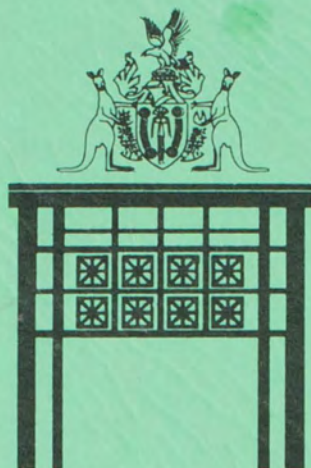


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LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

SESSIONAL COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

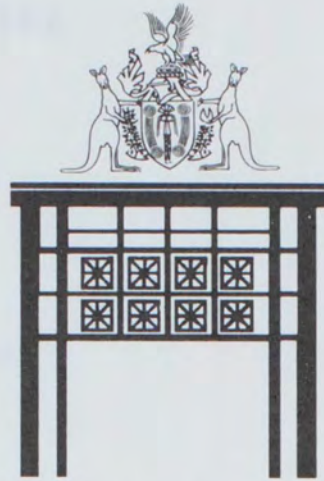
Final Draft Constitution
for the
Northern Territory

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.

December 1996

Approved to be printed
and for distribution by
the Sessional Committee
on Constitutional
Development on
11 December 1996.



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

SESSIONAL COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

Final Draft Constitution

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December 1996



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

SESSIONAL COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

Final Draft Constitution

for the

Northern Territory

Incorporating

- the Final Draft Constitution tabled in the Legislative Assembly on 12 August 1996
- the Schedule of Amendments tabled in the Legislative Assembly on 9 October 1996, and
- explanatory notes.

December 1996

MEMBERSHIP OF THE COMMITTEE

The Hon. 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 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 participate in deliberations of the Committee, but cannot vote.*

Please note that this Final Draft Constitution for the Northern Territory is an extract from "Volume 1 of *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" — Refer Appendix 8.

NORTHERN TERRITORY OF AUSTRALIA

FINAL DRAFT CONSTITUTION

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PREAMBLE

- 1.¹ 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;
- 2.² In 1788, that part of Australia East of the 135th parallel of Longitude East was proclaimed a Colony of Great Britain as the Colony of New South Wales;
3. By Letters Patent of 1825, the boundaries of the Colony of New South Wales were extended to the 129th parallel of Longitude East, thus encompassing all of the area of the Northern Territory;
4. The Northern Territory remained a part of the Colony of New South Wales (except for that period in 1846 when it became, and while it remained, part of the Colony of North Australia) until 1863 when, by Letters Patent, it became a part of the Province of South Australia;

¹ 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.

² 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.

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5. The Province of South Australia became a State of the Commonwealth on the proclamation of the Commonwealth of Australia in 1901 under the *Commonwealth of Australia Constitution Act* of the Imperial Parliament;
6. The *Northern Territory Acceptance Act 1910* of the Commonwealth 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;
- 9.³ 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;
- 10.⁴ 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

³ **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.

⁴ **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.

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respect of the Northern Territory under section 122 of the Constitution of the Commonwealth, unlimited by subject matter;

- 11.⁵ 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*;
- 12.⁶ 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;
- 13.⁷ 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;

⁵ **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.

⁶ **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.

⁷ **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.

- 14.⁸ 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;
- 15.⁹ 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,

⁸ **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.*

⁹ **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;

- 16.¹⁰ 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 POLITIC¹¹

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.

¹⁰ **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.

¹¹ **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 LAWS¹²

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.

¹² **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 LAW¹³

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.

¹³ 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 LAWS¹⁴

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.

¹⁴ **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 LAWS¹⁵

- (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

¹⁵ **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.

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.

Division 2 - Altering the Constitution and Organic Laws

2.4 CONSTITUTIONAL AMENDMENT¹⁶

- (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.

¹⁶ **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).

- (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.

- (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 LAWS¹⁷

- (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.

¹⁷ 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.

2.6 STANDING COMMITTEE ON THE CONSTITUTION AND ORGANIC LAWS¹⁸

- (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

¹⁸ **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).

it is 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 TERRITORY¹⁹

- (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.

¹⁹ **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.

- (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 LAWS²⁰

- (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.

²⁰ **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 VOTES²¹

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 IMPOSED²²

- (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.

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 PARLIAMENT²³

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 PARLIAMENT²⁴

- (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.

²³ **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.

²⁴ **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 ELECTORS²⁵

All persons who are, under a law of the Commonwealth, qualified to vote at an election of a member of the House of Representatives of the Parliament of the Commonwealth for the Northern Territory and who have resided in the Northern Territory for not less than 3 calendar months immediately before the polling day 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 ELECTIONS²⁶

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 ELECTIONS²⁷

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.

²⁵ **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.

²⁶ **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.

²⁷ **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.

3.10 TERM OF OFFICE OF MEMBER²⁸

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.

3.11 ELECTION PROCEDURES²⁹

- (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.

²⁸ **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.*

²⁹ **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.*

Alternative 1 - No Fixed Term	Alternative 2 - Three Year Partial Fixed Term	Alternative 3 - Fixed Four Year Term
<p>(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.</p>	<p>(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.</p>	<p>(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.</p>
<p>(3) Subject to this section, the Governor shall not dissolve the Parliament except on the advice of the Executive Council or the Premier.</p>	<p>(3) Subject to this section, the Governor shall not dissolve the Parliament except on the advice of the Executive Council or the Premier.</p>	<p>(3) Except as provided in subsections (4) and (5), the Governor shall not dissolve the Parliament.</p>
<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>(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 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>(b) the Parliament would otherwise expire on a public holiday; or</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>(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) 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>(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>(6) No provision</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>

3.12 RESIGNATION OF MEMBERS OF PARLIAMENT³⁰

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.

³⁰ **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 VACANCY³¹

Alternative 1 - Single Member Electoral Division	Alternative 2 - Single/Multi Member Electorates	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, 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.	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.	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 ELECTION³²

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 -

³¹ 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.

³² 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.

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

3.15 DISQUALIFICATIONS FOR MEMBERSHIP OF PARLIAMENT³³

- (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;

³³ **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.

- (ii) is the Governor-General, Administrator or head of government of the Commonwealth or the Governor, Administrator or head of government of a State or territory of the Commonwealth; or
- (iii) holds office, of whatever tenure, as a judge under a law of the Commonwealth or of a State or territory of the Commonwealth;

(b) the person -

- (i) holds an office or appointment, prescribed for the purpose of this section by an Act, under a law of the Commonwealth or a State or territory of the Commonwealth; or
- (ii) not being the holder of such an office or appointment, is employed by the Commonwealth, by a State or territory of the Commonwealth or by a body corporate established for a public purpose by such a law, and prescribed for the purposes of this section by an Act, and he or she is entitled to any remuneration or allowance (other than reimbursement of expenses reasonably incurred) in respect of that employment;

(c) the person is an undischarged bankrupt; or

(d) the person has been convicted and is under sentence of imprisonment (including while on parole or under a suspended sentence) for one year or longer for an offence against 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 PARLIAMENT³⁴

- (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.

³⁴ **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 QUORUM³⁵

- (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 SPEAKER³⁶

- (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

³⁵ **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.*

³⁶ **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 SPEAKER³⁷

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 PARLIAMENT³⁸

(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.

³⁷ **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.

³⁸ **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.

3.21 VALIDATION OF ACTS OF PARLIAMENT³⁹

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 PROCEEDINGS⁴⁰

- (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.

³⁹ **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.

⁴⁰ **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.

3.23 STANDING ORDERS⁴¹

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 POWER⁴²

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.

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.*

4.2 GOVERNOR⁴³

- (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.

⁴³ **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.*

- (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 GOVERNOR⁴⁶

- (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.

⁴⁶ **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.*

4.3 REMUNERATION AND OTHER TERMS AND CONDITIONS OF GOVERNOR⁴⁴

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 GOVERNOR⁴⁵

- (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.

⁴⁴ **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.

⁴⁵ **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.

4.7 MINISTERIAL OFFICE⁴⁸

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 TERRITORY⁴⁹

- (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 -

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.

4.6 EXECUTIVE COUNCIL⁴⁷

- (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.

⁴⁷ **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.

- (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 MINISTERS⁵¹

- (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 MONEYS⁵²

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

⁵¹ **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.

⁵² **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.

- (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 OFFICE⁵⁰

- (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;

⁵⁰ **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.

PART 6 - JUDICIARY

6.1 JUDICIAL POWER OF THE NORTHERN TERRITORY⁵⁴

- (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

⁵⁴ **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.

5.2 WITHDRAWAL OF PUBLIC MONEYS⁵³

- (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.

⁵³ **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.

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.

under this Constitution or involving its interpretation and, without limitation, its 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 COURT⁵⁵

- (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

⁵⁵ **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.

6.3 DOCTRINE OF SEPARATION OF POWERS⁵⁶

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.

⁵⁶ **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.

PART 7 - ABORIGINAL RIGHTS

7.1 PROTECTION OF ABORIGINAL LAND RIGHTS⁵⁷

- (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 -

⁵⁷ **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 Aboriginals 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.

7.2 PROTECTION OF ABORIGINAL SACRED SITES⁵⁸

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-DETERMINATION⁵⁹

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

⁵⁸ **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.

⁵⁹ **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.

- (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.

PART 9 - LOCAL GOVERNING BODIES

9.1 LOCAL GOVERNMENT⁶¹

- (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

⁶¹ **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.

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

8.1 LANGUAGE, SOCIAL, CULTURAL AND RELIGIOUS MATTERS⁶⁰

- (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.

⁶⁰ **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**.

10.2 CONTINUANCE OF LAWS AND ACTIONS TAKEN AND DECISIONS MADE UNDER LAWS⁶³

- (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 -

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.

- (iv) boundaries; and
 - (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 DEFINITIONS⁶²

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.

⁶² **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.

- (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	Alternative 2 - Three year partial fixed term	Alternative 3 - Fixed Four-year 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.	(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.	(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.

- (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 MONTHS⁶⁴

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 CONTINUE⁶⁵

- (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;

⁶⁴ **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.

⁶⁵ **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.

10.7 FUNCTIONS PERFORMED BY SPECIFIED PERSONS⁶⁸

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 DATE⁶⁹

- (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 LAWS⁷⁰

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 -

⁶⁸ **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.

⁶⁹ **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.

10.5 REMUNERATION, ALLOWANCES OF MEMBERS OF FORMER LEGISLATIVE ASSEMBLY TO CONTINUE⁶⁶

- (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 COUNCIL⁶⁷

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.

⁶⁶ **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.

⁶⁷ **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.

and conditions as those on which they were held from the Northern Territory of Australia.

10.11 CONTRACTS⁷²

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 PROCEEDINGS⁷³

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 DUTIES⁷⁴

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,

⁷² **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.

⁷³ **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.

⁷⁴ **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.

- (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 PROPERTY⁷¹

- (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 Territory under this Constitution on and after that date on the same terms

⁷¹ **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.

PART 11 - INTERPRETATION

11.1 DEFINITIONS⁷⁷

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;

⁷⁷ **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.

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

10.14 CLARIFICATION OF TRANSITIONAL ARRANGEMENTS⁷⁵

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 ACT⁷⁶

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.

⁷⁵ **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.

⁷⁶ **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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"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.

"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;

- (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.

11.2 INTERPRETATION OF THIS CONSTITUTION⁷⁸

- (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 -

⁷⁸ **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.

SCHEDULE 1

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

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!

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.

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.

11.3 MISCELLANEOUS INTERPRETIVE PROVISIONS⁷⁹

- (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.

⁷⁹ **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.

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.

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.

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.

Section 41(2)

OATH

I, do swear that I will well and truly serve the Government and people of the Northern Territory in the office of [Name] in accordance with the Constitution of the Northern Territory and the laws of the Northern Territory.

AFFIRMATION

I, 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 [Name] in accordance with the Constitution of the Northern Territory and the laws of the Northern Territory.

Section 41(3)

(1914-1915)

OATH

I, do swear that I will well and truly serve the Government and people of the Northern Territory in the office of [Name] in accordance with the Constitution of the Northern Territory and the laws of the Northern Territory.

AFFIRMATION

I, 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 [Name] in accordance with the Constitution of the Northern Territory and the laws of the Northern Territory.

