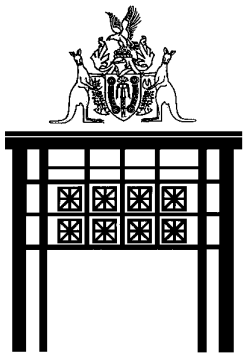
Chapter 1

DISCUSSION PAPER
ON A PROPOSED NEW STATE
CONSTITUTION
FOR THE
NORTHERN TERRITORY



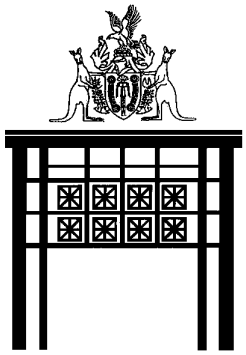
LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Select Committee on
Constitutional Development

DISCUSSION PAPER ON A PROPOSED NEW STATE CONSTITUTION FOR THE NORTHERN TERRITORY

JULY 1995

Second Edition



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Select Committee on Constitutional Development

Discussion Paper on A Proposed New State Constitution for the Northern Territory

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July 1995

Second Edition

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EDITOR'S NOTE

There has been no change to the content of the original Discussion Paper.

The only changes in the second edition refer to the following :

- the Summary of Recommendations and Endorsements have been listed numerically and cross-referenced to the respective paragraphs and pages within the second edition;
- Parts U to Y of the original document are now reflected as Appendices 1 to 5;
- the insertion of a new Appendix 6, listing the publications of the Committee; and
- due to reformatting, the original document page numbering has altered and cross-referencing within the second edition has been amended accordingly.

CONTENTS

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I. SUMMARY OF SELECT COMMITTEE RECOMMENDATIONS AND ENDORSEMENTS

For the convenience of considering this Paper the recommendations and endorsements of the Committee are consolidated below:

II. INTRODUCTION

1. The Select Committee is of the view that [the Northern Territory (Self-Government) Act] could not serve as [a new State] constitution without substantial modification. (p.11: para 2(b)).

2. The Select Committee considers that Statehood for the Territory must provide for constitutional equality with the other States. This in part can be achieved by the preparation and adoption of a new State constitution to replace the Northern Territory (Self-Government) Act (p.11: para 2(c)).

3. The view of all members of the Select Committee is that the new State constitution must be prepared by Territorians. (p.11: para 2(d)).

III. THE LEGISLATURE

4. The Select Committee is of the view that the new State Parliament should be given the same rights, powers and privileges as existing State Parliaments. (p.15: para (e)).

5. The Select Committee considers that the legislative powers of the new State Parliament in respect of the new State should be as extensive as possible, that is, that it should have the same powers as other State Parliaments, subject only to the limitations flowing from the Commonwealth Constitution and the Australia Act. (p.15: para (f)).

6. The Select Committee is unanimously of the view that the representative of the Monarch should at least have the function of assenting to legislation or withholding assent. The Committee differs as to whether that representative should have power to suggest amendments back to the new State Parliament. (p.15: para (h)).

7. The Committee is strongly of the view that the new State should be treated the same as existing States [with regard to reservation and disallowance], and that there should be no provision for reservation or disallowance of new State legislation by the Commonwealth Parliament or any other outside body. (p.15: para (i)).

IV. FORM AND COMPOSITION

8. The Select Committee considers that ... it is not necessary to define the Parliament of the new State in the constitution as including the Monarch or Her or His representative. (p.18: para 1(c)).

9. The Select Committee proposes that the new State Parliament should consist of one House only. (p.20: para 2(f)).

10. The Select Committee recommends that the number of members of the new State Parliament continue to be included in ordinary legislation. (p.20: para 3(b)).

11. [The Select Committee] does not at this stage recommend any change [to the provisions in the Northern Territory (Self-Government) Act relating to the qualifications of members] except the deletion of [residency in the Commonwealth for at least 6 months and in the Northern Territory for at least 3 months] and the substitution of a new single residential requirement of 6 months in the new State. (p.21: para 4(b)).

12. The Select Committee supports the exclusion from nomination of a candidate who is already a member of the Commonwealth or another State legislature and certain office holders such as the Governor and Judges. ... In all other cases, the Committee is of the view that ... a person in any other office or employment should not be disqualified from nominating for the new State Parliament. However if the person nominating holds an office of profit under the Crown (other than an office in relation to the new State Parliament), that office should automatically terminate upon that person's election (p.21: para 4(c)).

13. The Select Committee endorses [the] different treatment between [qualifications for] voting and nomination in the case of prisoners. (p.22: para 4(d)).

14. The Select Committee suggests that a member should only be disqualified if the member fails to attend the new State Parliament for 7 consecutive sitting days without permission. Otherwise it favours [the] provisions [relating to vacation of office by members in the Northern Territory (Self-Government) Act but] suggests ... that disqualification should not extend to a member who inadvertently receives remuneration in excess of his or her lawful entitlement and who repays the excess. (p.22: para 4(e)).

15. The Select committee favours a similar provision [that a member having an interest in a contract with the new State may not take part in the discussion or vote on the matter in the new State Parliament] in the new State constitution. (p.22: para 4(f)).

16. The Select Committee favours the inclusion of all provisions on Qualification and disqualification of members [in the new State Parliament] in the new State constitution ... (p.22: para 4(g)).

17. The Select Committee recommends retention of the existing term [4 years, for a new State Parliament.] (p.23: para 5 (c)).

18. The Select Committee is of the view that there should be a constitutional requirement that not more than 6 months pass between successive sittings of the new State Parliament. (p.23: para 5(d)).

19. The Select Committee prefers the partially fixed term option, whereby the Governor cannot dissolve the new State Parliament within the first three years of its term unless a vote of no-confidence in the Government has been carried by the Parliament or unless the Premier has resigned or has vacated office. In either of those events, the Governor should be able to invite another member to form a government. If the Governor is unable within a reasonable time to appoint a member who can form a government which would have the confidence of Parliament, the Governor should be able to dissolve the Parliament. (p.24: para 5(i)).

V. NEW STATE PARLIAMENT: ELECTORAL PROVISIONS

20. The Select Committee is of the view that most electoral provisions should not be contained in the new State constitution. (p.26: para 1(d)).

21. The Select Committee prefers the existing single-member electorate system, with Aboriginal Territorians participating in the same way as other Territorians on the basis of one person one vote and with no distinction on the basis of race. However it is of the view that the nature of electorates should not be prescribed in the new State constitution but should be left to ordinary legislation. (p.27: para 2(a)).

22. "The Select Committee" is divided as to it's views on this [electorate tolerance] matter. Some members favour a maximum 20 per cent rule for inclusion in the new State Constitution whilst others favour a maximum 10 per cent rule for inclusion. (p.28: para 2(e)).

23. The Select Committee is of the view that there should be a three month residential requirement in the new State for a person to be eligible to vote for the new State Parliament. Persons eligible to vote in Commonwealth elections anywhere in Australia immediately before the commencement of Statehood should be eligible to vote for the new State Parliament if meeting this residential qualification. Subject thereto, voting should be limited to Australian citizens. In other respects, the Committee favours similar provisions to those presently applying in the Northern Territory. These qualifications should be included in the new State constitution. (p.28: para 3(c)).

24. The Select Committee suggests that the new State constitution should contain provision enabling the Governor, on the advice of his or her Ministers, to issue writs for elections and to fix the date of elections. (p.28: para 4(a)).

25. The Select Committee also suggests that the new State constitution contain provisions as to casual vacancies and by-elections. Under this provision, an election (either a general election or a by-election) should be held within 6 months of any casual vacancy. (p.28: para 4(b)).

26. The Select Committee recommends that the principle of one person one vote, and the requirement that elections be by secret ballot, should also be contained in the new State constitution. (p.29: para 4(c)).

VI. OTHER LEGISLATIVE MATTERS

27. The Select Committee considers that because of the importance of the office of Speaker, the new State constitution should provide for that office in a similar way to the Northern Territory (Self-Government) Act. The Speaker of the new State Parliament should have the same voting power as the Speaker of the Legislative Assembly, namely, a deliberative vote and a casting vote. (p.30: para 2(b)).

28. The Select Committee envisages that entrenchment would generally comprise or include the requirement that any proposed change [to the new State constitution] be submitted to and be supported by a specified majority of new State electors at a referendum. This would necessitate certain minimal provisions dealing with referendums in the new State constitution. (p.30: para 3(b)).

29. The Select Committee is opposed to any method of entrenchment that would comprise or include the necessity of obtaining the prior approval of the Commonwealth Government or Parliament to any change. (p.31: para 3(c)).

30. Generally speaking, the Select Committee favours some degree of entrenchment of the whole of the new State constitution. (p.31: para 3(d)).

VII. GOVERNOR AND THE CROWN

31. "... direct links must be established between the new State government and the Monarch, at least in relation to the appointment and termination of appointment by the Monarch of the new State Governor." (p.36: para 3).

32. The Select Committee believes that [the existence of direct links with the Sovereign] is really part of a wider principle that the composition of a new State Government from time to time is entirely a matter for the new State and its citizens and is not a matter in which the Commonwealth has any legitimate role to play. (p.36: para 3).

33. The Select Committee considers that there should be some constitutional guarantee of the Governor's remuneration (p.36: para 5).

VIII. POWERS OF THE GOVERNOR

34. On balance, the Select Committee considers that as a general rule, the representative of the Crown should be required as a matter of law to act in accordance with the advice of his or her Ministers. ... The only exceptions to this general rule that the Committee envisages are those specific cases where the new State constitution or legislation provides otherwise, or where it is clearly established that the government was acting or is proposing to act unconstitutionally (p.38: para 8).

35. The Select Committee recommends that the Governor should be given the express constitutional duty of upholding and maintaining the new State constitution as part of his or her wider general responsibility of administering the government of the new State (p.39: para 9).

36. Where it is clear that the government retains the confidence of the Parliament, the Select Committee considers that the Governor should have no power to dismiss his or her Ministers, or to dissolve the Parliament within the first 3 years of its 4 year term, nor any power to dissolve the Parliament in the last year of that term without the advice of his or her Ministers. (p.39: para 10).

37. Where a vote of no-confidence in the government has been carried by the Parliament, the Select Committee suggests that the Governor should be free without advice to invite another member to form a government and to dismiss his or her existing Ministers. If the Governor has been unable within a reasonable time to appoint a member who would, in the Governor's opinion, be able to form a new government which had the confidence of the Parliament, the Governor should be free without advice to dissolve the Parliament. (p.39: para 11).

38. In the case where the Premier has resigned or has vacated office, the Select Committee suggests that the Governor should be free to invite another member to form a government. If the Governor has been unable within a reasonable time to appoint a member who would, in the Governor's opinion, be able to form a government which had the confidence of Parliament, the Governor should be free to dissolve the Parliament (p.39: para 12).

39. The powers of the Governor outlined in Paragraphs [(d) and (e)] above should apply even within the first 3 years of the 4 year term of Parliament (p.39: para 13).

40. The Select Committee further suggests that the written reasons of the Governor for acting otherwise than in accordance with advice in exercising any of these powers should in each case be required to be tabled in the new State Parliament within a reasonable time. (p.39: para 14).

IX. PREMIER AND OTHER MINISTERS

41. The Select Committee is of the view that the Premier and other Ministers of the new State should be chosen from the members of the new State Parliament (p.40: para 2).

42. The Select Committee is of the view that the choice of the Premier should be a matter for the new State Governor (p.40: para 3).

43. [The Select Committee believes] the choice of other Ministers should be also a matter for the new State Governor after having received the advice of the Premier (p.40: para 4).

44. In the Select Committee's opinion, the Premier and other Ministers should hold office in accordance with the views expressed in Part H above. (p.40: para 5).

45. The Select Committee considers that the new State constitution should provide that an appointment as Minister will automatically terminate if the Minister ceases to be a member of the Parliament. If a Minister loses an election, he or she should only be entitled to remain a Minister up to the declaration of the poll. (p.40: para 6).

46. The Select Committee is of the view that the number of Ministers and their respective functions, responsibilities and designations, should also be a matter for the new State Governor after receiving the advice of the Premier (p.41: para 7).

47. The Select Committee believes that the remuneration and other entitlements of Ministers should be left to new State legislation. (p.41: para 8).

48. The Select Committee is opposed to any limitations being placed in the new State constitution on the scope of the executive authority of the new State Governor and Ministers. (p.41: para 9).

X. EXECUTIVE COUNCIL AND CABINET

49. "... it is the view of the Committee that the membership of the Executive Council of the new State should be limited to the Ministers for the time being *of* the new State ... (p.42: para 2).

50. The Select Committee proposes that the Executive Council of the new State be presided over by the Governor or the Governor's nominee. Meetings should be convened by the Governor whenever requested by the Premier or acting Premier. Matters of procedure should be determined by the Executive Council itself (p.42: para 3).

51. The Select Committee sees no need to give express constitutional recognition to the institution of Cabinet ... (p.42: para 4).

XI. FINANCIAL MATTERS

52. The most significant [financial] provisions that the Select Committee suggests be included [in the new State constitution] are:

(i) a provision for the establishment of a consolidated fund into which moneys belonging to the new State must be paid;

(ii) a requirement that money can only be paid out of the consolidated fund in accordance with a statutory appropriation;

(iii) a requirement that all money bills introduced into Parliament should first be the subject of a recommendation by the Governor to the Parliament; and

(iv) a requirement that appropriation and taxation bills only deal with matters of appropriation and taxation respectively. (p.43: para 2).

53. The Select Committee is strongly opposed to any proposal for including any external controls over borrowing by the new State other than in accordance with the provisions and powers presently applicable to the existing States (p.43: para 5).\

XII. THE JUDICIARY - INDEPENDENCE

54. The Select Committee favours the existing system of appointment of judges by the representative of the Monarch but considers that there should be convention as to prior consultation with the Chief Justice and appropriate bodies representing the legal profession." (p.49: para 3(b)).

55. The Select Committee favours inclusion of provision for removal of judges in the new State constitution and, in the absence of a national scheme concerning the removal of judges, the existing method of removal, which leaves the question of a determination as to misbehaviour or incapacity to the legislature." (p.50: para 4(e)).

56. The Select Committee does not consider that any provision concerning court administration should be included in the new State constitution. (p.50: para 5(b)).

57. The Select Committee does not favour the inclusion of any provision concerning judges and non-judicial functions in the new State constitution. (p.51: para 6(c)).

58. The Select Committee favours inclusion in the new State constitution of a provision along the lines of section 159 of the Papua New Guinea Constitution which provides that nothing in the Constitution prevents a law conferring judicial authority on a person or body outside the Judiciary, or the establishment by or in accordance with law, or by consent of the parties, of arbitral or conciliatory tribunals, whether ad hoc or other, outside the Judiciary. (p.52:, para 7(g)).

XIII. THE JUDICIARY AND THE NEW STATE CONSTITUTION - ENTRENCHMENT

59. The Select Committee accepts that the Judiciary should be recognised in the new State constitution. An independent Judiciary is fundamental to our system of government and its position should therefore be entrenched in the constitution. (p.53: para (2)).

60. The Select Committee believes, however, that only fundamental principles should be entrenched, and not matters of detail. (p.53: para (3)).

61. The Select Committee recommends that, in respect of the Judiciary, the following provisions should be included in the new State constitution:

(a) the existence of the Supreme Court of the new State including the Court of Appeal;

(b) appropriate savings provisions to carry over the officers, functioning, proceedings, records etc. of the Supreme Court of the Northern Territory;

(c) provisions for the appointment of Supreme Court judges (see recommendation above) and a guarantee against any reduction in their terms ant conditions of service during their respective terms of office;

(d) provision for the removal of judges (see recommendation above); and

(e) provisions concerning the jurisdiction of the Supreme Court of that new State. (p.53: para (4)).

62. The Committee does not at this stage consider any further entrenched provisions [as to the Judiciary are necessary, although it invites comment. (p.53: para (e)).

XIV. LOCAL GOVERNMENT

63. "... the Select Committee favours some constitutional provisions for the recognition of local government in the State. (p.60: para 6).

XV. ABORIGINAL RIGHTS

64. In the absence of Commonwealth land rights legislation applying Australia-wide, the Select Committee in broad terms endorses [the] approach [that the Aboriginals Land Rights (Northern Territory) Act 1976 be patriated to and become part of the law of the new State upon the grant of Statehood by some agreed method and that the process of patriation should include appropriate guarantees of Aboriginal ownership. (p.61: para 1)

65. One option, favoured by the Select Committee, is to entrench these guarantees of Aboriginal ownership in the new State constitution, such that they can only be amended by following specified entrenchment procedures. (p.61: para 2).

A. INTRODUCTION

1. Terms of Reference[1]

(a) On 28 August 1985, the Legislative Assembly of the Northern Territory of Australia by resolution established the Select Committee on Constitutional Development. Amendments to the Committee's terms of reference were made when the Committee was reconstituted on 28 April, 1987 following the March 1987 election. The resolutions were passed in conjunction with proposals then being developed in the Northern Territory for a grant of Statehood to the Territory within the Australian federal system. The terms of reference include, as the major aspect of the work of the Select Committee, a consideration of matters connected with a new State constitution. This Discussion Paper forms part of that consideration and is issued for public comment.

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

And whereas in so far as it is constitutionally possible the equality should apply as on the date of the grant of Statehood to the new State;

And whereas it is necessary to draft a new State constitution;

(1) A Select Committee be established to inquire into, report and make recommendations to the Legislative Assembly on:

(a) constitution for the new state and the principles upon which it should be drawing, including;

- legislative power
- executive powers, and
- judicial powers, and
- the method to be adopted to have a draft new State constitution approved by or on behalf of the people of the Northern Territory, and

(b) the issues, conditions and procedures pertinent to the entry of the Northern Territory into the federation as a new state

[1] See Appendix 5 for current terms of reference.

2. The Need for a Constitution

(a) Section 106 of the Constitution of the Commonwealth of Australia clearly anticipates the existence of an appropriate constitution "at the admission or establishment of the [new] State". Moreover, there is a general concurrence of views that the existence of a constitution is a necessary pre-condition for Territory Statehood. This can either be the existing constitution of a political entity that is not yet a State, or it can be a new constitution specifically framed for the new State.

(b) The self-governing polity known as the Northern Territory of Australia derives its constitutional status from the Northern Territory (Self-Government) Act 1978. As an ordinary Commonwealth statute capable of being repealed or amended by normal legislative process, that Act does not have the higher legal status normally accorded to a constitutional enactment. The constitution of the new State of the Northern Territory will form part of the law of the new State and will be capable of being altered only in accordance with its own provisions for amendment. While many provisions of the Northern Territory (Self-Government) Act may be suitable or adaptable for the new State constitution, the Select Committee is of the view that it could not serve as that constitution without substantial modification.

(c) The Select Committee considers that Statehood for the Territory must provide for constitutional equality with the other States. This in part can be achieved by the preparation and adoption of a new State constitution to replace the Northern Territory (Self-Government) Act, the new constitution being guaranteed by the Commonwealth Constitution in the same way as are the constitutions of the existing States. This view is reflected in the terms of reference of this Select Committee. It is envisaged that the primary task of this Committee is to make recommendations on matters relating to the framing of the new State constitution consistent with the principle of constitutional equality and other principles that the Committee considers applicable.

(d) The view of all members of the Select Committee is that the new State constitution must be prepared by Territorians; it should not be imposed upon the Northern Territory by outside agencies. Territorians must decide the form and content of their own constitution. Given the crucial role of the Commonwealth in any grant of Statehood, there is no doubt that the constitution will also have to be acceptable to the incumbent federal Government. The views of the States should also be sought.

(e) In the Australian tradition, constitutions have been broadly concerned with the description of the major institutions - executive, legislative and judicial - of the political system and the relationship between them. They set out the basic structure but leave many of the dynamic aspects of government to unwritten conventions and practices. The traditional model does not include provisions about the manner and quality of the use of power nor does it place particular

stress on the limiting of that power. Whether the new State constitution follows Australian precedent or embraces wider concerns is a matter for Territorians to decide.

3. The Process of Constitution Making

(a) The Select Committee is in agreement on the process by which the new State constitution should be framed.

Three stages will be involved:

(i) The Select Committee on Constitutional Development will prepare a draft constitution for presentation to the Assembly. Options, where necessary, will be included.

(ii) The draft constitution will be put before a Territory Constitutional Convention. The Convention will be established by appropriate action of the Legislative Assembly and will include broad representation from across the Northern Territory Community. It will receive the recommendations of the Legislative Assembly following debate on the Select Committee's report, will discuss the proposals and ratify a final draft of the constitution.

(iii) The constitution as ratified by the Convention will be submitted to a referendum of Northern Territory electors for approval.

This three-stage process was endorsed by the Select Committee at its meeting of 3 November 1986.

(b) The Select Committee, empowered by its terms of reference, adopted at its meeting of 3 November 1986, the following procedure:

(i) Four draft discussion papers will be prepared for consideration by the Committee on the following subjects:

- the Legislature - Composition, Function and Power;
- the Executive and its relationship with the Crown and the Legislature;
- the Judiciary; and
- other entrenched provisions to be included in the constitution, including a possible Bill of Rights and possible special provisions relating to the Aboriginal citizens of the Northern Territory such as their individual rights and land tenure;

(ii) Following finalisation by the Committee of these documents, copies will be forwarded to appropriate communities, councils, groups and individuals throughout the Territory and the Committee will engage in a process of community consultation throughout the Territory to obtain the comments and views on the issues raised or alternative submissions.

Any person can, upon request, be put on the Committee's mailing list and may make oral or written submissions to the Committee.

(iii) Following such consultation, the Committee will prepare a draft constitution for inclusion in its Report to the Legislative Assembly, which draft shall contain, where necessary, other options; and

(iv) The Committee will prepare for inclusion in its Report to the Legislative Assembly recommendations on representation at the proposed Constitutional Convention.

(c) Membership of the Select Committee currently comprises Steve Hatton (Chairman), Terry Smith, Brian Ede, Wesley Lanhupuy, Mick Palmer and Rick Setter.[2]

4. Discussion and Information Papers[3]

(a) Following an examination of possible constitutional provisions, the Select Committee has directed that certain salient areas be addressed and that this be done in one consolidated paper rather than in four separate discussion papers. The areas selected for discussion were those which the Select Committee considered had more than one viable or acceptable option for inclusion in the constitution. Some were included because of divided opinions in the Select Committee itself, others, despite unanimous support for one option, because different courses of action might eventually be preferred. Where the Select Committee has a particular preference, it is clearly indicated.

(b) Irrespective of the Committee's preference, all options are discussed and treated as evenhandedly as possible. Each is deemed capable of forming part of the constitution. Any conclusions arising from these options are the task of the Select Committee and the Territory community.

(c) The Discussion Paper is directed to Territorians at large. Thus, it is written as concisely and non-technically as far as is practicable given the subject matter. The Select Committee hopes that it will generate interest and debate within the Territory community and be a useful basis for later consultation. Comments are invited, not only on matters discussed in the Paper, but also on any other matters relevant to the terms of reference.

(d) The Select Committee will also issue information papers as required to inform the public on specific issues arising from the terms of reference. The first information paper will deal with the options for granting Statehood, setting out the preferred option and steps and procedures to give effect to the grant.

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[2] Current membership of Committee is, Steve Hatton [Chairman], Maggie Hickey [Deputy Chairperson], John Bailey, Tim Baldwin, Wes Lanhupuy, Phil Mitchell.

[3] See Appendix 6 for list of publications prepared by the Committee.

B. THE LEGISLATURE

1. General

(a) Just as the necessity for a new State to have a constitution is recognised in the Constitution of the Commonwealth of Australia, so is the fact that there must be a Parliament of a new State - for example, Sections 9, 15, 41, 107, 108, 111 (although not all of these sections may apply to a new State that was formerly a Commonwealth territory) and see also the Australia Act 1986.

(b) The view in (a) above is supported by the definition of "the States" in section 6 of the Constitution Act to include new States and the definition of "State" in the Australia Act to also include new States.

(c) The Constitution contemplates that a State Parliament will be composed of one or more chambers (Section 15), one of which being described as "the more numerous House of the Parliament of the State" (Sections 10, 30, 31, 41). This is a reference to the Lower House of the State Parliament where a bicameral system has been adopted, although it is clear that unicameral system is constitutionally acceptable.

(d) The Constitution also contemplates that a State Parliament will be representative in nature, with at least an elected legislature. However the method of election is not specified and allows considerable scope for innovation. Possibilities that might be considered are single and multiple electorates, common rolls and separate rolls, single and plural voting, equality of electorates, special electorates, etc. The views of the Committee on some of these matters are discussed below.

(e) However it may be elected and constituted, the Select Committee is of the view that the new State Parliament should be given the same rights, powers and privileges as existing State Parliaments. Anything less would not comply with the view expressed in the first preamble to the terms of reference of the Select Committee requiring constitutional equality with the other States.

(f) The Select Committee considers that the Legislative powers of the new State Parliament in respect of the new State should be as extensive as possible, that is, that it should have the same owners as other State Parliaments, subject only to the limitations flowing from the Commonwealth Constitution and the Australia Act.

(g) At present Australia is a federal Commonwealth constituted under the Crown and in which the Monarchy, with the Queen as Head of State, has a central role although to a large extent it is purely formal. This applies not only to the Commonwealth but also to the States. Under Section 7 of the Australia Act 1986, each State (including a new State, see section 16) is to have a

representative of Her Majesty, namely the Governor of the State. The Committee considers below the appropriate role of the Monarch's representative in relation to the new State Parliament.

(h) Given the monarchical system, and given the prerogative powers of the Crown with respect to the passage of legislation, it seems that the role of the representative of the Monarch in assenting to legislation enacted by the Parliament of a State (including that of a new State) cannot be dispensed with. This is implicit in Section 9 of the Australia Act 1986. The Select Committee is unanimously of the view that the representative of the Monarch should at least have the function of assenting to legislation or withholding assent. The Committee differs as to whether that representative should have power to suggest amendments back to the new State Parliament. One view is that the representative should have this power, in the same way as Governors of the existing States. The other view disagrees, based on the premise that the Parliament should have control over its own legislative processes and that it should not be possible for the executive to seek a reconsideration of legislation by referral back once it is passed. It should do so by following normal legislative processes.

(i) The passage of the Australia Act has also clarified the position as to disallowance and reservation of State legislation. Under Sections 8 and 9 of that Act, laws made by a State Parliament cannot be subject to disallowance by the Monarch nor can any Bill be the subject of a requirement for reservation to the Monarch. This may be compared to the present situation under the Northern Territory (Self-Government Act pursuant to which Territory legislation dealing with non transferred matters can be reserved for the Governor-General's pleasure, and any Territory legislation assented to by the Administrator can be disallowed by the Governor-General within a specified time. The Committee is strongly of the view that the new State should be treated the same as existing States in this regard, and that there should be no provision for reservation or disallowance of new State legislation by the Commonwealth Parliament or any other outside body.

(j) The question arises as to whether the new State Parliament should be so established as to provide for, or at least operate consistently with, the system broadly known as responsible Government. Under this system, the executive government is responsible to the Parliament, which in turn is responsible to the people. It is a system inherited from the Westminster Parliament, and in general terms it requires the leader of government, however described, to be the member of Parliament chosen by the Monarch or Her or His representative who can form a government from amongst the members which enjoys the confidence of the Parliament. Ministers of the government are chosen from and responsible to the Parliament, and the Monarch or Her or His representative acts with the advice of such Ministers. This is a question to be addressed more detail below.

2. Transitional Provisions

(a) There is a question whether the existing Legislative Assembly of the Northern Territory should be continued after the grant of Statehood as the Parliament of the new State, or whether a new State Parliament should be elected and commenced on and from the grant. It is to be recalled that upon the grant Or Self-government in 1978, the existing Legislative Assembly continued in existence by force of the transitional provisions in the Northern Territory (self-Government) Act 1978 and no election was held until some time after the grant. Similarly in the case of the Self-governing Australian colonies prior to federation, their existing colonial Parliaments continued in existence upon federation in accordance with their colonial constitutions and became the State Parliaments, with the powers of these Parliaments being preserved by Section 107 of the Commonwealth Constitution except insofar as the Constitution vested any powers in the Commonwealth Parliament or withdrew them from the State Parliaments.

(b) The nature and extent of the provisions dealing with the legislature of the new State in the constitution of that new State will be influenced, not only by the decision as to whether or not the Legislative Assembly is to be continued as the Parliament of the new State, but also by any decision as to the extent to which the constitution is to be given a special constitutionally entrenched status going beyond that of ordinary legislation. A constitution is said to be entrenched if it cannot be amended or repealed except after following certain defined procedures going beyond those required for ordinary legislation eg: by referendum. Insofar as such entrenchment is not considered necessary, appropriate provisions relating to the legislature of the new State (unless necessary to facilitate the first election of the new State Parliament) need not be included in the constitution but could be contained in ordinary legislation. The question of entrenchment is considered in more detail below.

C. FORM AND COMPOSITION

1. Constitution of Parliament

(a) The inclusion of the Monarch as part of the legislative process has an historical base in the evolution of the British (and Australian) constitutional system. Insofar as a monarchical system is to continue to operate within the Australian federation, it may be necessary for the representative of the Monarch in a State (including a new State) to be part of that legislative process, at least at the assent stage (see above). Some might argue that because the Monarch or Her or His representative retains such a role, however formal, that he or she should be included by definition as part of the Parliament itself. Others may contend that, as the above role is largely formal and out-of-date, the Parliament should be defined as being the elected chamber or chambers only.

(b) The definition of the Parliament varies among the Australian States. In the constitutions of NSW, Victoria, Queensland and WA, there is a specific

reference to the Queen or "Her (His) Majesty". Tasmania refers to the "Governor". Two States, NSW and Queensland, however, qualify the Monarch's position by the use of the words "with advice and consent" of the representative chamber or chambers. South Australia makes no mention of the Monarch or Her/His representative as part of the Parliament.

The Commonwealth Constitution states that the legislative powers of the Commonwealth shall be vested in federal Parliament consisting of the Queen, Senate and House of Representatives.

In the Northern Territory, under Section 13 of the Northern Territory (Self-Government) Act, there is no reference to the Monarch or Her or His representative.

(c) The Select Committee considers that even though the role of the representative of the Monarch may have to be retained in assenting to legislation enacted by the State Parliament, it is not necessary to define the Parliament of the State in the constitution as including the Monarch or Her or His representative.

2. Number of Legislative Chambers

(a) With the exception of Queensland, the Australian State and Commonwealth Parliaments have a bicameral structure i.e. they have two Houses. In the bicameral States, the "Upper House" is called "The Legislative Council" and the "Lower House" is "The Legislative Assembly" (or, in the case of SA, "The House of Assembly"). In the Commonwealth the two Houses are "The Senate" and "The House of Representatives". All the Houses are directly elected by persons qualified to vote.

(b) The Legislative Councils of the States and the Senate numerically have about half the membership of the State Assemblies and the House of Representatives. E.g. Victoria - 88, 44: SA - 47, 22: WA - 57, 34; Tasmania 35, 19; and the Commonwealth - 148, 76. The electorates of the former are generally larger geographically although there is wide variation between the State Commonwealth in the nature of Legislative Council/Senate electorates. Some Upper Houses like those of Victoria and WA, have multi-member constituencies. Others, like those of SA and the Senate, are elected on a State-wide basis, while that of Tasmania has single-member electorates. Tenure of office for members of Legislative Councils/Senate are also longer - usually about two terms of the "Lower" House. NSW has a three-term period. Elections for part of the membership of the Upper House, except for that of Tasmania which has annual elections, occur at every Lower House general election or at the effluxion of a fixed term.

(c) Apart from the provision requiring money bills to originate in the Lower House, the powers of both Houses are generally similar. All legislation is required to pass through both Houses.

(d) Advocates of a bicameral system argue that Upper Houses play a valuable role as "Houses of review". In their view, Upper Houses have the capacity, through greater time availability, less Ministerial involvement, better organisation and procedures, superior research and feedback facilities, a longer, more secure tenure and a less volatile membership, to study and improve legislation and to scrutinise financial and administrative processes. They are said to fulfil a "watchdog" function, providing safeguards against hasty or ill-conceived legislation and financial or administrative deficiencies as well as promoting additional community input into parliamentary processes. Moreover, depending on the electoral system used, regional representation can be provided. In Tasmania, most members of the Upper House are by tradition elected without formal political affiliations, and this is said to contribute to the House Review function.

(e) Critics of bicameral systems usually cite the extra cost of a second House and dispute the alleged advantages. They argue that Upper Houses in the States (and sometimes the Senate) perform no useful role and operate largely, as a second party chamber. Thus, where the same party controls both Houses, the Upper House tends to be no more than a "rubber stamp" and where different parties (or groups) are in control, the Upper House is frequently obstructive. Governments, it is contended, are made in the Lower House and they should not be forced from office or their performance impaired by actions of a second chamber. Conflicts between the two Houses is said to contribute to paralysis or instability of government and the frustrating of democracy. To unicameralists, Upper Houses are anachronistic and serve, no useful purpose in contemporary times.

(f) In the Northern Territory, leaving aside the period from 1863 to 1910 when it was part of South Australia there is no tradition of bicameralism; from 1947 to 1974, the single chamber was the Legislative Council (a partly elected body) and, after 1974 the fully-elected Legislative Assembly. During the lead-up to Self-Government, there was no advocacy of a bicameral system and none has come to the attention of the Select Committee since. The Select Committee proposes that the new State Parliament should consist of one House only.

(g) If a bicameral system is adopted for the Northern Territory, additional provisions will be needed in the new State constitution. They include provisions for the resolution of disagreements between Houses, consideration of a separate electoral system, determination of number of members and terms of office, powers and procedures of the second House.

3. Number of Members

(a) Assuming that the new State is to have a unicameral Parliament, it will be necessary to determine the number of members for that single chamber only. In five States, the number of members is specified in the constitution; in Queensland and the NT, they are contained in the appropriate electoral

legislation. Section 13(2) of the Northern Territory (Self-Government) Act states that "The Legislative Assembly shall consist of such number of members as provided by enactment". The NT Electoral Act Section 138(3) stipulates 25 members. It is interesting to note that all bicameral Parliaments have the number of members set out in constitutions while unicameral Parliaments do not.

(b) The Select Committee recommends that the number of members of the new State Parliament continue to be included in ordinary legislation. If the Legislative Assembly is to become the Parliament of the new State, the then current provisions of the Electoral Act can continue to apply. If a new Parliament is to be established, it may be necessary to specify the number of members of the first Parliament in the new State constitution, subject to later legislative variation. In that way, a change in the number of members can simply be achieved by amending an ordinary statute rather than the new State constitution. If the numbers were to be entrenched in the constitution, then, depending on the method of alteration of that constitution, it would be that much more difficult to make later changes. However the Select Committee considers that Statehood of itself would not justify any difference in the number of members from that of the Territory Legislative Assembly.

4. Qualifications of Members

(a) At present the provisions for qualification of members of the Legislative Assembly are contained in the Northern Territory (Self-Government) Act see in particular section 20 and 21. The required qualifications include that the nominee is entitled or qualified to be entitled to vote for the Legislative Assembly, which is primarily derived from a qualification to vote for the member of the House of Representatives from the Territory - see Section 14 of the Act and Section 93 of the Commonwealth Electoral Act. Upon a grant of Statehood, these provisions will cease to operate, and will be replaced by new provisions, either in the new State constitution or in new State legislation.

(b) Under Section 20 of the Northern Territory (Self-Government) Act, as at the "date of nomination" (presumably the date of close of nominations) a candidate for election to the Legislative Assembly must be an Australian citizen, at least 18 years of age, entitled or qualified to be entitled to vote for the Legislative Assembly (which picks up the voting requirement of soundness of mind in Section 93 of the Commonwealth Electoral Act), and a resident in the Commonwealth for at least 6 months and in the Northern Territory for at least 3 months. The Select Committee invites comments on each of these qualifications. It does not at this stage recommend any change except the deletion of the last qualification and the substitution of a new single residential requirement of 6 months in the new State.

(c) Under Section 21(1) a person is not qualified to be a candidate for election to the Legislative Assembly if at the "date of nomination" he or she holds an office or appointment under a Commonwealth, State or Territory law (other

than as a member of the Legislative Assembly or of the Executive Council or as a Minister, Speaker or Acting Speaker), or is employed by the Commonwealth, State or Territory or a public corporation, and in either case received remuneration or allowances (other than reimbursement of expenses reasonably incurred). This imposes a very strict test and requires candidates to resign from a wide range of positions and employment; including some that might be considered compatible with contemporaneous Parliamentary membership - for example, a part time public office.

The Select Committee supports the exclusion from nomination of a candidate who is already a member of the Commonwealth or another State legislature and certain office holders such as the Governor and Judges. Views differ on the Committee as to whether this should extend to membership of a local government body. In all other cases the Committee is of the view that the present operation of section 2l(l) should be reversed upon Statehood, such that a person in any other office or employment should not be disqualified from nomination for the new State Parliament. However if the person nominating holds an office of profit under the Crown (other than an office in relation to the new State Parliament), that office should automatically terminate upon that person's election.

(d) Further, under Section 21(1) a person, is not qualified to be such a candidate at the "date of nomination" if he or she is an undischarged bankrupt or has been convicted and is under a sentence of imprisonment for one year or longer. It should be noted that under the Electoral Act, Section 27, prisoners are no longer qualified from voting for the Legislative Assembly.

The Select Committee endorses this different treatment between voting and nomination in the case of prisoners, although it invites comment.

(e) Under Section 21(2) of the Northern Territory (Self-Government) Act, a member of the Legislative Assembly vacates office if the member comes within Section 21(1) (see above), ceases to be an Australian citizen, fails to attend consecutive sitting days without Assembly permission or ceases to be entitled or qualified to be entitled to vote or takes any remuneration for services in the Assembly except in accordance with his or her lawful entitlement. The Select Committee suggests that a member should only be disqualified if the member fails to attend the new State Parliament for 7 consecutive sitting days without permission. Otherwise it favours the above provisions but invites comment. It suggests, however, that disqualification should not extend to a member who inadvertently receives remuneration in excess of his or her lawful entitlement and who repays the excess.

(f) Under section 21(3) of the Northern Territory (Self-Government) Act, a member of the Legislative Assembly having an interest in a contract with the Territory is not thereby, disqualified, but may not take part in the discussion or

vote on that matter in the Assembly. The Select Committee favours a similar provision in the new State constitution.

(g) There is a view that as the provisions for qualification and disqualification of members of the new State Parliament are so fundamental to democratic values that they should not be capable of easy alteration and should be entrenched in the new State constitution. On the other hand, the rigidity thereby created would make difficult even minor changes that might be required after the constitution has operated for a while and any deficiencies have been revealed. The Select Committee favours the inclusion of all provisions on qualification and disqualification of members in the new State constitution but invites comment.

5. Term of Office

(a) Four Australian States - New South Wales, Victoria, South Australia and Tasmania - have a maximum four-year term for their Lower Houses. In the case of the first three States, the term was increased from three to four years during the 1980s. Tasmania reduced its term from five years in 1972. The remaining States - Queensland and Western Australia plus the Commonwealth have retained three-year terms. Queensland has its term entrenched (i.e. it can only be varied by way of a referendum). As with all other provisions of the Commonwealth Constitution, the term of the House of Representatives is subject to change only through the complicated procedure of Section 128 which in part also requires a national referendum

(b) In four States and the Commonwealth, the term is calculated from the first meeting day of the Lower House; in the others - Queensland and Tasmania from the return of electoral writs.

(c) The Legislative Assembly of the Northern Territory, by Section 17(2) of the Northern Territory Self-Government) Act, has a four year term calculated from the first meeting of the incoming Assembly. The Select Committee recommends the retention of the existing term. It believes that the four year term is a proper compromise between electoral accountability (i.e. more frequent recourse to the voters) and effectiveness of administration. (i.e. the longer electoral cycle allows government greater capacity to implement policies and programmes). Most political analysis in Australia concurs with the Select Committee's reasoning. However, the option of shorter terms (annual, biennial or triennial) or longer terms in excess of four years are still open for consideration.

(d) It is a normal constitutional provision in Australia that there at least be an annual meeting of the Parliament. That provision is not part of the Northern Territory (Self-Government) Act. The Select Committee is of the view that there should be a constitutional requirement that not more than 6 months pass between-. successive sittings of new State Parliament.

(e) No State (or Commonwealth) Lower House has a fixed term Parliament provision although there has been considerable academic and political discussion about its merits and demerits. Broadly, there are three options available for consideration.

(i) A prescribed maximum term but with full flexibility as to when an election can be held within that term. In practice, the government advises the Governor-General or the Governor (or the Administrator, in the case of the Territory) when an election should occur. (For a discussion of the gubernatorial role in dissolving parliaments, see Part H below).

(ii) A fixed-term parliament.

(iii) A partially fixed-term. Precedents exist in Victoria and South Australia. In both, the Lower House must ordinarily run for at least three years (of the four year term). Elections can only be called in that period in the case of any rejection of financial appropriation, a second rejection of other legislation the Upper House or if a lack of confidence motion in the government has been carried. In the final year, an election can be called at any time, following advice to the Governor to dissolve the Lower House.

(f) Supporters of fixed-term parliaments use several arguments:

(i) That the system. works successfully in other countries (e.g. USA);

(ii) That parliaments are elected for a certain term and that term should, in normal circumstances, be served out;

(iii) That the ability of the Premier (Prime Minister, Chief Minister) to call an election at any time endows that position with power to maximise his party's electoral chances, to disadvantage opposing parties, and, in some cases, to discipline his own party members;

(iv) That over-frequent elections destabilise the political system, are detrimental to good government and involve significant financial costs to the community; and

(v) That recent Australian experience has indicated possible cynical manipulation of the flexible term; fixed terms would remove arbitrary, partisan and capricious early elections.

(g) Defenders of the non-fixed term cite:

(i) The importance of flexibility to the "Westminster" System of government and despite any occasional abuse, its overall enduring success;

(ii) That fixed-terms are incompatible with ministerial responsibility, the role of the Governor and other conventions of the "Westminster" system;

(iii) That the fixed-term system can itself be manipulated in that early elections can easily be engineered by creating artificial conflicts in either bicameral or unicameral systems; and most importantly.

(iv) That the electorate can judge the propriety of the calling of an early election at the polls. On this view, elections, however frequent, are cornerstones of accountable, responsible and democratic regimes. Government leaders are constrained in calling early elections by the need to convince the Governor, their own party and the electorate that one is necessary.

(h) The South Australia/Victoria model of a partly fixed term is an attempt to balance the advantages of the two competing systems, combining elements of stability and flexibility. There is no doubt that it can be successfully adapted to a unicameral system. Such a provision could be entrenched in the new State constitution if considered necessary.

(i) The Select Committee prefers the partially fixed term option, whereby the Governor cannot dissolve the new State Parliament within the first three years of its term unless a vote of no-confidence in the government has been carried by the Parliament or unless the Premier has resigned or has vacated office. In either of those events the Governor should be able to invite another member to form a government. If the Governor is unable within a reasonable time to appoint a member who can form a government which would have the confidence of Parliament, the Governor should be able to dissolve the Parliament. This is an issue that is discussed further in Part H below.

D. ELECTORAL PROVISIONS

1. General

(a) The electoral provisions applicable to a new State Parliament are clearly of great importance in a representative and democratic political system. However, with the exception of some limited provisions, traditionally in Australia they have not been thought of as being of sufficient importance to be included in constitutions. Provisions now thought of as being reasonable, for example universal adult suffrage, secret ballot, one person one vote, reasonable parity of voting numbers in each electorate and redistribution whenever there is a marked lack of parity, are not always found in constitutional provisions and in some cases not even in legislative provisions.

(b) The extent to which electoral provisions are included in constitutional enactments varies widely in Australia. Victoria has comprehensive provisions in its constitution; New South Wales, South Australia, Western Australia and

Tasmania have far fewer provisions included and they relate largely to qualifications of electors and details of electorates; and Queensland has only fleeting references. In the five latter States, to varying degrees the remaining electoral provisions are in ordinary electoral legislation. Some provisions are entrenched in the constitutions of New South Wales and South Australia. The question of entrenchment is discussed further below.

The Commonwealth Constitution has few references to elections with only broad guidelines on timing, method and electoral divisions being cited. Again, the bulk of the provisions are detailed in electoral legislation.

(c) Most electoral provisions in the Northern Territory are contained in ordinary legislation, although certain electoral provisions are found in the Northern Territory (Self-Government) Act. They are

(i) Distribution of electoral divisions (S.13);
(ii) Qualifications of electors (S.l4);
(iii) Writs for and dates of elections (Ss.15, 17); and
(iv) Casual vacancies and by-elections (S. 19)

These provisions will have to be replaced on Statehood by new provisions, either in the new State constitution or in ordinary legislation.

(d) The Select Committee is of the view that most electoral provisions should not be contained in the new State constitution. The only exceptions to this that the Committee envisages are as follows:

(i) the maximum tolerance for electorates;
(ii) qualifications of voters;
(iii) writs for and dates of elections;
(iv) casual vacancies and by-elections; and
(v) one person one vote and secret ballots.

(e) If some or all electoral provisions are to be continued in ordinary legislation, one suggestion of the Select Committee is for an Electoral Bill to also be drafted for consideration at the same time as the new State constitution, to facilitate discussion on electoral matters. This may not be necessary if the existing Legislative Assembly is to become the new State Parliament, with the existing Territory Electoral Act being continued in force subject to later amendment.

2. Electorate Tolerance

(a) The Select Committee prefers the existing single member electorate system with Aboriginal Territorians participating in the same way as other Territorians

on the basis of one person one vote and with no distinction on the basis of race. However it is of the view that the nature of electorates should not be prescribed in the State constitution but should be left to ordinary legislation.

(b) On the other hand, the Select Committee favours the inclusion in the new State constitution of some maximum permissible tolerance in the numbers of voters in each electorate. The most common tolerance (i.e. the difference either above or below an average national figure for electorates) in Australian States and the Commonwealth is 10 percent. Queensland with four-zone division, each with a different quota, is the stark exception. Some of the tolerances are specifically included in constitutions. In Section 13 of the Northern Territory (Self-Government) Act, the tolerance is set at 20 percent but in recent redistributions, the extreme margins have not been often used.

(c) The use of tolerance is a departure from a strict adherence to the principle of "one vote, one value" but it has been accepted in Australia as a device to take account of the huge size of electorates in the rural or more remote areas and the concentration of population in certain small areas of the continent. What has been a divisive issue has been the appropriate size of the tolerance.

(d) There are three realistic positions which could be adopted for the Northern Territory. They are**:**

(i) Approximate equality of electorate numbers;

(ii) A 10 percent tolerance; and

(iii) A 20 percent tolerance.

(e) The Select Committee is divided as to its views on this matter. Some members favour a maximum 20 per cent rule for inclusion in the new State constitution whilst others favour a maximum 10 percent rule for inclusion.

In either event, it should be possible for this maximum to be reduced by ordinary legislation.

3. Qualifications of Voters

(a) As noted above, the qualifications of voters for the Legislative Assembly of the Territory are primarily derived from Section 14 of the Northern Territory (Self-Government) Act so as to ensure that persons who are entitled under the Commonwealth Electoral Act to vote for the member of the House of Representatives for the Territory are also entitled to vote in Legislative Assembly elections.

(b) The qualifications for voting in the Commonwealth Electoral Act are that the voter has attained 18 years of age, is an Australian citizen (with some

transitional arrangements for British subjects), is not of unsound mind or under sentence of imprisonment for 5 years or longer or has not been convicted of treason or treachery without a pardon. Prisoners have now been given a vote in Legislative Assembly elections by Section 27 of the NT Electoral Act.

(c) The Select Committee is of the view that there should be a three month residential requirement in the new State for a person to be eligible to vote for the new State Parliament. Persons eligible to vote in. Commonwealth elections anywhere in Australia immediately before the commencement of Statehood should be eligible to vote for the new State Parliament if meeting this residential qualification. Subject thereto, voting should be limited to Australian citizens. In other respects the Committee favours similar provisions to those presently applying in the Northern Territory. These qualifications should be included in the new State constitution.

4. Other Electoral Matters

(a) The Select Committee suggests that the new State constitution should contain provision enabling the Governor on the advice of his or her Ministers, to issue writs for elections and to fix the date of elections.

(b) The Select Committee also suggests that the new State constitution contain provisions as to casual vacancies and by-elections. Under this provision, an election (either a general election or a by-election) should be held within 6 months of any casual vacancy.

(c) The Select Committee recommends that the principle of one person one vote, and the requirement that elections be by secret ballot, should also be contained in the new State constitution.

E. OTHER LEGISLATIVE MATTERS

1. General

(a) There are of course a number of other matters relating to the new State legislature that will have to be included either in the new State constitution, in the standing orders of the new Parliament or in ordinary new State legislation. This will include revisions in place of a number of existing provisions in the Northern Territory (Self-Government) Act. The Select Committee does not intend in this Paper to discuss every one of these matters, although it invites comments and suggestions on provisions that should be so dealt with.

(b) There are two matters that the Select Committee would like to specifically direct attention to. These comprise:

* Voting in the new State Parliament, including by the Speaker; and
* Entrenchment of constitutional provisions.

2. Voting

(a) As a matter of general principle, it is clear that each member of the new State Parliament should be limited to one vote on each question, except perhaps in the case of the Speaker or Chairman (including an acting Speaker or acting Chairman).

(b) The Select Committee considers that because of the importance of the office of Speaker, the new State constitution should provide for the office in a similar way to the Northern Territory (Self-Government) Act. The Speaker of the new State Parliament should have the same voting power as the Speaker of the Legislative Assembly namely a deliberative vote and a casting vote.

3. Entrenchment

(a) Reference has been made in a number of paragraphs above to the possibility of entrenching certain provisions in the new State constitution. These would be provisions that were considered to be of such importance that they should not be lightly changed, such as by an ordinary Act of the legislature passed by a simple majority of members present and voting.

(b) The degree of entrenchment need not be the same for all provisions - some may be considered of greater importance than others. The Select Committee envisages that entrenchment would comprise or include the requirement that any proposed change be submitted to and be supported by a specified majority of new State electors at a referendum. This would necessitate certain minimal provisions dealing with referendums in the new State constitution. Specific matters for possible entrenchment are dealt with below.

(c) The Select Committee is opposed to any method of entrenchment that would comprise or include the necessity of obtaining the prior approval of the Commonwealth Government or Parliament to any change. Such a provision would be inconsistent with the principle of constitutional equality.

(d) Generally speaking, the Select Committee favours some degree of entrenchment of the whole of the new State constitution. The constitution should be a document that is accorded special status in the law and should only deal with those matters considered to be of vital importance in the functioning of the new State and its institutions. Matters of lesser importance should be relegated to ordinary legislation.

(e) The Select Committee accepts that the new State constitution may need to include some transitional provisions to facilitate the establishment of new State institutions after the grant of Statehood, and which could thereafter be dealt with by ordinary legislation. The extent of these provisions will in part depend on the extent to which existing institutions, for example, the Legislative

Assembly, are carried forward as part of the institutions of the new State (see above).

(f) Particular aspects that could be considered for entrenchment will be dealt with below. Matters that might be considered as being appropriate for entrenchment in relation to the new State legislature, being matters that could be regarded as being fundamental to the democratic system applicable in Australia, include**:**

(i) The existence of the unicameral new State Parliament and its fully representative nature;

(ii) The qualifications and disqualifications of members;

(iii) The maximum tolerance allowed between electorates;

(iv) The qualifications of voters;

(v) The power of the Governor to assent or withhold assent to legislation, to dissolve the Parliament (subject to restrictions within the first 3 years of the 4 year term, to issue writs for elections and to fix the date of elections;

(vi)) Casual vacancies and by-elections;

(vii) The principle of one person one vote and secret ballots;

(viii) The wide legislative powers of that Parliament;

(ix) The requirement that not more than 6 months pass between successive sittings of the Parliament; and

(x) The office of Speaker.

There may be other matters that should be included.

F. THE EXECUTIVE

1. Traditionally, the functions of government are divided on a simple tripartite basis. The three functions are legislative (or law-making), executive (or law-implementing) and judicial (or law-adjudicating and enforcing). In the earlier parts of this Discussion Paper, discussion focussed upon the legislative function within the new State constitution. This Part examines the form and role of the executive and, in addition, discusses the relationship which might exist between it and the legislature.

2. In its broadest definition, the "executive" comprises a group of formal governmental institutions including the Monarch, the Governor, the Premier (President, Prime Minister, Chief Minister), the Executive Council, the Cabinet, Ministers and the bureaucratic apparatus (i.e. the departments of the public service and statutory authorities). The constitutions of the Commonwealth and the Australian States include references to some of those institutions. Undoubtedly, the new State constitution will follow that pattern. But a central question will be to what degree their powers and

role, their inter-relationship and their interplay with the legislature, should be prescribed in that constitution.

3. As with all simple models of the political process, the tripartite division does not adequately reflect real-life politics. Specific institutions**,** be they executive, legislative or judicial, are not necessarily confined to one function; they are often multi-functional. For example, the "executive" may have significant legislative and judicial roles as well as its law-implementing function. Contrary to the strict doctrine of separation of powers, there is no constitutional systems, no clear division between the three arms of government, such that there may be some co-mingling of functions between them to various degrees.

4. Within the western democratic tradition, there are two dominant forms of government - the presidential, of which the American system may be the best known example, and the parliamentary, of which the British "Westminster" system may be the best known example. In the first, there is a considerable degree of independence between the executive and the legislature, with each having, fixed terms of office. Neither is able (with the exception of impeachment in some systems) to dismiss the other. The second is characterised by a high level of dependence between the two with the legislature having the power to cause the dismissal of the executive government, and the executive government having the power to cause the dissolution of the legislature (at least the Lower House).

5. In the American system the executive comprises the President and Vice-President, the Cabinet (the members of which are personally appointed by the President), the White House staff and the bureaucracy. The legislature is the bicameral Congress comprising the House of Representatives and the Senate, both of which are directly elected. The President and Vice-President have their own separate mandates from the people (mediated by the Electoral College). Although in theory the operative principle of the system is the separation of powers, in practical terms it is better described as "separated institutions sharing powers". No person can simultaneously be a member of the two arms of government (subject to the position of the Vice-President as President of the Senate but with only a casting vote) but the two arms do, in fact, share many functions. The separation is qualified by an elaborate constitutional system of checks and balances (like the Presidential veto and its possible overturning by Congress, the impeachment of the President by Congress, Senate confirmation of the President's senior appointments and joint making of treaties and Congressional enquires). Most of those checks and balances are specified in the federal constitution but some (like the role of political parties) are conventional structures and practices. Supremacy within the system fluctuates; sometimes the executive dominates, at other times, the Congress.

6. This very brief exposition of the American system is not to suggest that it should, either totally or partially, be integrated into the new State constitution; indeed, it is not likely that a radical departure from traditional "Westminster" norms and styles, such as would be involved by the adoption of the American system, will be accepted by the

Territory people or by the Commonwealth, assuming it is even constitutionally possible to adopt such a system.

Rather, it is to demonstrate the intricate and dynamic inter-relationship between the executive and the legislature in what is, in Australian terms, an unfamiliar system. Of particular interest is the extent to which the American constitution defines the respective roles of the President and Congress and the relatively lesser influence of conventions (unwritten customary practices which are generally agreed upon and applied).

7. There is in any event some doubt, arising from a number of comments *of* several High Court Judges in various cases, as to whether it is ever constitutionally possible for a State constitution to be based other than on the system broadly known as responsible government as derived from the "Westminster" system (see below).

8. The second model is the "Westminster" System which evolved through centuries of British political Practice. At its heart is the doctrine of parliamentary sovereignty, a doctrine which implies that Parliament (i.e. the legislature) is the supreme organ of government. In theory, the Parliament controls the executive. Unlike the American system where the President is chosen by and is responsible to the electorate, the executive government in the "Westminster" system is responsible to the representative legislature which, in turn, owes its responsibility to the people. That dual pattern of responsibility is the basis of "responsible government". There is no separation of powers; the executive (the Monarch, the Prime Minister, Cabinet Ministers) are part of the Parliament. The effective executive (which excludes the Monarch) comprises those members of Parliament who, in the opinion of the Monarch; or Her representative, command the confidence of a majority of members in that Parliament; they are the leaders of the dominant political party (or coalition of parties).

9. Notwithstanding the principle of the supremacy of Parliament, the executive in contemporary times has become the dominant arm in the "Westminster" system, largely through the extension and consolidation of the party system. While Parliament does retain a limited capacity to exercise control on the executive's activities, it has lost the ability (except in exceptional circumstances) to exert the ultimate sanction of dismissing the executive. Thus, one strand of responsibility (that of the executive to the legislature) has a considerable extent been rendered ineffective. Moreover, although the legislature retains its formal and legal terms the law making function, it is no longer in total control of that function. The control of that function lies to a large extent in the hands of the executive.

10. The Monarch's role in the British "Westminster" system is almost purely ceremonial and formal. The Monarch is only the nominal head of the polity and the exercise of most of the once considerable Royal prerogative powers of an executive nature have long since either been delegated to the executive government or been replaced by statutory powers. Although in law the Monarch still possesses some prerogative and reserve powers, in practical terms they are exercisable only on advice of the Prime Minister, at least in most cases. The Monarch's role is that of a constitutional Monarch

even though this position is not comprehensively set out in any constitutional document and relies on the force of convention.

11. In contrast to the American model, the "Westminster" system is, for the most part conventional. Many of its major operative principles and structures are not described or prescribed in a constitution. Political parties, the Prime Minister and Cabinet - prime dynamic agencies within the system - and the links between the executive and the legislature, are largely determined by convention.

12. At a fundamental level, there remain a number of similarities between the American system and the "Westminster" system. Both are based on democratic traditions with representative legislatures and both are "constitutionalist" (emphasising the limitations of political powers) in character. The composition of the executive at the highest levels in both is derived either directly or indirectly through democratic means. In both, the executive is dependent on the legislature for the passage of its legislative proposals and for the ongoing appropriation of funds necessary for the performance of governmental functions. The common law is at the foundation of both systems and affords access to a variety of restraints on any executive action that is unlawful under the common law. In legal theory at least, the common law can be altered by action of the legislature. The executive has no formal law making powers nor can it dispense with or suspend existing laws except insofar as those powers may be validly delegated to it by the legislature. The rule of law is said to prevail.

13. The "Westminster" system forms the basis of government in Australia in a structural sense and in its reliance on conventions, as grafted onto a federal system with a written constitution. But it must be noted that many of the devices integral to that system in the United Kingdom have been dispensed with in Australia. In particular, some of the checks on executive power and the extensive powers of the Westminster Parliament do not exist to the same extent in Australian practice. Here, the effective supremacy of the executive over the legislature is much more noticeable and comprehensive. For that reason, many commentators have preferred the use of the "Australian model" (or "variant") to the "Westminster" system. That is especially relevant to the operation of government in the States. In the Commonwealth, the executive supremacy has been tempered in recent years by its lack of control over the federal House, the Senate. That however, may not be a continuous restraint depending on the composition of that House from time to time.

14. The nature of the executive of the new State and the appropriate relationship between the executive and the legislature are matters that have to be considered in the context of a grant of Statehood to the Northern Territory. To a limited extent, any decisions taken in this regard will be controlled by requirements flowing from the Commonwealth Constitution and the Australia Act 1986. For example, both of those documents contemplate that there will be a new State Governor as the representative of the Monarch in the new State and exercising the powers and functions of the Monarch with limited exceptions in respect of the new State. The Constitution also contemplates that there will be an "Executive Government" of a State (Section 119) with an "Executive Council" to advise the Governor (Section 15 and see Section 70

and 84). Discussion of possible options for inclusion in the new State constitution is included below.

15. The role of the Governor-General/Governor in Australia is not completely analogous to that of the constitutional Monarch in Britain. In the Commonwealth Constitution, the Governor-General is accorded powers of appointment and dismissal of Ministers of State which, while normally exercised on advice, can be used independently. The dismissal in November 1975 of the Whitlam administration was brought about by the use of the Governor-General's reserve powers on the basis of a view taken as to the extent to which those powers are free from constraints imposed by law or convention. Similar power exists, albeit not used since 1932, in the constitutional instruments of the States. A central concern of the following discussion on the executive's place in the new State constitution will relate to the reserve powers of the Governor and the extent to which their exercise should be left to convention or written into the constitution.

16. Finally, in the "Australian model" (like the "Westminster" system) no constitutional reference is made to important political offices and bodies like the Premier and the Cabinet. Whether (and to what extent) their role and powers should be included within the new State constitution is another question which needs consideration. Accordingly, that aspect is also treated in this Paper.

G. GOVERNOR AND THE CROWN

1. In Parts B and C above dealing with the legislature of the new State, the Select Committee noted the broad monarchical framework applicable to the federal Australian Commonwealth.

2. Having regard to the relevant provisions of the Commonwealth Constitution and the Australia Act 1986, it follows that the Head of the new State and its government must be the Monarch, and that the Monarch's representative in the new State must be the Governor. Whatever the nature of the provisions that may be desired in the new State constitution as to the office of the new State Governor, it is clear that the relevant provisions of the Constitution and the Australia Act must be complied with. This limits the options available in this matter.

3. Under Section 7 of the Australia Act, it is implicit that the Governor of the new State must be appointed by, and the Governor's appointment may be terminated by, the Monarch following receipt of advice from the new State Premier in relation to the appointment or that termination. It follows in the Select Committee's view that direct links must be established between the new State government and the Monarch, at least in relation to the appointment and termination of appointment by the Monarch of the new State Governor. It would be inconsistent with the principle of constitutional equality with the existing States, as expressed in the terms of reference, for those links *to* be established and maintained through the Commonwealth. The Select Committee believes that this is really part of a wider principle that the composition of a new State Government from time to time is entirely a matter for the new State and its citizens and is not a matter which the Commonwealth has any legitimate role to play.

4. Some special arrangements may have to be made by the Commonwealth for the appointment of the first Governor of the new State to enable that appointment to take effect immediately upon the commencement of the new State. Provision for this first appointment by the Monarch might be made in the Commonwealth legislation granting Statehood. That appointment should be subject to receipt of advice from the Chief Minister of the Northern Territory. The Select Committee is of the view that this should in no way be taken as a precedent for future action relating to any such appointment or termination thereof.

5. The Select Committee considers that there should be some constitutional guarantee of the Governor's remuneration. This could take the form of an automatic appropriation plus a provision that the remuneration of the new State Governor shall not be reduced during his or her period of office. A number of State constitutions provide for the remuneration of the Governor and for its appropriation, and the Commonwealth Constitution, Section 3, states that the Governor's salary shall not be altered during his or her continuance in office.

H. POWERS OF THE GOVERNOR

1. Generally speaking, the exercise of the powers of the representative of the Monarch in Australia (Governor-General, Governor) are not constrained by any express constitutional law. The powers are not required to be exercised in any specified way for example, in accordance with the advice of his or her Ministers. However, as a matter of convention, the representative of the Monarch generally follows the advice of his or her Ministers. Such reserve powers as that representative may still have are rarely exercised other than in accordance with such advice. The representative does, however, have the right to be consulted, to encourage and, to warn.

2. In the case of the former Royal Letters Patent (recently ceasing to have effect) applicable to the office of the Governor of NSW, the Governor was required to be guided by the advice of the Executive Council unless he had sufficient cause to dissent. A member of that Executive Council could require the grounds of the advice to the Governor to be recorded in the minutes of the Council. The Letters Patent of the other States do not even go this far in imposing any express restraints on the Governor's powers.

3. In some cases, powers of the Governor of a State have now been replaced or modified by provisions in State constitutions or legislation. For example, as mentioned in Part C above the limitations now contained in the constitutions of Victoria and South Australia on the power to dissolve the Lower House of State Parliament within the first three years of the four year term.

4. In many of the constitutions of newly emerged countries which broadly follow the "Westminster" system of government, the Head of State or its representative is specifically required to act in accordance with the advice of Executive Council or Cabinet or an authorised Minister, except:

a) where it is expressly provided otherwise by way of reference to some other person or body;

b) where the Head of State or its representative is expressly given a discretion; or

c) where the Head of State or its representative is under an obligation to take certain action upon the occurrence of specified events.

5. By way of example, the constitution of Barbados contains a provision similar to that outlined in paragraph 4 above and, in addition, the Governor-General is expressly given a discretion as to the appointment of the Prime Minister, being the person who in his or her opinion is best able to command the confidence of a majority of the members of the Lower House of Parliament. The Governor-General can only appoint other Ministers in accordance with the advice of the Prime Minister from among the members of either House of the Parliament. If the Lower House resolves that the appointment of Prime Minister should be revoked, and the Prime Minister does not within 3 days of the passing of that resolution resign or advise the Governor-General to dissolve the Parliament, the Governor-General must revoke the Prime Minister's appointment. If the office of Prime Minister is vacant and there is no prospect of making an appointment to that office within a reasonable time, the Governor-General can dissolve the Parliament without prior advice. Where there is a Prime Minister, the Governor-General can only dissolve the Parliament in accordance with the Prime Minister's advice.

6. The constitutions of some countries go ever further. For example, the Constitution of Papua New Guinea provides that the Prime Minister is appointed by the Governor-General acting in accordance with the decision of the Parliament. The Prime Minister must be dismissed from office by the Governor-General if the Parliament passes a motion of no confidence in him or her or in the Ministry except during the last year of the 5 year term of Parliament, in which event a general election must be held. If an absolute majority vote of the Parliament so decides, or if the Parliament; continues into the last 3 months of the maximum 5 year Parliamentary term, a general election must be held.

7. These various constitutional provisions prescribe the circumstances in which the Head of State exercises his or her most important constitutional powers, thereby limiting (with some exceptions) the scope of his or her discretion. To the extent that the discretion is limited there is greater certainty. It also limits the potential for abuse by the Head of State of his or her powers and requires that person to respond more precisely to the will of the elected Parliament and the responsible Ministers. It incorporates into law that which is presently dealt with by convention. It has the deficiency that it creates a degree of rigidity and removes a possible check on proposed action that might be unconstitutional.

8. On balance, the Select Committee considers that, as a general rule, the representative of the Crown should be required as a matter of law to act in accordance with the advice of his or her Ministers. By incorporating convention into the constitution, the law would thereby reflect contemporary practices in the Westminster system. The role of the representative of the Monarch would otherwise remain unaffected, although the manner in which that representative exercised his or her powers and functions would have been clarified. The only exceptions to this general rule that the Committee envisages are those specific cases where the new State constitution or legislation provides otherwise, or where it is clearly established that the government was acting or is proposing to act unconstitutionally. The special position relating to the appointment and dismissal of Ministers and dissolution of the new State Parliament is discussed below.

9. The Select Committee has some concern about the inflexibility that would be introduced by the view it has expressed in the preceding paragraph in cases involving unconstitutional governmental action. On one view the representative of the Crown has ultimate responsibility to ensure that the government of the day does not take any such action, although he or she should not act contrary to advice except in the most extreme and clear cut cases as a matter of last resort. On this basis, the Select Committee recommends that the Governor should be given the express constitutional duty of upholding and maintaining the new State constitution as part of his or her wider general responsibility of administering the government of the new State.

10. Where it is clear that the government retains the confidence of the Parliament, the Select Committee considers that the Governor should have no power to dismiss his or her Ministers, or to dissolve the Parliament within the first 3 years of its 4 year term, nor any power to dissolve the Parliament in the last year of that term without the advice of his or her Ministers. In cases of doubt, the Premier or the government should be able to obtain a vote of confidence from the Parliament

11. Where a vote of no-confidence in the government has been carried by the Parliament the Select Committee suggests that the Governor should be free without advice to invite another member to form a government and to dismiss his or her existing Ministers. If the Governor has been unable within a reasonable time to appoint a member who would, in the Governor's opinion, be able to form a new government which had the confidence of the Parliament the Governor should be free without advice to dissolve the Parliament. The Select Committee considers that the Governor should be able to seek the advice of Parliament (if then sitting) as to whether the government has its confidence, or to summons the Parliament (if then sitting) for the sole purpose of considering whether the government, has its confidence.

12. In the case where the Premier has resigned or has vacated office, the Select Committee suggests that the Governor should be free to invite another member to form a government. If the Governor has been unable within a reasonable time to appoint a member who would, in the Governor's opinion, be able to form a government which has the confidence of Parliament, the Governor should be free to dissolve the Parliament.

13. The powers of the Governor outlined in Paragraphs 11 and 12 above should apply even within the first 3 years of the 4 year term of Parliament (see Part C above).

14. The Select Committee further suggests that the written reasons of the Governor for acting otherwise than in accordance with advice in exercising any of these powers should in each case be required to be tabled in the new State Parliament within a reasonable time.

15. It should be noted that the above approach goes considerably further than any existing Australian constitutions. However, the Select Committee believes that it is an approach that accords more closely with contemporary practices and expectations.

I. PREMIER AND OTHER MINISTERS

1. Having regard to the terms of Section 7(5) of the Australia Act, it is necessary to have a Premier of a new State to advise the Sovereign. The Premier, as the political head of the government of the new State, will be the most senior Minister. He or she will be assisted by other Ministers.

2. The Select Committee is of the view that the Premier and other Ministers of the new State should be chosen from the members of the new State Parliament, in the same way as Ministers of the Territory are presently required to be members of the Northern Territory Legislative Assembly. In taking this view, the Committee in broad terms is advocating the adoption of the "responsible" system of government on the "Westminster" pattern whereby there is a direct relationship between the executive and the legislature. This is the method best understood and accepted in Australia and the Committee sees no good reason for departing from it. Notwithstanding the dominance of the executive arm of government over the legislature in contemporary times, the Committee sees considerable merit in having Ministers as members of the Parliament, given the wide range of powers that they exercise and the need for accountability in the exercise of those powers. In the Committee's view, the legislature does still play an important role in relation to the exercise of ministerial powers, a role greatly assisted if Ministers are also members of the legislature. The Committee does not favour any alternative whereby some or all of the Ministers are not required to be members of the Parliament.

3. Further, the Select Committee. is of the view that the choice of the Premier should be a matter for the new State Governor. In accordance with convention, the person chosen will be the person who, in the opinion of the Governor, is best able to form a government that commands the support of a majority of the members of the new State Parliament.

4. The choice of other Ministers should be also a matter for the new State Governor after having received the advice of the Premier. The Committee does not favour any other alternative, for example, for the Ministry to be elected by the Parliament.

5. In the Select Committee's opinion, the Premier and other Ministers should hold office in accordance with the views expressed in Part H above. If the Premier and other Ministers lose the confidence of Parliament, they should be removed from office by the Governor unless they resign. Individual Ministers should be removed from office by the Governor when advised by the Premier.

6. The Select Committee considers that the new State constitution should provide that an appointment as Minister will automatically terminate if the Minister ceases to be a member of the Parliament. If a Minister loses an election, he or she should only be entitled to remain a Minister up to the declaration of the poll. This is to be compared with the position under the Northern Territory (Self-Government) Act, Section 37(d), which allows the defeated Minister to continue to sit up to the first meeting of the Legislative Assembly after the election.

7. The Select Committee is of the view that the number of Ministers and their respective functions, responsibilities and designations, should also be a matter for the new State Governor after receiving the advice of the Premier.

8. The Select Committee believes that the remuneration and other entitlements of Ministers should be left to new State legislation.

9. The Select Committee is opposed to any limitations being placed in the new State constitution on the scope of the executive authority of the new State Governor and Ministers. There should be no list of matters in respect of which they are to have executive authority, such as is presently contained in the Northern Territory (Self-Government) Act and Regulations. Rather, they should have a general grant of executive authority in respect of the new State, including as to the exercise of the Royal prerogative powers, thus placing the new State in effect in the same position as the existing States.

J. EXECUTIVE COUNCIL AND CABINET

1. As noted above the Commonwealth Constitution contemplates that there will be an Executive Council of a State to advise the Governor. It follows that it is not possible to dispense with an Executive Council in the new State even though its functions are not deliberative as are those of Cabinet.

2. The Executive Council should be the formal channel of advice to the new State Governor except where, in particular cases, advice can be tendered by the Premier or otherwise in accordance with the law of the new State. In the Select Committee's view, it is desirable that advice should only be tendered by Ministers who are members of and are responsible to the Parliament. Accordingly, it is the view of the Committee that the membership of the Executive Council of the new State should be limited to the Ministers for the time being of the new State in much the same way as the Executive

Council of the Northern Territory is presently constituted by the Ministers of the Territory.

3. The Select Committee proposes that the Executive Council of the new State be presided over by the Governor or the Governor's nominee. Meetings should be convened by the Governor whenever requested by the Premier or acting Premier. Matters of procedure should be determined by the Executive Council itself**.**

4. The Select Committee sees no need to give express constitutional recognition to the institution of Cabinet but would welcome comments on this aspect. Such recognition has not been found to be necessary, in other Australian constitutions, it being sufficient to rely on the force of convention.

5. If Cabinet is not to be established or recognised by the constitution of the new State, it is not necessary to consider what its functions, procedures and membership should be. The Committee sees it as desirable to retain a substantial degree of flexibility in relation to such matters to permit the evolution of a system of government best suited to the needs of the new State. The Ministers who would normally comprise the membership of Cabinet should be free to adopt the system of collective decision-making which they consider to be the most effective in the circumstances.

K. FINANCIAL MATTERS

1. Most written constitutions contain some basic provisions dealing with the financial affairs of government. The Select Committee envisages that some such provisions would be included in the constitution of the new State although it considers that matters of detail should be left to new State legislation.

2. The most significant provisions that the Select Committee suggests be included are:

   a) a provision for the establishment of a consolidated fund into which moneys belonging to the new State must be paid;

   b) a requirement that money can only be paid out of the consolidated fund in accordance with a statutory appropriation;

   c) a requirement that all money bills introduced into the Parliament should first be the subject of a recommendation by the Governor to the Parliament; and

   d) a requirement that appropriation and taxation bills only deal with matters of appropriation and taxation respectively.

3. Additional financial provision be required if the new State was to adopt a bicameral legislative system.

4. Other matters that might be dealt with in a new State constitution, but which the Select Committee does not at this stage consider essential, include a provision for the audit of government accounts. Adequate provision for the latter could be included in new State legislation.

5. The Select Committee is strongly opposed to any proposal for including any external controls over borrowing by the new State other than in accordance with the provisions and powers presently applicable to existing States. This would exclude a Commonwealth veto as is contained in the Northern Territory (Self-Government) Act. Such a proposal would be inconsistent with the principle of constitutional equality. The new State would, however, be subject to the requirements of the Commonwealth Constitution as to borrowing by States.

L. THE JUDICIARY - EXISTING TERRITORY PROVISIONS

1. General

a) The judicial arm of government in the Northern Territory presently comprises a superior court of general civil and criminal jurisdiction known as the Supreme Court of the Northern Territory, together with inferior courts comprising the local court and a court of summary jurisdiction, as well as certain other courts of special jurisdiction.

b) The appellate structure in broad terms is from inferior courts to the Supreme Court, from a single judge of the Supreme Court to the Court of Appeal or the Court of Criminal Appeal of the Supreme Court, and from there to the High Court.

c) Federal Courts (Federal Court of Australia, Family Court) also exercise jurisdiction in the Northern Territory.

d) The Supreme Court was previously constituted by the Northern Territory Supreme Court Act 1961 of the Commonwealth. As such, it was recognised in the third recital to the Northern Territory (Self-Government) Act 1978 of the Commonwealth. The Supreme Court is also recognised in various other Commonwealth Acts. The transfer of executive responsibility for the Court to the Northern Territory in 1979 occurred at the same time as the enactment by the Legislative Assembly of the Supreme Court Act in that year.

e) Territory courts have been held not to be federal courts for the purposes of the Commonwealth Constitution. Thus, there is no constitutional guarantee of security of tenure for Judges of the Territory Courts, as there is for Judges of the High Court and Judges of other federal courts (section 72 of the Commonwealth Constitution - see Part V below). Judges of the Supreme Court of the Northern Territory have security of tenure under the Supreme Court Act only.

2. Supreme Court of the Northern Territory

a) The Supreme Court Act creates the Supreme Court of the Northern Territory. The Act sets out in detail provisions concerning the Court. The most important provisions relate to:

(i) its establishment and constitution (Sections 10 to 13);

(ii) its jurisdiction (Sections 14 to 20) (see also Part IXA of the Judiciary Act 1903 of the Commonwealth);

(iii) appointment by the Administrator of the Chief Justice, judges and additional judges (Section 32);

(iv) a judge not to accept, without the approval of the Attorney-General, another judicial commission or an office of profit under the Crown (Section 36);

(v) automatic retirement of judges on attaining the age of 70 years (Section 38);

(vi) removal of judges from office on an address from the Legislative Assembly on the ground of proved misbehaviour or incapacity (Section 40);

(vii) remuneration of judges and prohibition on any detrimental alteration of their remuneration (Section 41); and

(viii) the appellate jurisdiction of the Court in non-criminal matters to be exercised by the Court of Appeal, constituted by not less than 3 judges (Sections 50A to 60).

b) Further conditions of service of judges are set out in the Supreme Court (Judges Long Leave Payments) Act and the Supreme Court (Judges Pensions) Act.

c) The Criminal Code Act provides that there shall be a Court of Criminal Appeal, to be constituted by an uneven number of not less than 3 judges.

M. OTHER AUSTRALIAN PROVISIONS

1. Commonwealth Provisions

Section 71 of the Commonwealth Constitution provides that there shall be a High Court of Australia and permits the establishment by the Parliament of other federal courts. Detailed provisions are contained in Chapter III as to High Court Judges, High Court jurisdiction and other matters. Ancillary provisions are contained in the Judiciary Act 1903, High Court of Australia Act 1979 and other Commonwealth legislation. The Family Court of Australia was created by the Family Law Act 1975 and the Federal Court of Australia was created by the Australia Act 1976. These provisions are summarised in Part V below.

All the Australian States have their Supreme Court, as does the Australian Capital Territory. The constitutions of Queensland, South Australia, Victoria and Western Australia all recognise the judiciary to varying degrees but the constitutions of New South Wales and Tasmania do not. Only Victoria constitutionally entrenches its provisions as to its Supreme Court, and then only to a limited degree. There are legislative provisions concerning the judiciary in all Australian jurisdictions. Provisions as to the Supreme Courts of the States, in State constitutions and legislation, are summarised in Part W below.

2. State Provisions

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N. JUDICIAL INDEPENDENCE

1. Introduction

(a) An independent judiciary has been defined by Sir Ninian Stephen as

> "... a Judiciary which dispenses justice according to law without regard to the policies and inclinations of the government of the day" (13 Melbourne University Law Review, at 336).

(b) The independence of the Judiciary from the executive is, of course, a fundamental principle of the constitutional arrangements of the Westminster system as it operates in Australia. It requires that the Judiciary be able to exercise its functions and to administer justice in accordance with the law in an unbiased manner without fear or favour and totally free from government or official influence or threat of interference.

(c) The recently retired Chief Justice of the Supreme Court of the Northern Territory has stated that judicial independence is a subject of fundamental importance when considering the creation of a new State. According to the Chief Justice, judicial independence is necessary as an essential guarantee of liberty under our system of government. Similar views to the latter comment have been expressed by many commentators, both in Australia and internationally.

(d) Judicial independence, according to Sir Ninian Stephen, cannot be taken for granted:

> "... an independent Judiciary, although a formidable protector of individual liberty, is at the same time a very vulnerable institution, a fragile bastion..." (at 338).

2. Standards of Judicial Independence

(a) The need for judicial independence, the basic principles of judicial independence, and the appropriate mechanisms of achieving judicial independence have been asserted not only in Australia, but also internationally, including by the International Commission of Jurists, Lawasia, the International Bar Association and the Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders. The minimum standards of judicial independence adopted by the International Bar Association (IBA) in October 1982 included the following:

(i) the need for "substantive independence", defined to mean that in the discharge of his judicial function a judge is subject to nothing but the law and the commands of his conscience;

(ii) "collective independence" of the judiciary from the executive, by providing the Judiciary with adequate financial resources to allow for the due administration of justice; and

(iii) "personal independence", defined to mean that the terms and conditions of judicial service are adequately secured so as to ensure that individual judges are not subject to executive control.

(b) The IBA minimum standards in respect of the personal independence of judges, envisage that:

(i) judicial salaries and pensions should be adequate and should be regularly adjusted to account for price increases independent of executive control;

(ii) the position of judges, their independence, their security and their adequate remuneration should be secured by law;

(iii) judicial salaries should not be decreased during the judges services except as a coherent part of an overall public economic measure; and

(iv) the grounds of removal of judges should be fixed by law and should be clearly defined, and all disciplinary actions should be based upon standards of judicial conduct promulgated by law or in established rules of court.

(c) The Chief Justice has expressed the view that the new State constitution should ensure that the Judges enjoy personal independence and collective independence in accordance with the IBA minimum standards.

(d) The extent to which such provisions should be incorporated in the constitution itself, left to ordinary legislation, or be formulated by the courts themselves, is a matter for consideration.

3. Appointment of Judges

(a) A further matter for consideration is the method of choosing persons for appointment as judges. There are a number of options.

(i) The constitutions of a number of countries provide for appointment as judges by a constitutional commission.

(ii) The Courts (Federal) Committee of the Law Council of Australia has proposed that there should be a Judicial Commission which should submit a short list of names of persons for appointment to the High Court and to the Federal Court outside which the Federal Government should not go without public explanation of the reason for doing so.

(iii) The Constitutional Commission's Advisory Committee on the Australian Judicial System in its 1987 Report, has proposed that, while the existing process of consultation with the States should apply to that appointment of a Justice or Chief Justice of the High Court, there should not be a judicial commission established to advise upon the appointment of judges. It believes, however, that there should be a recognised practice that, before appointing a judge to a federal court other than the High Court, the federal Attorney-General should consult on a confidential basis with the Chief Judge of the court concerned and with the leaders of the most appropriate legal professional organisation or organisations to obtain their advice as to the persons eligible for appointment who are qualified to do the work of the court and who appear to have the necessary qualities.

(iv) The existing method of appointment which does not involve any formal requirement for consultation by the executive.

(b) The Select Committee favours the existing system of appointment of judges by the representative of the Monarch on the advice of Executive Council but considers that there should be a convention as to prior consultation with the Chief Justice and appropriate bodies representing the legal profession.

4. Removal of Judges

(a) A matter of considerable controversy in recent years has been the question of what kind of behaviour on the part of a judge constitutes "misbehaviour" such as to enable removal under section 72 of the Commonwealth Constitution.

(b) The Constitutional Commission's Advisory Committee on the Australian Judicial System in its 1987 Report, has expressed the view that there should be a Judicial tribunal established by Commonwealth legislation to determine questions of fact on which the removal of a judge may depend. It expressed the view that the Constitution should have a provision to the effect that a judge of a federal court of a State or Territory Supreme Court should not be removed unless the Judicial Tribunal has first found that the conduct of a Judge is capable of amounting to misbehaviour or incapacity warranting removal. In the case of federal judges, an address for removal must then be made by both Houses of the Parliament no later than the next session after the report of the Judicial Tribunal. It would be left to the Parliament of the States and the legislature of the Territories to determine whether a judge of that State of Territory should be removed. Only an Attorney-General could institute proceedings for removal.

(c) Attention is drawn to the Judicial Officers Act 1986 of New South Wales which introduced into Australia for the first time a standing Judicial Commission, the prime function of which is to receive and consider complaints against judicial officers. A summary of the provisions of the Act is at Part W below. The New South Wales legislation is an example of option (i) in paragraph (d) below.

(d) The matters for consideration are, whether provisions for the removal of judges should be included in the new State Constitution and, if so, the form those provisions should take. The two basic options are:

(i) a determination of "misbehaviour or incapacity' by some form of judicial tribunal, followed by an address in the legislature for removal; or

(ii) the existing method of removal, which leaves the question of a determination as to misbehaviour or incapacity to the legislature.

(e) The Select Committee favours inclusion of provision for the removal of judges in the new State constitution and, in the absence of a national scheme concerning the removal of Judges, retention of the existing method of removal, which leaves the question of a determination as to misbehaviour or incapacity to the legislature.

5. Court Administration

(a) There has been some debate as to the extent to which the courts should be able to manage their own administration, buildings, personnel and finances. In addition to the traditional model, such as the present arrangements in the Territory, there is the High Court model. Under the High Court of Australia Act 1979, the High Court is given considerable measure of independence in managing its own affairs (see Part V below).

(b) The Select Committee does not consider that any provision concerning court administration should be included in the new State constitution. The appropriate arrangements are matters for the Government, the legislature and the Judiciary to determine.

6. Judges and Non-judicial Functions

(a) There is concern about the growing practice of governments to involve the judiciary in political controversies by appointing judges to chair committees and commissions to investigate highly controversial affairs of a non-judicial nature.

(b) Some commentators have expressed the view that judges ought to be left free to perform their judicial duties and that neither the executive nor the legislature should involve them in duties or assign them tasks which in any way impinge on the performance of their proper role.

(c) The Select Committee does not favour the inclusion of any provision concerning Judges and non-judicial functions in the new State constitution.

7. Separation of Powers Doctrine

(a) The separation of powers doctrine seeks to separate the three traditional arms of government, namely the legislature, the judiciary and the executive with a view to preventing one arm from encroaching into the province of the others. This doctrine is particularly well developed in the Constitution of the U.S.A.

(b) The principle of separation of judicial from non-judicial powers has been held to be constitutionally entrenched in the Commonwealth Constitution in that:

(i) a Commonwealth tribunal cannot be given a combination of judicial and non-judicial functions without satisfying the tenure requirements of section 72; and

(ii) a judicial body established by the Commonwealth, properly constituted, cannot be given non-judicial functions that are not ancillary or incidental to the Judicial functions. [4]

(c) A justification for the strict application on of the doctrine is that it enables one arm of Government to act more effectively as a "check" or "balance" as against the other arms and, therefore, serves to limit and excesses or abuses of power and assists to protect the independence of the courts. However, it can be criticised in that it leads to excessive subtlety and technicality in the operation

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[4] (R v. Kirby; ex parte Boilermaker's Society of Australia (1956) 94 CLR 254; Attorney-General (Commonwealth) v. R; ex parte Boilermaker's Society of Australia (1957) 95 CLR 529)

of the constitution and of the law, resulting in unnecessary litigation and expense, often without any compensating benefit.

(d) The doctrine, however, is considered to be not relevant to the constitutions of the Australian States. This view is recently re-confirmed by the New South Wales Court of Appeal (Building Construction Employees and Builders' Labourers Federation. v, Minister for Industrial Relations and Anor, 31 October 1986). Depending on the nature and extent of the provisions in the new State constitution dealing with the Judiciary, it may be that the new State could be in a different position from the existing States in this respect

(e) The Constitutional Commission Advisory Committee on the Australian Judicial System in its 1987 Report saw no need to abrogate the doctrine as presently applying to the Commonwealth. On the other hand, it saw no need to extend the doctrine to matters of State or Territory jurisdiction.

(f) The options for a new State are either to expressly adopt doctrine, to leave the matter to be worked out by the courts by implication from the new State constitution, or to expressly exclude the doctrine.

(g) The Select Committee favours inclusion in the new State constitution of a provision along the lines of section 159 of the Papua New Guinea Constitution which provides that nothing in the Constitution prevents a law conferring judicial authority on a person or body outside the Judiciary, or the establishment by or in accordance with Law, or by consent of the parties, of arbitral or conciliatory tribunals, whether ad hoc or other, outside the Judiciary.

O. THE JUDICIARY AND THE NEW STATE CONSTITUTION ENTRENCHMENT

1. As indicated in Part E above, the Select Committee favours some degree of entrenchment of the whole of the new State constitution.

2. The Select Committee accepts that the Judiciary should be recognised in the new State constitution. An independent Judiciary is fundamental to our system of government and its position should therefore be entrenched in the constitution.

3. The Select Committee believes, however, that only fundamental principles should be entrenched, and not matters of detail.

4. The Select Committee recommends that in respect of the Judiciary, the following provisions should be included in the new State constitution:

(a) the existence of the Supreme Court of the new State including the Court of Appeal;

(b) appropriate transitional provisions to carry over the officers, functions, proceedings, records etc., of the Supreme Court of the Northern Territory;

(c) provisions for the appointment of Supreme Court Judges (see recommendation above) and a guarantee against any reduction in their terms and conditions of service during their respective terms of office;

(d) provision for the removal of judges (see recommendation above); and

(e) provisions concerning the jurisdiction of the Supreme Court of the new State.

5. The Committee does not at this stage consider any further entrenched provisions are necessary, although it invites comment.

6. The Committee anticipates that the Commonwealth will legislate to continue existing appellate rights from the Supreme Court to the High Court.

P. ENTRENCHED PROVISIONS GENERALLY

1. General

(a) As discussed in broad terms in Part E above, a decision must be made as to the extent to which the constitution of the new State is to be given a special constitutionally entrenched status. A constitution is said to be entrenched if it cannot be amended or repealed except after following certain defined procedures going beyond those required for ordinary legislation. One example of entrenchment is to make a successful referendum a prerequisite to any such change.

(b) Entrenchment is an option where the provisions to be entrenched are considered to be of such importance that they should not be lightly changed. The degree of entrenchment need not be the same for all provisions - some may be considered of greater importance than others.

(c) The Select Committee stated in Part E above, and adheres to the view, that it is opposed to any method of entrenchment that would comprise or include the necessity of obtaining the prior approval of the Commonwealth Government or Parliament to any change. Such a provision would be inconsistent with the principle of constitutional equality.

(d) The Select Committee further stated in Part E above, and adheres to the view, that generally speaking it favours some degree of entrenchment of the whole of the new State constitution. The constitution should be a document that is accorded special status in the law and should only deal with those

matters considered to be of vital importance in the functioning of the new State and its institutions. Matters of lesser importance should be relegated to ordinary legislation.

(e) The Select Committee also stated in Part E above, and adheres to the view that entrenchment would comprise or include the requirement that any proposed change be submitted to and be supported by a specified majority of new State electors at a referendum. It may be considered appropriate that for certain provisions, any change may require more than a simple majority of voters in any referendum. Certain minimal provisions will be necessary dealing with referendums in the new State constitution.

2. Position Elsewhere in Australia

(a) The Select Committee acknowledges that apart from the Commonwealth Constitution, constitutions in Australia are not generally given a constitutionally entrenched status except for certain limited matters. Apart from these matters, State constitutions can be changed in the same manner as ordinary legislation.

(b) The Commonwealth Constitution can be described as a "rigid" constitution in that it is relatively difficult to alter. The mechanism provided in Section 128 of the Constitution requires that any proposed alteration must first be passed by an absolute majority of each House of the Commonwealth Parliament. Within a limited time thereafter it must be submitted to a referendum of State and Territory electors qualified to vote in House of Representatives elections. A majority of electors in a majority of States as well as a majority of all electors voting, is required before the proposed law can be given assent.

(c) The Australia Act 1986, on the other hand, as well as the Statute of Westminster 1931, can only be amended or repealed by an Act of the Commonwealth Parliament passed at the request or with the concurrence of the Parliaments of all of the States (including any new States).

(d) Some State constitutions have provisions that are of an entrenched nature.

These are as follows.

(i) New South Wales, South Australia and Western Australia have entrenched the position of their Upper House of Parliament by requiring a referendum for abolition.

(ii) Queensland, on the other hand, has entrenched the position of its Legislative Assembly, such that any change, from the unicameral system applicable in that State requires a referendum.

(iii) New South Wales and South Australia have entrenched some electoral provisions, including redistribution requirements, by requiring a referendum for change.

(iv) The position of Governor and his powers has been entrenched in Queensland and Western Australia.

(v) The term of office of the Lower House has been entrenched in New South Wales (referendum) and Tasmania (two thirds majority vote of Assembly), as has the term of office of the Legislative Assembly of Queensland (referendum).

(vi) The Victorian constitution requires an absolute majority of both Houses for any change to certain provisions, including those as to local government and the Supreme Court.

(e) The Northern Territory, (Self-Government) Act 1978 and Regulations thereunder, under which the Self-governing Northern Territory is established, only has the status of ordinary Commonwealth legislation, and arguably can be amended or repealed by the Commonwealth Parliament as it sees fit. Seen from the perspective of the Northern Territory Legislative Assembly, it can be regarded as an entrenched provision in the sense that that Assembly cannot legislate inconsistently with or repugnantly to that Act. Such a position would clearly be inconsistent with the status of a new State.

Q. LEGISLATURE, EXECUTIVE AND JUDICIARY

1. Legislature

(a) The Select Committee, in Part E above, outlined those matters that might be considered as being appropriate for entrenchment in relation to the new State legislature, being matters that could be regarded as being fundamental to the democratic system applicable in Australia. These included:

(i) The existence of the unicameral new State Parliament and its fully representative nature;

(ii) The qualifications and disqualifications of members;

(iii) The maximum tolerance allowed between electorates;

(iv) The qualifications of voters;

(v) The power of the Governor to assent or withhold assent to legislation, to dissolve the Parliament (subject to restrictions within the first 3 years of the 4 year term), to issue writs for elections and to fix the date of elections;

(vi) Casual vacancies and by-elections;

(vii) The principle of one person one vote and secret ballots;

(viii) The wide legislative powers of that Parliament;

(ix) The requirement that not more than 6 months pass between successive sittings of the Parliament; and

(x) The office of the Speaker.

(b) It is unnecessary in this Paper to expand upon these matters further, although public comment is invited; as to the extent to which provisions relating to the new State legislature should be entrenched in the new constitution and the degree of entrenchment.

2. Executive

(a) The Select Committee, in Parts G, H, I, J and K above, outlined a number of recommendations and endorsements relating to the Governor and the executive government of the new State, including their relationship with the legislature of the new State, for inclusion in the new State constitution. These included retention of the Westminster system of responsible government, with Ministers chosen from the members of the Legislature and appointed by the Governor. The Governor in turn would be required as a general rule to act in accordance with the advice of his or her Ministers. The Governor would be appointed and his or her appointment terminated by the Monarch following receipt of advice from the new State Premier.

(b) It is unnecessary in this Paper to further expand upon these matters, although public comment is invited as to the extent to which provisions relating to the new State executive should be entrenched in the new State constitution and the degree o£ entrenchment.

3. Judiciary

(a) The Select Committee, in Part N above, accepted that the Judiciary of the new State should be recognised in the new State constitution. An independent Judiciary is fundamental to our system of government and its position should therefore be entrenched in the constitution.

(b) The Select Committee stated in Part O above that only fundamental principles relating to the Judiciary should be entrenched, and not matters of detail.

(c) The Select Committee recommended in that Part that the following provisions should be included in the new State constitution:

(i) the existence of the Supreme Court of the new State, including the Court of Appeal;

(ii) appropriate savings provisions to carry over the officers, functions, proceedings, records etc., of the Supreme Court of the Northern Territory;

(iii) provisions for the appointment of the Supreme Court judges and a guarantee against any reduction in their terms and conditions of service during their respective terms of office;

(iv) provision for the removal of judges; and

(v) provisions concerning the jurisdiction of the Supreme Court of the new State.

(d) The Select Committee does not consider any further entrenched provisions relating to the Judiciary are necessary for inclusion in the new State constitution, although it invites public comment as to the extent to which provisions relating to the new Judiciary should be entrenched in the new State constitution and the degree of entrenchment.

R. LOCAL GOVERNMENT

1. Arguments have been advanced in the Northern Territory proposing the constitutional entrenchment of the position of local government. At present, local government derives its existence, powers and status from the Local Government Act of the Territory and has no such entrenched position. The self-governing Northern Territory has both legislative power (through the Legislative Assembly) and executive authority (through Ministers of the Territory Government) in relation to all aspects of local government in the Territory.

2. Previous attempts to have local government recognised in the Commonwealth Constitution through the Constitutional Convention have so far brought no results, although the matter is presently under consideration by the Constitutional Commission. However four States have proceeded to recognise local government in their own constitutions - New South Wales, Victoria, South Australia and Western Australia.

3. Of these States, only the Victorian provision goes further than merely providing for formal recognition. The constitution of Victoria requires the existence of a general system of local government throughout the State (with some exceptions). Local government bodies are to be elected and are protected from dismissal except by Act of Parliament. Limitations are placed on suspension of local government bodies. The constitutional provisions have a limited degree of entrenchment (see discussion above) but subject thereto, ultimate control remains with the Victorian Parliament and Government.

4. The Northern Territory Local Government Association has previously indicated that any provision for constitutional recognition should be in accordance with the following principles:

(a) general competence and autonomy for each local government body to act for the peace, order and good government of its area;

(b) secure financial basis;

(c) proper recognition of the elected member role;

(d) protection from dismissal of individual local government bodies without public inquiry; and

(e) due consultation prior to any changes to powers, functions, duties, responsibilities and financial resources.

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

5. The Select Committee notes the special situation of the Northern Territory, where vast areas are not within any local government area. Other areas are covered by community government schemes. Any decision to extend local government or community government is appropriately a matter for the new State in consultation with the local residents. Constitutional recognition of local government must take into account the special situation of the Territory and the associated difficulties of administration.

6. Subject to these considerations, the Select Committee favours some constitutional provisions for the recognition of local government in the new State. It invites public comment on the nature of those provisions.

S. ABORIGINAL RIGHTS

1. Comprehensive Commonwealth legislation in the form of the Aboriginal Land Rights (Northern Territory) Act 1976 presently applies in the Northern Territory. In the Option Paper entitled "Land Matters Upon Statehood" dated November 1986, it was advocated that this Act be patriated to and become part of the law of the new State upon the grant of Statehood by some agreed method. That Paper suggests that the process of patriation should include appropriate guarantees of Aboriginal ownership. In the absence of Commonwealth land rights legislation applying Australia-wide, the Select Committee in broad terms endorses this approach.

2. One option, favoured by the Select Committee, is to entrench these guarantees of Aboriginal ownership in the new State constitution, such that they can only be amended by following specified entrenchment procedures. The extent of these guarantees and the degree of entrenchment are matters upon which public comment is invited.

3. There is a question whether the new State constitution should go further in its reference to Aboriginal citizens of the new State. One possibility is to include in the constitution some fundamental principles of a non-enforceable nature in the form of a preamble which would give particular recognition to the place of those citizens in contemporary society (and see Part T, paragraph 9 below).

4. Such a preamble could take many forms. It might, for example, recognise that the new State is now a multi-racial and multi-cultural society in which Aboriginal citizens are fully entitled to participate with other citizens on an equal, non-discriminatory basis under the Law. Where special provisions are provided under new State law for any particular class or group of citizens, they should only have effect for so long and in so far as they are necessary to redress any continuing lack of equality of opportunity or other disadvantages.

5. In an address by Ms. L. Liddle to the 1986 Law Society Conference on Statehood, she indicated that the new State constitution should go further and recognise not only the current place of Aboriginal citizens in the new State, but also their historical rights, including their traditional ownership of the land and the usurpation of those rights by European settlement.

6. There is undoubtedly some merit in recognising the pre-existing circumstances of Aboriginal citizens of the new State, including as to their language, social, cultural and religious customs and practices. Having regard to the desirability of maintaining harmonious relationships within the new State, it is preferable that any such recognition should be in a form acceptable to the broader new State community and compatible with its multi-racial, multi-cultural nature and the principles of equality and non-discrimination. The exact form this recognition should take is a matter for discussion.

7. The Select Committee makes no specific recommendation on these proposals but invites public comment.

T. HUMAN RIGHTS

1. The question arises as to whether the new State constitution should contain any provisions dealing with human rights - for example, freedom of speech, freedom of religion, freedom of assembly, etc. The Universal Declaration of Human Rights, adopted by the United Nations in 1948, conveniently summarises the main human rights of interest and is contained in Appendix 4 below.

2. No Australian constitution contains any comprehensive provisions of this nature. The Commonwealth Constitution contains some limited provisions which could be described as coming within this category, but the courts have in most cases given them a fairly limited application. The constitution of Tasmania contains a provision dealing with religious freedom. The Constitutions of other States are silent on any matters pertaining to the citizen's rights.

3. By way of contrast the Constitution of the USA and the constitutions of the States of the USA contain comprehensive bills of rights. The constitutions of many countries have similar guarantees of civil and political rights, of the nature contained in the International Covenant on Civil and Political Rights. Relevant extracts, from the

Constitutions of USA and Canada are also attached in Appendix 4 below by way of example.

4. The constitutions of some countries go further and provide for other rights of the nature contained in the International Covenant on Economic, Social and Cultural Rights. However not all of these countries have an independent Judiciary, and the real value of some of these statements of rights is questionable.

5. The question whether Australia should have legally enforceable guarantees of civil and political rights has been hotly debated in recent years. Australia is a signatory to the International Covenant on Civil and Political Rights and various other international human rights instruments, and has legislated to implement in part these instruments in the Human Rights and Opportunity Commission Act 1986, the Racial Discrimination Act 1975, and the Sex Discrimination Act 1984. However attempts to pass a comprehensive Human Rights Act in the Commonwealth Parliament have not succeeded. As a consequence, generally speaking it is not possible to found a cause of action or a defence in an Australian court based solely on an internationally recognised human right.

6. The Constitutional Commission's Advisory Committee on Individual and Democratic Rights in its 1987 Report has recommended that the Commonwealth Constitution be amended to expand and entrench specified human rights. These include rights relating to trial by jury and the criminal process, freedom of religion, movement, expression and assembly, equality before the law, acquisition of property on just terms, voting and citizenship rights and other matters, not limited in operation to matters over which the Commonwealth has jurisdiction. The report proposes the insertion of a new preamble in the Constitution.

7. There are arguments for and against the adoption of an enforceable statement of human rights in the new State constitution. Those arguments for such a proposal rely both on moral arguments and on the view that this is a desirable form of "check" against possible abuses by government or against undesirable legislation. Those arguments against the proposal stress the undesirability of the legislature abdicating its authority in these matters to the courts, the costs and delays potentially arising, the alleged adequacy of the common law as supplemented by legislation where found necessary or desirable in particular cases, and the fact that by prescribing some rights it may in some cases unduly limit other rights.

8. An enforceable statement of human rights entrenched in the new State constitution might or might not be expressed to be subject to express change in specific matters by later ordinary legislation.

9. An alternative may be to include in the new State constitution a preamble setting out basic human rights or goals for the new State and its citizens, that preamble not giving rise of itself to enforceable legal rights but merely acting as an aid to the interpretation of new State legislation and its administration.

10. The Select Committee invites public comment on this issue.

APPENDIX 1

SELECTED CONSTITUTIONAL PROVISIONS

SELECTED CONSTITUTIONAL PROVISIONS

1. The Constitution of the Commonwealth

"9. The Parliament of the Commonwealth may make laws prescribing the method of choosing senators, but so that the method shall be uniform for all the States. Subject to any such law the Parliament of each State may make laws prescribing the method of choosing the senators for that State.

The Parliament of a State may make laws for determining the times and places of elections of Senators for the State."

"15. If the place of a senator becomes vacant before the expiration of his terms of service, the Houses of Parliament of the State for which he was chosen, sitting and voting together, or, if there is only one House of that Parliament, that House, shall choose a person to hold the place until the expiration of the term. But if the Parliament of the State is not in session when the vacancy is notified, the Governor of the State, with the advice of the Executive Council thereof, may appoint a person to hold the place until the expiration of fourteen days from the beginning of the next session of the Parliament of the State or the expiration of the term, whichever first happens.

Where a vacancy has at any time occurred in the place of a senator chosen by the people of a State and, at the time when he was so chosen, he was publicly recognised by a particular political party as being an endorsed candidate of that party and publicly represented himself to be such a candidate, a person chosen or appointed under this section in consequence of that vacancy, or in consequence of that vacancy and a subsequent vacancy or vacancies, shall, unless there is no member of that party available to be chosen or appointed, be a member of that party.

Where -

a) in accordance with the last preceding paragraph, a member of a particular political party is chosen or appointed to hold the place of a senator whose place had become vacant; and

b) before taking his seat he ceases to be a member of that party (otherwise than by reason of the party having ceased to exist),

he shall be deemed not to have been chosen or appointed and the vacancy shall be again notified in accordance with Section twenty-one of this Constitution.

The name of any senator chosen or appointed under this section shall be certified by the Governor of the State to the Governor-General.

If the place of a senator chosen by the people of a State at the election of senators last held before the commencement of the Constitution Alternation (Senate Casual Vacancies) 1977 became vacant before that commencement and, at that commencement, no person chosen by the House or Houses of Parliament of the State, or appointed by the (Governor of the State, in consequence of that vacancy, or in consequence of that vacancy and a subsequent vacancy or vacancies, held office, this section applies as if the place of the senator chosen by the people of the State had become vacant after that commencement.

A senator holding office at the commencement of the Constitution Alteration (Senate Casual Vacancies) l977, being a senator appointed by the Governor of a State in consequence of a vacancy that had at any time occurred in the place of a senator chosen by the people of the State, shall be deemed to have been appointed to hold the place until the expiration of fourteen days after the beginning of the next session of the Parliament of the State that commenced or commences after he was appointed and further action under this section shall be taken as if the vacancy in the place of the senator chosen by the people of the State had occurred after that commencement.

Subject, to the next succeeding paragraph, a senator holding office at the commencement of the Constitution Alteration (Senate Casual Vacancies) 1977, who was chosen by the House or Houses of Parliament of a State in consequence of a vacancy that had at any time occurred in the place of a senator chosen by the people of the State shall be deemed to have been chosen to hold office until the expiration of the term of service of the senator elected by the people of the State.

If, at or before the commencement of the Constitution Alteration (Senate Casual Vacancies) 1977, a law to alter the Constitution entitled "Constitution Alteration (Simultaneous Elections) 1977" came into operation, a senator holding office at the commencement of that law who was chosen by the House or Houses of Parliament of the State in consequence of a vacancy that had at any time occurred in the place of a Senator chosen by the people of the State shall be deemed to have been chosen to hold office -

a) if the senator elected by the people of the State had a term of service expiring on the thirtieth day of June, One thousand nine hundred and seventy-eight - until the expiration or dissolution of the first House of Representatives to expire or be dissolved after that law came into, operation; or

b) if the senator elected by the people of the State had a term of service expiring on the thirtieth day of June, One thousand nine hundred and eight-one - until the expiration or dissolution of the second House of Representatives to expire or be dissolved after that law came into operation or, if there is an earlier dissolution of the Senate, until that dissolution."

"41. No adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State shall, while the right continues, be

prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth."

"106. The Constitution of each State of the Commonwealth shall, subject to this Constitution continue as at the establishment of the Commonwealth or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State."

"107. Every power of the Parliament of a Colony which has become or becomes a State, shall, unless it is by this Constitution exclusively vested in the Parliament of the Commonwealth or withdrawn from the Parliament of the State, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be."

"108. Every law in force in a Colony which has become or becomes a State, and relating to any matter within the powers of the Parliament of the Commonwealth, shall, subject to this Constitution, continue in force in the State; and, until provision is made in that behalf by the Parliament of the Commonwealth, the Parliament of the State shall have such powers of alteration and of repeal in respect of any such law as the Parliament of the Colony had until the Colony became a State."

"111. The Parliament of a State may surrender any part of the State to the Commonwealth; and upon such surrender, and the acceptance thereof by the Commonwealth, such part of the State shall become subject to the exclusive jurisdiction of the Commonwealth."

"12l. The Parliament may admit to the Commonwealth or establish new States, and may upon such admission or establishment make or impose terms and conditions, including the extent of representation in either House of the Parliament, as it thinks fit."

"122. The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit."

2. The Australia Act 1986

"7.(l) Her Majesty's representative in each State shall be the Governor.

(2) Subject to subsections (3) and (4) below, all powers and functions of Her Majesty in respect of a State are exercisable only by the Governor of the State.

(3) Subsection (2) above does not apply in relation to the power to appoint, and the power to terminate the appointment of, the Governor of a State.

(4) While Her Majesty is personally present in a State, Her Majesty is not precluded from exercising any of Her powers and functions in respect of the State that are the subject of subsection (2) above.

(5) The advice to Her Majesty in relation to the exercise of the powers and functions of Her Majesty in respect of a State shall be tendered by the Premier of the State."

"8. An Act of the Parliament of a State that has been assented to by the Governor shall not, after the commencement of this Act, be subject to disallowance by Her Majesty, nor shall its operation be suspended pending the signification of Her Majesty's pleasure thereon."

"9.(l) No law or instrument shall be of any force or effect in so far as it purports to require the Governor of a State to withhold assent from any Bill for an Act of the State that has been passed in such manner and form as may from time to time be required by a law made by the Parliament of the State.

(2) No law or instrument shall be of any force or effect in so far as it purports to require the reservation of any Bill for an Act of a State for the signification of Her Majesty's pleasure thereon."

APPENDIX 2

SELECTED COMMONWEALTH PROVISIONS AS TO THE JUDICIARY

SELECTED COMMONWEALTH PROVISIONS AS TO THE JUDICIARY

1. Chapter III of the Constitution of the Commonwealth of Australia is concerned with the Judicature. Section 71 provides:

> "71. The judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called the High Court of Australia, and in such other federal courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction. The High Court shall consist of a Chief Justice, and so many other Justices, not less than two, as the Parliament prescribes."

Other provisions provide for judges appointment, removal, retirement age, resignation and remuneration (section 72); the appellate jurisdiction of the High Court (section 73); appeal from the High Court to the Queen in Council (section 74); matters in which the High Court shall have original jurisdiction (section 75); matters in which the Parliament may make laws conferring original jurisdiction on the High Court (section 76); the power of the Parliament to define jurisdiction (section 77); proceedings against the Commonwealth or a State (section 78); federal jurisdiction to be exercised by such number of judges as the Parliament prescribes section 79); and for the trial on indictment of any offence against any law of the Commonwealth to be by jury section 80).

2. The Judiciary Act 1903 was enacted to make provision for the exercise of the judicial power of the Commonwealth. The Act includes provisions concerning the jurisdiction and powers of the High Court generally (sections 15 to 29), the original jurisdiction of the High Court (sections 30 to 33A), the appellate jurisdiction of the High Court (sections 34 to 37), inclusive and invested jurisdiction (sections 38 to 39B), removal of causes (sections 40 to 45), enforcement of certain orders concerning court proceedings (sections 46 to 51), legal practitioners (sections 55A to 55E), suits by and against the Commonwealth and the States (sections 56 to 67), suits relating to the Northern Territory (sections 67A to 67F), criminal jurisdiction (sections 68 to 77), the procedure of the High Court (sections 77A to 77R), appeals to the High Court (sections 77S to 77V) and supplementary provisions (sections 78 to 88).

3. The High Court of Australia Act 1979 includes provisions concerning the constitution and seat of the High Court (sections 5 to 16), administration of the High Court (sections 17 to 29), the Registry of the High Court (sections 30 to 34), the financial administration of the High Court (sections 35 to 44) and miscellaneous provisions concerning the High Court (sections 45 to 48). Of particular interest are the provisions:

- requiring consultation with the Attorneys-General of the States before an appointment to the High Court is made (section 6);
- which provide that the High Court shall administer its own affairs (section 17);
- concerning the Clerk and other officers and employees of the High Court (sections 18 to 29); and

. enabling the High Court to administer, its own finances, which are appropriated by the Parliament for the purposes of the Court (sections 35 to 44).

4. The Family Law Act 1975 created the Family Court of Australia and made provision for the jurisdiction of the Family Court.

5. The Federal Court of Australia Act 1976 created the Federal Court of Australia and made provision for the jurisdiction of the Federal Court.

6. The Australian Capital Territory Supreme Court Act 1933 provides for the constitution and jurisdiction of the Supreme Court of the Australian Capital Territory, officers of the Court, and general matters of procedure. In particular, the provisions relating to judges provide for their appointment and tenure (section 7), arrangement of the business of the Court by the Chief Justice (section 7B), exercise of jurisdiction of the Court (sections 8 to 8AC), holding of other judicial offices by judges (section. 8A), salary and allowances of judges (section 8B), the taking of an oath or affirmation of allegiance by judges (section 10), the jurisdiction of the Court (section 11) and the jurisdiction of the Court in Chambers (section 12).

APPENDIX 3

SELECTED STATE PROVISIONS AS TO THE JUDICIARY

SELECTED STATE PROVISIONS AS TO THE JUDICIARY

1. New South Wales

a) The Constitution Act 1902 of New South Wales does not include any provisions concerning the Judiciary.

b) The Supreme Court Act 1970 includes provision concerning judges, the powers and procedures of the Court, and officers of the Court. In particular there are provisions providing for the composition for the Court (section 25), appointment and qualifications of the Chief Justice and judges (section 26), the commissions of judges to continue and remain in force during their good behaviour, and for their removal upon the address of both Houses of Parliament (section 27) and remuneration of judges (section 29).

c) The Judicial Officers Act 1986 provides that:

. a judicial officer remains in office "during ability and good behaviour", and may not be suspended or removed from office except by or in accordance with that Act or another Act of Parliament (section 4);

. "judicial officer" is defined to mean a judge, Master of the Supreme Court, member of the Industrial Commission, or magistrate (section 3);

. the Judicial Commission of New South Wales is constituted by the Act, comprising the Chief Justice of the Supreme Court, the President of the Industrial Commission, the Chief Judge of the Land and Environment Court, the Chief Judge of the District Court, the Chief Judge of the Compensation Court, the Chief Magistrate and two members appointed by the Governor on the nomination of the Minister (section 5);

. the functions of the Commission are to assist courts to achieve consistency in imposing sentences by monitoring sentences imposed by courts and disseminating information and reports on sentences imposed by courts (section 8), organise and supervise an appropriate scheme for the continuing education and training of judicial officers (section 9), formulate guidelines to assist the Conduct Division in the exercise of its functions and monitor the activities of the Conduct Division (section 10) and give advice to the Minister and liaise with persons or organisations in connection with its functions (section 11);

. there shall be a Conduct Division of the Commission (section 13) with functions to examine and deal with complaints referred to it by the Commission (section 14);

- any person may complain to the Commission about a matter that concerns or may concern the ability or behaviour of a judicial officer (section 15) and the Minister may refer any matter relating to a judicial officer to the Commission (section 16);

- the Commission shall conduct a preliminary examination of a complaint (section 18) following which the Commission shall summarily dismiss the complaint, classify the complaint as minor, or classify the complaint as serious (section 19);

- the grounds for summary dismissal are set out in (section 20);

- if a complaint is not summarily dismissed, it shall be referred to the Conduct Division or to the relevant head of jurisdiction (section 21);

- the Commission shall appoint a panel of 3 persons, who shall be judicial officers but one of whom may be a retired judicial officer, for the purpose of a complaint referred to the Division (section 22);

- the Conduct Division shall conduct an examination of a complaint, or may initiate investigations, which shall as far as practicable take place in private (section 24);

- the Conduct Division may hold a hearing in connection with a serious complaint which shall take place in public unless the Division directs that hearing take place in private, or a hearing connection with a minor complaint which shall take place in private (section 24);

- for the purposes of a hearing in connection with a serious complaint, the Conduct Division and the Chairperson have the functions, protections and immunities conferred by the Royal Commissions Act 1923 on commissioners and the chairman of a commission appointed under that Act and that Act applies to witnesses before the Division (section 25);

- the Conduct Division shall dismiss a complaint on any of the grounds on which the Commission may summarily dismiss complaints, or if it is of the opinion that the complaint has not been substantiated (section 26);

- if the Conduct Division decides that a minor complaint is wholly or partly substantiated, it shall so inform the judicial officer complained about or decide that no action need be taken (section 27);

. if the Conduct Division decides that a serious complaint is wholly substantiated, it may form an opinion that the matter could justify parliamentary consideration of the removal of the judicial officer (section 28);

. in relation to a serious complaint the Conduct Division shall present to the Governor a report setting out the Division's conclusions, and the Minister shall lay the report before both Houses of Parliament as soon as practicable after the report is presented to the Governor (section 29);

. in relation to a minor complaint, the Division shall furnish a report to the Commission setting out the action taken by the Division (section 29);

. if the Conduct Division is of the opinion that a judicial officer about whom a serious complaint has been made may be physically or mentally unfit to exercise efficiently the functions of a judicial office, the Division may request the officer to undergo such a medical examination as the Division specifies (section 34);

. a judicial officer may be suspended by the "appropriate authority", being the relevant head of jurisdiction, but in relation to a member of the Commission, the Governor acting on the recommendation of the Commission (sections 40, 42 and 43);

. if a report of the Conduct Division presented to the Governor sets out the Division's opinion that a matter could justify parliamentary consideration of the removal of a judicial officer, the Governor may remove the officer on the address of both Houses of Parliament (section 41); and

. judicial officers shall retire on reaching specified ages (section 44).

2. Queensland

a) The Constitution Act 1867 of Queensland provides for the commissions of judges to be continued during their good behaviour (section 15); removal of judges upon the address of Parliament (section 16); salaries of judges (section l7); and pensions payable to judges section 38).

b) There is a number of Supreme Court Acts in Queensland which deal with various matters concerning the court. One of those Acts is the Supreme Court Act of 1867 which includes provisions concerning qualification of judges (section 8), the commissions of judges to be during their good behaviour and subject to removal upon the address of "both Houses" (section 9), judges'

salaries (section 10), judges not to hold other office (section 12), and constitution of the Court (sections 15 to 18).

3. South Australia

a) The Constitution Act 1934 of South Australia provides for the commissions of judges to remain in full force during their good behaviour (section 74) and for the removal of judges upon the address of both Houses of the Parliament (section 75).

b) The Supreme Court Act 1935 includes provisions concerning the constitution of the Supreme Court, jurisdiction and powers of the Court, the procedure of the Court, and the Master and officers of the Court. The provisions concerning the constitution of the Court with the qualifications of judges (section 8), appointment of judges (section 9), salaries of judges (sections 12 and 13), the retiring age for judges (section 13a) and long leave of absence of judges (section 13h).

4. Tasmania

a) The Constitution Act 1934 of Tasmania does not include any provisions concerning the Judiciary.

b) The Supreme Court Act 1887 includes provisions concerning the appointment of judges (sections 2 and 5) the qualifications for appointment of judges (section 4) and the retirement age of judges (section 6A). The Supreme Court Act 1959 includes provisions concerning the appointment of a person to be Master and Registrar (section 4) and provisions concerning sittings of the Court (section 6). The Supreme Court (Judges' Independence) Act 1857 provides that it shall not be lawful to suspend or remove a judge except upon the address of both Houses of Parliament (section 1). The Supreme Court Civil Procedure Act 1982 includes provisions concerning the civil jurisdiction of the Court and the procedure and practice relating to the exercise of that jurisdiction.

5. Victoria

a) The Constitution Act 1975 of Victoria continues the existing Supreme Court (section 2) and provides for the appointment of judges, the Prothonotary, the Registrar of Probates and the Masters of the Court (sections 75 and 80) the removal of judges upon the address of Parliament and a retirement age for judges (section 77); the appointment of the Chief Justice (section 78) and an acting Chief Justice (section 79); the appointment of temporary judges (section 81); salaries, allowances and pensions of judges (sections 77(2), 82 and 83) judges not to hold other offices of profit section 84); powers and jurisdiction of the Court (section 85) power of judges to award habeas corpus (section 86);

and the Court not to be required to exercise jurisdiction where jurisdiction is conferred on other bodies (section 87).

b) The Supreme (Court Act 1986, which repealed the Supreme Court Act 1958, amended and consolidated the law relating to the Supreme Court in Victoria. It includes provisions concerning sittings, powers, procedures and officers of the Supreme Court, and other matters.

6. Western Australia

a) The Constitution Act 1889 of Western Australia provides for the commissions of judges to continue in full force during their good behaviour (section 54).

b) The Supreme Court Act 1935 includes provisions concerning constitution of the Supreme Court, its jurisdiction, sittings and distribution of business, enforcement of judgments and orders, and Rules of Court. In particular there are provisions concerning the constitution of the Court (section 7), qualifications of judges (section 8), tenure of judges and oaths of office (section 9), the appointment of an Acting Chief Justice (section 10), acting judges section 11) and masters (sections 11A to 11E).

APPENDIX 4

EXAMPLES OF HUMAN RIGHTS

EXAMPLES OF HUMAN RIGHTS

There are numerous examples of comprehensive statements of human rights. Set out below are three such examples, namely the Universal Declaration of Human Rights, the Bill of Rights of the U.S.A. and the Canadian Charter of Rights and Freedoms.

1. Universal Declaration of Human Rights

This Declaration was adopted by the General Assembly of the United Nations on 10 December 1948, with Australian support. It is not a legally binding instrument as such, although it can be regarded as being part of the law of the U.N. It is one of the best known and most influential documents of all in the area of human rights, having inspired the preparation of a number of national and international human rights instruments. It is regarded by many as a yardstick by which to measure respect for, and compliance with, international human rights standards. It is set out below.

"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

Whereas it is essential to promote the development of friendly relations between nations.

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of Universal respect for and observance of human rights and fundamental freedoms.

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realisation of this pledge.

Now, Therefore,

THE GENERAL ASSEMBLY

proclaims

This universal declaration of human rights as a common standard of achievement for all people and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the Law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each state.

2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society, and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in

community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right of equal access to public service in his country.

3 The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

l. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein."

2. Bill of Rights ,USA

The Constitution of the U.S.A. was drawn up in 1787 and became operational in 1789. It has subsequently been amended a number of times, the first ten amendments being known as the Bill of Rights, adopted in 1791. These are an early and influential example of the constitutional recognition of human rights. The interpretation and application of these amendments by the courts has had a far reaching influence on the U.S.A. The Bill of Rights plus a few later amendments of relevance are set out below.

ARTICLE [I]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

ARTICLE [II]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

ARTICLE [III]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE [IV]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE [V]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject to the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE [VI]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favour, and to have the assistance of counsel for his defence.

ARTICLE [VII]

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

ARTICLE [VIII]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE [IX]

The enumeration in the Constitution, of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE [X]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE [XIII]

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce the article by appropriate legislation.

ARTICLE [XIV]

Section 1. All persons born or naturalised in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ARTICLE I [XV]

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, colour, or previous condition of servitude.

[Later amendments omitted.]"

3. Canadian Charter of Rights and Freedoms

The Canadian Charter of Rights and Freedoms is part of the Constitutional Act 1982 of Canada. Prior to the introduction of that Act, there was no general statement of a constitutional nature as to human rights in Canada, although there has been a Bill of Rights in legislative form since 1960. The Constitution Act 1982 was scheduled to the Canadian Act 1982, an Act of the U.K. Parliament, and which patriated and amended the Constitution of Canada following agreement between the Government of Canada and the governments of most of the Canadian provinces.

"PART I

Whereas Canada is founded upon principles that recognise the supremacy of God and the rule of law:

Guarantee of Rights and Freedoms

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental Freedoms

2. Everyone has the following fundamental freedoms:

a) freedom of conscience and religion;

b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(c) freedom of peaceful assembly; and

(d) freedom of association.

Democratic Rights

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members.

(2) In time of real. or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

5. There shall be a sitting of Parliament and of each legislature at least once every twelve months.

Mobility Rights

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

(a) to move to and take up residence in any province; and

(b) to pursue the gaining of a livelihood in any province.

(3) The rights specified in subsection (2) are subject to

(a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and

(b) any laws providing for reasonable residency requirements as a qualification of the receipt of publicly provided social services.

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

Legal Rights

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

8. Everyone has the right to be secure against unreasonable search or seizure.

9. Everyone has the right not be to arbitrarily detained or imprisoned.

10. Everyone has the right on arrest or detention

(a) to be informed promptly of the reasons therefor;

(b) to retain and instruct counsel without delay and to be informed of that right; and

(c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

11. Any person charged with an offence has the right

(a) to be informed without unreasonable delay of the specific offence;

(b) to be tried within a reasonable time;

(c) to be compelled to be a witness in proceedings against that person in respect of the offence;

(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

(e) not to be denied reasonable bail without just cause;

(f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;

(g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognised by the community of nations;

(h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and

(i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing to the benefit of the lesser punishment.

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

Equality Rights

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Official Languages of Canada

16. (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.

(2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick.

(3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.

17. (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament.

(2) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick.

18. (1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.

(2) The statutes, records and journals of the legislature of New Brunswick shall be printed and published, in English and French and both language versions are equally authoritative.

19. (1) Either English or French may be used by any person in, or in any pleading in or process issuing from any court established by Parliament.

(2) Either English or French may be used by any person in, or in any pleading or process issuing from, any court of New Brunswick.

20. (l) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament, or government of Canada in English or French, and has the same right with respect to any other office of any such institution where

(a) there is a significant demand for communications with and services from that office in such language, or

(b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.

(2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French.

2l. Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any, other provision of the Constitution of Canada.

22. Nothing in section 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.

Minority Language Educational Rights

23. (1) Citizens of Canada

(a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or

(b) who have received their Primary school instruction, in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, have the right to have their children receive primary and secondary school instruction in that language in that province.

(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of English or French linguistic minority population of a province

(a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and

(b) includes, where the number of those children so warrants, the rights to have them receive that instruction in minority language education facilities provided out of public funds.

Enforcement

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

General

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

(a) any rights or freedoms that have been recognised by the Royal Proclamation of October 7, 1763; and

(b) any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims settlement.

26. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.

27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools.

30. A reference in this Charter to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory and the Northwest Territories or to the appropriate legislative authority thereof, as the case may be.

31. Nothing in this Charter extends the legislative power of any body or authority.

Application of Charter

32. (1) This Charter applies

(a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and

(b) the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

(2) Notwithstanding subsection (l), section 15 shall not have effect until three years after this section comes into force.

33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

(2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.

(3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

(4) Parliament or a legislature of a province may re-enact a declaration made under subsection (1).

(5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

Citation

34. This part may be cited as the Canadian Charter of Rights and Freedoms.

PART II

RIGHTS OF THE ABORIGINAL PEOPLES OF CANADA.

35. (1) The existing aboriginal treaty rights of the aboriginal peoples of Canada are hereby recognised, and affirmed.

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Metis peoples of Canada."

APPENDIX 5

TERMS OF REFERENCE

TERMS OF REFERENCE

(AS CONTAINED IN THE RESOLUTION OF THE LEGISLATIVE ASSEMBLY 27 JUNE 1994)

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

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

AND WHEREAS it is necessary to draft a new State constitution;

(1) during the present session of this Assembly - a committee to be known as the Sessional Committee on Constitutional Development, be established to inquire into, report and make recommendations to the Legislative Assembly on:

(a) a constitution for the new State and the principles upon which it should be drawn, including:

(i) legislative powers;

(ii) executive powers;

(iii) judicial powers; and

(iv) the method to be adopted to have a draft new State constitution approved by or on behalf of the people of the Northern Territory;

(b) the issues, conditions and procedures pertinent to the entry of the Northern Territory into the Federation as a new State;

(c) such other constitutional and legal matters as may be referred to it by:

(i) relevant ministers, or
(ii) resolution of the Assembly.

(2) the Committee undertake a role in promoting the awareness of constitutional issues to the Northern Territory and Australian populations;

(3) unless otherwise ordered, the Committee consist of Mr Bailey, Mr Baldwin, Mr Hatton, Mrs Hickey, Mr Mitchell and Mr Rioli[5];

(4) the Chief Minister and the Leader of the Opposition, although not Members of the Committee, may attend all meetings of the Committee; may question witnesses; and may participate in the deliberations of the Committee, but shall not vote;

(5) the Chairman of the Committee may, from time to time, appoint a Member of the Committee to be the Deputy Chairman of the Committee and that the Member so appointed shall act as Chairman of the Committee at any time when there is no Chairman or when the Chairman is not present at a meeting of the Committee;

(6) in the event of an equality of voting, the Chairman, or the Deputy Chairman when acting as Chairman, shall have a casting vote;

(7) the Committee have power to appoint subcommittees and to refer to any such subcommittee any matter which the Committee is empowered to examine;

(8) four Members of the Committee constitute a quorum of the Committee and two members of a subcommittee constitute a quorum of the subcommittee;

(9) the Committee or any subcommittee have power to send for persons, papers and records, to adjourn from place to place, to meet and transact business in public or private session and to sit during any adjournment of the Assembly;

(10) the Committee shall be empowered to print from day to day such papers and evidence as may be ordered by it and, unless otherwise ordered by the Committee, a daily Hansard shall be published of such proceedings of the Committee as take place in public;

(11) the Committee have leave to report from time to time and any Member of the Committee have power to add a protest or dissent to any report;

(12) the Committee report to the Assembly as soon as possible after 30 June each year on its activities during the preceding financial year;

(13) unless otherwise ordered by the Committee, all documents received by the Committee during its inquiry shall remain in the custody of the Assembly provided that, on the application of a department or person, any document, if not likely to be further required, may, in the Speaker's discretion, be returned to the department or person from whom it was obtained;

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[5] Mr Rioli discharged from the Committee on 28 February 1995 and Mr Lanhupuy appointed on the same date.

(14) members of the public and representatives of the news media may attend and report any public session of the Committee, unless otherwise ordered by the Committee;

(15) the Committee may authorise the televising of public hearings of the Committee under such rules as the Speaker considers appropriate;

(16) the Committee shall be provided with all necessary staff, facilities and resources and shall be empowered, with the approval of the Speaker, to appoint persons with specialist knowledge for the purposes of the Committee;

(17) nothing in these Terms of Reference or in the Standing Orders shall be taken to limit or control the duties, powers or functions of any Minister of the Territory who is also a Member of the Sessional Committee;

(18) the Committee be empowered to consider the minutes of proceedings, evidence taken and records of similar committees established in the previous Assembly; and

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

APPENDIX 6

COMMITTEE PUBLICATIONS

INFORMATION AND DISCUSSION PAPERS PREPARED

BY

THE SESSIONAL COMMITTEE ON

CONSTITUTIONAL DEVELOPMENT

1. Information Paper No. 1 - *Options for a Grant of Statehood* - September 1987.

2. Information Paper No. 2 - *Entrenchment of a New State Constitution* - October 1989.

3. Discussion Paper on *A Proposed New State Constitution for the Northern Territory* - October 1987.

4. Discussion Paper on *Representation in a Territory Constitutional Convention* - October 1987.

5. *Proposals for a new State Constitution for the Northern Territory - Have your Say!*- October 1988.

6. Discussion Paper No. 3 - *Citizen's Initiated Referendums* - August 1991.

7. Discussion Paper No. 4 - *Recognition of Aboriginal Customary Law* - August 1992.

8. Discussion Paper No. 5 - *The Merits or Otherwise of Bringing an NT Constitution into Force before Statehood* - March 1993.

9. Discussion Paper No. 6 - *Aboriginal Rights and Issues - Options for Entrenchment* - July 1993.

10. Discussion Paper No. 7 - *An Australian Republic? - Implications for the Northern Territory* - March 1994.

11. Interim Report No. 1 - *A Northern Territory Constitutional Convention* - February 1995.

12. Discussion Paper No. 8 - *A Northern Territory Bill of Rights?* - March 1995.

13. Discussion Paper No. 9 - *Constitutional Recognition of Local Government* - June 1995.

14. Exposure Draft - Parts 1 - 7 : *A new Constitution for the Northern Territory* - June 1995.