph 3(d), p31.

<sup>4</sup> Northern Territory Legislative Assembly Sessional Committee on Constitutional Development. 1995. *Discussion Paper on A Proposed New State Constitution for the Northern Territory*, (Second Edition). Legislative Assembly of the Northern Territory, Darwin: Paragraph 3(b), p30.

<sup>5</sup> see clause 2.4(8) of the final draft Constitution.

The Committee also considered that because of the important status of the new Constitution and the fact that it would be an entrenched document, only the most important matters should go into that new Constitution<sup>6</sup>. Other matters could be relegated to ordinary legislation.

Since that time, the Committee has had the opportunity to consider the position in a number of countries, including in Papua New Guinea, where they have a system of Organic Laws<sup>7</sup>, that is, a category of written laws, made by the national Parliament, and having a status below that of the national Constitution, but superior to that of ordinary legislation. In PNG, the making of such laws requires extended debate over 2 calendar months in the Parliament and a special majority in the votes of the members of the national Parliament.

In the context of the Northern Territory, where there are matters of great importance in law, for example, if the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth was to be patriated to and become a new State law, as recommended by the Committee<sup>8</sup>, the facility of an Organic Law with a special constitutionally entrenched status offers some additional flexibility and protection. Thus, in relation to Aboriginal land rights, the Committee has recommended that certain key features be entrenched in the new Constitution itself<sup>9</sup>, and that the balance of that Act be contained in an Organic Law in terms based on those in the existing Commonwealth Act, with any necessary changes agreed with the Commonwealth Government.

There may be other matters appropriately dealt with by an Organic Law. The final draft Constitution has left it to the new Parliament to enact further Organic Laws by following the special procedure in that final draft<sup>10</sup>. Other than for legislation on Aboriginal sacred sites in the Northern Territory, the Committee does not make any recommendations as to which other matters should be dealt with by Organic Laws.

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<sup>6</sup> see

- (a) Northern Territory Legislative Assembly Sessional Committee on Constitutional Development. 1995. *Discussion Paper on A Proposed New State Constitution for the Northern Territory*, (Second Edition). Legislative Assembly of the Northern Territory, Darwin: Paragraph 3(f), p31 and p53; and
- (b) Northern Territory Legislative Assembly Sessional Committee on Constitutional Development. 1995. *Information paper No. 2 Entrenchment of a New State Constitution*, (Reprint). Legislative Assembly of the Northern Territory, Darwin: Paragraph 3(b), p2.

<sup>7</sup> see section 12 of the Papua New Guinea National Constitution.

<sup>8</sup> see

- (a) Northern Territory Legislative Assembly Sessional Committee on Constitutional Development. 1995. *Discussion Paper on A Proposed New State Constitution for the Northern Territory*, (Second Edition). Legislative Assembly of the Northern Territory, Darwin: Paragraph 1, p61; and
- (b) Northern Territory Legislative Assembly Sessional Committee on Constitutional Development. 1993. *Discussion Paper No. 6, Aboriginal Rights and Issues - Options for Entrenchment*, Legislative Assembly of the Northern Territory, Darwin: 15-16.

<sup>9</sup> see Clause 7.1 of the Final Draft Constitution.

<sup>10</sup> see Clause 2.3 of the Final Draft Constitution.

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The Committee has also given two alternatives for determination by the Territory Constitutional Convention of the question of the required majority of votes in the new Parliament for any amendment of an Organic Law or any class of Organic Laws<sup>11</sup>

The Committee considers that a system of Organic Laws has much to commend it in the special circumstances of the Northern Territory. The fact that such a system has not previously been used in Australia does not discourage the Committee in this regard. If a system of Organic Laws would serve a useful purpose by providing additional constitutional protections for matters of particular importance or sensitivity, while still preserving the proper role of the democratically elected representatives of the people, then the Committee sees no reason why it should not be adopted in the new Constitution. The use of Organic Laws can extend to any subject matter, not just as to Aborigines, with the question being left to the Parliament to decide.

### 3. Aboriginal Customary Law

The Committee was faced, in its hearings and consultations in numerous centres throughout the Northern Territory, and in submissions made to it, with overwhelming support from Aboriginal Territorians for some form of constitutional recognition of Aboriginal customary law. It is quite clear to the Committee that in the Northern Territory, Aboriginal customary law is a living system of law for many Territorians, one that is central to their existence and daily lives. There were frequent concerns expressed about the erosion of customary law in Aboriginal communities and the damage that this was causing to Aboriginal society and to the maintenance of order in that society.

The Committee is aware that no Australian jurisdiction has ever legally recognised the system of customary law operating amongst its indigenous inhabitants. However, to some extent this changed with the *Mabo* decision in the High Court<sup>12</sup>, at least as to common law recognition of customary title to land. Particular aspects of customary law have also been recognised in the Northern Territory in other ways.

The Committee's discussion paper on the constitutional recognition of Aboriginal customary law<sup>13</sup> that raised a number of options for the recognition of customary law, has been well received. There has been no significant opposition to some form of recognition. There are concerns as to particular aspects of customary laws which might, on some standards, be seen as objectionable. But in the Committee's view this does not necessitate a view that is opposed to any form of recognition. There is also no constitutional impediment to any such recognition.

The draft Constitution contains a proposal to recognise Aboriginal customary law as a source of Northern Territory law on a par with the common law. Both would be subject to any legislation. To some extent, recognition along these lines has already occurred through the

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<sup>11</sup> see Clause 2.3(2)(a) of the Final Draft Constitution.

<sup>12</sup> *Mabo v Queensland (No. 2)* (1992) 175 CLR 1.

<sup>13</sup> Northern Territory Legislative Assembly Sessional Committee on Constitutional Development. 1992. *Discussion Paper No.4, Recognition of Aboriginal Customary Law*, Legislative Assembly of the Northern Territory, Darwin.



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courts, both as a result of the *Mabo* decision, and also as a result of the practice of the courts in other areas. The Committee's proposal, expressed in the form of two options, is that the common law and customary law should run in tandem, not as two completely separate systems of law in a discriminatory manner, but in a complimentary manner as part of the one system of laws for the whole Northern Territory. However, to prevent unfair or undesirable consequences, it is proposed that Aboriginal customary law will not be able to be implemented and enforced through the institutions and officers of government except in so far as the courts are prepared to do so or as Territory legislation so provides. For example, this would prevent the use of practices which may be harsh or unjust on international principles — compare Part 8 of the final draft Constitution.

In this way, it will be possible to bring the two systems of law into a form of mutuality and reciprocity within a common constitutional framework, a gradual harmonisation of laws, but without any unfair or undesirable side effects. Aboriginal people will be subject to their own traditional laws as part of the laws of the Northern Territory, as well as being subject to non-indigenous Territory laws, and without being placed in a position of double jeopardy. This should greatly help to strengthen Aboriginal traditional society and meet their demands for recognition of their laws whilst remaining a part of one Territory community. Far from creating two separate systems of law on racial lines, this will legally recognise what already exists, and should facilitate the process of reconciliation and understanding between indigenous and non-indigenous people in the Territory.

#### **4. Constitutional Amendment and Citizen's Participation**

The recommendations of the Committee for the entrenchment of the whole new Constitution, such that a special procedures would be required to be followed for its later amendment, have already been noted above. The particular feature to be discussed under this heading is the matter of citizen's participation in constitutional matters generally, and in proposals for constitutional change in particular.

In the course of the Committee's community consultations, a number of submissions were made to it advocating various forms of citizen's initiated referenda, that is, that a sufficient number of citizens should be able to require government to put a particular proposal to a referendum which, if successful, would become law.

As a consequence, the Committee issued a further discussion paper listing the options for citizen's initiated referenda<sup>14</sup>. It noted that neither the Commonwealth nor any Australian State presently had such a provision, and that there were arguments for and against it.

The Committee has come to the conclusion since issuing the discussion paper that there is merit in providing for citizen's participation in the business of government, and in particular to constitutional matters, other than just by voting at periodic elections. As a general principle, the citizen should be afforded opportunities for input into the business of government in an open and democratic society. However, the Committee is not persuaded that it is appropriate

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<sup>14</sup> Northern Territory Legislative Assembly Sessional Committee on Constitutional Development. 1991. *Discussion Paper No. 3, Citizen's Initiated Referendums*. Legislative Assembly of the Northern Territory, Darwin.

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to provide a mechanism whereby a percentage of citizens can compel any change to the Constitution against the considered views of the elected representatives in Parliament.

The most important area where citizens' input would be desirable would be on matters concerning the new Constitution and possible changes to that Constitution. In this regard, the final draft Constitution proposes the establishment of a Standing Committee of the Parliament<sup>15</sup>. Any proposals to change the Constitution or to change an Organic Law would be required to be referred to and considered by that Committee, with facility for public hearings, before the proposal proceeded in the Parliament. Furthermore, the Committee advocates that a specified percentage of citizens on the Territory voting roll should be able to require that Standing Committee to consider any specific proposals for amendment of the Constitution or an Organic Law. Following the submission of the petition to the Standing Committee, it would be required that a report be tabled in the Parliament and that it be publicly accessible. However, the final decision to proceed with any amendments to the Constitution would be a matter for the Parliament.

In this way, there would be significant opportunities for public involvement and input into the most important constitutional matters, whilst still upholding the principle of representative democracy through the Parliament, a principle that is at the core of the Committee's recommendations.

## 5. Westminster Conventions

The Committee has deliberately recommended the retention of the Westminster system of responsible government under the new Constitution, whereby the Premier and other Ministers of the Territory would be required to be appointed from among the members of the new Parliament and be answerable back to that Parliament.

The Executive Council of the Territory under the new Constitution would in turn be comprised of the Premier and other Ministers, to advise the Governor in the government of the Territory. The Committee indicated that it preferred this form of Westminster government to some other model, such as a presidential system with a greater separation of the legislative and executive arms of government<sup>16</sup>. This does not necessarily mean, however, that the checks and balances provided by the system of responsible government that we have in Australia provide in themselves an adequate system of government accountability. They are still a valuable part of the system of accountability in a Parliamentary democracy and it is the system to which Australians have become used to and are familiar with.

The Committee also saw no necessary reason why there should be a change to a presidential system should Australia become a Republic and the Northern Territory followed suit<sup>17</sup>. The

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<sup>15</sup> see Clause 2.6 of the Final Draft Constitution.

<sup>16</sup> Northern Territory Legislative Assembly Sessional Committee on Constitutional Development. 1995. *Discussion Paper on A Proposed New State Constitution for the Northern Territory*, (Second Edition). Legislative Assembly of the Northern Territory, Darwin.

<sup>17</sup> Northern Territory Legislative Assembly Sessional Committee on Constitutional Development. 1994. *Discussion Paper No. 7, An Australian Republic? Implications for the Northern Territory*. Legislative Assembly of the Northern Territory, Darwin: 11.

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final draft Constitution has been prepared on the basis of these views. There is, however, no one single model of a Westminster system. It is necessary to devise a system that best meets the needs of the particular jurisdiction. The Committee sees an opportunity, in making a new Constitution, to devise a system of government for Territorians that best meets the needs of a small jurisdiction with a diverse population, and which tries to avoid the pitfalls experienced in other jurisdictions.

In this respect, the Committee has advocated measures in the draft Constitution which would convert many of the conventions of the Westminster system into binding constitutional rules. The creation of the position of a new Governor as head of government is recommended, but his or her powers are not to be left at large, with the resultant uncertainty that surrounds the debate as to the "reserve powers". In the Committees' view, consistent with the core principle of representative democracy, the Governor should be required as a general rule to follow the advice of his or her responsible Ministers. The only exceptions to this that the Committee envisages are where the Constitution or the legislation of the Territory expressly otherwise provides in particular cases, or where the Governor, in following the advice of Ministers, would be acting unconstitutionally<sup>18</sup>. It is to be noted that this form of codification of Conventions is much simpler than in a bicameral system. Under the Committee's recommendations, the Governor would be able to seek an advisory opinion of the Supreme Court in open court in appropriate cases for a ruling on a constitutional issue<sup>19</sup>.

In addition, the draft Constitution proposes that express constitutional recognition should be given to the Office of Premier, to which would be attached certain express constitutional powers. These would include power to advise the Governor on the appointment and dismissal of other Ministers. The Governor would be obliged to appoint as Premier the member of the Parliament who in the Governor's opinion has the support or is likely to have the support of a majority of the members of the Parliament. If a vote of no confidence was to be passed by the Parliament in the government, the Governor would be free to remove the Premier from office and appoint another member who had the support of the majority of members. If the Governor was unable to make such an alternate appointment, the Governor would be free to dissolve the Parliament and call a general election.

The final draft Constitution contains 3 options as to the term of the new Parliament:

- (1) To provide for a maximum 4 year term, in much the same way as the existing Legislative Assembly.
- (2) To provide for a maximum 4 year term, but would restrict the Governor's power to call an election in the first three years except where the Premier resigns or vacates office or a vote of no-confidence is carried in the government.
- (3) To provide for a fixed 4 year term, with an early election only permitted where the Premier resigns or vacates office or on such a vote of no confidence.

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<sup>18</sup> see Clause 4.2 of the Final Draft Constitution.

<sup>19</sup> see Clause 6.4(4) of the Final Draft Constitution.

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The choice of all these options is to be left to the Territory Constitutional Convention.

The Committee considers that these measures will secure a greater measure of constitutional certainty and uphold the principle of representative democracy, while at the same time retaining the office of Governor, with power to deal with any political crisis as a neutral umpire and to uphold the new Constitution, and otherwise to perform the normal duties of that office.

## **6. Judicial Independence and Supreme Court Jurisdiction**

The Committee recognised in its first Discussion Paper<sup>20</sup> that the judiciary was a fundamental part of the constitutional structure of the Northern Territory, and that the basic provisions as to the judiciary should be contained in the new Constitution to ensure its status and independence. This reflected the Committee's view that in a free and democratic society under the rule of law, an independent judiciary was an indispensable element.

However, consistent with its approach to the rest of that new Constitution, the Committee recommended that only essential provisions should be contained in the new Constitution, with matters of detail being left to ordinary legislation. The essential provisions listed in the Committee's recommendations in that first Discussion Paper were that the following provisions should be included in the new State constitution:

- (a) the existence of the Supreme Court of the new State including the Court of Appeal;
- (b) appropriate transitional provisions to carry over the officers, functions, proceedings, records etc, of the existing Supreme Court of the Northern Territory;
- (c) provisions for the appointment of Supreme Court Judges and a guarantee against any reduction in their terms and conditions of service without written agreement during their respective terms of office;
- (d) provision for the removal of judges only on address in the new Parliament on the grounds of proven misbehaviour or incapacity; and
- (e) provisions concerning the jurisdiction of the Supreme Court of the new State.

In the course of the Committee's discussions, it was also considered that some additional provisions should be contained in the new Constitution. These were:

- (a) an advisory jurisdiction in matters arising under the new Constitution or involving its interpretation, but only at the instance of the Governor, the Speaker of the Parliament on the resolution of the Parliament, the Executive Council of the Northern Territory or

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<sup>20</sup> Northern Territory Legislative Assembly Sessional Committee on Constitutional Development. 1995. *Discussion Paper on A Proposed New State Constitution for the Northern Territory*, (Second Edition). Legislative Assembly of the Northern Territory, Darwin.

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the new Premier. This will facilitate judicial resolution of important constitutional issues in appropriate cases, after full argument in open court; and

- (b) a supervisory jurisdiction over inferior Territory tribunals and other bodies, being not less extensive than the supervisory jurisdiction of the Northern Territory Supreme Court immediately before the commencement of the new Constitution, and including the most important relief of habeas corpus.

In addition, the Committee decided that appointments to the position of Judge in the Supreme Court should only be made by the Administrator in Executive Council after consultation with the Leader of the Opposition as well as the legal profession.

Despite submissions made to the Committee for some form of qualifications to the exclusion of the separation of powers doctrine, the Committee has decided not to recommend any such qualifications. The Committee considers it desirable to make it clear that the Territory Parliament can confer judicial power on other than a court, in the same way as in the existing States. However, the Committee considered that the supervisory jurisdiction of the Supreme Court, mentioned in (b) above, should extend to all cases of the exercise of judicial power by tribunals and other inferior bodies.

## **7. Aboriginal Rights**

As in other areas involving the final draft Constitution, the Committee has sought to be innovative in dealing with the special position of the indigenous peoples of the Northern Territory and their relationship with non-Aboriginal Territorians.

The Committee saw it as most important for a new Constitution to contain provisions that are adequate to reflect the special position of the Aboriginal peoples in the Northern Territory and the importance of their contribution to Northern Territory society. In its discussion paper on Aboriginal rights<sup>21</sup>, the Committee stated that it should proceed on the assumption that it was absolutely essential for Aboriginal people to be involved in the process of further constitutional development, and that without such involvement the prospects of achieving major constitutional reform were negligible. It was a view that was reinforced by the many submissions made to the Committee in the course of its community visits and on other occasions, advocating constitutional recognition of the rights of Aboriginal people in the Territory. The Committee continues to be of this view. The Committee considers that by appropriate and reasonable forms of entrenchment of Aboriginal rights in a new Constitution, in a manner that reflects both Aboriginal interests and the wider public interest, the future progression of Territory constitutional development can be assured, with the groundwork being laid for a unified, tolerant and harmonious Territory community into the future. The new Constitution should provide a legal framework for a form of Aboriginal and non-Aboriginal reconciliation and partnership within the one Northern Territory political entity.

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<sup>21</sup> Northern Territory Legislative Assembly Sessional Committee on Constitutional Development. 1993. *Discussion Paper No. 6, Aboriginal Rights and Issues - Options for Entrenchment*, Legislative Assembly of the Northern Territory, Darwin.

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Thus, for instance, the draft Constitution contains a Preamble reciting the historical circumstances of the Aboriginal people in the Territory and it also recognises Aboriginal customary law as a source of Territory law on a par with the common law. These have already been discussed above.

In addition, Part 7 of the final draft Constitution contains provisions dealing with specific Aboriginal rights:

- Clause 7.1 deals specifically with the proposals to patriate the existing *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth as a law of the Northern Territory by agreement with the Commonwealth and only with necessary changes as so agreed. Upon patriation, it would have the entrenched status of an Organic Law, except that certain basic provisions guaranteeing Aboriginal land rights would have the additional constitutional protection by way of entrenchment in the Constitution itself. This would include a prohibition on compulsory acquisition of Aboriginal land (except for the acquisition of a lesser interest for specific public purposes), and a restriction on dealings in the Aboriginal freehold interest without the prior order of a Judge of the Supreme Court after full enquiry.
- Clause 7.2 proposes the constitutional entrenchment of the requirement for the protection of Aboriginal Sacred Sites in the Northern Territory, in terms based on the current provision of the *Aboriginal Land Rights (Northern Territory) Act 1976*, and to be supported by an Organic Law on sacred sites.
- Clause 7.3 enables the new Parliament to legislate on "Aboriginal self-determination", as widely defined in section 11.1. This corresponds with the reference to this subject in Preamble 15. The purpose is to permit a form of internal self-determination under laws enacted by the Parliament within the framework of the new Constitution and a unified Northern Territory society.

In addition, Part 8 of the final draft Constitution deals with language, social, cultural and religious matters, that applies to all Territorians.

## **8. Language, Social, Cultural and Religious matters**

It was a critical aspect of the Committee's deliberations that the new Constitution should reflect the special multicultural nature of the Northern Territory. Failure to do so would mean, in the Committee's view, that the new Constitution did not adequately reflect one of the essential features of that society.

At the same time, the Committee was unable to agree that there should be a comprehensive Bill of Rights in the new Constitution. It has prepared a paper attached to this Report, entitled *Options for Dealing with Rights*<sup>22</sup>, which sets out the options for dealing with rights other than by way of constitutional entrenchment. Reference should be made to this paper and also

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<sup>22</sup> See Appendix 9.

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to the Committee's Discussion Paper relating to a Northern Territory Bill of Rights<sup>23</sup>. However, the final draft Constitution contains no such Bill of Rights.

The Committee did, however, consider that the final draft Constitution should contain provisions which reflect and protect the most important aspects of multiculturalism, being matters of language, social and cultural customs and traditions and religion.

In this regard, although English is the predominant language in use in the Northern Territory and the language in official use (the Committee suggests no change), there are a large number of other languages commonly used in the Territory, both Aboriginal and non-Aboriginal.

For many Territorians, English is a second language. The Committee considered that people should not be denied the right to use their own language in communicating with others speaking or understanding that same language, although for official purposes English would still be required.

As with language, there are many customs and traditions practised in the Northern Territory, both Aboriginal and non-Aboriginal, that are different from the predominant culture and its traditions. This is another feature of Territory life that is of value and that adds to its vibrancy and interest. It should be protected and encouraged in so far as it is compatible with overall society harmony and unity. Accordingly, the Committee considered that Territorians should not be denied the right to observe and practice their own social and cultural customs and traditions.

Finally, religion is a critical aspect of self-identification and belief and is at the core of personal rights. Again, the Northern Territory is a place that has a rich variety of religions and beliefs, both Aboriginal and non-Aboriginal. The Committee considered that Territorians should not be denied the right to follow their own religion or belief.

All these rights have been incorporated in Part 8 of the final draft Constitution and parallel the provisions of Preamble 15. None of the rights are absolute, but would be capable of qualification by Organic Law, or by reasonable regulation in an ordinary Act of the Parliament in the public interest, and also by the general principles of humanity contained in any international agreement to which Australia is a party. This should ensure that basic civilised standards are met, and that those asserting any of the specified rights cannot unreasonably infringe the rights of others, including as to their property rights.

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<sup>23</sup> Northern Territory Legislative Assembly Sessional Committee on Constitutional Development. 1995. *Discussion Paper No. 8, A Northern Territory Bill of Rights*. Legislative Assembly of the Northern Territory, Darwin.

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## D. RECOMMENDED CONSTITUTIONAL PROCESSES

The Committee has, as part of its Terms of Reference, the duty of making recommendations to the Legislative Assembly on the method to be adopted to have a draft new State Constitution approved by or on behalf of the people of the Northern Territory once the Committee has finalised its draft of that Constitution<sup>24</sup>.

The Committee has given lengthy consideration to this aspect of its work and has recommended a series of steps to be taken. In doing so, the Committee has been conscious of the desirability that the new Constitution, if it is to last into the future, should have the support of the greater majority of Territorians. It should be a document which Territorians feel they own and which they can be proud of — a "home-grown" document that reflects the special needs and circumstances of Territorians themselves.

### 1. Basic Steps to Statehood

The Committee has identified a desired procedure for the adoption of a Northern Territory constitution<sup>25</sup>:

- (a) the preparation of a Report and a draft constitution by the Committee for presentation to the Legislative Assembly with options where necessary;
- (b) the draft constitution, following debate in the Legislative Assembly, to be put to a Territory Constitutional Convention established by the Legislative Assembly with broad representation from across the Northern Territory community;
- (c) the draft constitution to be submitted to a referendum of Northern Territory electors for approval; and
- (d) the constitution, as so approved, will then be implemented by or pursuant to a specific grant of powers by the Commonwealth Parliament.

In adopting the above procedure, the Committee is of the view that the new State constitution be prepared by Territorians, with no imposition from outside agencies.

### 2. A Territory Constitutional Convention

The Committee has, since the early days of its existence, consistently advocated that a representative Territory Constitutional Convention should be held to finalise the draft Constitution. This view is now contained in the recommendations of the Committee's Interim Report No. 1<sup>26</sup> tabled in the Legislative Assembly in February 1995.

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<sup>24</sup> See paragraph (a) (iv) of the Terms of Reference -Appendix 2.

<sup>25</sup> see Northern Territory Legislative Assembly Select Committee on Constitutional Development. 1987. *Information Paper No. 1, Options for a Grant of Statehood*, Legislative Assembly of the Northern Territory, Darwin.

<sup>26</sup> Northern Territory Legislative Assembly Sessional Committee on Constitutional Development. 1995. *Interim Report No.1, A Northern Territory Constitutional Convention*. Legislative Assembly of the Northern Territory, Darwin.



The report advocates the following:

- (a) That a Territory Constitutional Convention be comprised of at least three-quarters elected representatives plus community nominees and the members of the Sessional Committee.
- (b) The Convention be administered by and financed through the Legislative Assembly.
- (c) The Convention would report back to the Administrator — the 'Report' would contain the form of Constitution finalised by the Convention.
- (d) The 'Report' would then be tabled and debated in the Legislative Assembly. There would be power in the Legislative Assembly to refer any matter back to the Convention for further consideration and supplementary report.

While the Committee in its recommendations supports a partly elected Convention; it notes that since the tabling of its recommendations, a view has been expressed that the members of the Legislative Assembly are the elected representatives of Territorians and Parliament may wish to have regard to this fact in deciding on the make up of the Convention.

### 3. A Territory Referendum

In like manner, the Committee has consistently recommended that once the draft Constitution has been finalised through the processes of a Territory Constitutional Convention, it should be ratified by a referendum of Territory voters<sup>27</sup>. The Committee is of the view that this method, should ensure that the draft Constitution, before it is submitted to the Commonwealth for legal implementation, is in a form acceptable to most Territorians. In this way, the Commonwealth would be unable to assert that it did not have demonstrable support within the Northern Territory. It would also strengthen the argument that it was not a matter for the federal Parliament to intervene by way of legislating for any amendment of the new Constitution.

The Committee makes the following recommendation:

#### **Recommendation: 2**

That the draft Territory Constitution be referred to a Territory Constitutional Convention for finalisation and to a Territory referendum for approval.

### E. A REPUBLIC

When the Committee first began its work, there was little public debate on whether Australia should be a Republic. The early proposals of the Committee were framed on the basis that if the Northern Territory became a new State, its new constitution would reflect the formally

<sup>27</sup> see Northern Territory Legislative Assembly Sessional Committee on Constitutional Development. 1995. *Interim Report No.1, A Northern Territory Constitutional Convention*. Legislative Assembly of the Northern Territory, Darwin: 17.

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monarchical nature of the Australian federation. In line with the *Australia Act* 1986, the new State would have a Governor (however called), who would be the representative of the Monarch in that new State and who would be appointed or dismissed by the Monarch on the advice of the new State Premier.

In more recent years, there have been strong moves for Australia to adopt a Republican system of government. As a consequence, the former Chief Minister made a reference to the Committee to consider the implications for the Northern Territory of any future establishment of such a Republic<sup>28</sup>.

The Committee as a result issued a discussion paper on this subject<sup>29</sup>. The Committee took the view that if Australia became a Republic there were no compelling reasons for the Northern Territory to establish direct links with the Monarch. Thus the new Territory Constitution would have to be Republican in nature also.

The final draft Constitution (see Appendix 8) has been framed to fit within the monarchical system presently applicable in Australia. If, by the time that draft Constitution is implemented, Australia has become a Republic, then on the basis of the above view that the Territory Constitution should also be Republican in nature, some changes to that draft Constitution will be required. These changes are indicated in the footnotes to the draft Constitution to this Report. Not many changes would be required.

## **F. POSSIBLE COMMENCEMENT OF THE CONSTITUTION BEFORE STATEHOOD**

The Committee's Terms of Reference contemplate that the making of the new Territory Constitution may take place in conjunction with proposals for a grant of Statehood to the Northern Territory. However, there is no necessary temporal link between the two.

Thus in the Committee's Discussion Paper No. 5<sup>30</sup>, the merits or otherwise of bringing the new Constitution into operation before a grant of Statehood together with the early repeal of the *Northern Territory (Self-Government) Act* 1978 were canvassed. The Committee is of the view that there are both advantages and disadvantages of bringing a new Constitution into force before any grant of Statehood. The advantages and disadvantages canvassed in the discussion paper have been reproduced under Appendix 7 of this Volume. However, the Committee makes no specific recommendation in regard to this matter or how it should occur. Some minor changes to the draft Constitution would be necessary if it was to occur and these are indicated in the footnotes to the final draft Constitution.

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<sup>28</sup> The Committee received additional Terms of Reference, on 9 May 1993, to enquire in and report back to the Legislative Assembly the implications of the Northern Territory in an Australian Republic.

<sup>29</sup> Northern Territory Legislative Assembly Sessional Committee on Constitutional Development. 1994. *Discussion Paper No. 7, An Australian Republic? Implications for the Northern Territory*. Legislative Assembly of the Northern Territory, Darwin.

<sup>30</sup> Northern Territory Legislative Assembly Sessional Committee on Constitutional Development. 1993. *Discussion Paper No. 5, The Merits or Otherwise of Bringing an NT Constitution into Force before Statehood*. Legislative Assembly of the Northern Territory, Darwin.

## G. STATEHOOD WORKING GROUP - FINAL REPORT

In May 1996, the Final Report of a Commonwealth-Northern Territory Statehood Working Group<sup>31</sup> of officials, set up as a result of an April 1995 meeting of the Council of Australian Governments, and chaired by the Commonwealth, was finalised and released. The Working Group was set up to consider a range of issues — legal and constitutional, financial and economic, territorial, environmental, mining, industrial, indigenous and other matters of relevance to a possible grant of Statehood to the Territory.

The Sessional Committee was not directly involved in the preparation of this Final Report. However, it is of some significance that the Report contains many references to the work of the Committee, both as to the contents of the draft Territory Constitution and as to the recommended procedure for the adoption of that Constitution. The Final Report stresses the need for consultative mechanisms in carrying out this process, both with the Aboriginal and non-Aboriginal segments of the Northern Territory population. It notes the work already undertaken by the Committee and the plans for a Territory Constitutional Convention and Territory referendum. It adopts the view that further comprehensive consultations with Aboriginal Territorians will be required and that it is absolutely essential for Aboriginal people to be involved. Without such involvement the Final Report states that the prospects of achieving constitutional reform are negligible. It states that the negotiation process needs to reflect a sense of "ownership" and participation by Aboriginal people and their representative organisations.

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<sup>31</sup> Northern Territory Government. 1996. *Northern Territory Statehood Working Group - Final Report (Northern Territory Edition, May 1996)*. Department of the Chief Minister, Darwin.



## Chapter 6 STRATEGIES FOR THE FUTURE

With this Report, a primary aspect of the work of the Committee has been completed, that is, to inquire into, report and make recommendations to the Legislative Assembly on a Constitution for the new State and the principles upon which it should be drawn.

The Committee, however, still has an ongoing role under other aspects of its Terms of Reference. These include paragraphs 1 (a) (iv), (b), (c) and (2) and comprise:

- (a) Procedural aspects concerning the adoption of the new Constitution. In this regard, the Committee has made recommendations on matters of constitutional process, but at the time of writing of this Report the response of the Parliament to these recommendations is not yet to hand. The Committee envisages that when the Parliament determines this matter, the Committee should have an on-going role in overseeing matters of constitutional process and in contributing to that process where appropriate.
- (b) Matters concerning the issues, conditions and procedures pertinent to the entry of the Northern Territory into the federation as a new State. In this regard, the Committee envisages that it should have an ongoing role in overseeing progress towards a grant of Statehood for the Northern Territory and in contributing to those developments where appropriate.
- (c) The undertaking of a role in promoting the awareness of constitutional issues to the Northern Territory and Australian populations. In this regard, the Committee has already undertaken a considerable amount of promotional activities in the course of its work, mainly within the Northern Territory. The Committee envisages that it should have an ongoing role in promotional matters as the debate on the new Constitution and on constitutional matters generally unfolds. This could be in conjunction with the work of a Territory Constitutional Convention and in support of the work of such a Convention. There would seem to be distinct advantages in conducting promotional activities through a bipartisan Parliamentary Committee, in addition to any such activities undertaken by Government.
- (d) Such other constitutional and legal matters as may be referred to the Committee by relevant Ministers or by resolution of the Legislative Assembly. In this regard, the Committee has already had one additional reference on Republicanism. There is now capacity for the Parliament or the Government to use the Committee for a range of other matters and not just those concerning Territory constitutional development. This will be particularly valuable where the Parliament or Government require assistance in matters with a legal or legal policy flavour, where the Committee procedure involving public hearings and submissions may be an advantage in investigating that matter, or where a bipartisan approach to the investigation of any matter is required or is desirable. The Committee invites additional references for its consideration.

- (e) Such other matters as the Committee could usefully assist the work of any Constitutional Convention, perhaps by delegation from that body.

The Committee already has plans for further promotional activities in support of the work it has already undertaken, but is reluctant to pursue these without advice from Parliament on the matter of future constitutional process. Once that advice is to hand, the Committee will be able to work out the nature of its involvement consistently with its Terms of Reference.

## Chapter 7 ADMINISTRATION AND STAFFING

### A. STAFFING

The Committee has support of a full-time Secretary and Administrative Assistant. Staff support is held at a minimum level. However, the Committee, under its Terms of Reference, can co-opt specialist resources as required.

The Department of the Legislative Assembly provides other support facilities to the Committee such as *Hansard*, computer support and backup and general administration in the personnel and financial areas.

#### Staffing of the Sessional Committee Secretariat



*Executive Officer:*  
**Mr Rick Gray**



*Legal Adviser to the Committee:*  
**Mr Graham Nicholson**  
Senior Crown Counsel  
NT Attorney General's Department



*Administrative Assistant:*  
**Mrs Yoga Harichandran**

### B. COMMITTEE EXPENDITURE

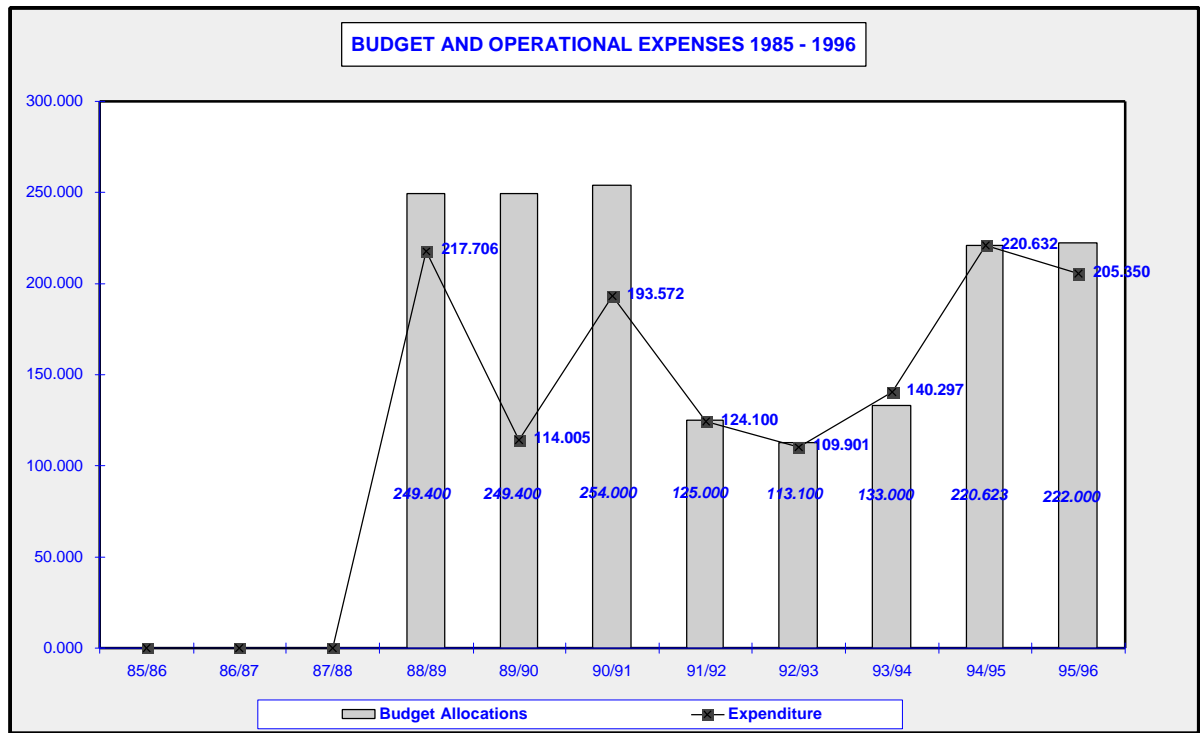
The Committee's total allocation for salaries, administration and operation expenses for the period 1985 - 1996 was \$1,566,523. Total administration and salary costs for that period amounted to \$1,325,563.

The following Table provides a break up costs attributed to the Committee's activities commencing in the 1985/86 financial year. Budget allocation to the Committee did not commence until the 1988/89 financial year. Prior to that year costs attributed to the Committee were subsumed within the Department of the Legislative Assembly's overall budget. Major activities of the Committee commenced in the 1988/89 financial year.

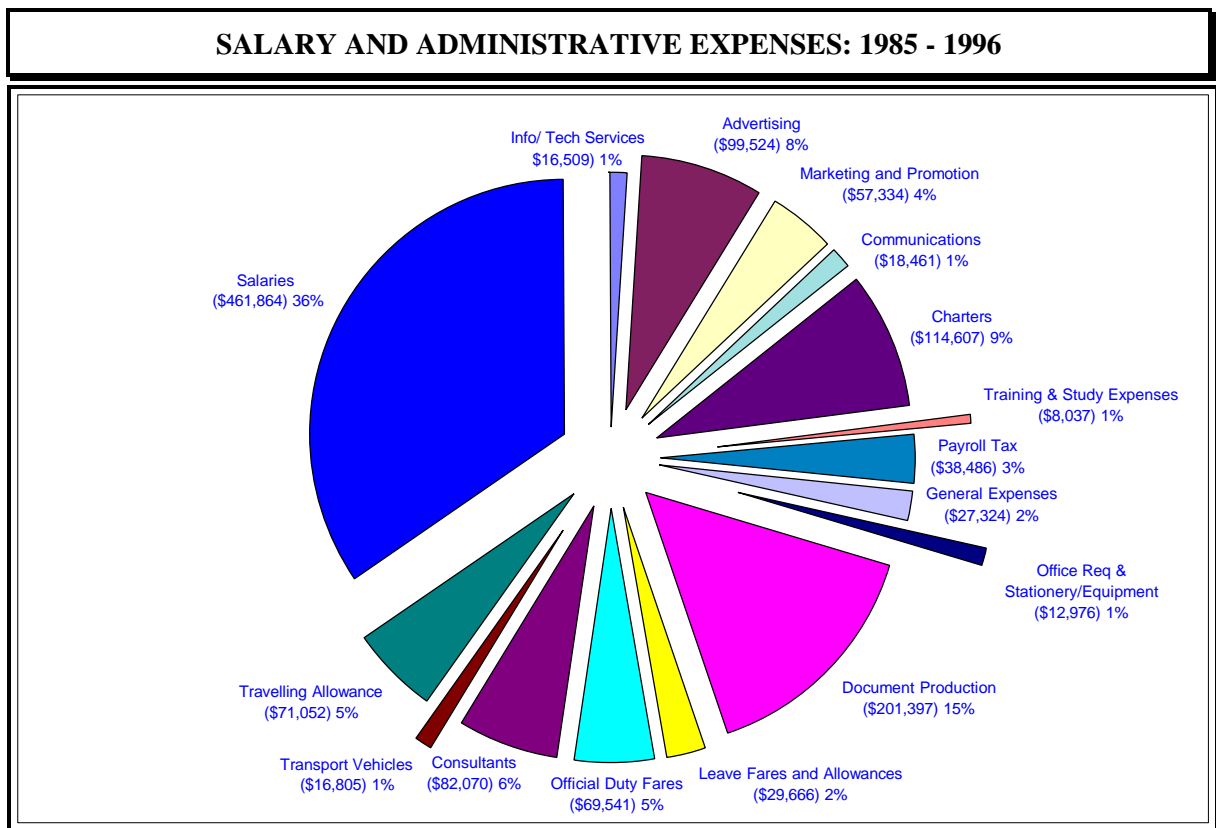
<b>ADMINISTRATION AND OPERATIONAL EXPENSES</b>												
	85/86	86/87	87/88	88/89	89/90	90/91	91/92	92/93	93/94	94/95	95/96	Total
Advertising				48.505	6.972	1.329	8.687	6.722	3.166	1.186	22.957	<b>99.524</b>
Marketing and Promotion						2.400		(9.911)	7.070	49.574	8.201	<b>57.334</b>
Communications							2.788	6.095	3.917	1.735	3.926	<b>18.461</b>
General Expenses				11.843	3.334	2.647	0.635	0.725	0.765	4.705	2.580	<b>27.234</b>
Document Production				36.050	47.561	7.350	8.250	3.410	14.922	56.983	26.871	<b>201.397</b>
Information and Technical Services				0.180	0.894	5.236	2.624	4.338	0.910	0.886	1.441	<b>16.509</b>
Office Requisites, and Equipment				4.055	3.688	0.894	1.068	0.762	0.018	0.943	1.548	<b>12.976</b>
Official Duty Fares				15.657	8.904	3.837	9.893	1.200	4.745	12.336	12.969	<b>69.541</b>
Charters				70.851	18.568	25.188						<b>114.607</b>
Training & Study Expenses							2.152	1.099	3.915		0.871	<b>8.037</b>
Consultants					10.000	70.934					1.136	<b>82.070</b>
Transport/Vehicle				7.462	3.065	0.478	0.050	0.745	0.437	0.530	4.038	<b>16.805</b>
Travelling Allowances				20.189	7.182	2.102	3.048	2.537	10.506	4.895	20.593	<b>71.052</b>
<b>Sub-Total</b>				214.792	110.168	122.395	39.195	17.722	50.371	133.773	107.131	<b>795.547</b>
<b>SALARIES AND ALLOWANCES</b>												
	85/86	86/87	87/88	88/89	89/90	90/91	91/92	92/93	93/94	94/95	95/96	Total
Advance to Payees								1.851				<b>1.851</b>
Leave Loading									1.814	0.585	1.260	<b>3.659</b>
NT Allowance								1.417	1.262	1.263	1.262	<b>5.204</b>
Other Allow:				2.914				0.013	1.125	0.341	2.637	<b>7.030</b>
Payroll Tax					3.837	4.049	4.997	5.324	6.658	5.841	7.780	<b>38.486</b>
Rec.Leave Fares						0.922	3.630	1.554	2.332		3.484	<b>11.922</b>
Salaries						66.206	76.278	82.020	76.735	78.829	81.796	<b>461.864</b>
<b>Sub-Total</b>				2.914	3.837	71.177	84.905	92.179	89.926	86.859	98.219	<b>530.016</b>
<b>Grand Total</b>				<b>217.706</b>	<b>114.005</b>	<b>193.572</b>	<b>124.100</b>	<b>109.901</b>	<b>140.297</b>	<b>220.632</b>	<b>205.350</b>	<b>\$1,325.563</b>
<b>Budget Allocation</b>				249.400	249.400	254.000	125.000	113.100	133.000	220.623	222.000	\$1,566.523

**Table Chapter 7-1: Salary, Administrative and Operational Expenses 1985 - 1996**





**Figure Chapter 7-1: Budget and operational Expenses: 1985 - 1996**



**Figure Chapter 7-2: Committee Item Expenditure by Category of Cost**



## **Chapter 8      APPENDICES**



**APPENDIX 1      ORIGINAL TERMS OF REFERENCE, 28 AUGUST 1985**



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**TERMS OF REFERENCE****AS CONTAINED IN THE RESOLUTION OF THE LEGISLATIVE ASSEMBLY  
28 August 1985**

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THAT, WHEREAS this Assembly is of the opinion that when the Northern Territory of Australia becomes a new State it should do so as a member of the Federation in terms resulting in equality with the other States with its people having the same constitutional rights, privileges, entitlements and responsibilities as the people of the existing States;

AND WHEREAS insofar as it is constitutionally possible the equality should apply as on the date of the grant of statehood to the new State;

- (1) A select committee be established to inquire into, report and make recommendations to the Legislative Assembly on:
  - (a) the constitutional issues arising between the Northern Territory of Australia and the Commonwealth of Australia, and the Northern Territory of Australia and the States of Australia concerning the entry of the Northern Territory of Australia into the federation as a new State including, but without limiting the generality of the foregoing:
    - (i) the representation of the new state in both Houses of the Commonwealth Parliament;
    - (ii) legislative powers;
    - (iii) executive powers;
    - (iii) judicial powers;
  - (b) the framework of a new State constitution and the principles upon which it should be drawn;
  - (c) the method to be adopted to have a draft new State constitution approved by or on behalf of the people of the Northern Territory of Australia; and
  - (d) the steps required or desirable to be taken by the Northern Territory of Australia, the Commonwealth and the States of the grant of Statehood to the Northern Territory of Australia as a new State within the federation.
- (2) That unless otherwise ordered, the Committee consist of Mr Robertson, Mr Dale, Mr Palmer, Mr B Collins, Mr Smith and Mr Lanhupuy.
- (3) That the Chairman of the Committee may, from time to time, appoint a Member of the Committee to be the Deputy Chairman of the Committee and that the Member so

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- appointed shall act as Chairman of the Committee at any time when there is no Chairman or when the Chairman is not present at a meeting of the Committee.
- (4) That in the event of an equality of voting, the Chairman, or the Deputy Chairman when acting as Chairman, shall have a casting vote.
  - (5) That the Committee have power to appoint subcommittees and to refer to any such subcommittee any matter which the Committee is empowered to examine.
  - (6) That 4 Members of the Committee constitute a quorum of the Committee and two members of a subcommittee constitute a quorum of the subcommittee.
  - (7) That the Committee or any subcommittee have power to send for persons, papers and records, to adjourn from place to place, to meet and transact business in public or private session and to sit during any adjournment of the Assembly.
  - (8) That the Committee shall be empowered to print from day to day such papers and evidence as may be ordered by it and, unless otherwise ordered by the Committee, a daily Hansard shall be published of such proceedings of the Committee as take place in public.
  - (9) That the Committee have leave to report from time to time and any Member of the Committee have power to add a protest or dissent to any report.
  - (10) That the Committee report to the Assembly 12 months from the date of this resolution.
  - (11) That unless otherwise ordered by the Committee, all documents received by the Committee during its inquiry shall remain in the custody of the Assembly provided that, on the application of a department or person, any document, if not likely to be further required, may, in the Speaker's discretion, be returned to the department or person from whom it was obtained.
  - (12) That members of the public and representatives of the news media may attend and report any public session of the Committee, unless otherwise ordered by the Committee.
  - (13) That the Committee may authorise the televising of public hearings of the Committee under such rules as the Speaker considers appropriate.
  - (14) That the Committee shall be provided with all necessary staff, facilities and resources and shall be empowered, with the approval of the Speaker, to appoint persons with specialist knowledge for the purposes of the Committee.
  - (15) That nothing in these Terms of Reference or in the Standing Orders shall be taken to limit or control the duties, powers or functions of any Minister of the Territory who is also a Member of the Select Committee.



- (16) That the foregoing provisions of this Resolution, so far as they are inconsistent with Standing Orders, have effect notwithstanding anything contained in the Standing Orders.



**APPENDIX 2      CURRENT TERMS OF REFERENCE, 27 JUNE 1994**



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**CURRENT TERMS OF REFERENCE****AS CONTAINED IN THE RESOLUTION OF THE LEGISLATIVE ASSEMBLY  
27 June 1994**

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THAT, WHEREAS this Assembly is of the opinion that when the Northern Territory of Australia becomes a new State it should do so as a member of the Federation in terms resulting in equality with the other States with its people having the same constitutional rights, privileges, entitlements and responsibilities as the people of the existing States;

AND WHEREAS insofar as it is constitutionally possible the equality should apply as on the date of the grant of statehood to the new State;

AND WHEREAS it is necessary to draft a new State constitution that -

- (1) during the present session of this Assembly - 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;
  - (b) the issues, conditions and procedures pertinent to the entry of the Northern Territory into the Federation as a new State;
  - (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;
- (3) unless otherwise ordered, the Committee consist of Mr Bailey, Mr Baldwin, Mr Hatton, Mrs Hickey, Mr Mitchell and Mr Rioli;

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- (4) the Chief Minister and the Leader of the Opposition, although not Members of the Committee, may attend all meetings of the Committee; may question witnesses; and may participate in the deliberations of the Committee, but shall not vote;
  - (5) the Chairman of the Committee may, from time to time, appoint a Member of the Committee to be the Deputy Chairman of the Committee and that the Member so appointed shall act as Chairman of the Committee at any time when there is no Chairman or when the Chairman is not present at a meeting of the Committee;
  - (6) in the event of an equality of voting, the Chairman, or the Deputy Chairman when acting as Chairman, shall have a casting vote;
  - (7) the Committee have power to appoint subcommittees and to refer to any such subcommittee any matter which the Committee is empowered to examine;
  - (8) four Members of the Committee constitute a quorum of the Committee and two members of a subcommittee constitute a quorum of the subcommittee;
  - (9) the Committee or any subcommittee have power to send for persons, papers and records, to adjourn from place to place, to meet and transact business in public or private session and to sit during any adjournment of the Assembly;
  - (10) the Committee shall be empowered to print from day to day such papers and evidence as may be ordered by it and, unless otherwise ordered by the Committee, a daily Hansard shall be published of such proceedings of the Committee as take place in public;
  - (11) the Committee have leave to report from time to time and any Member of the Committee have power to add a protest or dissent to any report;
  - (12) the Committee report to the Assembly as soon as possible after 30 June each year on its activities during the preceding financial year;
  - (13) unless otherwise ordered by the Committee, all documents received by the Committee during its inquiry shall remain in the custody of the Assembly provided that, on the application of a department or person, any document, if not likely to be further required, may, in the Speaker's discretion, be returned to the department or person from whom it was obtained;
  - (14) members of the public and representatives of the news media may attend and report any public session of the Committee, unless otherwise ordered by the Committee;
  - (15) the Committee may authorise the televising of public hearings of the Committee under such rules as the Speaker considers appropriate;
  - (16) the Committee shall be provided with all necessary staff, facilities and resources and shall be empowered, with the approval of the Speaker, to appoint persons with specialist knowledge for the purposes of the Committee;

- (17) nothing in these Terms of Reference or in the Standing Orders shall be taken to limit or control the duties, powers or functions of any Minister of the Territory who is also a Member of the Sessional Committee;
- (18) the Committee be empowered to consider the minutes of proceedings, evidence taken and records of similar committees established in the previous Assembly; and
- (19) the foregoing provisions of this Resolution, so far as they are inconsistent with Standing Orders, have effect notwithstanding anything contained in the Standing Orders.





**APPENDIX 3      FORMER AND CURRENT COMMITTEE MEMBERSHIP**



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**FORMER AND CURRENT COMMITTEE MEMBERSHIP**

Member	Fourth Assembly	Fifth Assembly	Sixth Assembly	Seventh Assembly
Mr J L Ah Kit, MLA				Appointed - 10/10/96
Mr J D Bailey, MLA		10/10/89 - 05/10/90	04/12/90 - 17/05/94	Reappointed - 27/06/94
Mr T D Baldwin, MLA				Appointed - 27/06/94
Mr G R Cartwright, MLA			04/12/90 - 17/05/94	
Mr B Collins, MLA	28/08/85 - 19/06/86 20/08/86 - 07/03/87			
Mr D F Dale, MLA <sup>#</sup>	28/08/85 - 07/03/87			
Mr B R Ede, MLA	17/06/86 - 07/03/87	28/04/87 - 05/10/90		Appointed - 14/05/96 Lapsed on Resignation - 23/08/96
Mr C C Firmin, MLA		24/08/88 - 05/10/90		
Mr T Harris, MLA		17/05/88 - 24/08/88		
Hon S P Hatton, MLA	17/06/86 - 07/03/87	28/04/87 - 14/07/88 24/08/88 - 05/10/90	04/12/90 - 17/05/94	Appointed - 27/06/94
Mrs M A Hickey, MLA				Appointed - 27/06/94; Discharged - 14/05/96
Mr W W Lanhupuy, MLA <sup>#</sup>	28/08/85 - 07/03/87	28/04/87 - 05/10/90	04/12/90 - 17/05/94	Appointed - 28/2/95; Lapsed on Resignation - 24/08/95
Mr D M Leo, MLA		24/08/88 - 10/10/89		
Mr T R McCarthy, MLA			04/12/90 - 17/05/94	
Mr. P A Mitchell, MLA				Appointed - 27/06/94
Mr M J Palmer, MLA	28/08/85 - 07/03/87	28/04/87 - 17/05/88		
Hon M B Perron, MLA		14/07/88 - 24/08/88		
Mr. M J Rioli, MLA				Appointed - 27/06/94; Discharged - 28/02/95
Mr J M Robertson, MLA	28/08/85 - 26/03/86			
Mr R A Setter, MLA		28/04/87 - 05/10/90	04/12/90 - 17/05/94	
Mr T E Smith, MLA	28/08/85 - 20/08/86	27/04/87 - 24/08/88		
Mr P H Toyne				Appointed - 09/10/96
Mr I L Tuxworth, MLA	26/03/86 - 15/05/86 17/06/86 - 07/03/87			

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<sup>#</sup> (deceased)



**APPENDIX 4      SUMMARY OF DELIBERATIVE MEETINGS 1985 - 1996**



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**SUMMARY OF DELIBERATIVE MEETINGS**

<b>Meeting No.</b>	<b>Date</b>	<b>Assembly</b>	<b>Key Agenda Items</b>
1	29 August 1985	Fourth (2nd Session)	<ul style="list-style-type: none"> <li>• Establishment of Committee.</li> <li>• Election of Chairman.</li> <li>• Adviser to Committee.</li> <li>• Operations of Committee.</li> </ul>
2	18 February 1986	Fourth (2nd Session)	<ul style="list-style-type: none"> <li>• Tabling of Papers.</li> <li>• Future program for Committee.</li> <li>• Sub Committees</li> </ul>
3	24 April 1986	Fourth (2nd Session)	<ul style="list-style-type: none"> <li>• Election of Chairman.</li> <li>• Future program for Committee.</li> <li>• Sub Committees.</li> <li>• Preparation of documents.</li> </ul>
1	21 August 1986	Fourth (3rd Session)	<ul style="list-style-type: none"> <li>• Establishment of Committee.</li> <li>• Election of Chairman</li> <li>• Operations of Committee.</li> <li>• Tabling of discussion papers.</li> </ul>
2	25 August 1986	Fourth (3rd Session)	<ul style="list-style-type: none"> <li>• Statehood Executive Group - assistance</li> <li>• Future program</li> </ul>
3	3 November 1986	Fourth (3rd Session)	<ul style="list-style-type: none"> <li>• Preparation and tabling of papers</li> </ul>
1	26 June 1987	Fifth (1st Session)	<ul style="list-style-type: none"> <li>• Establishment of Committee.</li> <li>• Election of Chairman.</li> <li>• Future program</li> <li>• Tabling of papers</li> </ul>
2	20 July 1987	Fifth (1st Session)	<ul style="list-style-type: none"> <li>• Tabling of papers <ul style="list-style-type: none"> <li>– Discussion papers on NT Constitution;</li> <li>– Information Paper No. 1;</li> <li>– Convention Paper.</li> </ul> </li> <li>• Preparation of other Discussion Papers.</li> </ul>

Meeting No.	Date	Assembly	Key Agenda Items
3	14 August 1987	Fifth (1st Session)	<ul style="list-style-type: none"> <li>• Final Consideration of Discussion Papers:               <ul style="list-style-type: none"> <li>– Discussion Paper No. 1 - The Legislature;</li> <li>– Discussion Paper No. 2 - The Executive;</li> <li>– Discussion Paper No. 3 - The Judiciary;</li> <li>– Discussion Paper No. 4 - Entrenched Constitutional Provisions.</li> </ul> </li> <li>• Convention Paper.</li> <li>• Information Paper No. 1 - <i>Options for a Grant of Statehood</i>.</li> </ul>
4	08 September 1987	Fifth (1st Session)	<ul style="list-style-type: none"> <li>• Tabling of Papers</li> <li>• Final Consideration of Discussion and Information Papers.</li> <li>• Future program and advertising</li> <li>• Composition of Constitutional Convention.</li> <li>• Executive Officer to the Committee.</li> </ul>
5	28 October 1987	Fifth (1st Session)	<ul style="list-style-type: none"> <li>• Draft mailing list.</li> <li>• Further consideration of Discussion and Information Papers.</li> <li>• Executive Officer to the Committee.</li> <li>• Liaison with the Commonwealth.</li> </ul>
6	02 March 1988	Fifth (1st Session)	<ul style="list-style-type: none"> <li>• Appointment of Executive Officer to the Committee</li> <li>• Extension of time to report.</li> <li>• Sub Committees</li> <li>• Submissions to the Committee.</li> <li>• Future Program.</li> </ul>
7	05 may 1988	Fifth (1st Session)	<ul style="list-style-type: none"> <li>• Proposed program to major centres and communities.</li> <li>• Draft Explanatory Booklet for Aboriginal Communities.</li> <li>• Preliminary Estimates for 1988/89.</li> <li>• Format and structure of public hearings.</li> </ul>



Meeting No.	Date	Assembly	Key Agenda Items
8	26 may 1988	Fifth (1st Session)	<ul style="list-style-type: none"> <li>Proposed program to major centres and communities.</li> <li>Draft Explanatory Booklet for Aboriginal Communities.</li> <li>Information Awareness program.</li> </ul>
9	19 July 1988	Fifth (1st Session)	<ul style="list-style-type: none"> <li>Election of Chairman</li> <li>Variation of Committee's Terms of Reference.</li> </ul>
10	10 August 1988	Fifth (1st Session)	<ul style="list-style-type: none"> <li>Explanatory Booklet for Aboriginal Communities.</li> <li>Darwin Public Hearings</li> <li>Program of visits to Communities.</li> </ul>
11	25 august 1988	Fifth (1st Session)	<ul style="list-style-type: none"> <li>Committee membership and variation of Terms of Reference.</li> <li>Election of Chairman.</li> <li>Explanatory Booklet for Aboriginal Communities.</li> <li>Program of visits to Communities review of itinerary.</li> </ul>
12	05 October 1988	Fifth (1st Session)	<ul style="list-style-type: none"> <li>Program of visits to Communities review of itinerary.</li> <li>Extension of time to report</li> <li>Explanatory Booklet for Aboriginal Communities.</li> <li>Proposal to organise a constitutional development seminar.</li> </ul>
13	01 February 1989	Fifth (1st Session)	<ul style="list-style-type: none"> <li>Information Awareness program.</li> <li>Review of Public Hearings held.</li> <li>Itinerary of visits to NT communities and centres.</li> <li>Co-ordination with Regional Committees.</li> <li>Committee's 1988/89 Budget Review.</li> </ul>
14	22 February 1989	Fifth (1st Session)	<ul style="list-style-type: none"> <li>Committee's 1988/89 Budget Estimates.</li> <li>Information Awareness Program.</li> <li>Report to the NT Government on the Industrial Relations system.</li> </ul>

Meeting No.	Date	Assembly	Key Agenda Items
15	22 February 1989	Fifth (1st Session)	<ul style="list-style-type: none"> <li>• Concept specifications for radio television and press advertising.</li> </ul>
16	24 may 1989	Fifth (1st Session)	<ul style="list-style-type: none"> <li>• Consideration of submissions.</li> <li>• Outline of sub committee hearings in the NT.</li> <li>• Committee's 1988/89 Budget Estimates.</li> <li>• Follow up meetings with NT communities.</li> <li>• Training and development program for Local Government Field Officers.</li> <li>• Information No. 2 <i>Entrenchment of a New State Constitution</i>.</li> <li>• Development of Discussion Papers and Briefing Papers.</li> <li>• Review of advertising Program.</li> <li>• Proposed meetings with NT Land Councils.</li> </ul>
17	30 August 1989	Fifth (1st Session)	<ul style="list-style-type: none"> <li>• Information Paper No. 2 <i>Entrenchment of a New State Constitution</i></li> <li>• Use of Officers from NT Public Service Departments and Authorities.</li> <li>• Development of a Video on Constitutional Development</li> <li>• Second Round of visits to NT communities</li> <li>• CPA 20th Australasian and Pacific Regional Conference, Tarawa, Kiribati</li> <li>• Aboriginal Conference on the Future of Government, Alice Springs</li> </ul>
18	18 October 1989	Fifth (1st Session)	<ul style="list-style-type: none"> <li>• Change in membership</li> <li>• Review of Committee status</li> </ul>
19	29 November 1989	Fifth (1st Session)	<ul style="list-style-type: none"> <li>• Translation of Aboriginal language into English in Hansard transcripts</li> <li>• Motion to change status of committee</li> <li>• Cross Culture Awareness Program, Alice Springs</li> <li>• Information Workshops 1990</li> <li>• Australian Marketing Institute Workshop "How to Market the Constitution"</li> <li>• Constitutional Development Video - expression of interests</li> </ul>

Meeting No.	Date	Assembly	Key Agenda Items
20	27 February 1990	Fifth (1st Session)	<ul style="list-style-type: none"> <li>Information Workshop 1990</li> </ul>
21	29 March 1990	Fifth (1st Session)	<ul style="list-style-type: none"> <li>Transcript translation for NT Aboriginal communities</li> <li>Information Workshops 1990</li> </ul>
22	27 April 1990	Fifth (1st Session)	<ul style="list-style-type: none"> <li>Expression of Interests - Constitutional Development video</li> </ul>
23	03 May 1990		<ul style="list-style-type: none"> <li>Expression of Interests - Constitutional Development video</li> </ul>
24	08 May 1990	Fifth (1st Session)	<ul style="list-style-type: none"> <li>Chairman's progress report to the Assembly</li> <li>Consideration of submissions - Constitutional Development video</li> </ul>
25	25 May 1990	Fifth (1st Session)	<ul style="list-style-type: none"> <li>Review of Information Workshop at Mutitjulu</li> </ul>
26	25 July 1990	Fifth (1st Session)	<ul style="list-style-type: none"> <li>Review of Public Awareness Program to NT Aboriginal Communities</li> <li>Development of a Video on Constitutional Development</li> <li>Proposed Awareness Program to NT Urban Centres</li> </ul>
27	23 August 1990	Fifth (1st Session)	<ul style="list-style-type: none"> <li>Proposed Awareness Program to NT Urban Centres</li> <li>Drafting certain parts of a Proposed NT Constitution.</li> <li>Preparation of draft discussion papers on: <ul style="list-style-type: none"> <li>Aboriginal Customary Law (other than land rights)</li> <li>Citizens' Initiated Referendums to alter the Proposed Northern Territory Constitution</li> </ul> </li> </ul>
28	27 September 1990	Fifth (1st Session)	<ul style="list-style-type: none"> <li>Status Report on Committee Activities to date</li> <li>Special Premiers Conference on Cooperative Federalism 30/10/90 to 1/11/90 - Brisbane</li> </ul>
1	06 December 1990	Sixth (1st Session)	<ul style="list-style-type: none"> <li>Establishment of new Committee in the sixth Assembly</li> <li>Election of Chairman and appointment of a Deputy Chairman</li> </ul>

Meeting No.	Date	Assembly	Key Agenda Items
2	13 February 1991	Sixth (1st Session)	<ul style="list-style-type: none"> <li>• Future program of the Committee and endorsement of activities commenced in the previous parliament</li> <li>• Establishment of Sub-committees.</li> <li>• Review of Committee Activities 1990/91</li> <li>• Public Awareness Program to NT Urban Centres</li> <li>• Committee Budget 1990/91 - Revised Estimates</li> </ul>
3	12 April 1991	Sixth (1st Session)	<ul style="list-style-type: none"> <li>• Public Awareness Program to NT Urban Centres 1991/92</li> <li>• Committee Preliminary Estimates 1991/92</li> <li>• Constitutional Centenary Conference 1991 Sydney 2-5 April 1991</li> </ul>
4	08 May 1991	Sixth (1st Session)	<ul style="list-style-type: none"> <li>• Consideration of decisions of the Government Estimates Review Committee on the Committee's Preliminary Estimates for 1991/92</li> <li>• Review of Committee Activities for 1991</li> <li>• Committee Annual Report 1989/90 and tabling statement</li> </ul>
5	22 July 1991	Sixth (1st Session)	<ul style="list-style-type: none"> <li>• Further responses from Constitutional Centenary Conference 1991.</li> <li>• Adoption of Financial Report for the year 30/06/92</li> </ul>
6	14 August 1991	Sixth (1st Session)	<ul style="list-style-type: none"> <li>• Adoption of Discussion Paper No. 3 <i>Citizens' Initiated Referendums</i>, for consideration.</li> </ul>
7	09 October 1991	Sixth (1st Session)	<ul style="list-style-type: none"> <li>• Consideration of submission by the Northern Territory Bar Association.</li> <li>• Discussion Papers to be prepared in the following subject areas: <ul style="list-style-type: none"> <li>• Constitutional advantages and disadvantages</li> <li>• merits of bringing a new constitution into effect before the grant of Statehood.</li> <li>• Constitutional recognition of the rule of law</li> <li>• local government</li> <li>• Adoption of the Committee's Annual Report for 1990/91.</li> </ul> </li> <li>• Presentation of the first draft of Discussion Paper No. 4 <i>Recognition of Aboriginal Customary Law</i>.</li> </ul>
Meeting No.	Date	Assembly	Key Agenda Items

8	20 November 1991	Sixth (1st Session)	<ul style="list-style-type: none"> <li>• Preparation of further Discussion Papers:</li> <li>• Constitutional entrenchment of the right to administrative decisions</li> <li>• The merits and demerits of constitutionally entrenching the right to audit and review government expenditure</li> <li>• Codes of conduct and registers of pecuniary interests of elected and appointed public officials.</li> <li>• Freedom of Information.</li> <li>• Review of Urban Awareness Program for 1992/93 financial year.</li> <li>• Discussions with various bodies, with the aim of organising a major national constitutional conference.</li> </ul>
9	04 March 1992	Sixth (1st Session)	<ul style="list-style-type: none"> <li>• Approval to conduct a major constitutional conference in Darwin 24 - 26 August 1992. Conference theme : "Constitutional Change in the 1990's".</li> <li>• Review of Committee Activities for 1992.</li> <li>• Nomination of Chairman as a council member to the Constitutional Centenary Foundation Inc.</li> </ul>
10	30 March 1992	Sixth (1st Session)	<ul style="list-style-type: none"> <li>• Constitutional Change in the 1990s Conference dates reviewed to 4 - 6 October 1992.</li> <li>• Committee 1992/93 Preliminary Estimates.</li> <li>• Review of Administrative Arrangements and ongoing activities for 1992.</li> </ul>
11	20 May 1992	Sixth (1st Session)	<ul style="list-style-type: none"> <li>• Constitutional Change in the 1990s Conference - progress report.</li> <li>• Meeting with the Constitutional Centenary Foundation Board in Melbourne.</li> <li>• Presentation of draft Discussion Paper No. 4 <i>Recognition of Aboriginal Customary Law</i> for consideration.</li> </ul>
12	29 July 1992	Sixth (1st Session)	<ul style="list-style-type: none"> <li>• Constitutional Change in the 1990s Conference</li> <li>• - Speakers Biographies</li> <li>• Background papers on Speakers and Forum Chairs.</li> <li>• Discussion Paper No. 4 - <i>Recognition of Aboriginal Customary Law</i>.</li> </ul>
Meeting No.	Date	Assembly	Key Agenda Items

13	19 August 1992	Sixth (1st Session)	<ul style="list-style-type: none"> <li>• Constitutional Change in the 1990s Conference.</li> <li>• Adoption of Discussion Paper No. 4 - <i>Recognition of Aboriginal Customary Law</i>.</li> </ul>
14	30 September 1992	Sixth (1st Session)	<ul style="list-style-type: none"> <li>• Final arrangements for the Constitutional Change in the 1990s Conference.</li> </ul>
15	26 November 1992	Sixth (1st Session)	<ul style="list-style-type: none"> <li>• Publication of transcripts from the Constitutional Change in the 1990s Conference.</li> <li>• Call for submissions on Discussion paper No. 4 - <i>Recognition of Aboriginal Customary Law</i>.</li> <li>• Appointment of Parliamentary Draftsman.</li> <li>• Adoption of Discussion Paper No. 5 - <i>The Merits or Otherwise of Bringing an NT Constitution into Force before Statehood</i>.</li> <li>• Review of Committee activities.</li> </ul>
16	03 May 1993	Sixth (1st Session)	<ul style="list-style-type: none"> <li>• Tabling statement for Discussion Paper No. 5 - <i>The Merits or Otherwise of Bringing an NT Constitution into Force before Statehood</i></li> <li>• Review of priority list of proposed discussion papers.</li> <li>• Adoption of Committee Annual Report for 1991/92.</li> <li>• Draft Discussion Paper No. 6 - <i>Aboriginal Rights and Issues - Options for Entrenchment</i>.</li> <li>• Committee meeting dates, 1993.</li> <li>• Publication of Papers from the Constitutional Change in the 1990s Conference.</li> </ul>
17	26 May 1993	Sixth (1st Session)	<ul style="list-style-type: none"> <li>• Additional terms of reference on Republicanism.</li> <li>• Draft Discussion Paper No. 6 - <i>Aboriginal Rights and Issues - Options for Entrenchment</i>.</li> <li>• Canberra Conference - Position of Indigenous Peoples.</li> <li>• Proposed Conference on Aboriginal self-government - Maningrida.</li> </ul>

Meeting No.	Date	Assembly	Key Agenda Items
18	29 June 1993	Sixth (1st Session)	<ul style="list-style-type: none"> <li>• Adoption of Discussion Paper No. 6 - <i>Aboriginal Rights and Issues - Options for Entrenchment</i>.</li> <li>• Proposed Northern Territory Aboriginal Constitutional Convention - 27 August 1993, Tennant Creek.</li> <li>• Conference on Development of Customary Law, Port Moresby, Papua New Guinea.</li> <li>• Conference on Aboriginal Peoples, Federalism and Self-determination - Townsville, 29 - 31 August 1993.</li> </ul>
19	25 August 1993	Sixth (1st Session)	<ul style="list-style-type: none"> <li>• Customary Law Conference - Port Moresby, Papua New Guinea.</li> <li>• Tabling of Discussion Paper No. 6 - <i>Aboriginal Rights and Issues - Options for Entrenchment</i></li> <li>• Briefing Tennant Creek Town Council.</li> <li>• NT Aboriginal Constitutional Convention - Tennant Creek.</li> </ul>
20	20 October 1993	Sixth (1st Session)	<ul style="list-style-type: none"> <li>• Terms of Reference on Republicanism from Chief Minister.</li> <li>• Australian Study of Parliament Group - Melbourne Conference.</li> <li>• Committee Workload and Strategies for 1994 and beyond and draft timetable for statehood.</li> <li>• Chairman's Report on his visit to Canada and USA.</li> <li>• Committee Annual Report.</li> <li>• Final Report and Draft Constitution.</li> <li>• Discussion Paper No. 6 - <i>Aboriginal Rights and Issues - Options for Entrenchment</i>.</li> </ul>
21	01 December 1993	Sixth (1st Session)	<ul style="list-style-type: none"> <li>• Australasian Study of Parliament Group.</li> <li>• Discussion Paper No. 7 - "Discussion Paper No. 7 - <i>An Australian Republic? - Implications for the Northern Territory</i>."</li> <li>• Adoption of Committee Annual Report for 1992/93.</li> <li>• Committee Workload and Strategies for 1994.</li> </ul>

Meeting No.	Date	Assembly	Key Agenda Items
22	02 March 1994	Sixth (1st Session)	<ul style="list-style-type: none"> <li>• Adoption of Discussion Paper No. 7 - <i>An Australian Republic? Implications for the Northern Territory.</i></li> <li>• Committee Preliminary Estimates for 1994/95.</li> <li>• Proposed NT Constitution - Legislature, Executive and Judiciary.</li> <li>• Australasian Study of Parliament Group Conference - Darwin.</li> <li>• Australian Federalism Conference - Melbourne.</li> </ul>
1	29 June 1994	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• Committee Terms of Reference.</li> <li>• Appointment of Chairman.</li> <li>• Appointment of Deputy Chairman.</li> <li>• Tabling of Discussion Paper No. 7 - <i>An Australian Republic Implications for the Northern Territory.</i></li> <li>• Committee Evaluation Report.</li> <li>• Committee Budget 1994/95 allocation.</li> <li>• ATSIC Regional Councils and Constitutional Development.</li> <li>• Australasian Study of Parliament Group Conference - Darwin.</li> <li>• Australian Federalism Conference, Melbourne.</li> <li>• Establishment of NT Chapter of the Constitutional Centenary Foundation.</li> <li>• Future meeting dates.</li> </ul>
2	31 August 1994	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• Australasian Study of Parliament Group Conference - Darwin, 6-7 October 1994.</li> <li>• Meeting with the Miwatj Regional Council; Yirrkala - 17 August 1994.</li> <li>• Constitutional Centenary Foundation - NT Chapter - Inaugural Annual General Meeting - 13 September 1994.</li> <li>• Raising public awareness of Constitutional and Statehood Issues to political parties and other groups.</li> </ul>



Meeting No.	Date	Assembly	Key Agenda Items
2 (cont'd)	31 August 1994	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• SCCD Evaluation Report and adoption of Recommendations.</li> <li>• Constitutional Change in the 1990s - Publication.</li> </ul>
3	31 October 1994	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• Appointment of Acting Chairman for Meeting.</li> <li>• Draft Annual Report for the period 1 July 1993 - 30 June 1994.</li> <li>• Sub-Committee Membership as at 31 October 1994.</li> <li>• ATSIC Regional Councils</li> <li>• Public Awareness Programs - Status Report.</li> <li>• Members briefing papers on NT Constitutional and Statehood issues.</li> <li>• Draft Discussion Paper No. 8 - <i>A Northern Territory Bill of Rights?</i></li> <li>• Draft NT Constitution as at 26 October 1994.</li> </ul>
4	30 November 1994	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• Tabling Statement - Committee Annual Report 1993/94.</li> <li>• House of Representatives Standing Committee on Legal and Constitutional Affairs - Suggested Terms of Reference.</li> <li>• Sub-Committee Membership.</li> <li>• ATSIC Regional Councils.</li> </ul>
5	06 February 1995	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• Draft NT Constitution.</li> </ul>
6	17 February 1995	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• Draft NT Constitution.</li> <li>• Draft Interim Report No. 1 - A Northern Territory Constitutional Convention.</li> </ul>
7	21 February 1995	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• Draft Interim Report No. 1 - A Northern Territory Constitutional Convention.</li> </ul>
8	28 February 1995	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• NT Draft Constitution : Amendment to Clauses in respect of Part 2 - The Parliament of the Northern Territory.</li> <li>• Forward Estimates 1995/96.</li> <li>• Sub-Committee Membership.</li> </ul>
9	02 March 1995	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• Tabling Statement - Interim Report No. 1 - A Northern Territory Constitutional Convention</li> <li>• Draft No. 6 - Discussion Paper No. 8 - <i>A Northern Territory Bill of Rights?</i></li> </ul>

Meeting No.	Date	Assembly	Key Agenda Items
10	31 March 1995	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• Promotion of Committee work and Constitutional Development.</li> <li>• News Poll Market Research on Statehood.</li> <li>• Draft NT Constitution - Part 1 (Preamble/Parliament/Executive/Judiciary) - Settled copy.</li> <li>• SCCD Drafting Program for 1995/96.</li> <li>• Discussion Paper No. 8 - <i>A Northern Territory Bill of Rights?</i></li> <li>• Development of Drafting Instructions on Constitutional Recognition of Aboriginal Customary Law.</li> <li>• Development of Drafting Instructions on Aboriginal Rights and Issues.</li> </ul>
11	08 April 1995	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• Development of Drafting Instructions on Aboriginal Rights and Issues - Options for Entrenchment.</li> </ul>
12	16 May 1995	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• SCCD Drafting Program: 1995/96 - Update.</li> <li>• Draft Discussion Paper No. 9 - <i>Constitutional Recognition of Local Government</i>.</li> <li>• Proposal for 1995 July Show Circuit.</li> <li>• NT Schools Constitutional Convention - Parliament House - 25 August 1995: SCCD Sponsorship.</li> </ul>
13	23 May 1995	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• Tabling Statement: Discussion Paper No. 8 - <i>A Northern Territory Bill of Rights?</i></li> <li>• SCCD Drafting Program: 1995/96: Laws of the Northern Territory (including Aboriginal Customary Law).</li> </ul>
14	25 May 1995	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• Proposal for 1995 July Show Circuit.</li> <li>• SCCD Activities - 25 May 1995 - 30 July 1995.</li> </ul>
15	13 June 1995	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• Proposal for 1995 - July Show Circuit.</li> <li>• Commonwealth/Northern Territory Statehood Task force.</li> </ul>

Meeting No.	Date	Assembly	Key Agenda Items
16	19 June 1995	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• Proposal for 1995 July Show Circuit.</li> <li>• Clause Notes on Part 1, Preamble, Parliament, Executive and Judiciary.</li> <li>• Draft Clauses relating to Aboriginal Issues.</li> <li>• Discussion Paper No. 9 - <i>Constitutional Recognition of Local Government</i>.</li> <li>• Public Hearings Program - July 1995.</li> </ul>
17	21 June 1995	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• July Show Circuit - Program Update</li> <li>• Tabling Statement and NT Draft Constitution - Parts 1 - 7.</li> <li>• Tabling Statement : Discussion Paper No. 9 - <i>Constitutional Recognition of Local Government</i>.</li> <li>• New Draft Clause - Interpretation of the Constitution.</li> </ul>
18	22 August 1995	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• Consideration of Submissions.</li> <li>• Committee Budget 1995/96.</li> <li>• July Show Circuit</li> <li>• Public Hearings Program - NT major centres.</li> <li>• NT Draft Constitution - outstanding clauses.</li> <li>• Future Activities and Establishment of the Territory Constitutional Convention.</li> <li>• First NT Annual Schools Constitutional Convention - 25 August 1995.</li> </ul>
19	24 August 1995	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• First NT Annual Schools Constitutional Convention - 25 August 1995.</li> <li>• Future Activities and Establishment of the Territory Constitutional Convention.</li> <li>• NT Draft Constitution - outstanding clauses.</li> </ul>
20	10 October 1995	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• Consideration of Submissions.</li> <li>• SCCD Program: Education Workshops - ATSIC Regional Councils.</li> <li>• SCCD Program: Review of Public Hearings November 1996.</li> <li>• SCCD Program: Proposed Territory Constitutional Convention and Referendum..</li> </ul>
Meeting No.	Date	Assembly	Key Agenda Items

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20 (cont'd)	10 October 1995	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• SCCD Program: Committee reorganisation and structure..</li> <li>• SCCD Program: Review of Drafting Time Table.</li> <li>• NT Draft Constitution - outstanding clauses.</li> <li>• Budget Review - 1995/96 - mid-year assessment.</li> </ul>
21	17 October 1995	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• NT Draft Constitution - outstanding clauses: <ul style="list-style-type: none"> <li>– NT Legal System;</li> <li>– Language, Social, Cultural and Religious Matters.</li> </ul> </li> </ul>
22	13 November 1995	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• Consideration of Submissions.</li> <li>• NT Draft Constitution: <ul style="list-style-type: none"> <li>– Aboriginal self-determination;</li> <li>– Amendment to the Constitution:</li> <li>– Citizen's Initiated Referendum;</li> <li>– Bill of Rights.</li> </ul> </li> </ul>
23	22 November 1995	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• NT Draft Constitution: <ul style="list-style-type: none"> <li>– Aboriginal self-determination;</li> <li>– Amendment to the Constitution:</li> <li>– Citizen's Initiated Referendum;</li> <li>– Bill of Rights.</li> </ul> </li> </ul>
24	28 November 1995	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• Additional provisions to the Exposure Draft Constitution: <ul style="list-style-type: none"> <li>– Preamble 15;</li> <li>– Constitutional Amendment and Organic Laws;</li> <li>– Standing Committee on the Constitution and Organic Laws;</li> <li>– Aboriginal Rights;</li> <li>– Language, Social, Cultural and Religious Matters;</li> <li>– Local Governing Bodies.</li> </ul> </li> <li>• NT Draft Constitution - Bill of Rights.</li> <li>• Draft Annual Report 1994/95.</li> </ul>

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Meeting No.	Date	Assembly	Key Agenda Items
25	28 February 1996	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• Consideration of Submissions</li> <li>• NT Draft Constitution - Bill of Rights.</li> <li>• Annual Report 1994/95.</li> <li>• ATSIC Regional council Meeting - Tennant Creek.</li> <li>• Territory Constitutional Convention.</li> </ul>
26	11 March 1996	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• ATSIC law and Justice Committee Meetings.</li> <li>• NT Draft Constitution - Acquisition of Property on just terms.</li> <li>• Territory Constitutional Convention.</li> </ul>
27	01 April 1996	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• Consideration of Submissions.</li> <li>• Final NT Draft Constitution.</li> <li>• SCCD Futures Activities</li> <li>• Territory Constitutional Convention.</li> <li>• Proposed Constitutional Conference - 1997</li> </ul>
28	22 May 1996	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• Change in membership and appointment of Deputy Chairman</li> <li>• ATSIC Combined Regional Council's Meeting Alice Springs, 6-7 June 1996.</li> <li>• Final NT Draft Constitution.</li> <li>• Collation of evidence received to date.</li> <li>• Second NT Annual Schools Constitutional Convention - 23 August 1995.</li> <li>• SCCD/NARU Workshop Series On NT In The Federal Framework.</li> <li>• SCCD Futures Activities</li> <li>• Territory Constitutional Convention.</li> </ul>
29	27 June 1996	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• ATSIC Combined Regional Council's Meeting Alice Springs, 6-7 June 1996.</li> <li>• Forward Estimates 1996/97</li> <li>• NLC Request - NT Consultation Process</li> <li>• Final NT Draft Constitution consolidation of Exposure draft and Additional Provisions..</li> <li>• NT/Commonwealth Statehood Working Group - Final Report.</li> </ul>
Meeting No.	Date	Assembly	Key Agenda Items

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29 (cont'd)	27 June 1996	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• SCCD Futures Activities</li> <li>• Aboriginal Language Policy</li> </ul>
30	23 July 1996	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• NT/Commonwealth Statehood Working Group - Final Report - briefing by the Chief Minister.</li> <li>• Committee Budget Allocation 1996/97</li> <li>• Final NT Draft Constitution.</li> <li>• ATSIC and Land Council's Consultation Program</li> </ul>
31	15 August 1996	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• Final NT Draft Constitution - finalisation of clauses prior to adoption.</li> </ul>
32	21 August 1996	Seventh (1st Session)	<ul style="list-style-type: none"> <li>• Final NT Draft Constitution - adoption and approval to print.</li> <li>• Tabling Statement - Final NT Draft Constitution.</li> </ul>

**APPENDIX 5      LIST OF INDIVIDUALS APPEARING BEFORE THE  
COMMITTEE**





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**LIST OF INDIVIDUALS THAT HAVE APPEARED BEFORE THE COMMITTEE**

<b>Date</b>	<b>Name</b>	<b>Location</b>	<b>Date</b>	<b>Name</b>	<b>Location</b>
05/07/88	Mr Neil BELL Mr Vince FORRESTER Mr Bob KENNEDY Mayor Leslie OLDFIELD Ms Gail PETTY Mr Ian YUELL	ALICE SPRINGS	06/07/88	Mr Robert REYBURN Ms Janelle KARRIGER Mr John HICKEY Ms Joan SMALL Ms Kay ROSE	TENNANT CREEK
20/07/88	Mr Tony McMICHAEL Mr Syd STIRLING Mr Dan LEO	NHULUNBUY	10/08/88	Mr Harry COEHN Ms Sue SCHMOLKE Mr John HARE Ms Lyn POWIERZA Ms Myrna BULL Ms Ida WILLIAMS Mr Kevin FLETCHER Mr Peter TULLGREN	DARWIN
11/08/88	Mr Raphael CROWE Mr Rod ELLIS Mr John ANTELLA Mr Francis PERCEVAL Ms Joan WILKINSON Mr Anthony HOSKING Mr Charles JEFFERIES Mr Noel LYNAGH Mr Kevin ANDERSON Ms Susan ANDRUSZKO	DARWIN	13/03/89	Mrs Mona COOK Mr Gary CARTWRIGHT Mr Smiler CUDDAH Mrs Topsy DODD Mrs Michelle DONALD Mr Ray DUNCAN Mrs Kathleen DUNCAN Mr Billy BUNTER Mr Wonga BILL Mr George EDWARDS Mrs Roslyn FRITH Mrs Nancy FRITH Mr George NIDGI Mr Peanut PONTIARI Mrs Jerry RUNGIARI Mr Mick RUNGIARI Mrs Marianne YUNGA	DAGARAGU
13/03/89	Mr Mark RAE Mr Phil PRICE Mr Mike PRESS Mr Harsh PRABHD Mr Paddy PATRICK	LAJAMANU	15/03/89	Mr Abraham WESAN Mr Barry WESTON Mr Steve WHITE Mr Neil WILLIAM Mr Alan WILSON	BESWICK

Date	Name	Location	Date	Name	Location
	Ms Christine NICHOLLS			Mr Andre ZONN	
	Mr Jerry JUNGALA			Mr Bandicoot ROBINSON	
	Mr Martin JOHNSTON			Mr Richard KENNEDY	
	Mr George JOHNSON			Mr Adam HOLME	
	Mr Lindsay HERBERT			Mr Ray FORDIMAIL	
	Ms Jeannie HERBERT			Mr Sammy BUSH	
	Mr Gordon HALLIDAY			Mr Donald BLITNER Snr	
	Mr Ron ANDERSON			Mr Sam ASHLEY	
				Mr John ANGUS	
				Mrs Gloria LANE	
16/03/89	Mr Jim FORSCUTT	KATHERINE	16/03/89	Mr George WULKI	MATARANKA
	Mr Mark CROSSIN			Mr Jimmy ASHLEY	
	Mr Leon CHOLSH			Mr Mick ASHLEY	
	Ms Prue ROUBICEK			Ms Wendy CLARK	
	Mr Trevor SURPLICE			Mr Mark DAVIDSON	
				Mr Nayingi DAYLIGHT	
				Mr Des FISHLOCK	
				Ms Sandra FISHLOCK	
				Mr Jacob GAGAEW	
				Mr Lindsay JOSHUA	
				Mr W MUNUMA	
				Mr Pongi MUNYNGUNN	
				Mr Wilfred PONTO	
				Mr Mark WELLINGTON	
				Mr T S WORTHINGTON-AYRE	
17/03/89	Ms Kelly CLARIDGE	PINECREEK	28/03/89	Ms Margaret BUNDY	PALMERSTON
	Ms Gaye LAWRENCE			Mr Steve BENNETT	
	Mr Kevin McGREGOR			Ms Dawn COOK	
	Ms Margaret McGREGOR			Mr Chris DRAFFIN	
				Mrs Mali GRAY	
				Mr Derek HOGBEN	
				Mr Frank HOLLAND	
				Mr Andrew KEARNEY	
				Mr Andrew MODRA	
				Ms Janelle RUMBLE	
				Mr David SHANNON	
				Mr Robert TREMETHICK	
				Ms Sonja WILLIAMS	

<b>Date</b>	<b>Name</b>	<b>Location</b>	<b>Date</b>	<b>Name</b>	<b>Location</b>
28/03/89	Mr Norm BUDBY Mr Dick NIKI	BAGOT	29/03/89	Ms Lorna TENNANT Mr John SINGH	BELYUEN
30/03/89	Mr Lewis WILKES Mr John WHATLEY Mr Peter RUZSICKA Mr Bruce ROSS Ms Maureen ROBERTS Mr Malcolm PASSMORE Ms Juliet LEWIS Mr Ian LANCASTER Ms Patsy FAWCETT Mr John FAWCETT Mr Leigh BROWN Mrs A PAZNIEWSKI Mr R HARDING	ADELAIDE RIVER	31/03/89	Mr Dave SHOBRIDGE Mr Ron PEARCE Mr Ken MARSHALL Ms Jackie HARGRAVES Mr Harry de SACHAN	BATCHELOR
04/04/89	Mr Neil BELL Mr Harry BIGFOOT	DOCKER RIVER	04/04/89	Mr Smithy ZIMMERMAN Mr Graham HENDERSON Mr David SCRIMGOUR Mr Neil BELL Mr CONWAY Mr Nigel CARRICK Mr Riley MAJOR Ms Vicki GORDON	KINTORE
06/04/89	Mr Alfred DOOLAN Mr Johnny BRISCOE	FINKE	07/04/89	Mr Alan KEELING Mr David CAMERON Mr Helmut PARAROELTJA Mr Gus WILLIAMS Pastor Traugott MALBUNKA	HERMANNSBURG
07/04/89	Mr Arthur SWAN Mr Mike NIELSON Ms Alison TOBBY Mr Kevin JURRA	AREYONGA	10/04/89	Mr Tiger JAPALJARRI	NYRIPPI

<b>Date</b>	<b>Name</b>	<b>Location</b>	<b>Date</b>	<b>Name</b>	<b>Location</b>
11/04/89	Mr George GARDI Mr HARGREAVES Mr DARBY Mr Paddy Japaljarri SIMS Mr Eddie Jampbajimba ROBERTSON Mr Dennis WILLIAMS Mr Jampbajimba ROSS Mr Paddy NELSON Mr Chris MARSHALL Mr Francis KELLY Mr Ted GRANITES	YUENDUMU	11/04/89	Mr Teddy LONG Mr Harry NELSON Mr BILLY Mr Johnny KITSON Mr Sammy JOHNSON  Old Toby JAPANGARDI Mr Ben JAKAMARRA Mr Andy LAUDER Mrs NAPALTJARRI	WILLOWRA
12/04/89	Mr Lindsay BOOKLEK Mr Toby PAULAR Mr Alec PETERSON Mr Anthony PETRICK Ms Agnes PETRICK	HARTS RANGE	12/04/89	Mr Mick ARUNDEL Mr Jack COOK Ms Alice GOREY Mr Johnny JUNGARAI Ms Peggy NANGALA Mr Eric PANANKA	TI TREE
13/04/89	Mr Ken PORTER  Mr Chris MARSHALL	WALLACE ROCK HOLE	13/04/89	Mr Denis COLLINS  Mr Russell GOLDFLAM	ALICE SPRINGS
14/04/89	Mr Vince FORRESTER	AMOONGUNA	17/04/89	Mr Pat BURKE Ms Betty FINLAY Mr John HAVNEN Ms Shirley LEWIS	JUNKURRAKU
17/04/89	Ms Maggie HICKEY Mr Kevin BAIN Mr Ian TUXWORTH Mr Rolf SCHAEFER Ms Kay ROSE	TENNANT CREEK	18/04/89	Mr JAMES	ALICURUNG
18/04/89	Ms Lena PULA  Mr Ray PULA Mr Harold NELSON	UTOPIA	19/04/89	Ms Melissa (Surname Unknown) Mr Kerry GARDINER Mr Marcus DIXON Ms Donna SCHUBERT Mr Jim RENNIE	ELLIOT

<b>Date</b>	<b>Name</b>	<b>Location</b>	<b>Date</b>	<b>Name</b>	<b>Location</b>
20/04/89	Mr Bernie WENKE Ms Fiona DARCY Mr Ron KERR  Mr Charlie POWICK Ms Anne WENKE Ms Judy RETTER	BORROLOOLA	02/05/89	Mr WARD Mr Selwyn RAINER Mr Bobby NUNGGUMAJBARR Ms Susan GILMOUR Mr Mervin BROWN	ANGURUGU
02/05/89	Mr HART  Ms Helen WILLIAMS Mr Milark WINUNGUDJ  Mr YIBARBUKK	MANINGRIDA	03/05/89	Mr Mujiji NUNGGARRGALU Mr Lindsay JOSHUA Mr Samuel NUMAMURDIRDI	NUMBULWAR
03/05/89	Mr David DANIELS Mr Frank FARLEY Ms Jeanie McFARLANE Mr Peter MILAYNA Mr Jim MULHERN Mr Ray MUNYAL	NGUKURR	04/05/89	Mr Joe PETERS Mr Frank FARLEY Mr DJUPANDAWUY Mr Henry DJERRINGAL Mr Kenny DJAWULMA Ms Daisy BAKER	MILINGIMBI
04/05/89	Mr G BANBUMA Mr John WELUK Ms Junie THOMPSON Mr Nicholas THACKER  Ms Virginia RUSSELL	RAMINGINING	05/05/89	Mr DANGATANGA Mr DAJANNANGA Mr DATJARRANGA Mr George DAYNGUMBU Mr DJALANGGI Mr DJILIPA Mr Keith DJINIYINI Mr DJIRIMBILPILWUY Mr Richard GANDUWUY Mr G GURWANAWUY Mr Jeffrey MALAWA Mr MAWUNYDJIL	GALIWINKU
05/05/89	Mr W WIRRKUWUY Mr Bill MANYDJARRI Mr D GARRTHANDHAN Mr Allan BANGGANA	GAPUWIYAK	08/05/89	Mr Colin DONALDSON Ms Susan GILMOUR Dr Dan NAIDOO Ms Julie WADDY Ms Kay WRIGHT Mr Alan WRIGHT	ALYANGULA

Date	Name	Location	Date	Name	Location
08/05/89	Mr Frank FARLEY Ms Marian MAURER Mr Tony McMICHAEL Mr Dave PERMEZEL Mr Greg SMITH  Mr Syd STIRLING  Mr Adrian WEIKE	NHULUNBUY	08/05/89	Mr BANAMBA Mr GUNGATA Mr LARRTJANNGA Mr Roy MARIKA Mr Wirilma MUNUNGGURR Mr Daymbal'pu MUNUNGGURR Mr Dhungala MUNUNGGURR Mr WUNUNMURRA Mr WUNUNGGURR Mr WAKURATJPI	YIRRKALA
09/05/89	Mr Stanley TIPILOURA Mr Mick MARTIN Ms Helen LUGLIETTI Mr Warren LOFTHOUSE Ms Lesley EAST Mr Don DITCHBURN	JABIRU	09/05/89	Mr Steven MANSFIELD Mr Joe SINGH Mr Stanley TIPILOURA	OENPELLI
10/05/89	Mr Jumbo GUNGGIBARA Mr Stanley TIPILOURA Mr Wayne WAUCHOPE Mr Peter (Surname Unknown) Mr Lloyd BOYLE Mr Alan CLOUGH	MINJILANG	11/05/89	Mr Patrick HEENAN Mr Stanley TIPILOURA Mr Robert TIPUNGWUTI Mr Peter SIMONS Mr Kevin DOOLAN	MILIKAPITI
11/05/89	Mr Hyacinth TUNGATULUM Mr John PUPANGAMIRRI Mr Walter KERINAIUA Mr Jimmy TIPUNGWUTI Mr Stanley TIPILOURA Mr Bernard TIPILOURA	NGUIU	11/05/89	Mr Stanley TIPILOURA  Mr Chris BROGAN  Mr Cyril RIOLI Mr Graham WHITING	PULARUMPI
12/05/89	Mr Bernard JABNEE  Mr Felix BUNDUCK	WADEYE	27/09/89	Mr Robert D TREMETHICK Mr Graham NICHOLSON Mr Earl B M JAMES Mr Richard CRESWICK Mr David SHANNON Mr Max ORTMANN	DARWIN

<b>Date</b>	<b>Name</b>	<b>Location</b>	<b>Date</b>	<b>Name</b>	<b>Location</b>
17/05/90	Mr TRIGGER Mr Johnny JINGO Mr Howard DOOLAN Mr Allan WILSON Mrs Sandra ARMSTRONG Mr Toby GINGER MRS RITA BULLA	MUTITJULU	06/06/90	Mr Rex GRANITES Mr Lindsay TURNER	YUENDUMU
21/06/90	Mr Ray PULA Mr Albert MORTON Mr Banjo MORTON	THREE BORES (UTOPIA)	21/06/90	Mr Roger WATTERS Mr Denis COLLINS Ms Barbara CURR Mr Bardius GOLDBERG Mr Dave JOHANNSEN	ALICE SPRINGS
01/11/91	Mr John REEVES	DARWIN	05/07/95	Mr John RICHARDSON Mr Bill IVORY Ms Joanne LEE	ALICE SPRINGS
12/07/95	Mr Kym COOK Mr Barry SHARPLES Ms Joan SMALL Ms Sandra REW Mr Peter WYATT Ms Joanne LEE	TENNANT CREEK	19/07/95	Ms Sandra REW Mr Jim FORSCUTT Ms Dawn CHOLSH Mr Mick PEIRCE Ms Joanne LEE Mrs June TAPP	KATHERINE
26/07/95	Mr Alistair WYVILL Mr Michael SPARGO Mr Trevor RILEY Mr John REEVES Mr Peter CARROLL Ms Sandra REW Mr David SHANNON Mr Jeff HOARE Mr Allan WHYTE Ms Joanne LEE	DARWIN			





**APPENDIX 6            LIST OF SUBMISSIONS RECEIVED AS AT 22 AUGUST 1996**



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**LIST SUBMISSIONS RECEIVED**

<b>Sub.No.</b>	<b>FROM</b>	<b>Date Presented</b>
1	A J Hosking, Nakara	02.03.88
2	K Fletcher, Darwin	02.03.88
2a	K Fletcher	30.08.89
3	W Whiley, NT Women's Advisory Council, Groote Eylandt	02.03.88
4	Prof. J M Thomson, University College NT (personal)	02.03.88
5	P Jull, Queensland	02.03.88
6	Alice Springs Town Council	02.03.88
7	NT Women's Advisory Council	02.03.88
8	Darwin Institute of Technology	02.03.88
9	NT Local Govt. Association	02.03.88
10	Northern Territory Community Government Association	05.05.88
11	Tangentyere Council Inc	05.05.88
12	The Federated Miscellaneous Worker's Union of Australia	26.05.88
13	Northern Territory Trades & Labour Council	10.08.88
14	Office of Equal Opportunity, Department of Labour & Administrative Services	10.08.88
15	P R Hockey, Katherine	05.10.88
16	P Mitchell, Darwin	05.10.88
17	H Compton, Darwin	05.10.88
18	J Hare, Darwin	10.08.88
19	P McNab	10.08.88
20	Northern Territory Bar Association	05.10.88
20a	Northern Territory Bar Association	24.05.89
21	K T Borrow, Adelaide	05.10.88
22	Alderman J Antella, Acting Lord Mayor, Darwin City Council	05.10.88
22a	Darwin City Council	29.03.90
23	Ms S K, Canberra	24.05.88
24	Mr R G (Dick) Kimber, Alice Springs	24.05.88
25	Australian Small Business Association	24.05.88
26	Northern Territory University	24.05.89
27	NT Trades & Labour Council	24.05.89
28	K A McGregor-King	24.05.89
29	J B Forscutt, JP	24.05.89
30	D J Gans	24.05.89
31	F Schmidt	24.05.89
32	Alice Springs Peace Group	24.05.89
33	Tennant Creek Town Council	24.05.89
34	T S Worthington-Eyre	24.05.89
34a	T S Worthington-Eyre	30.08.89
34b	T S Worthington-Eyre	22.07.91
35	R G Kimber	24.05.89
36	P R Hockey	24.05.89
37	R Vaughan-Smith	24.05.89
38	G Norton	30.08.89
39	Dr P K Thorn	30.08.89

<b>Sub.No.</b>	<b>FROM</b>	<b>Date Presented</b>
40	G Brown	30.08.89
41	P Gough	30.08.89
42	National Spiritual Assembly of the Baha'is of Australia	30.08.89
43	D Shannon	30.08.89
43a	D Shannon	18.10.89
44	M Lonsdale	18.10.89
45	A J Hosking & Associates Pty Ltd	18.10.89
46	R D Tremethick	18.10.89
47	N T Council of Government School Organisations.	18.10.89
48	E B M James	18.10.89
49	B Reyrburn	29.03.90
50	Julalikari Council Inc	19.04.89
51	People's Law (Colin Gray)	08.05.91
52	Citizens' Initiated Referendum (Ted Mack)	15.07.91
53	F McGuirk	09.10.91
54	G Orr	20.11.91
55	Men's Confraternity (Inc) M Ward	20.11.91
56	K Crombie	20.11.91
57	M Webb	20.11.91
58	R G (Dick) Kimber	20.11.91
59	F Walker, QC MP	20.11.91
60	K Wright, MP	20.11.91
61	Gympie Electorate Citizens Referenda	20.11.91
62	Constitutional Heritage Protection Soc.	20.11.91
63	B Mahar	20.11.91
64	K Bain	20.11.91
65	H Pfeifer	20.11.91
65a	H Pfeifer	20.11.91
66	M Watson	20.11.91
67	People's Law - Mentone	20.11.91
68	S Fleming	20.11.91
69	J Sosso	20.11.91
70	Australian Recovery Movement	20.11.91
71	Senator Cheryl Kernot	04.03.92
72	T S Worthington-Eyre	04.03.92
73	R M Harris	04.03.92
74	J M Fitzgerald	04.03.92
75	K F Fletcher	04.03.92
76	Office of Local Govt (R Lesley)	04.03.92
77	D Shannon	04.03.92
78	P R Hockey	04.03.92
79	L Nightingale	04.03.92
80	Katherine Town Council (N Lockley)	04.03.92
81	Attorney General's Dept (Canberra)	04.03.92
82	Dept of Chief Minister (P Conran)	04.03.92
83	F Cowman JP	04.03.92
84	P Adams	04.03.92
85	Voters Action Association	04.03.92
86	Office of Local Government - Phegan	04.03.92
87	Raprora	04.03.92

<b>Sub.No.</b>	<b>FROM</b>	<b>Date Presented</b>
88	D W Collins, MLA	20.05.92
89	A Markham, Lord Mayor, Darwin	20.05.92
90	Mr A Millar, Sydney	03.03.93
91	The Hon. Justice D K Derrington	03.03.93
92	Mr J B Forscutt	03.03.93
93	Mrs Wanda Teakle	03.03.93
94	Mr H M Campbell	03.03.93
94a	Mr H M Campbell	03.03.93
95	Mr John McKenzie	03.03.93
96	Mrs Joan Macnee	28.05.93
96a	Mrs Joan Macnee	28.05.93
97	Mrs V Campbell	28.05.93
97a	Mrs V Campbell	28.05.93
98	Mr Bruce Reyburn	28.05.93
99	Mr Peter Slipper, MP	28.05.93
100	Yirrkala Dhanbul Community Association	28.05.93
101	Ms Bromley, Darwin City Council	28.05.93
102	Aboriginal & Torres Strait Islander Commission, Canberra	28.05.93
103	Chief Justice David Malcolm, WA	29.06.93
104	Rev. Dr Djiniyini Gondarra, Aboriginal Resource & Development Services	28.08.93
105	Mr Dennis Collins, MLA	20.10.93
106	G E Ryan, Toornima, NSW	20.10.93
107	K T Borrow, Erindale, SA	20.10.93
108	The Hon. Ron Bowden JP MLC, Victoria	20.10.93
109	Mr George Seitz MP, Victoria	20.10.93
110	NT Department of Correctional Services	01.12.93
111	Mr Garry McIlwaine, Barrister-at-Law, NSW	29.06.94
112	Mr Bruce Hannaford, SA	29.06.94
114	Mr K T Borrow, SA	29.06.94
115	Mr John Turner, MP, NSW	29.06.94
116	Mr E G Chapman, Kelmscott WA	31.08.94
117	NT Government Schools Organisation	31.08.94
118	Mr Bruce Reyburn, Thirroul, NSW	31.08.94
119	Miwatj Regional Council, Nhulunbuy	31.08.94
120	BC Ruxton, State President, RSL (Victorian Branch)	31.10.94
121	Jack Catling, 11 Yashoiy Street, Leanyer, NT	22.08.95
122	Mrs Mary V O'Hanlon, Ainslie, ACT	22.08.95
123	Tony Paynter, Glebe, NSW	22.08.95
123a	Tony Paynter, Glebe, NSW	22.08.95
123b	Tony Paynter, Glebe, NSW	N/A
124	The Northern Territory Bar Association	22.08.95
125	Peter J Carroll, Rapid Creek, NT	22.08.95
126	R G (Dick) Kimber, Alice Springs, NT	22.08.95
127	K T Borrow, Erindale, SA	22.08.95
128	W B 'Digger' James, National President, RSL, ACT	22.08.95
129	Malcolm H Brandon, Hawker, ACT	22.08.95
130	Peter S Jull, Kenmore, QLD	22.08.95
131	David Shannon, Nightcliff, NT	22.08.95
132	Paul Watson, NTU, NT	22.08.95

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<b>Sub.No.</b>	<b>FROM</b>	<b>Date Presented</b>
133	Dr Colin Balmer, Claremont, TAS	22.08.95
134	L B Tilmouth and Darryl Pearce, Central and Northern Land Council	10.10.95
135	G E Casey, Darwin, NT	10.10.95
136	Chief Justice of the Northern Territory	10.10.95
137	Jeff Hoare, Executive Director, LGANT	13.11.95
138	R G Kimber, Alice Springs, NT	13.11.95
139	Brett Midena, Youth for Christ Northern Territory Inc.	28.02.95
140	Northern Territory Supreme Court	01.04.96
141	Dr Peter J Carroll, Rapid Creek, NT	27.06.96

**APPENDIX 7      EXTRACT OF DISCUSSION PAPER NO. 5 - ADVANTAGES  
AND DISADVANTAGES OF BRINGING AN NT  
CONSTITUTION INTO FORCE BEFORE THE GRANT OF  
STATEHOOD.**





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**EXTRACT OF DISCUSSION PAPER NO. 5 - ADVANTAGES AND DISADVANTAGES OF BRINGING AN NT CONSTITUTION INTO FORCE BEFORE THE GRANT OF STATEHOOD**

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**ADVANTAGES**

Some of the advantages of bringing a Northern Territory constitution into force before any grant of Statehood may include:

- (i) It would focus solely on the issues surrounding a new, home-grown constitution and separate them from the political issues surrounding any grant of Statehood, such as the question of the extent of federal Parliamentary representation;
- (ii) It would enable Territory citizens to have a real say as to how they should govern themselves without the added complications arising from Statehood as in (i) above;
- (iii) It would facilitate a review of the current constitutional arrangements applying to the Northern Territory;
- (iv) It may enhance the reconciliation process between Aboriginal and non-Aboriginal Territorians and the creation of a more harmonious community. It would do this by openly addressing the issue of what, if any, constitutional or other protections should be afforded to Aboriginal Territorians as part of one Territory, and thereby help to allay any fears arising from the proposals;
- (v) It may assist the implementation of proposals for a further transfer of self-governing State-type powers to the Northern Territory by combining this with appropriate constitutional provisions, thereby providing a firm framework within which to meet the concerns of all Governments in discharging their respective responsibilities;
- (vi) It would better enable the Territory to demonstrate to the rest of Australia its capacity to govern itself in accordance with a constitution developed by Territorians themselves rather than one imposed by Canberra;
- (vii) It would strengthen the constitutional position of the Northern Territory in advance of Statehood;
- (viii) As a constitution has to be developed in any event if the Territory is to become a new State, there may be an advantage in finalising this development first before embarking on any Statehood campaign;
- (ix) It would smooth the path to Statehood by enabling Territorians to evaluate how the new constitution operated in practice before they decided whether to move to Statehood, and by giving the Territory a functioning constitution upon which a grant of Statehood could be based;

- (x) It is possible that Statehood may never occur, or if it does, it may not occur for a long time, particularly in view of the difficulties associated with federal Parliamentary representation. This should not be allowed to hold up the development of a new constitution for the Territory.

## **DISADVANTAGES**

Some of the disadvantages of bringing a Northern Territory constitution into force before any grant of Statehood may include:

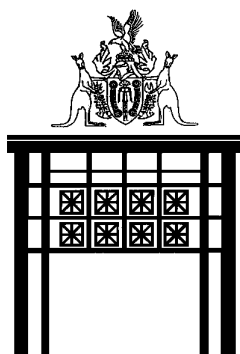
- (i) It would tend to divorce the question of whether the Territory should have a new constitution from the question of whether the Territory should be a new State, whereas it can be argued that the two questions are, or should be, connected and occur simultaneously;
- (ii) It would involve difficult negotiations with the Commonwealth Government on two separate occasions, firstly on the issue of bringing into effect a new Territory constitution, and secondly at a later time on the issue of a grant of Statehood;
- (iii) It is not necessary to repeal the *Northern Territory (Self- Government) Act 1978* and regulations prior to Statehood as it may be perceived that they have worked reasonably well in the past;
- (iv) The public development of a new Territory constitution could be used as an excuse for confrontation and lead to a deterioration of race relations rather than result in reconciliation and greater harmony;
- (v) Any new Territory constitution would not have the protection of the Commonwealth Constitution until a grant of Statehood;
- (vi) Any failure in the development of a new Territory constitution could set back the cause of Statehood;
- (vii) The development of a new Territory constitution might be seen as adding an unnecessary complication to proposals for the further transfer of State-type powers as part of Self-Government; and
- (viii) The development of a new constitution arguably should only be undertaken in conjunction with a grant of Statehood as the priority goal (assuming Statehood to be the desired goal).

**APPENDIX 8                    FINAL DRAFT CONSTITUTION FOR THE NORTHERN  
TERRITORY**

Incorporating:

- the Final Draft Constitution tabled in the Legislative Assembly on 22 August 1996;
- the Schedule of Amendments tabled in the Legislative Assembly on 9 October 1996; and
- explanatory notes.





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**LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY**

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**Final Draft Constitution**

**for the**

**Northern Territory**

Incorporating:

- the Final Draft Constitution tabled in the Legislative Assembly on 22 August 1996;
- the Schedule of Amendments tabled in the Legislative Assembly on 9 October 1996; and
- explanatory notes.



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# NORTHERN TERRITORY OF AUSTRALIA

## FINAL DRAFT CONSTITUTION

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**PREAMBLE**

- 1.<sup>1</sup> 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;
- 2.<sup>2</sup> 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;

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<sup>1</sup> *Purpose of Preamble: 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.*

<sup>2</sup> **Purpose of Preamble: 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.*

6. The *Northern Territory Acceptance Act 1910* of the Commonwealth provided for the ratifying of an Agreement between the Commonwealth and the State of South Australia for the surrender of the Northern Territory by that State to, and its acceptance by, the Commonwealth;
7. By section 122 of 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;
- 9.<sup>3</sup> In 1978, by reason 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;
- 10.<sup>4</sup> 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;

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### <sup>3</sup> Purpose of Preamble: 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.

### <sup>4</sup> Purpose of Preamble: 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.<sup>5</sup> 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*;
- 12.<sup>6</sup> 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;
- 13.<sup>7</sup> The Legislative Assembly of the Northern Territory, by the *Constitutional Convention Act 199x*, 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 199x that Convention, in accordance with that 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;

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**<sup>5</sup> Purpose of Preamble: 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.

**<sup>6</sup> Purpose of Preamble: 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.

**<sup>7</sup> Purpose of Preamble: 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.<sup>8</sup> 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;
- 15.<sup>9</sup> The people of the Northern Territory are concerned to preserve a harmonious, tolerant and united multicultural society, and to this end, it is desirable that no person should be unreasonably denied the right -
- (a) to use his or her own language in communicating with others speaking or understanding the same language;
  - (b) to observe and practice his or her own social and cultural customs and traditions in common with others of the same tradition; and
  - (c) to manifest his or her own religion or belief in worship, ceremony, observance, practice or teaching,

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**<sup>8</sup> Purpose of Preamble: 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.*

**<sup>9</sup> Purpose of Preamble: 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.*



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;

- 16.<sup>10</sup> 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, within the federal Commonwealth of Australia.

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

## PART 1 - THE NORTHERN TERRITORY

### 1. ESTABLISHMENT OF BODY POLITIC<sup>11</sup>

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.

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#### <sup>10</sup> Purpose of Preamble: Preamble 16

*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.

#### <sup>11</sup> Purpose of 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.*

---

## PART 2 - LEGAL SYSTEM OF THE NORTHERN TERRITORY

### *Division 1 - Laws of the Northern Territory*

#### 2.1 LAWS<sup>12</sup>

The laws of the Northern Territory consist of -

- (a) this Constitution;
- (b) the Organic Laws;
- (c) the Acts of the Parliament;
- (d) enactments, including subordinate legislative enactments, in force immediately before the commencement date 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; and
- (g) other laws recognised as a source of law by this Constitution.

---

<sup>12</sup> **Purpose of 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<sup>13</sup>

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

#### Alternative 1

- (a) shall be recognised as a source of law in the Northern Territory; and
- (b) except where it is implemented and enforced as part of the common law or the practice of the courts, 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 as expressly provided by or under an Organic Law or other Act.

#### Alternative 2

- (a) shall be recognised as a source of law in the Northern Territory;
- (b) may be implemented or enforced in respect of any person, but only under and in accordance with that Aboriginal customary law where the person considers that he or she is bound by that law; and
- (c) may also be implemented or enforced in so far as it is part of the common law or in accordance with the practice of the courts,  
but subject to paragraphs (b) and (c), 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 as expressly provided by or under an Organic Law or other Act.

---

#### <sup>13</sup> Purpose of 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<sup>14</sup>

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

- (a) in any case - this Constitution, the *Commonwealth of Australia Constitution Act* including the Constitution of the Commonwealth and the *Australia Acts 1986*;
- (b) in the case of -
  - (i) Acts of the Parliament (other than Organic Laws); and
  - (ii) laws of the Northern Territory in force immediately before the commencement date and continued in force by, this Constitution, but not including an Organic Law, any subordinate legislative enactments made under such Acts or laws, the common law or Aboriginal customary law - any relevant Organic Laws;
- (c) in the case of subordinate legislative enactments - the Organic Laws, the Acts of the Parliament and the laws by or under which they were enacted or made; and
- (d) in the case of other laws of 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, it shall nevertheless be a valid law to the extent to which it is not in excess of that authority.

---

### <sup>14</sup> Purpose of 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<sup>15</sup>

- (1) For the purposes of this Constitution and any other law of the Northern Territory, an Organic Law is a law of the Northern Territory -
  - (a) declared by this Constitution to be an Organic Law; or
  - (b) 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) subject to subsection (3), it was supported on its second and third readings by a division in each case in accordance with the Standing Orders with an affirmative vote equal to or more than a **[Alternative 1: two-thirds - Alternative 2:- three-quarters]** 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 in Committee;
  - (b) there was not less than 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 not less than 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 at its second reading stage of the Bill for debate on its merits.
- (3) The Parliament may in a Bill for an Act that expressly states that the Act is an Organic Law, increase (but not decrease) the percentage of affirmative votes specified in

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### <sup>15</sup> Purpose of 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, see also Clause 7.1 and the Northern Territory Sacred Sites Act - Clause 11.2. 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: 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.*

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subsection (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 a proposed 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 dates on which the votes on the second and third readings of the Bill were taken;
  - (b) the date on which the vote in Committee on the last amendment to the Bill (if any, and other than minor drafting or consequential amendments) was taken;
  - (c) the date or dates on which opportunity for debate on the merits of the Bill at its second reading occurred;
  - (d) in relation to the vote on the second and third readings -
    - (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 or under 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.

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***Division 2 - Altering the Constitution and Organic Laws***

**2.4 CONSTITUTIONAL AMENDMENT<sup>16</sup>**

- (1) This Constitution may be amended in accordance with 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 has first been passed by the Parliament, 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.
- (3) That Bill shall not be taken to have been passed unless -
  - (a) there was not less than 2 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 not less than 2 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 at its second reading stage of the Bill for debate on its merits.

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**<sup>16</sup> Purpose of Clause: 2.4**

*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 its second 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 ).

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- (4) The Speaker shall present to the Governor for assent a proposed law passed in accordance with this section, and on doing so must certify to the Governor that the requirements of subsection (3) have been complied with.
- (5) The certificate referred to in subsection (4) shall state -
- (a) the dates on which the votes on the second and third readings of the Bill were taken;
  - (b) the date on which the vote in Committee on the last amendment to the Bill (if any, and other than minor drafting or consequential amendments) was taken; and
  - (c) the date or dates on which opportunity for debate on the merits of the Bill at its second reading stage occurred,

and is, in the absence of proof to the contrary, conclusive evidence of the matters so stated.

- (6) On the assent by the Governor to the proposed law, the question of the adoption of the proposed amendment to the Constitution shall, not earlier than 3 or later than 12 calendar months after that date of assent, be submitted to a referendum of electors of the Northern Territory qualified to vote at an election of the members of the Parliament.
- (7) Except as provided in subsection (8) a referendum question shall not be taken to be approved unless it is carried at the referendum to which it is put by valid affirmative votes of not less than 50% of the total number of valid votes cast at the referendum.
- (8) In respect of those parts of this Constitution specified in Column 1 of Schedule 1 the percentages of valid affirmative votes required to carry a referendum to amend those parts shall be the percentage shown in Column 2 of that Schedule opposite those parts.
- (9) 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 that the requirements of this section as to the referendum have been complied with.
- (10) The certificate referred to in subsection (9) 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.



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- (11) If a referendum question is carried in accordance with this section, the amendment shall be effective on the date on which the Speaker presents the certificate to the Governor under subsection (9), or on such other date as specified in the amendment.

## 2.5 AMENDMENT OF ORGANIC LAWS<sup>17</sup>

- (1) An Organic Law may be amended either by an amendment of this Constitution under section 2.4 or by a law enacted in accordance with this section, and not otherwise.
- (2) Subject to sections 2.3(6) and 2.6(4), a Bill for an Act for the amendment, in whole or part, of an 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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### <sup>17</sup> Purpose of Clause: 2.5

*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.*

*Reference to Discussion and Information Papers: 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.*

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## 2.6 STANDING COMMITTEE ON THE CONSTITUTION AND ORGANIC LAWS<sup>18</sup>

- (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 Orders.
- (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 a resolution of the Parliament made in accordance with the Standing Orders.
- (4) A Bill for an Act to amend this Constitution or to amend an Organic Law shall not proceed to its 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 in the Northern Territory requesting an amendment of this Constitution or of an Organic Law, and the Committee may, at any stage of its consideration, report to the Parliament on the requested amendment.
- (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 on the reference as soon as practicable after considering it.
- (7) The Committee shall receive from persons in the Northern Territory, and consider, a petition requesting amendment of this Constitution or of an Organic Law if the petition is signed by at least 10% 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 it is

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### <sup>18</sup> Purpose of Clause: 2.6

*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 by resolution under 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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presented to the Committee, and the Committee shall report to the Parliament on the requested amendment as soon as practicable after considering it.

- (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.
- (11) An Act shall prescribe the procedures for a petition under subsections (5) and (7) and the method for verification of the signatures to such a petition.

## PART 3 - PARLIAMENT OF THE NORTHERN TERRITORY

### *Division 1 - Legislative Power*

#### 3.1 LEGISLATIVE POWER OF THE NORTHERN TERRITORY<sup>19</sup>

- (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.

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**<sup>19</sup> Purpose of 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.

3.1(3) Provides that under this Constitution property can only be acquired by just terms.

**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.

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- (3) The power of the Parliament conferred by this Constitution in relation to the making of laws does not extend to the making of laws with respect to the acquisition of property otherwise than on just terms.

### 3.2 ASSENT TO PROPOSED LAWS<sup>20</sup>

- (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.

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#### <sup>20</sup> Purpose of 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<sup>21</sup>

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.

### 3.4 APPROPRIATION AND TAXATION LAWS NOT TO DEAL WITH SUBJECTS OTHER THAN THOSE FOR WHICH APPROPRIATION MADE OR TAXATION IMPOSED<sup>22</sup>

- (1) A law which appropriates or provides for the appropriation of revenue or moneys for the ordinary annual services of the government of the Northern Territory shall deal only with such appropriation.
- (2) Laws imposing taxation and laws which appropriate or provide for the appropriation of revenue or moneys for purposes other than the ordinary annual services of the government of the Northern Territory 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.

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#### **21 Purpose of 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.

#### **22 Purpose of 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<sup>23</sup>

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.

#### *Division 2 - Constitution and Membership of Parliament*

### 3.6 PARLIAMENT<sup>24</sup>

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

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#### <sup>23</sup> Purpose of 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.

#### <sup>24</sup> Purpose of Clause: 3.6

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.*

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.*

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:** See Discussion Paper on A Proposed New Constitution for the Northern Territory, 1987: - unicameral Parliament: pp 15-18; - numbers of members: p18-19; - electoral laws: pp 29-34, on single/multi member electorates: pp 31-33.

- (3) Subject to this Constitution, the members of the Parliament shall be directly elected as prescribed by an Act.

**Alternative 1 - Single Member Electorates**

- (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.
- (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 each other electoral division.

**Alternative 2 - Single or Multi-Member Electorates**

- (4) For the purpose of the election of members of the Parliament, the Northern Territory shall be divided into single or multi-member electoral divisions, (or a combination of both) by or under an Act.
- (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 each other electoral division.

**Alternative 3 - Equal Multi-Member Electorates**

- (4) For the purpose of the election of members of the Parliament, the Northern Territory shall be divided into electoral divisions, each division to return 2 or more members, but the same number as each other division, by or under an Act.
- (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 each other electoral division.

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

### 3.7 QUALIFICATIONS OF ELECTORS<sup>25</sup>

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

<sup>25</sup> **Purpose of 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: pp 33-34.

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Northern Territory and who have resided in the Northern Territory for not less than 3 calendar months immediately before the polling day for an election of a member or members of the Parliament of the Northern Territory are qualified to vote at that election.

### 3.8 VOTING AT ELECTIONS<sup>26</sup>

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.

### 3.9 WRITS FOR ELECTIONS<sup>27</sup>

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.

### 3.10 TERM OF OFFICE OF MEMBER<sup>28</sup>

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.

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#### <sup>26</sup> Purpose of 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: pp 34 & 38.

#### <sup>27</sup> Purpose of 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: pp 34, 53.

#### <sup>28</sup> Purpose of 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: pp 23-28.



### 3.11 ELECTION PROCEDURES<sup>29</sup>

- (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.

#### Alternative 1 - No Fixed 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.

- (3) Subject to this section, the Governor shall not dissolve the Parliament except on the advice of the Executive Council or the Premier.

#### Alternative 2 - Three Year Partial Fixed 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.

- (3) Subject to this section, the Governor shall not dissolve the Parliament except on the advice of the Executive Council or the Premier.

#### Alternative 3 - Fixed Four Year Term

- (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 main 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) Except as provided in subsections (4) and (5), the Governor shall not dissolve the Parliament.

#### <sup>29</sup> Purpose of Clause: 3.11

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.

3.11 (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 circumstances, see below);

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

3.11 (5) and (6) This specifies 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). Two alternatives are provided, depending on whether the term of office is a 4 year term with a partially fixed term of 3 years, or a fixed 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: pp 23-28 In respect of Clauses 3.11 (2) through to (4) The Committee favoured the partially fixed 4 year term, but offers 3 options. As to the circumstances raised in Clauses 3.11 (5) and (6) 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: pp 54-55.

<p>(4) If -</p> <p>(a) the Premier resigns or vacates his or her office or a vote of no confidence in the government of the Northern Territory is carried in the Parliament by a majority of its members present and voting; 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, 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>(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.</p>	<p>(4) The Governor may dissolve Parliament within 2 months before it is due to expire under subsection (2) where-</p> <p>(a) the general election would otherwise be required to be held during the same period as a Commonwealth election directly affecting the Northern Territory;</p> <p>(b) the Parliament would otherwise expire on a public holiday; or</p> <p>(c) where the Governor, in his or her absolute 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).</p>
<p>(5) No Provision</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 of the Northern Territory is carried in the Parliament by a majority of its members present and voting; and</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 of the Northern Territory is carried in the Parliament by a majority of its members present and voting; and</p>

(6) No provision.	<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, 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>(6) No provision</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, 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>(6) A general election shall be held after the dissolution of Parliament under subsection (5) as soon as the Governor considers it to be practicable, but in any case not later than the Saturday referred to in subsection (2).</p>
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### 3.12 RESIGNATION OF MEMBERS OF PARLIAMENT<sup>30</sup>

A member of the Parliament may resign office in 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.

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<sup>30</sup> **Purpose of 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:** Nil

### 3.13 FILLING OF CASUAL VACANCY<sup>31</sup>

#### Alternative 1 - Single Member Electoral Division

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.

#### Alternative 2 - Single/Multi Member Electorates

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 elected 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.

#### Alternative 3 - Equal Multi Member Electorates

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 elected 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.

### 3.14 QUALIFICATIONS FOR ELECTION<sup>32</sup>

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 his or her nomination, the person -

- (a) is an Australian citizen;
- (b) has attained the age of 18 years;

#### <sup>31</sup> Purpose of 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: pp 30, 34.

#### <sup>32</sup> Purpose of 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: pp 19-23.

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- (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.

### 3.15 DISQUALIFICATIONS FOR MEMBERSHIP OF PARLIAMENT<sup>33</sup>

- (1) A person is not qualified to be a candidate for election as a member of the Parliament if, at the date of his or her 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

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#### <sup>33</sup> Purpose of Clause: 3.15

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.

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.

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: pp 19-23.

- 
- (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 a law of the Commonwealth or of a State or territory of the Commonwealth.
- (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 a law of the Northern Territory (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.
- (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 (unless the member honestly believes 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.

### *Division 3 - Procedure of Parliament*

#### **3.16 SESSIONS OF PARLIAMENT<sup>34</sup>**

- (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.

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**<sup>34</sup> Purpose of 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: pp 24-25, 38.

**3.17 QUORUM<sup>35</sup>**

- (1) The quorum for a sitting of the Parliament is not less than one third of the number of members in the Parliament at the time.
- (2) The Standing Orders shall make provision for the action to be taken in the event of a lack of or loss of a quorum at any time.

**3.18 SPEAKER<sup>36</sup>**

- (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 sits after a general election of members of the Parliament that takes place after he or she is chosen as Speaker under subsection (1);
  - (b) he or she resigns office in writing signed by him or her and 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

**<sup>35</sup> Purpose of 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 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.*

**<sup>36</sup> Purpose of 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.*

*3.18 (3) Provides that the powers, functions and privileges of the Speaker will be incorporated 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: pp 36, 38.*



(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 Northern Territory.

### 3.19 ACTING SPEAKER<sup>37</sup>

The Standing Orders 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.

### 3.20 VOTING IN PARLIAMENT<sup>38</sup>

(1) Subject to this Constitution, questions arising in the Parliament shall be determined by a simple majority of votes of the members present and voting.

(2) The Speaker or other member presiding at a sitting of the Parliament or of a Committee of the Parliament is, in all cases, entitled to vote, provided that where there is an equality of votes on a question and the Speaker or member presiding has not exercised a deliberative vote on that question, the Speaker or member presiding is entitled to a casting vote.

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#### <sup>37</sup> Purpose of Clause: 3.19

*Provides that the Standing 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: pp 36, 38.

#### <sup>38</sup> Purpose of 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 a deliberative vote on a question, but if he or she does not exercise that vote, 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: pp 35-36.

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### 3.21 VALIDATION OF ACTS OF PARLIAMENT<sup>39</sup>

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 and -

- (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.

### 3.22 MINUTES OF PROCEEDINGS<sup>40</sup>

- (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.

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#### **<sup>39</sup> Purpose of 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.

#### **<sup>40</sup> Purpose of 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.

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### 3.23 STANDING ORDERS<sup>41</sup>

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

## PART 4 - EXECUTIVE

### 4.1 EXTENT OF EXECUTIVE POWER<sup>42</sup>

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.

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#### **41 Purpose of 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'.*

#### **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.*

#### **42 Purpose of 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.*

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## 4.2 GOVERNOR<sup>43</sup>

- (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 sole 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.

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### <sup>43</sup> Purpose of 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.*

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### 4.3 REMUNERATION AND OTHER TERMS AND CONDITIONS OF GOVERNOR<sup>44</sup>

The Governor shall be paid out of the public moneys 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.

### 4.4 ACTING GOVERNOR<sup>45</sup>

- (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.

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**<sup>44</sup> Purpose of 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.

**<sup>45</sup> Purpose of 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.*

*4.4 (6) Provides for the absence of an Acting Governor, The chief Justice of the Supreme Court is to be ex-officio Acting Governor.*

**Variations:**

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

**(b) Pre—Statehood:** No change.

**Reference to Discussion and Information Papers:** Nil.

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- (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.
  - (6) In the absence of any appointment of an Acting Governor, or if the Acting 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 the office, the Chief Justice shall be the Acting Governor.

#### **4.5 OATH OR AFFIRMATION TO BE TAKEN BY GOVERNOR AND ACTING GOVERNOR<sup>46</sup>**

- (1) The Governor or Acting Governor shall, before entering on the duties of his or her office, 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 4.
- (2) An oath or affirmation under this section shall be made before the Chief Justice or a person authorised by the Chief Justice to administer the oath or affirmation.

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**<sup>46</sup> Purpose of Clause: 4.5**

*Provides for the Governor or Acting Governor before taking up his or her duties of office shall 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 4, before the Chief Justice or a person authorised by the Chief Justice to administer the oath or affirmation.*

**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.

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#### 4.6 EXECUTIVE COUNCIL<sup>47</sup>

- (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 Premier and 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 to do so.
- (6) A meeting of the Executive Council shall not be convened otherwise than by the Governor.
- (7) Subject to this section, the procedure of the Executive Council shall be as the Council determines.

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**<sup>47</sup> Purpose of Clause: 4.6**

4.6 (1) Provides for the establishment of the Executive Council to advise the Governor of the Northern Territory.

4.6 (2) Provides for membership of the Executive Council will comprise of members of Parliament who hold the office of Minister for the Northern Territory.

4.6 (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.

4.6 (4) Provides for the Governor to introduce into a meeting of the Executive Council any matter for discussion.

4.6 (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.

4.6 (6) Provides for the Governor to be the only person who can convene a meeting of the Executive Council.

4.6 (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.

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#### 4.7 MINISTERIAL OFFICE<sup>48</sup>

There shall be such number of Ministerial Offices, having such respective designations, as the Governor, acting on the advice of the Premier, from time to time determines.

#### 4.8 APPOINTMENT OF PREMIER AND OTHER MINISTERS OF THE NORTHERN TERRITORY<sup>49</sup>

- (1) The Governor shall, from time to time, appoint as the Premier 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.
- (2) If a vote of no confidence in the government of the Northern Territory 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, 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 -

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**48 Purpose of Clause: 4.7**

*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.*

**49 Purpose of Clause: 4.8**

*4.8 (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.*

*4.8 (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.*

*4.8 (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.*

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- (a) appoint a member of the Parliament to a Ministerial Office, who, on being so appointed, shall be a Minister of the Northern Territory; and
  - (b) at any time, terminate the appointment.

#### 4.9 TENURE OF OFFICE<sup>50</sup>

- (1) The appointment of the Premier takes effect on the day specified in the instrument of appointment and terminates -
  - (a) if 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) if his or her appointment is terminated under section 4.8 (2) by the Governor;
  - (c) if he or she resigns office in writing signed by him or her and delivered to the Governor;
  - (d) when the Parliament first sits after a general election of the Parliament that takes place after the appointment takes effect; or
  - (e) in the case of the Acting Premier, when the Premier resumes the powers and functions of his or her office.
- (2) 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 4.8 (3) by the Governor;

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**<sup>50</sup> Purpose of Clause: 4.9**

*Provides for the tenure of office of Premier, and 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) *in the case of -*
  - (i) *the Premier if he or she resigns in writing to the Governor;*
  - (ii) *a member of the Parliament if he or she resigns in writing to the Governor and the resignation is accepted; or*
- (d) *where he or she has not be 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: pp 58-59 and also Part H.

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- (c) he or she resigns office in writing signed by him or her and delivered to the Governor and the resignation is accepted by the Governor; or
  - (d) the Parliament first meets after a general election of the Parliament that takes place after the appointment takes effect.

#### **4.10 OATH OR AFFIRMATION TO BE TAKEN BY MEMBERS OF EXECUTIVE COUNCIL AND MINISTERS<sup>51</sup>**

- (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 5.
- (2) The Premier and 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 6.
- (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 the oath or affirmation.

### **PART 5 - FINANCE**

#### **5.1 PUBLIC MONEYS<sup>52</sup>**

- (1) The public moneys of the Northern Territory shall be available to defray the expenditure of the Northern Territory.

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##### **<sup>51</sup> Purpose of Clause: 4.10**

*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 5 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:** Nil.

##### **<sup>52</sup> Purpose of Clause: 5.1**

*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.

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- (2) The receipt, expenditure and control of public moneys of the Northern Territory shall be regulated as provided by an Act, or by an enactment continued in force by this Constitution.

## 5.2 WITHDRAWAL OF PUBLIC MONEYS<sup>53</sup>

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

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<sup>53</sup> **Purpose of Clause:** 5.2

*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.

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## PART 6 - JUDICIARY

### 6.1 JUDICIAL POWER OF THE NORTHERN TERRITORY<sup>54</sup>

- (1) The judicial power of the Northern Territory shall be vested in -
  - (a) 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 which shall be a continuation of that Court as it existed immediately before the commencement date; and
  - (b) in such other courts as they existed immediately before the commencement date pursuant to an enactment or as the Parliament establishes by an Act.
- (2) The Supreme Court shall consist of a Chief Justice and such other Judges and officers as prescribed by an enactment continued in force by this Constitution or by an Act.
- (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

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#### <sup>54</sup> Purpose of Clause: 6.1

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.

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.

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. In addition it guarantees the supervisory jurisdiction of the Supreme Court as at the commencement of the Constitution including habeas corpus.

#### **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. In regard to Clause 6.1 (4) 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.

jurisdiction and that of other courts referred to in or established in pursuance of subsection (1) is as prescribed by an enactment continued in force by this Constitution or by an Act of the Commonwealth or of a State or territory of the Commonwealth.

- (4) The jurisdiction of the Supreme Court under subsection (3) extends to -
- (a) an advisory jurisdiction in matters arising under this Constitution or involving its 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; and
  - (b) a supervisory jurisdiction which shall be not less extensive than its supervisory jurisdiction immediately before the commencement date, including its jurisdiction in relation to *habeas corpus*.
- (5) The Supreme Court may in its discretion, whether on application or of its own motion, decline to exercise its advisory jurisdiction in matters arising under this Constitution or involving its interpretation, but it shall publish its reasons in writing for so doing.

## 6.2 APPOINTMENT, REMOVAL AND REMUNERATION OF JUDGES OF THE SUPREME COURT<sup>55</sup>

- (1) The Chief Justice shall be appointed by the Governor in accordance with the advice of the Executive Council, after consultation by the Minister of the Northern Territory having ministerial responsibility for the matter with the Leader of the Opposition and

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### <sup>55</sup> Purpose of 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 the Leader of the Opposition and 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, the Leader of the Opposition and with bodies representing the legal profession.*

*6.2 (3) Provides for the appointment of an Acting Judge of or about 70 years of age for up to 12 months at a time.*

*6.2 (4) 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 (5) 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 (6) and (7) 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.*

*6.2 (8) Clarifies the application of Acting Judge under Clause 6.2 (3).*

#### **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: pp 71-74, 78-79.

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with such bodies representing the legal profession in the Northern Territory as that Minister thinks fit.

- (2) The Judges other than the Chief Justice shall be appointed by the Governor in accordance with the advice of the Executive Council, after consultation by the Minister of the Northern Territory having ministerial responsibility for the matter with the Chief Justice, with the Leader of the Opposition and with such bodies representing the legal profession in the Northern Territory as that Minister thinks fit.
- (3) The Governor, in accordance with the advice of the Executive Council, may appoint a person who is or was at any time a Judge or a Judge of any other superior Court in Australia to be an acting Judge on or after that person attains the age of 70 years, for such period not exceeding 12 months at a time, and subject to such terms, conditions and limitations, as are specified by the Governor.
- (4) A Judge 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.
- (5) A Judge shall retire from office on attaining the age of 70 years, or such greater age as is prescribed by an Act.
- (6) Judges and the members of other courts referred to in section 6.1 shall be paid out of the public moneys of the Northern Territory such remuneration, and be employed on such terms and conditions, as provided by or under an enactment continued in force by this Constitution or by or under an Act.
- (7) The remuneration or other terms and conditions of appointment of a Judge shall not, without the Judge's written consent, be reduced while the Judge continues in office.
- (8) In this section, other than in subsection (3), a reference to a Judge includes an additional Judge but does not include an acting Judge.

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### 6.3 DOCTRINE OF SEPARATION OF POWERS<sup>56</sup>

Subject to section 6.1(4)(b), nothing in this Constitution prevents the passing by the Parliament of an Act -

- (a) conferring judicial power 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.

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<sup>56</sup> **Purpose of 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, including by way of exercising its supervisory jurisdiction over other courts and tribunals.*

**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: pp 75-77.

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## PART 7 - ABORIGINAL RIGHTS

### 7.1 PROTECTION OF ABORIGINAL LAND RIGHTS<sup>57</sup>

- (1) Subject to this Constitution, the Parliament shall enact an Organic Law 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 date, 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) An Organic Law enacted in pursuance of subsection (1) may be amended only by another Organic Law in accordance with section 2.5, and the affirmative votes required for such an amendment under that section shall be equal to or more than **[Alternative 1: two-thirds - Alternative 2:- three-quarters]**.
- (3) Notwithstanding anything in the "Aboriginal Land Rights (Northern Territory) Act" as an Organic Law, an estate in fee simple in Aboriginal land shall not be capable of being sold, assigned, mortgaged, charged, surrendered, extinguished, or otherwise disposed of unless, after enquiry, a court or body established or identified by an Organic Law is satisfied that -

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#### <sup>57</sup> Purpose of 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 by 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. The decision of the Supreme Court Judge is subject to appeal in the normal way. 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.



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- (a) 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
  - (b) 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 be constituted by a Judge nominated by the Chief Justice, that it shall have power to conduct such enquiries as it considers necessary and to issue a summons for the attendance of witnesses and for the production of documents and that the findings of that court or body shall be subject to appeal as if it was a civil judgment of a single Judge.
- (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 an estate in fee simple, 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 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 is extinguished.
- (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.

## 7.2 PROTECTION OF ABORIGINAL SACRED SITES<sup>58</sup>

An Organic Law shall provide for the protection of, and the prevention of the desecration of, Aboriginal 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 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.

## 7.3 ABORIGINAL SELF-DETERMINATION<sup>59</sup>

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

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### <sup>58</sup> Purpose of 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 of 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 declares that the existing Northern 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 - see also Clause 11.2.

### <sup>59</sup> Purpose of Clause: 7.3

*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. See definition of aboriginal self-determination in Clause 11.1.*

#### **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.

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

**8.1 LANGUAGE, SOCIAL, CULTURAL AND RELIGIOUS MATTERS<sup>60</sup>**

- (1) Notwithstanding anything in the laws of the Northern Territory other than as provided in subsections (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 subsection (1) (a), (b) and (c) shall be subject to this Constitution, any Organic Law and any reasonable regulation imposed by an Act (not being an Organic Law) in the public interest.
- (3) The rights in subsection (1) (b) and (c) 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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**<sup>60</sup> Purpose of Clause: 8.1**

*Provides an express 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 and 15**.

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## PART 9 - LOCAL GOVERNING BODIES

### 9.1 LOCAL GOVERNMENT<sup>61</sup>

- (1) Subject to this Constitution, 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 an Act.
- (3) Without limiting the generality of subsection (2) the Parliament shall, in any Act in respect of local governing bodies, provide for -
  - (a) matters relating to their -
    - (i) objectives, powers, functions, duties and responsibilities;
    - (ii) rating and any other forms of revenue, expenditure and fiscal accountability;
    - (iii) membership; and
    - (iv) boundaries; and

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#### **<sup>61</sup> Purpose of Clause: 9.1**

*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 -*

*objectives, powers, functions and responsibilities;*

*rating and any other forms of revenue, expenditure and fiscal accountability;*

*membership; and*

*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. See definition of 'local government' and 'local governing bodies' under Clause 11.1, which includes municipal and community government.

- (b) protection from dismissal of the members of a local governing body or from the dissolution of a local governing body without public enquiry.
- (4) Any local governing body in existence immediately before the commencement date under an enactment continued in force by this Constitution shall, subject to this section and any law of the Northern Territory, continue in existence on and from the commencement date.

## PART 10 - TRANSITIONAL PROVISIONS

### 10.1 DEFINITIONS<sup>62</sup>

In this Part, unless the contrary intention appears -

"former Executive Council" means the Executive Council of the Northern Territory as constituted from time to time under the *Self-Government Act*;

"former Minister of the Territory" means a person holding a Ministerial Office under section 36 of the *Self-Government Act* immediately before the commencement date;

"former Speaker" means the Speaker of the Legislative Assembly chosen under section 24 of the *Self-Government Act* and holding office immediately before the commencement date;

"interest" includes any right, title, estate, power, privilege, claim, demand, charge, lien or encumbrance, whether at law or in equity;

"instrument" includes rules, regulations and by-laws.

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<sup>62</sup> **Purpose of Clause:** 10.1

These definitions are necessary for this Part only.

**Variations:**

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

(b) **Pre—Statehood:** No Change.

**Reference to Discussion and Information Papers:** Nil.

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## 10.2 CONTINUANCE OF LAWS AND ACTIONS TAKEN AND DECISIONS MADE UNDER LAWS<sup>63</sup>

- (1) Subject to this Constitution, on and after the commencement date, all laws of the Northern Territory in force immediately before the commencement date shall continue and have the same operation as they would have had if the *Self-Government Act* had not been repealed, subject to alteration or repeal by or under an Act.
- (2) Where a law of the Northern Territory in force immediately before the commencement date, the operation of which is preserved by subsection (1), is or was a law of South Australia, any power or function which by that law is vested in the Governor of South Australia, in the Governor of South Australia with the advice of the Executive Council, or in any Minister, officer, body or authority of South Australia shall, in relation to the Northern Territory under this Constitution, be vested in and exercised or performed by the Governor of the Northern Territory or the Minister, officer, body, or authority, as the case may be, exercising similar powers and functions in the Northern Territory, or as the Governor of the Northern Territory directs.
- (3) Where by a law of the Northern Territory, the operation of which is preserved by subsection (1), a power or function is vested in the Administrator, in the Administrator with the advice of the Executive Council or in any Minister, officer, body or authority of the Northern Territory of Australia as constituted at any time before the commencement date, that power or function shall, in relation to the Northern Territory under this Constitution, be vested in and exercised or performed by the Governor, the Minister, officer, body or authority, as the case may be, exercising similar powers and functions in the Northern Territory under this Constitution, or as the Governor directs.
- (4) A judicial, administrative or other act done or decision made by or on behalf or in the name of a person (including the holder or occupier of a named office), body or authority under a law of the Northern Territory the operation of which is preserved by subsection (1), and having legal effect immediately before the commencement date shall, subject to this Constitution and any act or provision made under an Act, continue to have legal effect on and after that date under that law of the Northern Territory, according to its tenor.
- (5) A reference in this section to a law of the Northern Territory in force immediately before the commencement date -

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**63 Purpose of Clause:** 10.2

*Provides for the continuance in existence of Territory laws, actions and decision taken under those laws upon the commencement of the new Constitution.*

**Variations:**

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

**(b) Pre—Statehood:** No Change.

**Reference to Discussion and Information Papers:** Nil.

- 
- (a) does not include a reference to an Act of the Commonwealth or an instrument (not being an Ordinance or instrument made under an Ordinance) made under an Act of the Commonwealth; but
  - (b) includes an enactment, and an instrument under an enactment, in force immediately before the commencement date or made and assented to, but not in force, before that date.

### 10.3 ADMINISTRATOR TO CONTINUE IN OFFICE AS FIRST GOVERNOR FOR UP TO 12 MONTHS<sup>64</sup>

Where, immediately before the commencement date, a person holds office as the Administrator or Acting Administrator under a provision of the *Self-Government Act*, then on and after the commencement date, but subject to this Constitution, that person shall hold office as the first Governor or Acting first Governor, as the case may be, for a period not exceeding 12 calendar months from the commencement date, as if he or she had been appointed and had made and subscribed the relevant oath or affirmation of allegiance and office under the corresponding provisions of this Constitution, and any instrument by which his or her appointment was made or oath or affirmation of allegiance or office was subscribed continues in force accordingly, but that person shall be eligible for reappointment under and in accordance with this Constitution.

### 10.4 LEGISLATIVE ASSEMBLY TO CONTINUE<sup>65</sup>

- (1) Notwithstanding the repeal of the *Self-Government Act*, but subject to this Constitution, until the date of the first general election of members of the Parliament after the commencement date -
  - (a) the former Legislative Assembly, as constituted immediately before the commencement date, is continued in existence as if it were the Parliament elected under this Constitution, and may be prorogued or dissolved in accordance with this Constitution;

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<sup>64</sup> **Purpose of Clause:** 10.3

Provides for the last Administrator to continue in office as the first Governor for up to 12 months from the commencement of the new Constitution.

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

(b) **Pre—Statehood:** No Change.

**Reference to Discussion and Information Papers:** Nil.

<sup>65</sup> **Purpose of Clause:** 10.4

10.4 (1) Provides for the continuance of the Legislative Assembly (including its Members and Officers) as the first Parliament under the new Constitution for the balance of its existing term.

10.4 (2) Provides for the first general elections under the new Constitution, depending on whether the Parliament is to have no fixed term up to 4 years or 3 years partially fixed term or a fixed 4 year term.

10.4 (3) Provides for the continuance of the existing Standing Rules and Orders of the Legislative Assembly.

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

(b) **Pre—Statehood:** No Change.

**Reference to Discussion and Information Papers:** Nil.

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- (b) the members of the former Legislative Assembly holding office immediately before the commencement date hold office as members of the Parliament under this Constitution on and after that date as if they had been elected, and had made and subscribed the relevant oath or affirmation of allegiance and office, under the corresponding provisions of this Constitution; and
- (c) the former Speaker, and persons appointed as Acting Speakers of the former Legislative Assembly holding office immediately before the commencement date, holds or hold office as the Speaker and Acting Speakers, as the case may be, on and after that date as if chosen or appointed under the corresponding provisions of this Constitution.

**Alternative 1 - No fixed term**

- (2) Notwithstanding anything in this Constitution, a general election of members of the Parliament shall be held not later than 4 years after the commencement of the first meeting of the former Legislative Assembly that occurred after the last general election of members before the commencement date (where that meeting occurs before the commencement date), or where that meeting does not occur before the commencement date, not later than 4 years after the commencement date.

**Alternative 2 - Three year partial fixed term**

- (2) Subject to section 3.11(4) (construing a reference to the Parliament in that section as including a reference to the former Legislative Assembly) but notwithstanding anything else in this Constitution, a general election of members of the Parliament shall be held not later than 4 years after the commencement of the first meeting of the former Legislative Assembly that occurred after the last general election of members before the commencement date (where that meeting occurs before the commencement date), or where that meeting does not occur before the commencement date, not later than 4 years after the commencement date.

**Alternative 3 - Fixed Four-year term**

- (2) A general election of members of the Parliament shall be held when a general election would be required to be held had section 3.11 been in operation immediately before the polling day for the last general election of members of the former Legislative Assembly before the commencement date and a reference in that section to the Parliament included a reference to the former Legislative Assembly.

- (3) Notwithstanding the repeal of the *Self-Government Act*, the Standing Rules and Orders of the former Legislative Assembly in force immediately before the commencement date continue in force as the Standing Orders of the Parliament, but may be altered or repealed in accordance with this Constitution.



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## 10.5 REMUNERATION, ALLOWANCES OF MEMBERS OF FORMER LEGISLATIVE ASSEMBLY TO CONTINUE<sup>66</sup>

- (1) Until a person receives remuneration, allowances and other entitlements in accordance with an Act, he or she shall receive in respect of his or her services as a member of the Parliament, a member of the Executive Council or a Minister of the Northern Territory the same remuneration, allowances and other entitlements as a member of the former Legislative Assembly, member of the former Executive Council or former Minister of the Territory, as the case may be, were entitled to receive immediately before the commencement date under the *Self-Government Act*, and the *Remuneration Tribunal Act*, with the necessary changes, applies to and in relation to the members of the Parliament, members of the Executive Council and Ministers of the Northern Territory as if they held the corresponding offices referred to in that latter Act, and paragraph (e) of section 3.15(3) of this Constitution applies as if that latter Act were an Act referred to in that paragraph.
- (2) In subsection (1) "Act" (first mentioned) includes an enactment, whenever passed, amended by an Act.

## 10.6 FUNCTIONS PERFORMED BY LEGISLATIVE ASSEMBLY AND EXECUTIVE COUNCIL<sup>67</sup>

Subject to this Constitution, an act done or decision made under the *Self-Government Act* before the commencement date, by, on behalf of, or in the name of, the former Legislative Assembly or the former Executive Council has effect on and after that date as if it had been done or made by, on behalf of, or in the name of, the Parliament or the Executive Council under this Constitution.

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### <sup>66</sup> Purpose of Clause: 10.5

Provides for the preservation of entitlements of existing Members and Ministers.

(a) Republic: No Change.

(b) Pre—Statehood: No Change.

Reference to Discussion and Information Papers: Nil.

### <sup>67</sup> Purpose of Clause: 10.6

Provides for the continuance of actions and decisions under the Northern Territory (Self-Government) Act.

(a) Republic: No Change.

(b) Pre—Statehood: No Change.

Reference to Discussion and Information Papers: Nil.

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## 10.7 FUNCTIONS PERFORMED BY SPECIFIED PERSONS<sup>68</sup>

Subject to this Constitution, an act done or decision made by, on behalf of, or in the name of, a person under a provision of the *Self-Government Act* before the commencement date has effect on and after that date as if it had been done or made by, on behalf of, or in the name of, the appropriate person under the corresponding provision of this Constitution.

## 10.8 PROPOSED LAWS OF FORMER LEGISLATIVE ASSEMBLY PASSED BUT NOT ASSENTED TO BEFORE COMMENCEMENT DATE<sup>69</sup>

- (1) A proposed law passed by the former Legislative Assembly before the commencement date but not assented to before that date (other than a proposed law to which subsection (2) applies) is, for the purposes of this Constitution, deemed to be a proposed law passed by the Parliament under this Constitution.
- (2) Where, before the commencement date, the Administrator then in office had, in accordance with section 7 of the *Self-Government Act*, reserved a proposed law for the Governor-General's pleasure, and the Governor-General has not made a declaration under section 8(1) of the *Self-Government Act*, as then in force in relation to the reserved proposed law, the proposed law is, for the purposes of this Constitution, deemed to be a proposed law passed by the Parliament and may be presented to, and assented to by, the Governor.

## 10.9 REFERENCES IN OTHER LAWS<sup>70</sup>

In any law of the Northern Territory or any instrument having effect under a law of the Northern Territory (including an instrument that came into operation before the commencement date), except so far as the context or this Constitution otherwise requires -

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### <sup>68</sup> Purpose of Clause: 10.7

*Provides for the continuance of actions and decisions by specified persons under the Northern Territory (Self-Government) Act.*

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

**(b) Pre—Statehood:** No Change.

**Reference to Discussion and Information Papers:** Nil.

### <sup>69</sup> Purpose of Clause: 10.8

*Provides for the preservation of proposed laws passed by the Legislative Assembly but not assented to at the commencement of the new Constitution.*

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

**(b) Pre—Statehood:** No Change.

**Reference to Discussion and Information Papers:** Nil.

70

### Purpose of Clause: 10.9

*Provides for the appropriate transitional references in existing laws of the Northern Territory.*

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

**(b) Pre—Statehood:** No Change.

**Reference to Discussion and Information Papers:** Nil.

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- 
- (a) a reference, however expressed, to the former Legislative Assembly or to the legislature of the Northern Territory or of the Northern Territory of Australia shall be read as a reference to the Parliament;
  - (b) a reference to the Executive Council established by the *Northern Territory (Administration) Act* 1910 of the Commonwealth or to the former Executive Council shall be read as including a reference to the Executive Council under this Constitution; and
  - (c) a reference, however expressed, to a person holding office under a provision of the *Self-Government Act* shall be read as including a reference to a person holding office under a corresponding provision of this Constitution.

## 10.10 TRANSFER OF PROPERTY<sup>71</sup>

- (1) In this section -

"interests in land" includes (without limitation) interests -

- (a) in an estate in fee simple;
- (b) under easements, rights of way and mortgages;
- (c) as lessee or sub-lessee; and
- (d) in minerals or other substances on or in land;

"mineral" means a naturally occurring substance or mixture of substances, whether in a solid, liquid or gaseous state.

- (2) All interests in land or personal property which, immediately before the commencement date, were held by or on behalf of the Northern Territory of Australia as established by the *Self-Government Act*, are, by force of this section, vested in or held by or on behalf of the Northern Territory under this Constitution on the commencement date.
- (3) All interests in land in the Northern Territory which, immediately before the commencement date, were held from the Northern Territory of Australia as established by the *Self-Government Act* are, by force of this section, held from the Northern

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**<sup>71</sup> Purpose of Clause:** 10.10

*Provides for the transfer of property rights of the self-governing Northern Territory to the new Northern Territory body politic established by the new Constitution and for the preservation of existing private property rights.*

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

**(b) Pre—Statehood:** No Change.

**Reference to Discussion and Information Papers:** Nil.

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Territory under this Constitution on and after that date on the same terms and conditions as those on which they were held from the Northern Territory of Australia.

### 10.11 CONTRACTS<sup>72</sup>

Subject to section 10.14, a reference in any contract, deed or other document having any legal effect and entered into or made before the commencement date and to which the Northern Territory of Australia as established by the *Self-Government Act* was a party immediately before that date, shall be taken to be a reference to the Northern Territory under this Constitution, and the contract, deed or other document by force of this section and without other novation or confirmation, may be enforced and has effect accordingly.

### 10.12 LEGAL PROCEEDINGS<sup>73</sup>

Subject to section 10.14, where immediately before the commencement date legal or administrative proceedings to which the Northern Territory of Australia as established by the *Self-Government Act* was a party were pending before any court or other body, then on the commencement date the Northern Territory under this Constitution is, by force of this section, substituted as a party to those proceeding instead of the Northern Territory of Australia.

### 10.13 OTHER RIGHTS, OBLIGATIONS, LIABILITIES AND DUTIES<sup>74</sup>

Subject to this Constitution, where the Northern Territory of Australia as established by the *Self-Government Act* has, or is entitled to the benefit of, or is subject to, any powers, functions, authorities, rights, obligations, liability or duties, and in existence immediately before the commencement date, they shall on the commencement date become the powers,

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<sup>72</sup> **Purpose of Clause:** 10.11

*Provides for the transfer of contractual rights of the self-governing Northern Territory to the new Northern Territory body politic established by the new Constitution.*

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

**(b) Pre—Statehood:** No Change.

**Reference to Discussion and Information Papers:** Nil.

<sup>73</sup> **Purpose of Clause:** 10.12

*Provides for the continuation of pending legal proceedings in which the self-governing Northern Territory was a party.*

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

**(b) Pre—Statehood:** No Change.

**Reference to Discussion and Information Papers:** Nil.

<sup>74</sup> **Purpose of Clause:** 10.13

*Provides for a general 'catch-all' transfer of the rights, obligations, liabilities and duties of the self-governing Northern Territory.*

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

**(b) Pre—Statehood:** No Change.

**Reference to Discussion and Information Papers:** Nil.

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functions, authorities, rights, obligations, liability or duties of the Northern Territory under this Constitution.

#### 10.14 CLARIFICATION OF TRANSITIONAL ARRANGEMENTS<sup>75</sup>

An Organic Law or other Act may make whatever provision the Parliament thinks necessary or desirable to ensure a smooth transition from self-government arrangements under the *Self-Government Act* to the arrangements under this Constitution or to ensure there is no inconvenience in or disruption to the government of the Northern Territory or of any of its agencies, and, in particular, but without limiting the generality of the foregoing, for securing, whether conditionally or otherwise -

- (a) the continuance of any offices, positions and bodies (corporate or otherwise) and their assets, liabilities, powers, functions and authorities;
- (b) the continuance of enactments as laws of the Northern Territory and anything done or to be done or permitted to be done under those enactments and laws; and
- (c) the rights, obligations, liability or duties of any person or body (corporate or otherwise, and including the Northern Territory) as a result of or arising out of or incidental to the commencement of this Constitution and the repeal of the *Self-Government Act*.

#### 10.15 NORTHERN TERRITORY ABORIGINAL SACRED SITES ACT<sup>76</sup>

Until the enactment of an Organic Law under section 7.2, the *Northern Territory Aboriginal Sacred Sites Act* as continued in force by this Constitution is hereby declared to be an Organic Law.

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<sup>75</sup> **Purpose of Clause:** 10.14

*Provides legislative power for the new Parliament to clarify the transitional arrangements.*

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

**(b) Pre—Statehood:** No Change.

**Reference to Discussion and Information Papers:** Nil.

<sup>76</sup> **Purpose of Clause:** 10.15

*Provides for the clarification of the Northern Territory Sacred Sites Act as an 'Organic Law' pending the enactment of a new Organic Law under Clause 7.2.*

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

**(b) Pre—Statehood:** No Change.

**Reference to Discussion and Information Papers:** Nil 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.

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## PART 11 - INTERPRETATION

### 11.1 DEFINITIONS<sup>77</sup>

In this Constitution, unless the contrary intention appears -

"Aboriginal" and "Aboriginal person" means a person who is a member of the Aboriginal race of Australia;

"Aboriginal land" means Aboriginal land within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976*, of the Commonwealth, or the Organic Law referred to in section 7.1(1);

"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;

"Act" or "Act of the Parliament" means a proposed law passed by the Parliament and assented to under Part 3, and includes an Organic Law under section 2.3;

"Acting Governor" means a person appointed under section 4.4 to act in the office of the Governor;

"Acting Judge" means a Judge appointed under section 6.2(3);

"Chief Justice" means the Chief Justice of the Supreme Court and includes an acting Chief Justice;

"commencement date" means the date on which this Constitution comes into operation;

"common law" includes equity;

"Committee of the Parliament" means a Committee established by the Parliament and includes the Standing Committee on the Constitution and Organic Laws;

"Constitution" means this Constitution of the Northern Territory, and includes the Preamble;

"document" includes a form of information, however stored or retrieved or retrievable;

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<sup>77</sup> **Purpose of Clause:** 11.1

*Provides the necessary definitions for the whole of the new Constitution.*

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

**(b) Pre—Statehood:** No Change.

**Reference to Discussion and Information Papers:** Nil.

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"enactment" means -

- (a) a law (however described or entitled) passed by the former Legislative Assembly and assented to under section 7 or 8 of the *Self-Government Act* and continued in force by this Constitution;
- (b) an Ordinance made under the *Northern Territory (Administration) Act 1910* of the Commonwealth, and continued in force by this Constitution; or
- (c) a law (however described or entitled) passed by the legislature of South Australia or by the Parliament of England and in force in the Northern Territory immediately before the commencement date and continued in force by this Constitution.

"Executive Council" means the Executive Council of the Northern Territory established by section 4.6;

"former Legislative Assembly" means the Legislative Assembly of the Northern Territory of Australia as constituted from time to time under the *Self-Government Act* or the *Northern Territory (Administration) Act 1910* of the Commonwealth;

"Gazette" means the Government Gazette of the Northern Territory;

"Governor" means a person appointed under section 4.2;

"Judge" means a Judge of the Supreme Court, and includes, as the context permits, an acting Judge and an additional Judge of the Supreme Court;

"Leader of the Opposition" means the member of the Parliament who is recognised as being the leader of the opposition political party with the most members in the Parliament;

"local government" and "local governing bodies" extend to and include municipal government and community government, and other bodies prescribed by an Organic Law or by another Act;

"Minister of the Northern Territory" means a person holding a Ministerial Office under section 4.8, and includes the Premier;

"Ministerial Office" means an office referred to in section 4.7;

"Northern Territory" means, as the context requires -

- (a) the body politic established by section 1; or
- (b) the geographical area for the time being comprising the Northern Territory of Australia;

"Organic Law" has the meaning given in section 2.3;

"Parliament" means the Parliament of the Northern Territory established by section 3.6;

"Premier" means the member of the Parliament appointed under section 4.8.(1) to be the Premier of the Northern Territory, and includes the acting Premier;

"public interest" includes the protection and maintenance of interests in or in respect of public or private property, and whether proprietary or otherwise;

"public moneys of the Northern Territory" means the revenues, loans and other moneys received by or on behalf of the Northern Territory;

"*Self-Government Act*" means the *Northern Territory (Self-Government) Act 1978* of the Commonwealth;

"Standing Orders" means the Standing Orders of the Parliament made under section 3.23 or continued by section 10.4(3);

"Supreme Court" means the Supreme Court of the Northern Territory.



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## 11.2 INTERPRETATION OF THIS CONSTITUTION<sup>78</sup>

- (1) In the interpretation of this Constitution, a construction that would promote any purpose or object underlying this Constitution (whether or not that purpose or object is expressly stated in this Constitution) shall be preferred to a construction that would not promote that purpose or object.
- (2) Subject to subsection (4), in the interpretation of a provision of this Constitution, consideration may be given to any material not forming part of this Constitution -
  - (a) that came into existence before the commencement of the provision; and
  - (b) relevant to and capable of assisting in ascertaining its meaning.
- (3) Without limiting the generality of subsection (2), the material that may be considered in accordance with that subsection includes -

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### <sup>78</sup> Purpose of Clause: 11.2

*Provides the mechanism to assist the Courts in the interpretation of this Constitution, and without limiting the generality of this section, material that may be considered includes:*

- (a) *all matters not forming part of this Constitution that are set out in the document containing the text of this Constitution or a draft of this Constitution or part of this Constitution, if printed by or under the authority of the Northern Territory and publicly released before the time when that provision commenced;*
- (b) *any relevant paper, report or other document of a Committee of the Legislative Assembly and of any other committee of inquiry or other similar body that was laid before the Legislative Assembly before the time when that provision commenced;*
- (c) *any explanatory memorandum or other document relating to a draft of this Constitution or part of this Constitution that was laid before, or furnished to, the members of the Legislative Assembly before the time when that provision commenced;*
- (d) *any speech or statement made in or to the Legislative Assembly concerning any aspect of a draft of this Constitution and made before that provision commenced; or*
- (e) *any document publicly released by the authority of the Northern Territory Constitutional Convention set up under the Constitutional Convention Act, 1996 and any transcript of the proceedings of that Constitutional Convention or any Committee thereof.*

*In determining whether consideration should be given to any material in accordance with this section, or in considering the weight that would be given to any such material, regard shall be had, in addition to any other relevant matters, to:*

- (a) *the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in this Constitution and any purpose or object underlying this Constitution;*
- (b) *the need to avoid prolonged legal or other proceedings without compensating advantage; and*
- (c) *nothing in this section shall be taken to limit the use that may be made of any other material which may be taken into account in the interpretation of this Constitution in accordance with any law in force in 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 State Constitution for the Northern Territory, 1987.

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- (a) any matter set out in the document containing the text of this Constitution or a draft of this Constitution or part of this Constitution, if printed by or under the authority of the Northern Territory of Australia as established by the *Self-Government Act* and publicly released before the commencement of that provision;
  - (b) any relevant paper, report or other document of a Committee of the former Legislative Assembly and of any other committee of inquiry or other similar body that was laid before the former Legislative Assembly before the commencement of that provision;
  - (c) any explanatory memorandum or other document relating to a draft of this Constitution or part of this Constitution that was laid before, or furnished to, the members of the former Legislative Assembly before the commencement of that provision;
  - (d) any speech or statement made in or to the former Legislative Assembly concerning any aspect of a draft of this Constitution and made before the commencement of that provision; or
  - (e) any document publicly released by the authority of the Northern Territory Constitutional Convention set up under the *Constitutional Convention Act 199x* and any transcript of the proceedings of that Constitutional Convention or any of its committees.
- (4) In determining whether consideration should be given to any material in accordance with subsection (2), or in considering the weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to -
- (a) the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in this Constitution and any purpose or object underlying this Constitution;
  - (b) the need to avoid prolonged legal or other proceedings without compensating advantage.
- (5) Nothing in this section shall be taken to limit the use that may be made of any other material which may be taken into account in the interpretation of this Constitution in accordance with any law of the Northern Territory.

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### 11.3 MISCELLANEOUS INTERPRETIVE PROVISIONS<sup>79</sup>

- (1) In this Constitution, unless the contrary intention appears -
- (a) where words, expressions and phrases are given a particular meaning, other parts of speech and grammatical forms of that word, expression or phrase have corresponding meanings;
  - (b) words in the singular shall include the plural and words in the plural shall include the singular; and
  - (c) all headings and the schedules to this Constitution are part of this Constitution.
- (2) In the reckoning of time under this Constitution -
- (a) where a period of time dating from a given day, act or event is prescribed, allowed or limited for any purpose, the time shall be reckoned exclusive of such day or of the day of such act or event; and
  - (b) subject to section 3.11 [Alternative 3 only], where the last day of any period prescribed, allowed or limited for the doing of anything falls on a Saturday, on a Sunday or on a day which is a public holiday in the Northern Territory, the thing may be done on the first day following which is not a Saturday, a Sunday or a public holiday in the Northern Territory.
- (3) In the reckoning of age of a person under this Constitution -
- (a) the person shall be taken to have attained a particular age on the relevant anniversary of that person's birth;
  - (b) where a person was born on 29 February in any year, then in any subsequent year that is not a leap year, the anniversary of the birth of that person shall be deemed to be 28 February in that subsequent year.

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<sup>79</sup> **Purpose of Clause:** 11.3

*Provides miscellaneous interpretive provisions for the new Constitution bearing in mind that the Constitution is not an Act of the Parliament and therefore is not subject to the operation of the Interpretation Act.*

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

**(b) Pre—Statehood:** No Change.

**Reference to Discussion and Information Papers:** Nil 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.

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**SCHEDULE 1****Column 1****(LEAVE TO CONVENTION)****Section 2.4(8)  
Column 2**

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**SCHEDULE 2****Sections 3.6 (6), 4.5 (1)****OATH**

I, A B , do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her heirs and successors according to law: so held me God!

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**AFFIRMATION**

I, A B , do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her heirs and successors according to law.

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**SCHEDULE 3****Section 3.6(6)****OATH**

I, A B , do swear that I will render true and faithful service as a member of the Parliament of the Northern Territory: so help me God!

**AFFIRMATION**

I, A B , do solemnly and sincerely affirm and declare that I will render true and faithful service as a member of the Parliament of the Northern Territory.

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**SCHEDULE 4****Section 4.5(1)****OATH**

I, A B , do swear that I will well and truly serve our Sovereign Lady the Queen in the Office of [Governor] [Acting Governor] of the Northern Territory and that I will uphold and maintain the Constitution of the Northern Territory and do right to all manner of people according to law, without fear or favour, affection or ill-will: So help me God!

**AFFIRMATION**

I, A B , do solemnly and sincerely affirm and declare that I will well and truly serve our Sovereign Lady the Queen in the Office of [Governor] [Acting Governor] of the Northern Territory and that I will uphold and maintain the Constitution of the Northern Territory and do right to all manner of people according to law, without fear or favour, affection or ill-will.

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**SCHEDULE 5****Section 4.10(1)****OATH**

I, A B , do swear that, except as may be required by law, I will not divulge any information (including the contents of any document) of which I have become aware by reason of my membership of the Executive Council of the Northern Territory: So help me God!

**AFFIRMATION**

I, A B , do solemnly and sincerely affirm and declare that, except as may be required by law, I will not divulge any information (including the contents of any document) of which I have become aware by reason of my membership of the Executive Council of the Northern Territory.

**SCHEDULE 6**

**Section 4.10(2)**

**OATH**

I, A B , do swear that I will well and truly serve the government and people of the Northern Territory in the office of [Premier] [Minister of the Northern Territory] in accordance with the Constitution of the Northern Territory and the law: So help me God!

**AFFIRMATION**

I, A B , do solemnly and sincerely affirm and declare that I will well and truly serve the government and people of the Northern Territory in the office of [Premier] [Minister of the Northern Territory] in accordance with the Constitution of the Northern Territory and the law.

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**APPENDIX 9      OPTIONS FOR DEALING WITH RIGHTS**

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## OPTIONS FOR DEALING WITH RIGHTS

### 1. **Introduction**

The draft Constitution to which this Addendum is attached contains a limited number of specific proposals<sup>1</sup> that are relevant to matters that could be included in a "Bill of Rights" (or similar document, however called) if one was to be inserted into that draft Constitution.

The Committee has not, however, recommended the inclusion of a comprehensive set of "rights" in that draft Northern Territory Constitution.

As to any remaining "rights"-type matters not so included in the draft Constitution, the Committee felt that it was sufficient to bring this subject to the attention of Honourable members of the Legislative Assembly and other readers, in the manner contained in this Addendum, listing the options. For this purpose, this Addendum is to be read in conjunction with the Committee's Discussion Paper No. 8 entitled "A Northern Territory Bill of Rights" of March 1995.

The Committee notes that there are several alternate views as to how these remaining matters could be addressed. Traditionally these matters have often been incorporated in constitutional provisions at the national level, setting out the rights in question. A second method can be through incorporation in ordinary national legislation rather than in legal provisions (constitutional or otherwise) at a State or Territory level. A third alternative is by ordinary State or Territory legislation. The options are listed more fully below. It does not necessarily follow that these matters must be dealt with in the State or territory constitutions or even in organic laws (if any) of a State or territory.

The Sessional Committee does not have a unanimous view on whether all or any of these remaining matters should be included in the draft Northern Territory Constitution.

The purpose of this Addendum is to set out in summary form those rights dealt with in the Commonwealth Constitution, those rights already dealt with in national legislation and in international treaties and conventions to which Australia is a party and which have been implemented by national legislation, those rights already included in the Committee's draft Northern Territory Constitution, and then to list the options for dealing with any remaining rights. This approach reflects the fact that the Northern

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<sup>1</sup> See Item 5 below, which summarises the rights already contained in the draft Northern Territory Constitution.



Territory is a part of the Australian constitutional system (even though not yet a State) and that it and its citizens have (or at least will have upon any grant of Statehood), the benefit of certain guarantees in the Commonwealth Constitution, as well as relevant protections provided by national legislation and by treaties and conventions (to the extent that they are implemented in Australian law).

## 2. **Relevant Rights Provisions already in the Commonwealth Constitution**

### (i) Express Rights

These are of a fairly limited nature in the Commonwealth Constitution, as that Constitution does not contain a comprehensive "Bill of Rights". They include:

- (a) no compulsory acquisition of property otherwise than on just terms;<sup>2</sup>
- (b) trial by jury for indictable offences;<sup>3</sup>
- (c) absolute freedom of movement between States;<sup>4</sup>
- (d) freedom of religion;<sup>5</sup>

<sup>2</sup> Section 51(xxxi) of the Commonwealth Constitution prevents the passing of valid laws by the Commonwealth Parliament for the acquisition of property from any State or person unless the acquisition is on just terms. This only applies to a compulsory acquisition under Commonwealth law, not under State law nor a self-governing territory law. The guarantee may not apply in territories at all. A similar statutory guarantee in section 50(1) of the Northern Territory (Self-Government) Act 1978, preventing the Legislative Assembly of the Northern Territory from legislating for the acquisition of property otherwise than on just terms, will presumably disappear if that Act is repealed and replaced by the draft Northern Territory Constitution. See however, the proposal in section 3.1(3) of the draft Northern Territory Constitution to incorporate a similar provision to that in section 50(1).

<sup>3</sup> Section 80 of the Commonwealth Constitution provides that the trial of indictable offences against a law of the Commonwealth shall be by jury in the State where the offence was committed. This does not apply to non-indictable offences, nor to any offences under State and self-governing territory law. The section may not operate in territories at all.

<sup>4</sup> Section 92 of the Commonwealth Constitution guarantees absolute freedom of intercourse between States. It has no application to movement occurring solely within a State or within a Territory, nor to movement between a State and a Territory. It does, however, prevent the Commonwealth or a State from infringing the right of free movement between States except on clearly justifiable grounds. A similar statutory guarantee to section 92 found in section 49 of the Northern Territory (Self-Government) Act 1978, applicable between the Northern Territory and a State, will presumably disappear if that Act is repealed and replaced by the draft Northern Territory Constitution. Section 92 of the Commonwealth Constitution would fill that gap if the Northern Territory became a new State contemporaneously with the commencement of that new Northern Territory Constitution, but otherwise there would be a gap which may have to be filled by Commonwealth legislation.

<sup>5</sup> Section 116 of the Commonwealth Constitution prevents the Commonwealth Parliament from legislating to establish a religion, to impose any religious observance and to prohibit the free exercise of religion, and the Commonwealth cannot require a religious test for any office or public trust under the Commonwealth. However, the section does not control the actions of States and State Parliaments and possibly not Territories and self-governing Territory legislatures. The section has so far been interpreted narrowly by the High Court. There is no general legal right of

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- (e) protection against disability or discrimination based on State residence;<sup>6</sup>
  - (f) certain democratic rights;<sup>7</sup>
  - (g) an independent federal judiciary;<sup>8</sup>
  - (h) provisions designed to maintain the Australian federal system.<sup>9</sup>
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religious freedom in Australia, even though such freedom is widely accepted in practice. See, however, the proposal in section 8.1 (1) (c) of the draft Northern Territory Constitution to prevent the unreasonable denial in the Northern Territory of the right to manifest a person's religion or belief in worship, ceremony, observance, practice or teaching.

- <sup>6</sup> Section 117 of the Commonwealth Constitution provides that a resident in one State is not to be subject in any other State to any disability or discrimination not equally applicable to that person if he or she was a resident in that other State. The section imposes a limit on both the Commonwealth and on States, but it must be a disability or discrimination between States and referable to State residence. It may not apply in territories at all. It would apply to the Northern Territory if it became a new State under its new Constitution.
- <sup>7</sup> The Commonwealth Constitution contains some provisions designed to guarantee the democratic nature of the national Parliamentary system of government. Thus both Houses of the national Parliament must be directly chosen by the Australian people (sections 7 and 24), with each elector having one vote in elections for each House (sections 8 and 30) and a guarantee of regular elections (sections 13 and 28). The House of Representatives electoral divisions for each of the States must be based on a population quota (section 24). Persons having the right to vote in State elections are guaranteed the right to vote in national elections (section 41), although the High Court has given this a narrow interpretation. These democratic guarantees form the basis of the system of representative government, but only apply at the national level, not at the State and Territory levels in respect of their legislatures. However, see below as to implied constitutional rights and see also the provisions of the draft Northern Territory Constitution establishing the democratic, representative nature of the new Northern Territory Parliament.
- <sup>8</sup> The Commonwealth Constitution in Chapter III deals with the federal judiciary, comprising the High Court of Australia and other courts established by the national Parliament (section 71). It guarantees the tenure of judges of those federal courts up to 70 years of age, such that they can only be removed from office before that age by an address in both Houses of national Parliament on the grounds of proved misbehaviour or incapacity. Their remuneration is also guaranteed (section 72). The Constitution now establishes the High Court as the final court of appeal for Australia from State and other federal courts (sections 73 and 74) and also guarantees some of the most important aspects of the original jurisdiction of the High Court (section 75). On the basis of these provisions, the High Court has adopted a doctrine of separation of powers at the federal level, requiring a constitutional division between federal judicial power and non-judicial power. This has not so far been extended to the State level. However the Constitution does not establish the independence of State and Territory courts and their judges. See, also, the proposals in Part 6 of the draft Northern Territory Constitution, designed to establish the Northern Territory Supreme Court and to give to its judges a similar measure of judicial independence. The full doctrine of separation of judicial power, if applicable, would be qualified by section 6.3 of the draft Constitution.
- <sup>9</sup> The Commonwealth of Australia Constitution Act recites that the people of Australia "... have agreed to unite in one indissoluble Federal Commonwealth ....". The Commonwealth Constitution itself establishes that federal system, comprising the Commonwealth and the States, original and new, and entrenches that federal system in a variety of ways. This has been further reinforced by the Australia Act 1986, giving the States direct links with the Crown in England. Section 51 of the Constitution contains a federal division of legislative power between the Commonwealth Parliament and the State Parliament, with the residue of legislative power to the States. Where a Commonwealth law is within constitutional power, it will prevail over an inconsistent State law (section 109), but otherwise State law prevails. State constitutions are protected (section 106).
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There has been much debate about whether the federal system has been eroded by broad High Court interpretations of section 51 of the Constitution, giving very wide scope to Commonwealth legislative power and thereby eroding residual State legislative power. This has been particularly the case under the external affairs power (section 51 (xxix)). Once the Commonwealth executive Government has entered into an international agreement on any subject, the Commonwealth Parliament has the constitutional capacity under this head of power to legislate to implement that agreement in Australian law, thereby over-riding inconsistent State law. From a State perspective the Commonwealth law cannot be altered and has the force of a constitutional limitation on State power.

The federal system has no direct applications to territories, including the Northern Territory under Self-government. The Commonwealth Parliament has an almost unlimited legislative power over Territories under section 122 of the Constitution. This would change if the Northern Territory became a new State within the federal system, putting the new State in much the same position as existing States (unless restricted by valid Commonwealth imposed terms and conditions on the new State under section 121 of the Constitution).

The draft Northern Territory Constitution has been prepared on the basis that the Northern Territory will, either contemporaneously with the coming into effect of that new Constitution, or at some later point in time, be granted Statehood within the Australian federal system on the basis of that new Constitution.<sup>10</sup>

#### **Additional Note**

If a national "Bill of Rights" was to be adopted, whether in the Commonwealth Constitution or in Commonwealth legislation, this would almost certainly have the effect of either extending, limiting or otherwise varying any Northern Territory constitutional rights provisions. Such a national "Bill of Rights" could be expected to directly impinge on the Northern Territory in some way.

In addition, it is of course possible that the Commonwealth could seek to impose other human rights provisions on the Northern Territory as a condition of its further constitutional advancement, including by way of a term or condition under section 121 of the Commonwealth Constitution upon any grant of Statehood.

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<sup>10</sup> See in particular the last Preamble to that draft Northern Territory Constitution and the reference to the Commonwealth Constitution and the Australia Acts in section 2.2 (a) of that draft Constitution.

(ii) Implied Constitutional Protections

The evolution of implied constitutional protections is a subject of some controversy as a result of some recent High Court decisions. The scope of these protections has yet to be fully enunciated by the Court. In reality there are very few identified constitution protections that have been implied in this manner.

The main implied constitutional right clearly enunciated by a majority of the High Court to date is the implied freedom of communication in political matters. This right arose out of a decision of the High Court in 1992, involving a challenge to the validity of Commonwealth legislation seeking to restrict political election advertising in the lead up to Commonwealth, State and Territory elections, with certain limited free time being required to be given to political parties on the electronic media.<sup>11</sup> The majority of the High Court took the view that in a representative democracy such as Australia under its Constitution,<sup>12</sup> the people must have a constitutional right to freedom of communication in political matters, otherwise it would not be possible for those democratic ideals to be put into practice. This, the High Court said, was necessarily implied in the Commonwealth Constitution, even though not expressly stated in that document. This comes close to a guarantee of freedom of speech based on the views of some of the Justices of the High Court. It apparently applies at both Commonwealth and State levels and may also apply in and to territories.

The High Court has yet to fully explore whether there are other implied constitutional rights relating to the legal system and due process, based on the separation of powers doctrine or on some doctrine of equality before or under the law, or the equal protection of the law. To date, other than as referred to in (g) above, the implied constitutional protections of this nature recognised in the Court's decisions have been limited.

There is a well established implied federal principle that the Commonwealth may not act in a manner that prejudices the continued existence of the States nor discriminates against any of them.

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<sup>11</sup> The Australian Capital Television case, High Court, 1992.

<sup>12</sup> See Item 2(i)(f) above.

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### 3. **Relevant Commonwealth Legislation**

There are a number of Commonwealth Acts which contain human rights provisions and which, from a State or Territory perspective, have a constitutionally entrenched force which cannot be altered by State or Territory laws. These include:

#### (a) **Human Rights and Equal Opportunity Commission Act 1986**

The Act schedules the International Covenant on Civil and Political Rights 1966 (which contains comprehensive individual human rights provisions) plus several other international human rights instruments. The UN Declaration on the Elimination of all Forms of Intolerance and Discrimination based on Religion or Belief and the Convention on the Rights of the Child have since been added to these international instruments by declaration under section 47 of this Act. The Act contains a complicated process whereby people who consider their rights have been infringed under any of these international instruments may lodge a complaint with the relevant national body. That body then investigates the matter, may arrange for mediation and then a report may be made. If the matter cannot be resolved by agreement between the parties, recommendations are made that can only be enforced through Federal Court orders.

However, it is not possible for the person aggrieved to directly enforce any of these international instruments by court action taken in the Australian courts without first complying with this complicated mechanism in the Act.

The Human Rights & Equal Opportunity Commission Act is expressed to bind the Commonwealth and hence its instrumentalities and employees, but not the States and the Northern Territory. An exception to this is in relation to equal opportunity in employment under Part II Division 4, which does bind the States and the Northern Territory. Other than this the States and the Northern Territory cannot be subject to enforcement action under the Act except in limited circumstances where they are involved in a joint project with the Commonwealth.

It is to be noted that under the Optional Protocol to the International Covenant, to which Australia is a party, complainants in Australia have a remedy of last resort to the Human Rights Committee in Geneva for any alleged breach of the Covenant's provisions.

It is also to be noted that a number of matters dealt with in the International Covenant are also dealt with under other Commonwealth legislation; for example, race discrimination is dealt with in the Racial Discrimination Act in a manner binding on the States and Northern Territory.

(b) Racial Discrimination Act 1975 and Racial Hatred Act 1995

These Acts outlaw a variety of conduct of a racial nature. The Acts are binding on the Commonwealth, States and Territories and allow for Federal Court orders for enforcement.

(c) Sex Discrimination Act 1984 and the Affirmative Action (Equal Opportunity for Women) Act 1986.

The Sex Discrimination Act outlaws a variety of conduct involving discrimination on the basis of sex, and allows for enforcement by Federal Court orders. The Act is primarily directed at discrimination based on sex by the Commonwealth, its instrumentalities and employees, but extends to discrimination by non-government persons and bodies to the extent of Commonwealth constitutional power (including in the case of discrimination against women under the Sex Discrimination Convention and discrimination by foreign, financial and trading corporations), and in limited circumstances by the Self-governing Northern Territory, for example in the course of trade and commerce or as part of a Commonwealth program. The provisions as to the application of the Act are complicated.

The Affirmative Action (Equal Employment Opportunity for Women) Act is primarily directed at private employers to the extent that is within Commonwealth constitutional power.

(d) Other statutes such as the Freedom of Information Act 1982, the Privacy Act 1988 and the Disability Discrimination Act 1992.

The Freedom of Information Act and the Privacy Act both are directed at the Commonwealth and its instrumentalities, not the States and the Northern Territory.

The Disability Discrimination Act utilises the Commonwealth's constitutional power to prevent government and non-government persons and bodies from discriminating against others on the basis of disability in various fields. It is expressed to bind the States and Northern Territory and applies to them to the extent of the constitutional power of the Commonwealth, with some additional application to the Northern Territory, for example, in the course of trade and commerce. The provisions as to the application of this Act are complicated.

- (e) Various Commonwealth Acts on Aboriginal rights, including the Aboriginal Land Rights (Northern Territory) Act 1976,<sup>13</sup> the Native Title Act 1993 and the Aboriginal & Torres Strait Islander Heritage Act 1984.

Note that the first of these Acts only applies to the Northern Territory, whereas the last two of these Acts apply Australia wide. From the point of view of the Northern Territory, they have superior force to Northern Territory law and hence can be seen to have a constitutionally entrenched status.

- (f) The Human Rights (Sexual Conduct) Act 1994, which protects sexual conduct between consenting adults in private from any invasion of privacy that is otherwise applicable by the effect of any Australian law.<sup>14</sup>

#### 4. **Relevant Treaties and Conventions to which Australia is a Party**

The traditional legal rule inherited from England is that, generally speaking, international agreements creating international legal obligations on the part of nation-states that are parties to those agreements have no effect in their domestic law until implemented by domestic legislation. It is clear that the Commonwealth Parliament has the necessary constitutional power to implement such agreements to which Australia is a party under the external affairs power (section 51(xxix) of the Commonwealth Constitution). It has already so legislated to a limited extent.<sup>15</sup>

This leaves the question of the extent to which such international agreements can have some effect in domestic Australian law even without statutory implementation. In Teoh's case,<sup>16</sup> a majority of the High Court held that ratification of such an agreement by Australia was a positive statement that Australia and its agencies will act in conformity with it, and that this can create a legitimate expectation which must be addressed by Australian decision makers and brought to the affected person's notice before the decision. It is to be noted that Government statements have been made both in the Commonwealth Parliament and in the Northern Territory Legislative Assembly,

<sup>13</sup> See Section 7.1 of the draft Northern Territory Constitution, facilitating the patriation of the Aboriginal Land Rights (Northern Territory) Act to the Northern Territory as a Northern Territory law, subject to constitutional guarantees of Aboriginal title to land.

<sup>14</sup> The Human Rights (Sexual Conduct) Act followed on from the decision of the Human Rights Committee in Geneva in the Toonen Case, in which the view was expressed that certain Tasmanian criminal laws on homosexuality were in breach of the privacy provisions of the International Covenant on Civil and Political Rights, to which Australia is a party. The Act is designed to override those Tasmanian laws, relying on the external affairs power in section 51(xxix) of the Constitution.

<sup>15</sup> Reference should be made back to the Commonwealth Acts listed in Item 3 of this Addendum in this regard.

<sup>16</sup> Minister for Immigration and Ethnic Affairs v Teoh (1995).

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refuting the existence of any legitimate expectation of the kind mentioned in Teoh. The Commonwealth also proposes to legislate on the matter.

The rule in Teoh's case is in addition to the rule of interpretation that where the domestic law is ambiguous or uncertain, the courts will favour an interpretation that accords with Australia's international obligations under any international agreement.

In principle it is possible in Australian law for an Australian parliament (including a State or self-governing Territory parliament), by sufficiently clear words, and including the Commonwealth Parliament under the external affairs power, to legislate inconsistently with the provisions of an international agreement to which Australia is a party. In the absence of legislation, consistent or otherwise, those international agreements have no effect in domestic Australian law. Thus the domestic human rights protections afforded by international agreements, even where Australia is a party, are fragile. In the absence of Australian legislation implementing these agreements, their value largely rests on international opinion and action (including in some instances the opinion of an international tribunal in Geneva deciding the international rights of the case).

#### 5. **Rights Already Contained in the Draft Northern Territory Constitution**

The Sessional Committee's draft Northern Territory Constitution already contains provisions of relevance, intended to be entrenched in that Constitution and directly enforceable in the courts by any person adversely affected. The provisions of relevance are:

- (a) elements of representative democracy, such as direct elections to the new Parliament, equality of Territory electorates, secret ballot, wide qualifications of electors and candidates, regular general elections, etc. These are to a large extent now covered by the Northern Territory (Self-Government) Act, but this Act is proposed for repeal. The draft Constitution incorporates all of these;
- (b) any constitutionally implied rights, if they also already apply in the Northern Territory,<sup>17</sup> may, if the new Northern Territory Constitution is implemented, continue to apply in the Northern Territory and may even be enhanced by the provisions of that Constitution;

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<sup>17</sup> See Item 2(ii) of this Addendum above.



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- (c) provisions as to the independence of the Northern Territory Supreme Court Judges.<sup>18</sup> These provisions are not already covered by the Commonwealth Constitution or by other Commonwealth protections;
  - (d) Aboriginal rights in respect of land under the Aboriginal Land Rights (Northern Territory) Act 1976 if it is patriated to the Northern Territory, Aboriginal sacred sites, Aboriginal self-determination, and recognition of Aboriginal customary law as a source of law in the Northern Territory.<sup>19</sup> All of these provisions have elements which would go beyond existing Commonwealth protections of Aboriginal rights and also of the common law;
  - (e) rights in respect of language, social, cultural and religious matters;<sup>20</sup>
  - (f) in addition, the Committee has more recently agreed to provide in the draft new Northern Territory Constitution that the power of the new Northern Territory Parliament in relation to the making of laws does not extend to the making of laws with respect of the acquisition of property otherwise than on just terms.<sup>21</sup>

#### 6. **Options for Dealing with Residual Rights not already Protected**

There are a number of rights that are not already dealt with in the above mentioned Commonwealth provisions or in the draft Northern Territory Constitution at all, or are dealt with in a different manner to that if there was a Bill of Rights, and which the Sessional Committee has identified in its Discussion Paper No. 8<sup>22</sup> as potentially capable of being incorporated in the new Northern Territory Constitution. Whether they should be so incorporated is of course quite another matter, upon which the views of members of the Committee differ. These are set out in the Committee's Discussion Paper No. 8.<sup>23</sup> The arguments for and against entrenching these additional rights in the Northern Territory Constitution are also set out in that Discussion Paper.<sup>24</sup> It will be obvious from reading this Addendum that, to some extent at least, entrenchment of many of these

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<sup>18</sup> See section 6.2 of the draft new Northern Territory Constitution.

<sup>19</sup> See sections 2.1.1, 7.1, 7.2, 7.3 and 11.2 of the draft new Northern Territory Constitution.

<sup>20</sup> See Part 8 of the draft new Northern Territory Constitution which deals with these matters, and applicable to all people in the Northern Territory.

<sup>21</sup> See section 3.1(3) of the draft new Northern Territory Constitution. Compare section 51(xxix) of the Commonwealth Constitution and section 50(1) of the Northern Territory (Self-Government) Act 1978, discussed in Item 2(i)(a) of this Addendum.

<sup>22</sup> See the Committee's Discussion Paper No. 8, "A Northern Territory Bill of Rights", March 1995.

<sup>23</sup> *Ibid*, Item F, pp 28-46.

<sup>24</sup> *Ibid*, Item E, pp 21-27.

additional rights in a new Northern Territory Constitution would result in some degree of overlap with the existing protections listed above.

The Sessional Committee wishes to point out again that there are other options that can be considered for dealing with these additional rights rather than entrenching them in a new Northern Territory Constitution in some form of an enforceable Bill of Rights. Options for consideration are set out in Discussion Paper No. 8.<sup>25</sup> They include:

- (a) reliance on national constitutional or legislative provisions supplementing the common law only, rather than on any additional Northern Territory legislation;
- (b) the incorporation of these additional rights in ordinary Northern Territory legislation;
- (c) the incorporation of these additional rights in the new category of organic laws;
- (d) reference to these additional rights in an expanded Preamble to the new Northern Territory Constitution;
- (e) the incorporation of these rights in the new Northern Territory Constitution, but not in a form that makes them directly enforceable; rather, in a form that is relevant to matters of statutory interpretation and public administration only;
- (f) some form of reference to these rights for the purposes only of Parliamentary scrutiny of new proposals for Northern Territory legislation, and/or for the purposes of investigation by the Northern Territory Ombudsman into complaints as to Northern Territory administrative actions.

If none of these options are considered acceptable, there is always the option of maintaining the present status quo, reliance being placed on the existing protections mentioned above as well as on the common law and the capacity of the new Territory Parliament to legislate in the future where there is a perceived need. The Sessional Committee makes no specific recommendation as to any of these options.

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<sup>25</sup> Ibid, Item G, pp 50-52.

**APPENDIX 10**

**TABLING STATEMENT TO THE FINAL DRAFT  
CONSTITUTION FOR THE NORTHERN TERRITORY,  
22 AUGUST 1996**



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**SESSIONAL COMMITTEE ON CONSTITUTIONAL DEVELOPMENT****FINAL DRAFT CONSTITUTION FOR THE NORTHERN TERRITORY TABLING STATEMENT****(presented by the Chairman, the Hon. S P Hatton MLA on 22 August 1996)**

Mr Speaker, It is with great pleasure, and with some degree of pride, that I lay before this Assembly the final draft of the Northern Territory Constitution as prepared by the Sessional Committee. This document is the culmination of a long history of dedicated work by a small group of Territory politicians from both sides of this Assembly and their support staff. The work began way back in 1985. It has been a slow, sometimes tedious, often frustrating process, involving much research, a lot of paper, many public hearings and submissions, and lengthy debate and deliberations within the Committee. There has been widespread community consultation. In total, the Committee has received 141 written submissions and numerous other oral submissions. The Committee now has a regular mailing list of close to 4,000. It has many publications to its credit and has been involved in many related activities. These will all be detailed in the Committee's major Report on this aspect of its work in the October sittings of the Assembly. The tabling of this final draft Constitution has been brought forward to the present sittings to facilitate the early consideration of the document by Honourable Members in advance of the major Report. Sufficient to say at this stage that this lengthy exercise has been made even more remarkable by the fact that throughout this whole process, bipartisanship between the members of the two major parties on the Committee has been continuously maintained. This augurs well for the future constitutional development of the Territory and for the task of developing a new constitution as a framework for maintaining a harmonious, tolerant and united Territory community into the future.

Let us be under no illusions, Mr Speaker. This task is a daunting one. It is one which the Territory people, initially through their elected representatives, have taken on in preparing their own home-grown constitution - the basic framework for their own future Territory society. When completed, it will operate for a long time to come. It is obviously important to get it right, in the interests of all sections of the Territory community. The process of constitution-making should be an open, democratic process, with maximum opportunity for input by all the community. This draft Constitution is only one step, albeit a fundamental step, in that process. It represents the considered views of the Committee and its members.

With your indulgence, Mr Speaker, I would like to take Honourable Members through some of the philosophy, background and salient features of this final draft of the Constitution prepared by the Committee.

Since its formation, the Committee has adopted some basic philosophies of approach. These are:

- (a) That we should maximise community involvement and participation in its drafting process. This process has had the added advantage of increasing community awareness and understanding of Statehood and the role of a Constitution.

- (b) That we would not reject any issue out of hand. If an issue was raised, it was researched, options considered and recommendations made.
- (c) That the Constitution should reflect the realities of the Northern Territory, its people, its demography and its aspirations into the 21st century.
- (d) That the Constitution should aim to set the framework for a social partnership of all races and ethnic groups in an open, inclusive and democratic society.

A further underlying theme in this draft Constitution has been to create an inclusive document which all sections of our community can embrace as their own.

We live in a unique multicultural, multi-racial society with people from almost any background imaginable. Overlaying this, of course, is the very significant position of Aboriginal people in our society, comprising 26% of our population and with effective control of half the Northern Territory's land mass.

Seeking to develop an approach which recognises the diversity of backgrounds of Territorians, whilst constructing a framework for our common future, has been one of the greatest challenges for the Sessional Committee.

The answer will serve either to divide or to unite us. It will either be the driving force for, or the greatest obstacle against, achieving our goal of Statehood.

Consistently, Aboriginal people expressed strong common concerns, and even fears, in the progress of moving to Statehood and formulating our Constitution.

They were fearful that if the Aboriginal Land Rights (Northern Territory) Act became a Northern Territory rather than federal law, it could be repealed or emasculated, and the gains they have made over the last 20 years would be lost.

Similar fears were expressed with respect to the protection of Sacred Sites, and the continuation of their rights to use their own language, practice their own religions, culture, ceremony and traditions.

Members may say this is an unjustified fear and that it is inconceivable that this could occur in this day and age. However, I remind Honourable Members that it is still within living memory when Aboriginal people -

- were denied the practice of their customs and religion;
- denied the right to use their own language;
- were dispossessed of all their traditional lands;
- not recognised as citizens of Australia;
- were wards of the State; and
- not even permitted to act as responsible adults.

This included the denial, in too many cases, of the right to bring up their own children or to pass on their heritage to their children.

Is there any wonder that such people would seek any opportunity to ensure that such circumstances could never be repeated?

Further, Mr Speaker, I cannot comprehend any Member of this House contemplating such a situation under any circumstance. We would all regard these as fundamental and inviolable rights of any citizen in a free society.

In fact, Mr Speaker, the only issues raised by Aboriginal people are those which could be regarded as uniquely relevant to indigenous Aboriginal people. These include safeguards in respect to Land Rights and Sacred Sites legislation, and the recognition of the existence of Aboriginal society prior to European or other settlement.

We have sought to address these issues on this premise and I will detail them later in this Address.

#### COMMITTEE PROCESSES

But first Mr Speaker let me briefly deal with the processes adopted by the Committee in carrying out the task given to it by this Assembly. Initially, the Committee undertook wide ranging community consultation through some 90 Territory centres, firstly to explain its processes and objectives and secondly, to identify issues Territorians wanted addressed. No issue raised was ignored.

Procedurally each issue went through 3 stages:

- (a) Initially a Discussion Paper was provided incorporating relevant options, tabled and debated in this House. It was then widely circulated to attract comment and submissions. In addition, the Committee issued some Information and other Papers on specific issues.
- (b) Following these stages the Committee considered the submissions received and developed its constitutional provisions.
- (c) As constitutional proposals were finalised they were tabled in this House as Exposure Drafts for debate and further public submissions and comment.

The final stage of this process is what I have tabled in this House today.

Mr Speaker, it is to be remembered that this draft has been prepared in association with plans for the future constitutional development of the Northern Territory within the Australian federal system. The goal is full Statehood on equal constitutional terms with the existing States. We wish to be a full partner in the Australian federation. We believe that is our constitutional right. This is reflected in the Committee's terms of reference.

This draft Constitution, if and when adopted, would be the Constitution of the Northern Territory as a new State, although it is possible that it could be brought into operation before any grant of Statehood. It does not contain all the provisions needed for a grant of Statehood,

as some terms and conditions would have to be fixed by Commonwealth legislation under section 121 of the national Constitution. An example of this is the representation arrangements for new State in the national Parliament.

These are matters that will be the subject of negotiation between the Northern Territory and the Commonwealth.

The draft Northern Territory Constitution defines how the new State will be shaped and governed. It is a separate process to the conditions of Statehood, and in our view is a matter for the Northern Territory people alone.

#### NAME OF THE NEW STATE

First and foremost, Mr Speaker, is the important question of the name of the new State. We as residents of the Northern Territory are proud to be colloquially described as “Territorians”. At the same time, the Northern Territory as a new State must be given a name. The Committee proposes that we be called simply the “Northern Territory” under the new Constitution, whether that Constitution is brought into operation before or at any grant of Statehood. As you will see, the name the “Northern Territory” is expressly contained in clause 1 of the draft. There may be debate about whether it is appropriate to be called “The State of the Northern Territory”. We as a Committee see no objection to this name. It suitably encapsulates how we feel about ourselves, and reflects our special history and character. It will in no way detract from our constitutional status as a new State.

Mr Speaker, I am pleased to say that substantial agreement has been achieved within the Committee, not only as to the name, but also as to nearly all other provisions. In other words, agreement has been achieved as to the core provisions of the new Constitution. There are only two main areas, apart from that of customary law which I will deal with later, where agreement could not be achieved on a single option. In both cases the Committee was able to agree on including three possible options without indicating any preference, to be left open for further consideration by others. These two areas are, firstly, the composition of the electorates in the new Parliament, and, secondly, the nature of the term of the new Parliament. In the case of electorates, the three options given are the constitutional entrenchment of single member electorates as at present, multi-member electorates with equal numbers of members in each, or by constitutionally providing the option of single or multi-member electorates or some combination of both, as determined by the Parliament itself. In the case of Parliamentary terms, the three options are a fixed four year Parliamentary term, a four year term with no general election permitted within the first three years except in limited circumstances, and a four year flexible maximum term as at present. In each case, consequential amendments have been incorporated in the final draft.

#### BILL OF RIGHTS

Mr Speaker, the Committee could not agree on the need for a constitutionally entrenched Bill of Rights. The final draft does contain several provisions of a “rights” nature on particular topics, which I will detail later, but it does not contain a comprehensive Bill of Rights as found in some other constitutions. To assist further deliberation, the Committee has already issued Discussion Paper No. 8 on this subject. In addition, there is attached to this final draft a



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paper detailing existing provisions concerning rights as already contained in this draft Constitution, the Commonwealth Constitution, in treaties and in other international agreements to which Australia is a party, and in Commonwealth legislation. From this, members will be better assisted to consider and debate this complex topic.

## THE QUESTION OF A REPUBLIC

Honourable Members will note that the final draft has been prepared within the monarchical structure that presently applies in Australia, and in particular in the existing States. This includes the existence of a new State Governor appointed by the Queen on the advice of the new State Premier. This is not to suggest that the Committee has a view for or against the monarchical system for Australia. It merely reflects the fact that the new Northern Territory Constitution must operate within the existing Australian constitutional structure, and in particular under the Commonwealth Constitution and the Australia Acts 1986, both of which are formally monarchical in nature. Should Australia become a Republic, then the necessary changes to the draft Constitution have already been indicated in the Exposure Draft and the Additional Provisions already tabled in this Assembly. The main Report of the Committee, to be tabled in the October sittings, will also indicate the changes required to the final draft to fit it into any Republican system. This will not require many changes.

## STRUCTURE OF THE DRAFT CONSTITUTION

Mr Speaker, let me now turn to the basic structure of this draft Constitution .

Honourable Members will see from the longer table of contents, located just before page 1 of the document, how the document is structured. It begins in a manner common with many other Constitutions with a Preamble. It then contains a number of Parts as follows -

- Part 1 - establishes the new Northern Territory Government under the Crown;
- Part 2 - defines the legal system of the Northern Territory;
- Part 3 - sets up the Legislature, that is the new Parliament;
- Part 4 - sets up the Executive Government;
- Part 5 - the financial arrangements;
- Part 6 - the Judicial structure;
- Part 7 - specific Aboriginal rights;
- Part 8 - rights in respect of language, social, cultural and religious matters, applying to all Territorians;
- Part 9 - Local Government provisions;
- Parts 10 & 11 - transitional and interpretive provisions.

I will deal with these Parts in the same order.

## PREAMBLE

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Honourable Members will note that this is a lengthy aspect of the document. It recites in some detail the constitutional history of the Northern Territory, much of it in words taken from similar preambles in former or existing Territory constitutional documents (including the Northern Territory (Self-Government) Act). However it also has some unique features, one of which I will mention at this stage.

In the first Preamble, the particular and unique history of the indigenous people of this land are referred to and recognised.

It reads -

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;”

This provision will be unique in Australia, in that no other existing constitutional document has an equivalent provision. This no doubt reflects the fact that Australian constitutional documents are largely the product of 19th Century thinking, having been prepared last Century. This will be the first time in Australia’s history that there has been constitutional recognition of the prior existence of Aboriginal society and that that society has its own unique history. The Committee is unanimously of the view that that history should be recorded and recognised in the new Constitution, and that it would be incomplete without it.

## PART 1 - A NEW GOVERNMENT

Mr Speaker, this is a fundamental provision of the new Constitution in that it establishes the new Government under the new Constitution. If we become a new State it would be the new State Government. However in large measure it will be a continuation of the existing Government under the Self Government Act, as will be seen later from the transitional provisions.

## PART 2 - THE LEGAL SYSTEM

This Part not only defines what are the laws of the Northern Territory under the new Constitution, but establishes an order of precedence within those laws. It contains several important innovations.

Firstly, it creates a new category of “Organic Law”. This is a category of law which, although not fully entrenched in all respects in the Constitution, is given a special measure of constitutional protection beyond that of ordinary legislation. This will in effect ensure that such a law can only be amended in the future with bipartisan support under a special majority in the Parliament, and following extensive opportunities for public debate and after enquiry and report by a standing Parliamentary Committee.

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In this respect, the Committee has drawn upon overseas precedents, and in particular from Papua New Guinea, in adopting the concept of Organic Laws.

The final draft contemplates that, by agreement with the Commonwealth, the Land Rights Act in its current form will be re-enacted as an Organic Law of the Northern Territory. I will deal with Land Rights later.

A further innovation in Part 2 is the proposal to recognise Aboriginal customary law as a source of law in the Northern Territory, that customary law being on a par with the common law, placing both of them on the same constitutional level together. For this purpose, two options are given in the final draft. Either should facilitate the process of harmonisation of underlying laws that can take place into the future. This proposal again reflects the very strong representations made to the Committee in the course of its community consultations for such a form of recognition. It also reflects the unique situation of the Northern Territory, with a large proportion of its population still adhering to customary lifestyles under their traditional law. The proposal in the final draft would constitute recognition of a situation in which customary law is still a living system of law for many of its indigenous citizens. The proposal is not to entrench every aspect of that customary law in the draft Constitution, but rather to recognise it as a legitimate source of law, which the Parliament can thereafter implement in a way that the whole community finds acceptable. At the same time, the process already under way in the Territory courts in giving increasing effect to customary law can continue and be expanded, leading not to two separate and distinct systems of law, but to a gradual harmonisation of our underlying laws in a way that reflects the needs of all Territorians. At the same time, the residual power of the Parliament to remedy any undesirable or unfair consequences of this process will remain unfettered. Let me make it clear that this is not a “two law” concept. Rather, it is designed to recognise that the Aboriginal people in the Territory are presently faced with two systems of laws, one recognised by our existing constitutional system and one that in the main is not presently recognised, and which can put these people into a position of double jeopardy. The challenge before us is to bring these two systems into a form of mutuality and reciprocity within a common constitutional framework, a gradual harmonisation of laws, but without any undesirable or unfair side-effects. The Committee believes that its draft provision will create a constitutional imperative to drive this result, and at the same time give traditional Aboriginal leaders a significant measure of support to combat the present erosion of their traditional values and society.

In addition, Part 2 deals with the method of altering the Constitution and Organic Laws. In this regard, Mr Speaker, the Committee proposes that as the Constitution would be the basic law of the Northern Territory, it should be an entrenched document. That is, it should be a document that is designed to last; it should not be capable of being easily changed. By way of contrast, State constitutions started out in the 19th Century as ordinary legislation, capable of amendment in the same way as ordinary legislation. However in more recent times, States have increasingly entrenched key sections of their State Constitutions. The Commonwealth Constitution is of course an example of a rigid constitution, requiring a national referendum for change.

The Committee, for its part, unanimously supports an entrenched new Territory Constitution, requiring a Territory referendum for any future change. This has been incorporated in the final draft. At the same time, the Committee is aware of criticisms that the initiation of referendum

proposals should not be left to the legislature alone. Such criticisms have often been voiced in conjunction with proposals for Citizens Initiated Referenda (“CIR”), submissions in favour of which were put to the Committee. The Committee in fact issued a separate Discussion Paper on this topic.

After deliberation, the Committee has decided against any form of mandatory CIR by which a fixed percentage of the Territory electors could force the holding of a referendum for constitutional or legislative change. The Committee, while recognising the undoubted legitimacy of public participation in a democracy, was also aware of the potential for abuse of this form of process. It has again sought to be innovative, with a modified version of CIR, whereby a percentage of Territory electors could require the proposed Standing Parliamentary Committee to consider a proposal for change to the new Constitution or to an Organic Law. The matter would then be considered publicly by that Committee, with a report to the Parliament. The final decision would be left to the Parliament. This process gives due regard to the role of the elected representatives in the Parliament, while at the same time giving the ordinary citizen a real opportunity for initiative and input. Again, no other constitution in Australia has anything similar to this provision.

### PART 3 - THE PARLIAMENT

Mr Speaker, Part 3 of the draft Constitution sets out the detail for the operation of the new Parliament for the Northern Territory.

By way of background, it is important to note that the traditional Westminster pattern of democratic government, exercised through the three traditional arms of government - that is, the legislature, the executive and the judiciary, has been maintained and incorporated in the final draft. This is because the system of responsible and representative Parliamentary democracy, originating in England but since exported to many other countries, is the system that we in Australia have become familiar and are comfortable with. It is a system which has worked well in this country and given us a long period of stable government within a free and open society. It is a system that contains certain checks and balances between these three arms, calculated to maintain a democratic system under the rule of law. The Committee does not propose any radical changes in this respect, although the final draft does incorporate some interesting innovations, including on some issues that have up until now baffled the experts in Australia. The Committee has not sought to shy away from difficult subjects - rather, it has sought to wrestle with some of the difficult issues of this age within our system of government.

Mr Speaker, Part 3 establishes the new Parliament as a single House and gives it very wide powers to make laws for the Northern Territory. The provisions of this Part are similar to those in the Self Government Act. I have already described how 3 different options have been given in the draft both as to the nature of the electorates and as to the term of the new Parliament. Honourable Members will note that the existing provisions as to reservation and disallowance of Territory laws have disappeared.

### PART 4 - THE EXECUTIVE GOVERNMENT

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This Part, Mr Speaker, deals with the Executive power of the new Northern Territory Government and how it is exercised. Again, the Committee has sought to be innovative.

In this regard, the subjects tackled by the Committee include that of defining the role of the head of state within the new system of Government, in this case the new State Governor, and the relationship of that head of State with the Parliament and the Government. That is, the Committee has looked at “Kerr” type issues and the concept of the reserve powers of the Crown. It has sought clarification of this issue. This has in fact been a much simpler exercise in the case of the proposed Northern Territory Constitution in view of the Committee’s recommendation of an unicameral Parliament. The Committee has proposed an express constitutional requirement that would require the Governor as a general rule to act in accordance with the advice of his or her responsible Ministers except in specified narrow circumstances. These circumstances include the situation where to follow that Ministerial advice would be to act unconstitutionally. Where the Governor acts contrary to, or without his or her Ministers’ advice, there is a requirement that the Governor promptly table a statement of reasons in the Parliament. Honourable Members should note the provisions of Part 6, whereby the Governor can seek an advisory opinion from the Supreme Court to clarify constitutional questions.

Honourable Members will also be interested to note the provisions for the appointment of the Premier and the other Ministers contained in Section 4.8.

#### PART 5 - FINANCE

Mr Speaker, it is possible to be very brief about this Part. It deals with the financial arrangements for the new Government, expressed in similar terms to the equivalent provisions of the Self Government Act.

#### PART 6 - THE JUDICIARY

This Part deals with the judicial structure of the Northern Territory. It is proposed that the existing Supreme Court would continue as the new Supreme Court, as would other existing Territory Courts.

The final draft recognises the key role of the Territory Supreme Court in the constitutional equation by entrenching the Court in the Constitution and by guaranteeing the independence of its judges. The Court would be given a particular jurisdiction as the interpreter of the new Constitution, subject of course to any right of appeal to the High Court. Its supervisory jurisdiction over inferior courts and tribunals is also expressly recognised. In this regard, the Committee recognises the judiciary as a bulwark in the maintenance of the rule of law. At the same time, the Committee has not supported a strict separation of powers between the Territory judiciary and the other two arms of government. Such a rigid separation presently exists only at a federal level, not at a State level.

Accordingly, the final draft does not confine the exercise of the Territory judicial power to Territory courts alone - that is, tribunals and other statutory bodies are not precluded from exercising particular kinds of judicial power under their enabling legislation. However it is proposed that where this occurs, those other bodies will be subject to the supervisory

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jurisdiction of the Supreme Court, including the remedy of habeas corpus as a guarantee of individual liberty. In this regard, the Committee sees a need, not for a rigid separation of powers doctrine that causes practical difficulties, but for a proper intermeshing of the three arms of government in a balanced way, with appropriate checks and balances, in the manner that characterises the Westminster system of Parliamentary Democracy.

In another innovative provision, it is proposed that the Supreme Court of the Northern Territory be given an advisory jurisdiction in such constitutional matters, but only at the initiative of specified constitutional office holders. By this means, the constitutionality of a proposed action can, in an appropriate case, be litigated in open court, after full legal argument, without having to go through the action first and then having uncertainty as to whether it is valid or not.

## PARTS 7 & 8 - ABORIGINAL AND OTHER RIGHTS

Mr Speaker, I would now like to turn to those Parts of the draft Constitution which contain provisions of a “rights” nature. It is convenient to deal with both Parts 7 & 8 together in this respect. Part 7, as Honourable Members will see, deals with Aboriginal rights. Part 8 deals with rights in respect of language, social, cultural and religious matters, expressed in terms that applies to both Aboriginal and non Aboriginal persons.

The specific matters dealt with in Part 7 address the core concerns of Aboriginal Territorians as indicated to the Committee in its community consultations throughout the Territory. The Committee is of the view that it is vitally important to recognise and protect rights arising from these core concerns for the future to ensure that they cannot be unfairly infringed, for reasons that I have already explained.

Of the greatest importance is the Aboriginal Land Rights Act, an Act of the Commonwealth Parliament that only applies in the Northern Territory. There is nothing even approaching this Act in other Commonwealth legislation applying in particular States. Whether people like it or not, the Land Rights Act has become an established feature of the Northern Territory constitutional landscape, and this is not going to disappear upon a grant of Statehood. At the same time, there is a growing body of opinion that the Land Rights Act should become a Northern Territory law if the Territory is to be put into a position of constitutional equality with the other States. The Commonwealth Parliament should only legislate for Australia as a whole, as is the proper role of a national Parliament in a federation, and which it has done, for example, in the Native Title Act. This would mean that the Land Rights Act, applying only in the Northern Territory, would need to become a new State law. This is the view taken by the Committee.

To facilitate this, the Committee in its final draft has again sought an innovative solution. It seeks to constitutionally guarantee the continuance of land rights under the Constitution on basically the same terms, but under Territory law. The final draft contemplates that, by agreement with the Commonwealth, the Land Rights Act in its current form will be re-enacted as an Organic Law of the Northern Territory.

At the same time, certain key features concerning land rights would be entrenched in the proposed Constitution itself and be even more firmly guaranteed than an Organic Law. In

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particular, the right of Aboriginal traditional owners to sell the Aboriginal freehold would be subject to a very stringent constitutional processes, involving full consultation with Aboriginal people, and requiring a prior finding by a Supreme Court Judge, so as to prevent dealings with the freehold that are not in the best interests of the Aboriginal people concerned. This is designed to avoid the situation, such as occurred in Alaska and Hawaii, where unwise decisions resulted in the loss of traditional lands. In addition, while Aboriginal sacred sites are protected by a provision of the Land Rights Act itself, as a result of very strong concerns put to the Committee in its community consultations, the final draft incorporates a special provision as to the protection of sacred sites. This provision requires that there be new Territory legislation on this subject in the form of an Organic Law. The existing Territory Sacred Sites Act would in the meantime be given Organic Law status, it having proved to be the best and most effective measure consistent with Aboriginal culture, incorporating a process that has proven to be successful.

Part 7 also proposes that certain other measures as to land rights be included in that Constitution itself that appear to have acquired a measure of general acceptance. These comprise a prohibition on the compulsory acquisition or forfeiture of Aboriginal land, but with a capacity for the compulsory acquisition by Government of a less than freehold title, strictly limited to purposes that are clearly public purposes, in accordance with existing legislative safeguards and with just compensation. Such a measure is seen as being critical to finding a proper balance between Aboriginal interests and the wider Territory public interest as a whole. There is also provision in the draft Constitution to enable the new Parliament to clarify the interaction between the Land Rights Act and other Northern Territory laws, such as local government on Aboriginal land.

In addition to land rights and sacred sites, Mr Speaker, Part 7 contains provisions which will facilitate the grant of self determination to Aboriginal Territorians within the overall framework of the Northern Territory under the one Constitution.

Mr Speaker, I now refer to the provisions of Part 8 of the draft Constitution. These provisions recognise that the Northern Territory community is exceptional because of its multi-cultural, diverse nature, being made up of many cultures, languages and religions. Part 8 provides that no person in the Territory is to be denied the right to use his or her own language in communicating with others, to observe and practice his or her own social and cultural customs and traditions in common with others, and to have and practice his or her own religion. These provisions, which are also reflected in the Preamble, were considered by the Committee to be particularly important in a place like the Northern Territory. This is a view which received support in the various submissions to the Committee. At the same time, the Committee has recognised that they should not be absolute rights, but that they should be capable of being qualified by Territory legislation in the public interest or by reference to the general principles of humanity contained in international agreements to which Australia is a party. Again, the Committee has sought a balance between particular interests and the wider public interest.

## PART 9 - LOCAL GOVERNMENT

Mr Speaker, I would like now to briefly move to those aspects of the draft Constitution concerning local government. Following strong representations made to the Committee by representatives of the third sphere of government in the Territory, and having regard to the

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constitutional position in the existing States, the Committee felt compelled to give constitutional recognition to the fact that there should be a continuing system of local government in the Territory. This includes both normal municipal government and community government. The Committee felt that the detailed provisions within which local government should operate should be left to legislation, although the Constitution should set out some minimum requirements for that legislation. In addition, it considered that the Constitution should prohibit the termination of a particular local government body once established, or the removal of its members, without prior public enquiry.

#### PART 10 & 11 - TRANSITIONAL & INTERPRETATION

Mr Speaker, the final draft also contains a number of detailed provisions of a transitional nature, designed to carry the Northern Territory from the present Self-government arrangements under Commonwealth legislation into these new Constitutional arrangements. It is envisaged by the Committee that the present Northern Territory (Self-Government) Act will be repealed to accommodate the new Constitution. However, the Committee felt that a significant degree of continuity was required between the two systems. For this reason, it has advocated that most of the existing institutions of Territory government should be carried over on a transitional basis into the draft new Constitution - that is;

- the existing Legislative Assembly and its members and officers, which would become the first new Parliament and its members and officers until a general election could be held;
- the Administrator, who would become the first Governor for a period of up to twelve months until a new appointment could be made by the Queen; and
- the existing Supreme Court, which would continue as before but subject to the new Constitution. In the Committee's view, a smooth transition is essential and will be facilitated by this carry-over of institutions.

On the other hand, the Committee envisages that there would be a fresh appointment and swearing in of the first Premier and other Ministers on day one of the new Constitution, they to be chosen from the existing majority party as before in accordance with the Executive provisions of the draft new Constitution.

In other respects, the new State would be a continuation of the Self-governing Territory. Existing Territory legislation, administrative and judicial decisions and processes would be continued as before. There would be a minimum of disruption.

Part 11 deals with general interpretative provisions.

#### CONCLUSION

Mr Speaker, this document contains the Committee's proposals for a new Territory Constitution for a new Century. It is the product of a great deal of work by the Committee over a period of more than 10 years. In the Committee's view, it fairly reflects the needs and aspirations of the wider Territory community as expressed to the Committee in the course of its consultations. It provides a point of reference from which further debate can proceed. I



will continue to keenly follow the course of the debate, as I am sure the other members of the Committee will do.

It remains for me to say a few words of thanks to all those that have assisted in the production of this document. Let me thank all past and present members of the Committee for their patience and diligent attention to their duties. In particular let me mention two members whose contribution has been outstanding. I refer to the Member for Stuart, who has had a long and valued input into this process and who has greatly facilitated the maintenance of a bipartisan approach in the Committee. I also refer to the former member for Arnhem, whose determined input on Aboriginal and other issues has had such a marked effect on the content of this final draft, and who greatly assisted in the community consultations. This document is a lasting testimony to his memory. Let me also thank the dedicated staff to the Committee, the Executive Officer Rick Gray, his assistant, Mrs Yoga Harichandran, and the legal adviser Graham Nicholson.

I commend the final draft of the Constitution to the consideration of Honourable Members.