

Northern Territory Legislative Assembly

SESSIONAL COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

FINAL DRAFT CONSTITUTION FOR THE NORTHERN TERRITORY

TABLING STATEMENT

Presented by
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Minister for Correctional Services
Minister for Parks and Wildlife
Minister for Sport and Recreation
Minister for Ethnic Affairs
and
Chairman
Sessional Committee on Constitutional Development

22 August 1996

Mr Speaker,
I lay on the table the final draft Constitution for the Northern Territory, as prepared by the Sessional Committee of this Assembly on Constitutional Development, together with an addendum.

Mr Speaker,

I move that the final draft Constitution for the Northern Territory with the addendum be printed.

Mr Speaker,

I move that the Assembly note the final draft Constitution for the Northern Territory and the addendum.

Mr Speaker,

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

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

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

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

1. That we should maximise community involvement and participation in its drafting process. This process has had the added advantage of increasing community awareness and understanding of Statehood and the role of a Constitution.
2. That we would not reject any issue out of hand. If an issue was raised, it was researched, options considered and recommendations made.
3. That the Constitution should reflect the realities of the Northern Territory, its people, its demography and its aspirations into the 21st century.

4. That the Constitution should aim to set the framework for a social partnership of all races and ethnic groups in an open, inclusive and democratic society.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COMMITTEE PROCESSES

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

Procedurally each issue went through 3 stages:

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

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

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

This draft Constitution, if and when adopted, would be the Constitution of the Northern Territory as a new State, although it is possible that it could be brought into operation before any grant of Statehood. It does not contain all the provisions needed for a grant of Statehood, as some terms and conditions would have to be fixed by Commonwealth legislation under section 121 of the national Constitution. An example of this is the representation arrangements for new State in the national Parliament.

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

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

NAME OF THE NEW STATE

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

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

BILL OF RIGHTS

Mr Speaker, the Committee could not agree on the need for a constitutionally entrenched Bill of Rights. The final draft does contain several provisions of a "rights" nature on particular topics, which I will detail later, but it does not contain a comprehensive Bill of Rights as found in some other constitutions. To assist further deliberation, the Committee has already issued Discussion Paper No. 8 on this subject. In addition, there is attached to this final draft a paper detailing existing provisions concerning rights as already contained in this draft Constitution, the Commonwealth Constitution, in treaties and in other international agreements to which Australia is a party, and in Commonwealth legislation. From this, members will be better assisted to consider and debate this complex topic.

THE QUESTION OF A REPUBLIC

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

STRUCTURE OF THE DRAFT CONSTITUTION

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

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

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

I will deal with these Parts in the same order.

PREAMBLE

Honourable Members will note that this is a lengthy aspect of the document. It recites in some detail the constitutional history of the Northern Territory, much of it in words taken from similar preambles in former or existing Territory constitutional documents (including the Northern Territory

(Self-Government) Act). However it also has some unique features, one of which I will mention at this stage.

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

It reads -

1. "Before the proclamation of the Colony of New South Wales in 1788 and since time immemorial all or most of the geographical area of Australia that now constitutes the Northern Territory of Australia (the Northern Territory) was occupied by various groups of Aboriginal people under an orderly and mutually recognised system of governance and laws by which they lived and defined their relationships between each other, with the land and with their natural and spiritual environment;"

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

PART 1 - A NEW GOVERNMENT

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

PART 2 - THE LEGAL SYSTEM

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

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

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

The final draft contemplates that, by agreement with the Commonwealth, the Land Rights Act in its

current form will be re-enacted as an Organic Law of the Northern Territory. I will deal with Land Rights later.

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

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

The Committee, for its part, unanimously supports an entrenched new Territory Constitution, requiring a Territory referendum for any future change. This has been incorporated in the final draft. At the same time, the Committee is aware of criticisms that the initiation of referendum proposals should not be left to the legislature alone. Such criticisms have often been voiced in conjunction with proposals for Citizens Initiated Referenda ("CIR"), submissions in favour of which were put to the Committee. The Committee in fact issued a separate Discussion Paper on this topic.

After deliberation, the Committee has decided against any form of mandatory CIR by which a fixed percentage of the Territory electors could force the holding of a referendum for constitutional or

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

PART 3 - THE PARLIAMENT

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

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

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

PART 4 - THE EXECUTIVE GOVERNMENT

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

In this regard, the subjects tackled by the Committee include that of defining the role of the head of state within the new system of Government, in this case the new State Governor, and the relationship of that head of State with the Parliament and the Government. That is, the Committee has looked at "Kerr" type issues and the concept of the reserve powers of the Crown. It has sought clarification of this issue. This has in fact been a much simpler exercise in the case of the proposed Northern Territory Constitution in

view of the Committee's recommendation of an unicameral Parliament. The Committee has proposed an express constitutional requirement that would require the Governor as a general rule to act in accordance with the advice of his or her responsible Ministers except in specified narrow circumstances. These circumstances include the situation where to follow that Ministerial advice would be to act unconstitutionally. Where the Governor acts contrary to, or without his or her Ministers' advice, there is a requirement that the Governor promptly table a statement of reasons in the Parliament. Honourable Members should note the provisions of Part 6, whereby the Governor can seek an advisory opinion from the Supreme Court to clarify constitutional questions.

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

PART 5 - FINANCE

Mr Speaker, it is possible to be very brief about this Part. It deals with the financial arrangements for the new Government, expressed in similar terms to the equivalent provisions of the Self Government Act.

PART 6 - THE JUDICIARY

This Part deals with the judicial structure of the Northern Territory. It is proposed that the existing Supreme Court would continue as the new Supreme Court, as would other existing Territory Courts.

The final draft recognises the key role of the Territory Supreme Court in the constitutional equation by entrenching the Court in the Constitution and by guaranteeing the independence of its judges. The Court would be given a particular jurisdiction as the interpreter of the new Constitution, subject of course to any right of appeal to the High Court. Its supervisory jurisdiction over inferior courts and tribunals is also expressly recognised. In this regard, the Committee recognises the judiciary as a bulwark in the maintenance of the rule of law. At the same time, the Committee has not supported a strict separation of powers between the Territory judiciary and the other two arms of government. Such a rigid separation presently exists only at a federal level, not at a State level.

Accordingly, the final draft does not confine the exercise of the Territory judicial power to Territory courts alone - that is, tribunals and other statutory bodies are not precluded from exercising particular kinds of judicial power under their enabling legislation. However it is proposed that where this occurs, those other bodies will be subject to the supervisory jurisdiction of the Supreme Court, including the remedy of habeas corpus as a guarantee of individual liberty. In this regard, the Committee sees a need, not for a rigid separation of powers doctrine that causes practical difficulties, but for a proper intermeshing of the three arms of government in a balanced way, with appropriate checks and balances, in the manner that characterises the Westminster system of Parliamentary Democracy.

In another innovative provision, it is proposed that the Supreme Court of the Northern Territory be given an advisory jurisdiction in such constitutional matters, but only at the initiative of specified constitutional office holders. By this means, the constitutionality of a proposed action can, in an appropriate case, be litigated in open court, after full legal argument, without having to go through the action first and then

having uncertainty as to whether it is valid or not.

PARTS 7 & 8 - ABORIGINAL AND OTHER RIGHTS

Mr Speaker, I would now like to turn to those Parts of the draft Constitution which contain provisions of a "rights" nature. It is convenient to deal with both Parts 7 & 8 together in this respect. Part 7, as Honourable Members will see, deals with Aboriginal rights. Part 8 deals with rights in respect of language, social, cultural and religious matters, expressed in terms that applies to both Aboriginal and non Aboriginal persons.

The specific matters dealt with in Part 7 address the core concerns of Aboriginal Territorians as indicated to the Committee in its community consultations throughout the Territory. The Committee is of the view that it is vitally important to recognise and protect rights arising from these core concerns for the future to ensure that they cannot be unfairly infringed, for reasons that I have already explained.

Of the greatest importance is the Aboriginal Land Rights Act, an Act of the Commonwealth Parliament that only applies in the Northern Territory. There is nothing even approaching this Act in other Commonwealth legislation applying in particular States. Whether people like it or not, the Land Rights Act has become an established feature of the Northern Territory constitutional landscape, and this is not going to disappear upon a grant of Statehood. At the same time, there is a growing body of opinion that the Land Rights Act should become a Northern Territory law if the Territory is to be put into a position of constitutional equality with the other States. The Commonwealth Parliament should only legislate for Australia as a whole, as is the proper role of a national Parliament in a federation, and which it has done, for example, in the Native Title Act. This would mean that the Land Rights Act, applying only in the Northern Territory, would need to become a new State law. This is the view taken by the Committee.

To facilitate this, the Committee in its final draft has again sought an innovative solution. It seeks to constitutionally guarantee the continuance of land rights under the Constitution on basically the same terms, but under Territory law. The final draft contemplates that, by agreement with the Commonwealth, the Land Rights Act in its current form will be re-enacted as an Organic Law of the Northern Territory.

At the same time, certain key features concerning land rights would be entrenched in the proposed Constitution itself and be even more firmly guaranteed than an Organic Law. In particular, the right of Aboriginal traditional owners to sell the Aboriginal freehold would be subject to a very stringent constitutional processes, involving full consultation with Aboriginal people, and requiring a prior finding by a Supreme Court Judge, so as to prevent dealings with the freehold that are not in the best interests of the Aboriginal people concerned. This is designed to avoid the situation, such as occurred in Alaska and Hawaii, where unwise decisions resulted in the loss of traditional lands. In addition, while Aboriginal sacred sites are protected by a provision of the Land Rights Act itself, as a result of very strong concerns put to the Committee in its community consultations, the final draft incorporates a special provision as to the protection of sacred sites. This provision requires that there be new Territory legislation on this subject in the form of an Organic Law. The existing Territory Sacred Sites Act would in the meantime be given Organic Law status, it having proved to be the best and most effective measure consistent with Aboriginal culture, incorporating a process that has proven to be successful.

Part 7 also proposes that certain other measures as to land rights be included in that Constitution itself that appear to have acquired a measure of general acceptance. These comprise a prohibition on the compulsory acquisition or forfeiture of Aboriginal land, but with a capacity for the compulsory acquisition by Government of a less than freehold title, strictly limited to purposes that are clearly public purposes, in accordance with existing legislative safeguards and with just compensation. Such a measure is seen as being critical to finding a proper balance between Aboriginal interests and the wider Territory public interest as a whole. There is also provision in the draft Constitution to enable the new Parliament to clarify the interaction between the Land Rights Act and other Northern Territory laws, such as local government on Aboriginal land.

In addition to land rights and sacred sites, Mr Speaker, Part 7 contains provisions which will facilitate the grant of self determination to Aboriginal Territorians within the overall framework of the Northern Territory under the one Constitution.

Mr Speaker, I now refer to the provisions of Part 8 of the draft Constitution. These provisions recognise that the Northern Territory community is exceptional because of its multi-cultural, diverse nature, being made up of many cultures, languages and religions. Part 8 provides that no person in the Territory is to be denied the right to use his or her own language in communicating with others, to observe and practice his or her own social and cultural customs and traditions in common with others, and to have and practice his or her own religion. These provisions, which are also reflected in the Preamble, were considered by the Committee to be particularly important in a place like the Northern Territory. This is a view which received support in the various submissions to the Committee. At the same time, the Committee has recognised that they should not be absolute rights, but that they should be capable of being qualified by Territory legislation in the public interest or by reference to the general principles of humanity contained in international agreements to which Australia is a party. Again, the Committee has sought a balance between particular interests and the wider public interest.

PART 9 - LOCAL GOVERNMENT

Mr Speaker, I would like now to briefly move to those aspects of the draft Constitution concerning local government. Following strong representations made to the Committee by representatives of the third sphere of government in the Territory, and having regard to the constitutional position in the existing States, the Committee felt compelled to give constitutional recognition to the fact that there should be a continuing system of local government in the Territory. This includes both normal municipal government and community government. The Committee felt that the detailed provisions within which local government should operate should be left to legislation, although the Constitution should set out some minimum requirements for that legislation. In addition, it considered that the Constitution should prohibit the termination of a particular local government body once established, or the removal of its members, without prior public enquiry.

PART 10 & 11 - TRANSITIONAL & INTERPRETATION

Mr Speaker, the final draft also contains a number of detailed provisions of a transitional nature, designed to carry the Northern Territory from the present Self-government arrangements under

Commonwealth legislation into these new Constitutional arrangements. It is envisaged by the Committee that the present Northern Territory (Self-Government) Act will be repealed to accommodate the new Constitution. However, the Committee felt that a significant degree of continuity was required between the two systems. For this reason, it has advocated that most of the existing institutions of Territory government should be carried over on a transitional basis into the draft new Constitution - that is;

- the existing Legislative Assembly and its members and officers, which would become the first new Parliament and its members and officers until a general election could be held;
- the Administrator, who would become the first Governor for a period of up to twelve months until a new appointment could be made by the Queen; and
- the existing Supreme Court, which would continue as before but subject to the new Constitution. In the Committee's view, a smooth transition is essential and will be facilitated by this carry-over of institutions.

On the other hand, the Committee envisages that there would be a fresh appointment and swearing in of the first Premier and other Ministers on day one of the new Constitution, they to be chosen from the existing majority party as before in accordance with the Executive provisions of the draft new Constitution.

In other respects, the new State would be a continuation of the Self-governing Territory. Existing Territory legislation, administrative and judicial decisions and processes would be continued as before. There would be a minimum of disruption.

Part 11 deals with general interpretative provisions.

CONCLUSION

Mr Speaker, this document contains the Committee's proposals for a new Territory Constitution for a new Century. It is the product of a great deal of work by the Committee over a period of more than 10 years. In the Committee's view, it fairly reflects the needs and aspirations of the wider Territory community as expressed to the Committee in the course of its consultations. It provides a point of reference from which further debate can proceed. I will continue to keenly follow the course of the debate, as I am sure the other members of the Committee will do.

It remains for me to say a few words of thanks to all those that have assisted in the production of this document. Let me thank all past and present members of the Committee for their patience and diligent attention to their duties. In particular let me mention two members whose contribution has been outstanding. I refer to the Member for Stuart, who has had a long and valued input into this process and who has greatly facilitated the maintenance of a bipartisan approach in the Committee. I also refer to the former member for Arnhem, whose determined input on Aboriginal and other issues has had such a marked effect on the content of this final draft, and who greatly assisted in the community consultations. This document is a lasting testimony to his memory. Let me also thank the dedicated staff to the Committee, the Executive Officer Rick Gray, his assistant, Mrs Yoga Harichandran, and the legal adviser Graham Nicholson.

I commend the final draft of the Constitution to the consideration of Honourable Members.