

SUBORDINATE LEGISLATION AND TABLED PAPERS COMMITTEE

THIRD REPORT

Papers considered by Committee

on

16 September 1987

on which no further action is recommended

Paper No.	Title	Date Tabled
82	Annual Report 1985-86 - Darwin Institute of Technology	2.6.87
83	Annual Report 1985-86 - Uranium Mining (Environment Control) Act (Eighth)	2.6.87
<i>Regulations 1987:</i>		
84	No.15 - Angurugu Community Government Council (Water Pollution) By-laws	2.6.87
85	No.16 - Amendments to the By-laws of the Municipality of Darwin	2.6.87
86	No.17 - Amendments of the Rules of the Supreme Court of the Northern Territory of Australia	2.6.87
87	No.18 - Work Health Court Rules	2.6.87
88	No.19 - Ngiuu Community Government Council (Common Seal) By-laws	2.6.87
89	No.20 - Repeal of the Alice Springs (Rates and Charges) By-laws	2.6.87
90	No.22 - Criminal Investigation (Extra-Territorial Offences) Regulations	2.6.87
91	No.23 - Amendment of Treasury Regulations	2.6.87
92	No.24 - Amendments of the Pay-roll Tax Regulations	2.6.87
93	Annual Report 1986 - Department of Education	2.6.87
99	Annual Report - 21 December 1984 to 30 June 1985 - Department of Industry and Small Business	3.6.87
100	Financial Statement 1986 - Araluen Arts and Cultural Trust	4.6.87

Paper No.	Title	Date Tabled
101	Annual Report, Years ending 30 June 1984 and 1985 - Registrar of Building Societies	4.6.87
102	Annual Report, 1985-86 - Registrar of Building Societies	4.6.87
103	Annual Report, Years ending 30 June 1984 and 1985 - Registrar of Credit Unions	4.6.87
104	Annual Report, 1985-86 - Registrar of Credit Unions	4.6.87
105	Regulations 1987, No.25 - University College of the Northern Territory - By-law Governing Examinations	9.6.87
106	Annual Report, 1985-86 - Department of Health	9.6.87
107	Financial Statement, 1985-86 - Legislative Assembly Members' Superannuation Trust	9.6.87
109	Pine Creek Community Government Scheme	10.6.87
112	Regulations 1987, No.21 - Katherine (Parking) By-laws	11.6.87
113	Annual Report, 1985-86 - National Companies and Securities Commission (Seventh)	11.6.87
124	Revocation of Reserve No. 1021 - Botanical Gardens, Town of Darwin	28.7.87
125	Revocation of Reserve No. R1149 - Bagot Reserve Lot 4806, Town of Darwin	28.7.87
	<i>Regulations 1987</i>	
126	No.26 - University College of the Northern Territory By-laws governing the library	28.7.87
127	No.27 - University College of the Northern Territory By-laws governing exclusion	28.7.87
128	No.28 - Alice Springs (Todd Mall) By-laws	28.7.87
129	No.30 - Amendments of the Port By-laws	28.7.87
130	No.31 - Amendments of the Education (School Councils) Regulations	28.7.87
131	No.32 - Trade Development Zone Regulations	28.7.87

Paper No.	Title	Date Tabled
132	Regulations 1987, No.33 - Amendment of Liquor Regulations	28.7.87
133	Regulations 1987, No.34 - Cigarette Containers (Labelling) Regulations	28.7.87
134	Annual Report, 1985-86 - Department of Correctional Services	28.7.87

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LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

DISCUSSION PAPER ON
REPRESENTATION IN A TERRITORY CONSTITUTIONAL CONVENTION

A. BACKGROUND

1. In the Chief Minister's policy statement, Towards Statehood, (28 August 1986), a three-stage process was proposed for the making of the new State constitution. The three stages were:

- (i) The preparation of a draft constitution by the Select Committee on Constitutional Development;
- (ii) The development and adoption of a proposed constitution by a Northern Territory Constitutional Convention for submission to a referendum; and
- (iii) A referendum of Northern Territory electors to approve the constitution as ratified by the Convention.

The Chief Minister stressed the condition that the Convention must represent "a broad cross-section of community interests and opinions".

2. The Select Committee on Constitutional Development has also considered the constitution-making process and, in November 1986, endorsed the Chief Minister's proposal. It also undertook "to prepare for inclusion in its report to the Legislative Assembly [before June 1988] recommendations on

representation at the proposed Constitutional Convention". To that end, discussion has taken place within the Committee but except for a decision that the preferred Convention size should be between fifty and sixty, the Committee has not yet determined its attitude to representation. Before any recommendation is made, the Committee wishes to receive public comment on the issue. This paper addresses the salient questions to be resolved.

B. REPRESENTATION

1. There are three basic ways to constitute the Convention membership. They are:
 - (i) Wholly-elected;
 - (ii) Wholly-nominated; and
 - (iii) Partly elected/partly nominated.

To the extent that it is elected, the question arises as to the electoral and voting systems which will be most appropriate. To the extent that it is nominated, salient questions are how the nomination process should be conducted and who should do the nominating.

2. (i) Wholly-elected conventions are the rule in the U.S.A. constitutional experience. Because of the electoral system devised (a combination of at-large and precinct contests) and the deliberate avoidance of

overt partisanship, the outcome usually produced an adequate representational profile and thus a broad political legitimacy and community acceptance. As opposed to the 1891 Convention which was wholly nominated by the respective colonial parliaments, the Australian Constitutional Convention (which substantially drafted the federal constitution) was also directly elected.

(ii) Advantages:

- a) Most "democratic" option;
- b) Confers political legitimacy and acceptability;
- c) May be required by Commonwealth government; and
- d) Depending on electoral system used, a fair representation could be achieved.

(iii) Disadvantages:

- a) Costly and time-consuming;
- b) If turnout low, representation may not be adequate;
- c) If electoral system ill-chosen, representation again may be deficient; and
- d) Suitable candidates may not offer for election.

3. The electoral system and voting procedure used will have to be chosen with the view of providing "a

broad cross-section of community interests and opinion." It is unlikely that single-member constituencies would achieve that result as minority interests do not fare well under such circumstances. They would certainly do better at an "at-large" election using the Territory as one electorate (as with Senate elections) but it would probably, given the weight of "urban" voters and Darwin voters in particular, not produce a reasonable regional balance. Thus, the most appropriate system would be a series of multi-member electorates (of varying sizes) covering regional areas. Assuming a Convention of fifty-five members, Greater Darwin would return twenty-two members, Alice Springs eleven, Katherine four, Tennant Creek and Nhulunbuy two each, northern "rural" and southern "rural" seven each. A single transferable voting procedure [i.e. the full Senate variant] would enable a wide range of community opinion to be represented.

4. (i) A wholly-nominated convention also presents a number of advantages and disadvantages.
- (ii) Advantages:
 - a) Less costly to convene than a fully-elected convention;
 - b) Allows for a deliberate choice of candidates thereby ensuring reasonable representation;
 - c) May ensure participation of best-suited and qualified representatives; and

- d) Could allow involvement of "non-Territorians".

(iii) Disadvantages:

- a) Lacks the same legitimacy as a fully-elected Convention;
- b) May be unacceptable to Commonwealth Government;
- c) Likely to be criticised as "rigged" or unintentionally unrepresentative;
- d) Difficulty of ensuring places and balance for the myriad of Territory interests; and
- e) members may see themselves as "delegates" rather than "trustees" and represent their "sponsors" rather than the wider Territory concerns. In that circumstance, agreement on sensitive issues may be hard to reach and the resultant constitution could follow "the lowest common denominator" approach which may prejudice its acceptance at a referendum.

- (iv) The Select Committee believes that, if the Convention is to be nominated, the final choice of nominees should be made by the Legislative Assembly on advice from the Select Committee. Nominations could be sought from designated groups or specific individuals. Public advertisement could also be employed to elicit nominations from

the general community. It is important that all significant bodies of opinion (whether organised or not) obtain some degree of representation. To enable the Select Committee to identify all parties deserving or desirous of representation (and the extent of that representation) on the Convention, it seeks expressions of interest from such parties. Comment is also welcomed on the desirability and practicability of having non-Territorians or Territory parliamentarians as members. So too is the proportion of "specialists" (those nominated for their particular expertise, qualifications and experience) to "generalists" (those who have some broad appreciation of constitutional subjects).

- (v) The type of membership should relate to the form in which the Convention operates. If it undertakes most of its business in plenary session, the membership appropriate for such a style will be different from that of a Convention which conducts most of its business in specialist committees. A paper prepared by a Select Committee member is based around "specialist" membership. He proposed a structure of four committees to deal with legislative, executive, judicial and "other matters" aspects respectively. The Convention Chairman and the Committee Convenors are to be selected on the grounds

of national eminence, capacity and acceptability. Committee membership which is to include two M.L.As, is to be chosen for its particular qualifications and a minority could come from outside the Territory. Any scheme which gives prominence to a strong committee structure will tend to require similar "specialist" members. Public comment on the form which the Convention should take is also sought. Particular attention should be given to the roles of committees and plenary sessions.

5. The third approach - the mixed model - offers a range of membership possibilities. At one extreme, there could be a predominance of elected members, at the other a predominance of nominated. As a hybrid model, the mixed option has a combination of the advantages and disadvantages pertinent to the wholly-elected and wholly-nominated models. But, it does have the additional benefit, if the majority of members are elected, of allowing participation of key groups (such as the Legislative Assembly, land councils, local and community government organisations, or any other major body of opinion demonstratively excluded in the electoral process). In that way, nomination of a certain proportion of the Convention can ensure an adequate representation of Territory interests.

OCTOBER, 1987