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*“Make Your Mark,
on the Future!”*

**Message from the Leader of
Government Business,
Honourable D. Kurt Tibbetts, JP,
MLA**

Fellow Caymanians,

In a matter of weeks, you will have a unique opportunity to shape the future of your country by voting in an historic referendum on a new Constitution.

Following extensive public consultations during the past five months, Government takes pleasure in presenting, for your consideration, a revised set of proposals which, with your approval, will form the basis of our new Constitution.

These are essentially now your proposals. They fully capture and reflect the views you so clearly expressed about the kind of constitutional arrangements you would like to see adopted in our beloved Cayman Islands.

I thank you very much for your invaluable input in the debate which was driven by a set of proposals which Government published earlier this year for your consideration. As a result of the consultations, these original proposals have been modified to incorporate your views.

To facilitate maximum voter participation, the day of the referendum will be declared a public holiday. I urge you, therefore, to go out in record numbers and vote. You have every reason to.

Voting will help you get what you want. It will also make a powerful statement that you do love the Cayman Islands and care about our future.

Vote because you know the Constitution is the framework of our Government and it needs to be modernized. The existing Constitution is outdated and does not effectively address the realities of

today.

Vote because you want to live in a country with more democracy, more efficiency and greater protection of your rights as a citizen against the abuse of governmental power. Vote because it will send a clear message to the United Kingdom that Caymanians fully support a new constitutional relationship which not only gives us more say in running our affairs but also protects our identity, culture and values.

Vote whether or not you agree with all of the proposals. Vote whether you are PPM, UDP or neither of the two. Above all, vote so that your views will be counted and make a difference. Let it not be whispered that Caymanians do not care what kind of government they have.

I wish to thank the Constitutional Review Secretariat for skilfully planning, organizing and executing the nation-wide programme of public consultations. It is an outstanding achievement. Not many countries have gone to these lengths to empower their people to make an informed decision on Constitutional change.

Thanks also to Professor Jeffrey Jowell, the Government’s Constitutional Advisor, for his expert guidance in the process. Dr. Carlyle Corbin, another Constitutional expert, also contributed to the public dialogue for which Government is most appreciative.

The publication of these Revised Proposals does not mean the end of public discussion. On the contrary, it will continue up to Referendum Day. Once again, I urge you to go out and vote. The future of the Cayman Islands depends on you!

**Sincerely yours,
D. Kurt Tibbetts, JP, MLA
Leader of Government Business**

INTRODUCTION

The proposals published by Government in January 2008 have been reviewed and revised, in light of feedback received during the last four months from the public; non-governmental organisations (NGOs); and from the Opposition. Some of the revisions are to make things clearer; some make actual changes. The Revised Proposals are set out after this introduction.

Assuming they are approved for this purpose by the Legislative Assembly, the Revised Proposals will be the subject of the referendum, which is expected to be held in July 2008. Voters will be able to say whether they agree with all, some, or none of the Revised Proposals. Voters who agree with some, but not all, of the Revised Proposals will be able to indicate which proposals they disagree with.

The form of ballot paper that will be used at the referendum (assuming it is approved by the LA) is attached at the end of these Revised Proposals. Voters are encouraged to look at the ballot paper before referendum day, and to decide how they will vote. If voters have any questions about the Revised Proposals, or about the ballot paper, they are strongly encouraged to come to the public meetings or contact the Secretariat. Members of the LA should also be able to answer questions.

The proposed Referendum (Constitutional Modernisation) Law requires the referendum to be held in much the same way as an election under the Elections Law.

Once the referendum results have been tallied, they will be published. Everyone, here and in London, will then be able to see what Cayman Islands voters want in the new Constitution. This will be the basis for the discussions with the UK Government.

It is anticipated that the Cayman Islands' representatives in the discussions with the UK Government will include not only Cayman's Government representatives, but also representatives of the Opposition and NGOs.

When the discussions have concluded, and the UK Government has issued the draft of the new Constitution, there will be an opportunity for the public to study the draft and make comments. Whether it will be necessary to have a further referendum will depend on whether the draft is, in any significant way, inconsistent with the wishes expressed by Cayman's voters in the July referendum.

REVISED PROPOSALS FOR CONSTITUTIONAL MODERNISATION

Proposal 1: THE CONSTITUTION SHOULD BE MODERNISED.

The Constitution should be modernised to give the country more democratic, accountable and efficient government, while continuing to be an Overseas Territory of the United Kingdom. The UK/Governor should continue to have responsibility for defence and external affairs; internal security and the police; and the civil service, but with some adjustments, as noted in other proposals.

Proposal 2: NO INDEPENDENCE.

It should be made clear to the United Kingdom that:

- *this country does not want independence from the United Kingdom, and wants to remain an Overseas Territory of the United Kingdom;*
- *this country does not want, and does not authorise, any agreement or understanding with the United Kingdom that would or might involve independence in the future or further Constitutional change; and*
- *this country wants the United Kingdom to agree that, after the present modernisation, no further change to our Constitution would be made without the approval of voters at another referendum (except as permitted under Proposal 25 below).*

Proposal 3: A SUITABLE PREAMBLE.

The Constitution should have a preamble proclaiming our historical context, fundamental values and aspirations. This should be based on the Preamble in the 2003 draft Constitution.

Proposal 4: A BILL OF RIGHTS.

- *The Constitution should include a Bill of Rights, to protect our basic rights and freedoms from interference by Government.*
- *The Bill of Rights should be based on the 2003 draft Constitution, but with a number of adjustments, and clearer language.*
- *It must be clear that the Bill of Rights will only apply “vertically”. In other words, it will only bind Government, governmental institutions and public officials - not private persons, businesses, churches or private schools. It will not affect relationships or dealings between private persons, businesses, churches or private schools.*
- *It must be clear that the Bill of Rights will not affect our Christian traditions, in particular religious instruction in schools, or prayers in schools or public places.*
- *It must be clear that the Bill of Rights will not apply to controversial areas such as the recognition of sex change,*

gay marriage, or more liberal abortion laws.

- *Although freedom of religion is an essential part of the Bill of Rights, it must be clear that the Government can still ban religious practices or preaching in the interests of public safety, public order, public health or public morality.*
- *Everyone should have access to the Courts, in order to challenge the decisions of Government, governmental institutions or public officials for violating their rights under the Bill of Rights, and the Courts should be able to strike down the decision. Legislation could also be challenged, but the Courts should have power only to declare that the legislation offends the Bill of Rights. It would then be up to our Parliament (see Proposal 5) to decide whether and how to put things right.*

Proposal 5: UPGRADE THE LEGISLATURE AND RESTRICT THE OVERRIDING LEGISLATIVE POWERS OF THE UK/GOVERNOR.

- *It should be clear that our Assembly of elected representatives is responsible for making laws, with the assent of the Governor or the UK Government.*
- *The overriding powers of the UK Government and the Governor to make laws for the Cayman Islands, without the approval of our Assembly; to annul laws that have been duly passed; and to give directions to our Assembly, should be restricted or eliminated.*
- *Our Assembly should be renamed “the Parliament of the Cayman Islands”. Members would then be known as “Members of Parliament” or “MPs”.*
- *The Parliament should consist only of the elected representatives (MPs) and the Speaker. In other words, there should be no unelected members. The Attorney General should not be a Member of Parliament, but should attend to give legal advice if required.*
- *The Speaker should not be an MP. The Deputy Speaker may be an MP.*
- *The Constitutional provision for Standing Orders should require fair procedures, adequate notice of bills and motions, and a sufficient opportunity for all MPs to speak. It should also be provided that Standing Orders will not be suspended without good and sufficient reason.*
- *The Governor should prorogue Parliament annually, on the advice of the Premier.*
- *The Governor should consult the Premier before dissolving Parliament.*

Proposal 6: CONTINUE WITH A SINGLE LEGISLATIVE BODY, I.E., NOT CREATE A SENATE.

There should continue to be a single legislative body, the Parliament (presently known as the Legislative Assembly). A Senate should not be created.

Proposal 7: UPGRADE THE CABINET.

- *Cabinet should have responsibility for formulating and directing the implementation of government policy in all areas of government, except those for which the Constitution gives responsibility to the Governor or some other*

public officer or body.

- *The Cabinet should consist of the Premier, Deputy Premier and five other Ministers.*
- *The Governor, and in his absence the Deputy Governor, should attend and advise Cabinet meetings.*
- *There should be no unelected members of Cabinet. The Attorney General should attend Cabinet meetings to give legal advice.*
- *The Premier and Deputy Premier should be the MPs chosen by a majority of the MPs of the winning party, or if there is no winning party, a majority of all MPs.*
- *The other Ministers should be chosen from among the MPs by the Premier.*
- *The portfolios (areas of responsibility) of the Premier, Deputy Premier and other Ministers should be allocated by the Premier.*
- *If the Ministers do not include a Sister Islands' MP, the Minister with responsibility for District Administration should ensure that the District Commissioner liaises with the Sister Islands' MPs. The Minister should also give the MPs regular opportunities to explain their districts' requirements to Cabinet (Proposal 23 below).*
- *The Premier (or Deputy Premier) should chair Cabinet meetings, rather than the Governor.*
- *The Premier (or Deputy Premier) should set the agenda for Cabinet meetings, after consulting the Governor.*

Proposal 8: MODERNISE THE GOVERNOR'S ROLE.

- *The Governor's overriding legislative powers should be restricted, as outlined in Proposal 5 above. Note that the Governor's assent would still be required for all legislation.*
- *The Governor's policy-making and executive functions should be limited to his areas of special responsibility: defence and external affairs (Proposal 10), internal security and the police (Proposal 11), the civil service (Proposal 12).*
- *The Governor should continue to have emergency powers, but should consult Cabinet or the Premier, unless consultation is impracticable.*
- *The Constitution should make clear that in carrying out his functions the Governor (like the Ministers) must act for the benefit of this country, and in a way that is justified and proportionate. The Governor's decisions should be subject to judicial review in the same way as any other person or body performing a public function.*
- *In general, the Governor should be required to keep the Premier informed of the Governor's decisions and the reasons for them.*
- *The Governor should have discretion to delegate any of his special responsibilities and powers to members of Cabinet.*
- *The UK Government should consult the Premier before choosing a new Governor.*

Proposal 9: MORE CHECKS AND BALANCES ON EXECUTIVE POWER.

- *A clear rule that Ministers and public officials must exercise their powers and responsibilities in the interests of the country, not for their private interests or benefit.*

- *A Bill of Rights to protect our basic rights and freedoms from interference by the Government (Proposal 4 above).*
- *Constitutional backing for the Freedom of Information Law, so that its key features (including the whistle blower provisions) cannot simply be changed by the Government of the day.*
- *Greater oversight (Proposals 17 - 20 below).*
- *People-initiated referendums (Proposal 24 below).*
- *Constitutional backing for the limits on public debt contained in the Public Management and Finance Law, so that they cannot simply be changed by the Government of the day.*
- *The Constitution should provide for the Public Accounts Committee (PAC) of Parliament along present lines, i.e., to scrutinise Government accounts and the reports of the Auditor General. A separate PAC should be formed whenever there is a change of Government, to ensure that scrutiny of a Government's accounts and actions is not under the control of MPs who are or were a part of that Government.*
- *Term limits for the Premier: A person should not serve as Premier for more than two successive terms.*

Proposal 10: THE UK GOVERNMENT AND THE GOVERNOR SHOULD CONTINUE TO BE RESPONSIBLE FOR DEFENCE AND EXTERNAL AFFAIRS, BUT THERE SHOULD BE RESTRICTIONS ON ENTERING INTO INTERNATIONAL AGREEMENTS, AND A PROVISION FOR SOME DELEGATION.

The UK Government and the Governor should continue to be responsible for the defence and external affairs of this country, but:

- *Cabinet should always be consulted in advance of any international agreement or commitment that would affect this country.*
- *If the international agreement or commitment would affect internal policy or require implementation by legislation, it should not be entered into without the approval of Cabinet.*
- *The Governor should have power to delegate to members of Cabinet responsibility for external affairs, and should do so wherever the interests of the United Kingdom are not significantly affected.*

Proposal 11: THE GOVERNOR SHOULD CONTINUE TO HAVE RESPONSIBILITY FOR INTERNAL SECURITY AND THE POLICE. A NATIONAL SECURITY COUNCIL SHOULD BE ESTABLISHED TO ADVISE THE GOVERNOR.

- *The National Security Council should comprise the Governor, as Chairman; the Premier; the Attorney General; the Commissioner of Police; and two other Ministers appointed by the Governor on the advice of the Premier.*
- *The National Security Council should advise the Governor on policy matters concerning internal security and the police.*
- *The Commissioner of Police should provide the National Security Council with regular briefings. This requirement should be suitably qualified to maintain the security of current operations.*

- *The Governor should be required to act in accordance with the advice of the National Security Council, unless he considers that this would be contrary to Her Majesty's interests.*

Proposal 12: NO CHANGE WITH REGARD TO THE GOVERNOR'S RESPONSIBILITY FOR THE CIVIL SERVICE.

- *The Governor should continue to have Constitutional responsibility for appointing, disciplining and dismissing civil servants, subject to the applicable legislation, presently the Public Service Management Law.*
- *The Constitution should express the overarching duty of civil servants, namely to implement Government policy to the best of their abilities and in accordance with the directions of the Cabinet or other responsible person or body.*

Proposal 13: ESTABLISH A JUDICIAL AND LEGAL SERVICES COMMISSION.

- *The Judicial and Legal Services Commission should comprise the Chief Justice; the President of the Court of Appeal; one member nominated by the Law Society; one member nominated by the Bar Association; one non-lawyer member nominated by the Premier; and one non-lawyer member nominated by the Leader of the Opposition.*
- *The Commission should have responsibility for appointments of judges and magistrates, and for related matters including the creation of divisions of the Courts. The Commission should also have responsibility for appointing a Director of Public Prosecutions (Proposal 15).*
- *The Constitution should require the Cabinet to provide adequate financial support to the judicial administration.*

Proposal 14: LIMIT THE ROLE OF THE ATTORNEY GENERAL AND CHANGE THE RULES FOR HIS APPOINTMENT.

- *The Attorney General should no longer be a member of Cabinet or Parliament. He should be the principal legal adviser to the Cabinet. For that purpose he should be required to attend both Cabinet and the Parliament.*
- *The Attorney General should no longer be responsible for criminal prosecutions. That responsibility should be given to a Director of Public Prosecutions (Proposal 15).*
- *The Attorney General should be appointed by the Governor, on the advice of the Premier. His or her qualifications, independence and suitability for the office must, however, be endorsed by the Judicial and Legal Services Commission (Proposal 13).*

Proposal 15: CREATE THE OFFICE OF DIRECTOR OF PUBLIC PROSECUTIONS.

- *Constitutional responsibility for criminal prosecutions should be given to a Director of Public Prosecutions.*
- *The Director of Public Prosecutions should be appointed by the Judicial and Legal Services Commission (Proposal 13).*

Proposal 16: CREATE THE OFFICE OF CABINET SECRETARY.

- *The Cabinet Secretary should be appointed by the Governor after consultation with the Premier.*
- *The principal responsibilities of the Cabinet Secretary should be:*
 - *to provide frank and politically neutral policy advice to the Cabinet and, where appropriate, the Premier;*
 - *to coordinate the development and implementation of policy between ministries and portfolios and across the wider Government sector, to ensure that Government policy is developed coherently and implemented as directed; and*
 - *to provide administrative and secretarial support to the Cabinet and the Premier, to allow high-quality and effective decision-making processes by the Government.*

Proposal 17: ESTABLISH A HUMAN RIGHTS COMMISSION.

- *The Commission should consist of a chairman and four other members. All should be appointed by the Governor after consultation with both the Premier and the Leader of the Opposition. At least two members should be experienced lawyers.*
- *The Commission's primary responsibilities would be to promote understanding of the Bill of Rights within Government and by the public; to give advice to persons who think that Government has violated their rights under the Bill of Rights; and to mediate where possible.*
- *The Commission should have no judicial functions.*

Proposal 18: ESTABLISH A COMMISSION FOR STANDARDS IN PUBLIC LIFE.

- *The Commission should consist of a chairman and four other members. All should be appointed by the Governor after consultation with both the Premier and the Leader of the Opposition. At least one member should be an experienced lawyer, and one an experienced chartered accountant.*
- *The Commission's primary responsibility would be to assist in laying down standards for public life, in order to ensure the prevention of conflicts of interest and corruption, and to monitor standards of ethical conduct, particularly by Ministers, MPs, Public Officers and senior civil servants.*
- *The Commission should supervise registers of interest and investigate breaches of established standards.*
- *The Commission should review the procedures for awarding public contracts.*
- *The Commission should review the procedures for appointing members of public boards and other public officials, and also their terms of appointment.*
- *The Commission should immediately assist in drawing up a law to impose sanctions on any Minister or public official who employs his or her power, or seeks to influence any person to use their power, for the purpose of obtaining or conferring any material benefit or advantage for any Minister or public official.*
- *The Commission should report to Parliament.*

Proposal 19: OUTLINE THE RESPONSIBILITIES OF THE AUDITOR GENERAL.

- *Keep the present Constitutional provisions for the Auditor General, appointed by the Governor, but specify in outline the responsibilities of the Auditor General.*

Proposal 20: HARMONISE THE RESPONSIBILITIES OF THE VARIOUS OVERSIGHT BODIES.

- *Harmonise the responsibilities of the Human Rights Commission, the Standards in Public Life Commission, the Auditor General, the Complaints Commissioner and the Anti-Corruption Authority, to avoid duplication or the disruption of existing procedures for complaints and appeals, and to keep costs to a reasonable level.*

Proposal 21: SIMPLIFY THE RULES ON ELIGIBILITY TO VOTE. NO CHANGE TO THE RULES ON ELIGIBILITY TO STAND FOR ELECTION.

- *A person should be entitled to be registered as an elector if he is a Caymanian who has attained the age of 18 years, is resident in the Cayman Islands at the date of registration, and has been resident in the Cayman Islands for not less than two years out of the four years immediately preceding registration.*
- *There should be no change to the existing rules on eligibility to stand for election to Parliament.*

Proposal 22: ADOPT THE “ONE PERSON, ONE VOTE” PRINCIPLE, AND SINGLE-MEMBER CONSTITUENCIES THROUGHOUT GRAND CAYMAN.

- *Adopt the “one person, one vote” principle.*
- *Single-member constituencies throughout Grand Cayman.*
- *Cayman Brac and Little Cayman remain a single constituency, sending two members to the Parliament, but each voter should have only one vote.*

Proposal 23: IMPROVE THE REPRESENTATION OF DISTRICTS.

- *The Constitution should require MPs to make proposals to the Cabinet concerning the requirements of their districts. And Cabinet should be required to meet regularly with MPs, including Opposition MPs, to discuss the requirements of their districts.*
- *Put an enabling provision in the Constitution, so that legislation can be adopted to establish District Councils to assist the local MPs.*

Proposal 24: PROVIDE FOR PEOPLE-INITIATED REFERENDUMS.

- *Provision should be made for people-initiated referendums.*
- *Initiation should be by a petition signed by not less than 20% of the electorate. It would then be the duty of the Parliament to settle the wording of the referendum question(s), and to cause the referendum to be held within a reasonable period.*
- *The decision of the referendum should be binding, provided that there is no inconsistency with the Bill of Rights or other parts of the Constitution, if passed by more than 50% of the electorate. If the referendum is passed, but by less than 50% of the electorate, it would be advisory, not binding.*

Proposal 25: FURTHER CHANGES TO THE CONSTITUTION SHOULD REQUIRE A REFERENDUM.

- *After the present modernisation process has been completed, further changes to the Constitution should not be made without the authorisation of a referendum, unless the change is declared by the Premier and the Leader of the Opposition to be minor or uncontroversial, in which case a resolution of Parliament would be sufficient.*
- *The UK Government should be invited to agree that it would honour this referendum requirement.*

EXPLANATION OF THE REVISED PROPOSALS FOR CONSTITUTIONAL MODERNISATION

In this section, the Revised Proposals are repeated in the yellow boxes and an explanation is given of each of them.

Proposal 1: THE CONSTITUTION SHOULD BE MODERNISED.

The Constitution should be modernised to give the country more democratic, accountable and efficient government, while continuing to be an Overseas Territory of the United Kingdom. The UK/Governor should continue to have responsibility for defence and external affairs; internal security and the police; and the civil service, but with some adjustments, as noted in other proposals.

The present Constitution is, in essence, as given to us in 1972. Much has changed since then.

In 1999 the UK Government proposed that the constitutions of its Overseas Territories should be modernised. This has been done in nearly all of the other Overseas Territories. But in the Cayman Islands, the process stalled in 2003/4.

The present Government and the previous Government (now the Opposition) agree that the Constitution needs to be modernised, although there are some differences in their specific proposals.

“Modernisation” does not mean independence. Nor does it mean that the country would be put on the path to independence. See Proposal 2 below.

“Modernisation” does mean rebalancing the powers of the UK/Governor and the elected representatives of the people, in order to establish a relationship with the UK that is based on principles of mutual respect and self-determination. As the revised proposals below show in more detail, it is not so much a matter of adding to the existing responsibilities of the elected representatives, or removing responsibilities from the Governor. It is more a matter of seeking limits and restrictions on the powers of the Governor and the UK Government to override our Legislature or Cabinet.

“Modernisation” also means that in all parts of our Government (elected and unelected) there should be more accountability; more checks and balances; and better safeguards and protections against bad government, the abuse of power, and interference with our basic freedoms.

Proposal 2: NO INDEPENDENCE.

It should be made clear to the United Kingdom that:

- *this country does not want independence from the United Kingdom, and wants to remain an Overseas Territory of the United Kingdom;*
- *this country does not want, and does not authorise, any agreement or understanding with the United Kingdom that would or might involve independence in the future or further Constitutional change; and*
- *this country wants the United Kingdom to agree that, after the present modernisation, no further change to our Constitution would be made without the approval of voters at another referendum (except as permitted under Proposal 25 below).*

The Government's proposals, published in January 2008, state that "we believe that there is no desire in the country to seek independence. Our aim is to improve the relationship with the United Kingdom; to make our internal government more democratic, efficient and accountable; and to prevent any recurrence of the unfortunate incidents that have in the past strained our relationship with the Mother Country." This reflected what was said in the 2005 Manifesto, upon which the Government was elected.

Public feedback in recent months has reinforced the belief that the country does not want independence.

This is now spelled out in detail in the box above, so that there will be no room for any doubt.

Proposal 3: A SUITABLE PREAMBLE.

The Constitution should have a preamble proclaiming our historical context, fundamental values and aspirations. This should be based on the Preamble in the 2003 draft Constitution.

The Government's January 2008 proposals suggested that the preamble in the 2003 draft Constitution might be a suitable starting point. It acknowledges the distinct history, culture and Christian heritage of the country, and sets out a list of fundamental values or aspirations.

This proposal seems to be generally agreed, including by the Opposition. The Cayman Islands Ministers Association has made representations that the Constitution should declare that we are a Christian country tolerant of other religions. It is proposed to put words to this effect in the Preamble.

The Opposition has suggested in its discussion paper 2008 some provision in the Constitution endorsing our "free market," capitalist economic approach. It is proposed to put words to this effect in the Preamble.

Proposal 4: A BILL OF RIGHTS.

- *The Constitution should include a Bill of Rights to protect our basic rights and freedoms from interference by Government.*
- *The Bill of Rights should be based on the 2003 draft Constitution, but with a number of adjustments, and clearer language.*
- *It must be clear that the Bill of Rights will only apply “vertically”. In other words, it will only bind Government, governmental institutions and public officials – not private persons, businesses, churches or private schools. It will not affect relationships or dealings between private persons, businesses, churches or private schools.*
- *It must be clear that the Bill of Rights will not affect our Christian traditions, in particular religious instruction in schools, or prayers in schools or public places.*
- *It must be clear that the Bill of Rights will not apply to controversial areas such as the recognition of sex change, gay marriage, or more liberal abortion laws.*
- *Although freedom of religion is an essential part of the Bill of Rights, it must be clear that the Government can still ban religious practices or preaching in the interests of public safety, public order, public health or public morality.*
- *Everyone should have access to the Courts, in order to challenge the decisions of Government, governmental institutions or public officials for violating their rights under the Bill of Rights, and the Courts should be able to strike down the decision. Legislation could also be challenged, but the Courts should have power only to declare that the legislation offends the Bill of Rights. It would then be up to our Parliament (see Proposal 5) to decide whether and how to put things right.*

What is a Bill of Rights?

- A Bill of Rights is that section of the Constitution that makes it difficult or impossible for Government to deny a person’s basic dignity, or to interfere with the fundamental civil and political freedoms that underpin all the world’s democracies. A Bill of Rights is contained in the constitutions of virtually every other Overseas Territory.
- These rights include the right to a fair trial; to privacy; to a family home; to marriage between a man and a woman; to property; to life; the right to not be subject to cruel or degrading punishment, or to slavery; the right of free association; free movement; free speech; freedom of conscience and religion; and the right to not be discriminated against on the grounds of race, creed, colour or gender.

Reasons for proposing a Bill of Rights in the Constitution:

- It is absolutely clear that the UK will, because of its own international obligations, require us to have a Bill of Rights in our Constitution if we change the Constitution in any way.
- A Bill of Rights is not alien to our democratic traditions and values, and indeed will allow us the positive

opportunity to enshrine our own *moral, spiritual and democratic* values in our own way, with far less chance of the UK imposing rights upon us that do not fit our traditions.

- Having our own Bill of Rights will inspire confidence in all people who deal with us, that Government observes democratic fundamentals and treats people with due dignity and respect.

Concerns expressed about a Bill of Rights during the discussion period

- Many of the concerns expressed in the discussion period centred on the assumption that rights could be asserted against private institutions, such as churches and private schools and businesses.
 - *That will not be so.* Like most bills of rights, ours will only apply “vertically”, that is, between the Government and the people. The Constitution will therefore plainly say that the rights will only apply against *the Government, governmental institutions and public officers*. It therefore *will not apply against our private schools, whether or not in receipt of some public funding; or to our churches or businesses*. If the country wants private institutions such as these to assume duties towards individuals, that should be done by ordinary legislation.
- *There is no suggestion that we adopt a US-style separation between church and state.* Therefore, the Bill of Rights will specifically recognise our Christian tradition, the right of religious instruction, and the right of prayer in all schools and public places.
- Subject to our existing employment laws, it will be made clear that the Bill of Rights will preserve the right of any school to impose requirements in employment, admission or curriculum design, where necessary to maintain that school’s *religious ethos*.
- The Bill of Rights *will not require recognition of sex change, marriage between same-sex couples or more liberal abortion laws* than we now have. These too are matters that are best decided by ordinary legislation.
- Our present law requires *tolerance of different religious practices*. The right to conscience and religion in a bill of rights will also prevent future governments from banning practices such as Saturday Sabbath or non-Christian religious worship. However, religious practices and preaching that foment violence or dissent may be banned in the interests of *public safety, public order, public health or public morality*.
- Other rights too may be limited where necessary to maintain national security, public morals, the rights of others, etc. Thus the right of free speech permits laws against pornography or defamation.
- We are not proposing that the Courts will be able to strike down laws. As in the UK, the Courts will only be able to *declare those laws to violate the Bill of Rights*, and it will be then up to Parliament to decide what to do about them.

Additional rights

- Support was expressed for three rights, over and above the fundamental rights listed above. These rights have been adopted in recent newly-drafted constitutions in other Overseas Territories, and seem to fit our values and aspirations. They are:
 - the rights of children in our society to be free of abuse or exploitation;

- the right to the protection of our environment. This will include the control of pollution, and the protection of our heritage, oceans, wildlife and land biodiversity – subject, of course, to appropriate social and economic development; and
- the right of us all to be treated lawfully, fairly and reasonably by governmental institutions and public officials. We already have this right, because of the law of judicial review that has been developed by the English courts in recent decades. But it needs to be entrenched in our Constitution so that it cannot be removed by the Government of the day.

Proposal 5: UPGRADE THE LEGISLATURE AND RESTRICT THE OVERRIDING LEGISLATIVE POWERS OF THE UK/GOVERNOR.

- *It should be clear that our Assembly of elected representatives is responsible for making laws, with the assent of the Governor or the UK Government.*
- *The overriding powers of the UK Government and the Governor to make laws for the Cayman Islands without the approval of our Assembly; to annul laws that have been duly passed; and to give directions to our Assembly, should be restricted or eliminated.*
- *Our Assembly should be renamed “the Parliament of the Cayman Islands”. Members would then be known as “Members of Parliament” or “MPs”.*
- *The Parliament should consist only of the elected representatives (MPs) and the Speaker. In other words, there should be no unelected members. The Attorney General should not be a Member of Parliament, but should attend to give legal advice if required.*
- *The Speaker should not be an MP. The Deputy Speaker may be an MP.*
- *The Constitutional provision for Standing Orders should require fair procedures, adequate notice of bills and motions, and a sufficient opportunity for all MPs to speak. It should also be provided that Standing Orders will not be suspended without good and sufficient reason.*
- *The Governor should prorogue Parliament annually, on the advice of the Premier.*
- *The Governor should consult the Premier before dissolving Parliament.*

Many people assume that under our present Constitution it is our elected representatives who have the power and responsibility to make laws for this country. That assumption is not entirely correct because:

1. the LA includes some unelected members: the Chief Secretary, the Attorney General, and the Financial Secretary.
2. the Constitution says it is the Governor who, with the advice and consent of the LA, makes laws. Confusingly, other provisions of the Constitution talk in terms of the Governor (or the UK Government) giving assent to Bills passed by the LA. Either way, laws cannot be made without the agreement of the Governor (or the UK Government).
3. the UK Government has power to disallow and annul any law that has been passed by the LA, even though it received the assent of the Governor.
4. the UK Government has power to issue instructions to the LA with regard to the making of laws, and such instructions must be obeyed by the LA.
5. the Governor has power to declare that a Bill introduced to the LA by any member shall have effect

as though passed by the LA, even if the LA actually voted against it.

6. the Governor may establish committees of the LA to conduct any business he prescribes and, although he is required to consult the Cabinet before doing so, he is at liberty to go against Cabinet's advice.
7. the Governor may prorogue or dissolve the LA at any time without consulting Cabinet or the elected members.
8. the UK Government has power to make laws for this country without seeking the advice or consent of the LA.

The proposal is that our Assembly of elected representatives should be upgraded and brought more into line with democratic principles and the popular assumptions about its responsibilities. Correspondingly, the overriding powers of the Governor and the UK Government should be restricted.

It should be made clear that our Assembly of elected representatives is the lawmaking body for this country. New laws should still require the assent of the Governor or the UK Government. But the overriding powers of the UK/Governor to give instructions to our Assembly, to make laws without its consent, or to annul duly enacted laws should all be eliminated or substantially restricted. In other words, our Assembly should cease to be subordinate. In some other Overseas Territories, Bermuda and Gibraltar for example, the UK's overriding powers have been substantially restricted.

The proposal to change the name of the Legislative Assembly to "Parliament" reflects this proposed change of status.

The proposal that the Parliament should consist only of elected representatives is based on the fundamental democratic principle that those who make our laws should be chosen by the people, and be removable by the people at the next election.

The proposal that the Speaker should not be an MP is controversial.

The Speaker presides over Parliamentary proceedings and is responsible for ensuring that these proceedings are conducted in a proper and orderly manner, on both sides of the aisle. So it is essential that the Speaker acts in a politically impartial way. Any suspicion that the Speaker is acting in a biased way is bad for Parliamentary proceedings and bad for public confidence in Parliament. In the past, some Speakers have been zealous in their impartiality, some less so.

This is one of the reasons for the proposal that the Speaker should not be an MP. The other consideration is that, if an MP acts as Speaker and does so properly and impartially, he or she is, to a large extent, neutralised as an MP, and the representation of his or her district may suffer.

On the other hand, concerns have been expressed that it may be difficult to find a suitable candidate who is not an MP. And it must also be acknowledged that choosing a Speaker from outside Parliament does not guarantee that the Speaker will be impartial.

This may be the point that the Opposition had in mind in its discussion paper when it wrote, “It should be noted that a Speaker is always chosen by the government and must enjoy their confidence. This would suggest that the Speaker has a natural loyalty to the person who has appointed him/her (i.e. the Government of the day)”. But, if this was meant to say that the Speaker cannot be expected to act impartially, then the Government disagrees strongly.

The Government still considers that the new Constitution should require the Speaker to be non-MP. But the Government will of course be guided by the result of the Referendum. For those who disagree with the proposal, there is a separate box on the Ballot Paper.

The proposal with regard to Standing Orders is primarily to ensure that the Opposition can do its job of examining and debating proposed legislation.

Proposal 6: CONTINUE WITH A SINGLE LEGISLATIVE BODY, I.E., NOT CREATE A SENATE.

There should continue to be a single legislative body, the Parliament (presently known as the Legislative Assembly). A Senate should not be created.

The Opposition has invited the public to consider the idea of a Senate. The Opposition has not made a specific proposal, but the implication is that it favours a Senate, and that it has in mind that:

- members of the Senate would be appointed, not elected. The Government would appoint some members, the Opposition would appoint some members, and the Governor would appoint a sufficient number of “independent” members to have the casting vote if the other members voted on party lines;
- the legislative process would require a review by the Senate of draft legislation and other measures proposed by Parliament. The Senate could recommend changes, but it could not insist on changes or prevent Parliament from deciding in the end to go ahead; and
- the Senate would share the accommodation and staff of Parliament. It would meet at times when Parliament was not sitting.

The Opposition’s reason for suggesting a Senate is to attract “talented persons in our community who will not get involved in electoral politics,” and to have a “watchdog” on the work of elected MPs.

In the Government’s opinion, this suggestion does have drawbacks. A large number of talented people, Caymanians and non-Caymanians, do already give their time, individually and as members of numerous associations, to review proposed legislation when it is under consideration by the Government. It is not clear that more valuable input would be obtained by having a Senate to debate measures after they have been debated by Parliament. It may be doubted whether a Senate appointed in the manner suggested

would be free of party political considerations or special interests. Certainly, as they would be unelected, senators would have no authority to speak on behalf of the people.

Undoubtedly, it is important for proposed legislation to be critically examined and debated; but that is precisely the role of the Opposition. If the Opposition feels that the Constitution does not enable it to perform its role effectively, we need changes that would enable it to do so. It is with that in mind that Proposal 5 contains the item with regard to Standing Orders. There is also the question of the cost of having a Senate, in terms of money and in terms of delay in Parliamentary business.

The Government considers that the drawbacks of a Senate outweigh the advantages. So the Government does not intend to adopt the Senate proposal, unless that is the wish of voters at the referendum. For this purpose a separate box has been provided on the ballot paper.

Proposal 7: UPGRADE THE CABINET.

- *Cabinet should have responsibility for formulating and directing the implementation of government policy in all areas of government except those for which the Constitution gives responsibility to the Governor or some other public officer or body.*
- *The Cabinet should consist of the Premier, Deputy Premier and five other Ministers.*
- *The Governor, and in his absence the Deputy Governor, should attend and advise Cabinet meetings.*
- *There should be no unelected members of Cabinet. The Attorney General should attend Cabinet meetings to give legal advice.*
- *The Premier and Deputy Premier should be the MPs chosen by a majority of the MPs of the winning party, or if there is no winning party, a majority of all MPs.*
- *The other Ministers should be chosen from among the MPs by the Premier.*
- *The portfolios (areas of responsibility) of the Premier, Deputy Premier and other Ministers should be allocated by the Premier.*
- *If the Ministers do not include a Sister Islands' MP, the Minister with responsibility for District Administration should ensure that the District Commissioner liaises with the Sister Islands' MPs. The Minister should also give the MPs regular opportunities to explain their districts' requirements to Cabinet (Proposal 23 below).*
- *The Premier (or Deputy Premier) should chair Cabinet meetings, rather than the Governor.*
- *The Premier (or Deputy Premier) should set the agenda for Cabinet meetings, after consulting the Governor.*

Many people assume that under our present Constitution it is our elected Ministers who have the power and responsibility for making Government policy and directing its implementation – except for matters that are the Governor's special responsibility. That assumption is not entirely correct because:

1. the Constitution gives executive power and responsibility to the Governor, not Cabinet. The Constitution requires the Governor to consult Cabinet, except on matters that are his special responsibility, but the consultation requirement is qualified in several ways. Furthermore, the

Governor may act against the advice of Cabinet if he thinks that what Cabinet is recommending would be “inexpedient in the interests of public order, public faith or good government”.

2. Cabinet includes unelected members: the Chief Secretary, the Attorney General, and the Financial Secretary.
3. though it is customary for the Governor to allocate responsibility for the various aspects of Government (other than the Governor’s special responsibilities and the Department of Finance) among the Ministers, and to do so in accordance with the recommendations of the Leader of Government Business, this is not a requirement of the Constitution. Under the present Constitution it is up to the Governor whether he allocates any responsibilities to the Ministers.
4. the Governor controls Cabinet’s agenda. No question may be raised in Cabinet except by, or with, the approval of the Governor.
5. the UK Government has power to confer additional powers on the Governor.

The proposal is that Cabinet be upgraded and brought more into line with democratic principles and the popular assumptions about its responsibilities.

The Governor should not be in a position to override the policies and decisions of Cabinet in matters that are Cabinet’s responsibility.

In the interests of greater accountability, Cabinet should consist only of elected Ministers, answerable to and removable by the electorate.

It is proposed that the number of elected Ministers be increased from five to seven (including the Premier and Deputy Premier). One of the new Ministers would be the Minister of Finance. The Financial Secretary would then become the chief officer of that Ministry. Like any other chief officer, the Financial Secretary would be available to advise Cabinet. Having another Minister would enable the workload of the Ministers to be shared more widely.

The Chief Secretary would become the Deputy Governor. As such, he would attend Cabinet meetings in the absence of the Governor. He would continue to be the head of the civil service, and he would have such other responsibilities as were assigned to him by the Governor or Cabinet.

Some people have expressed uneasiness about the proposal that the Premier, rather than the Governor, would chair Cabinet meetings. This arrangement already exists in some other Overseas Territories, Gibraltar for example, and so it is unlikely that the UK Government would object to it here. But for those who disagree with this point, a separate box has been provided on the ballot paper. This would not affect the proposal that the Premier, rather than the Governor, would set the agenda for Cabinet meetings.

Proposal 8: MODERNISE THE GOVERNOR'S ROLE.

- *The Governor's overriding legislative powers should be restricted as outlined in Proposal 5 above. Note that the Governor's assent would still be required for all legislation.*
- *The Governor's policy-making and executive functions should be limited to his areas of special responsibility: defence and external affairs (Proposal 10), internal security and the police (Proposal 11), the civil service (Proposal 12).*
- *The Governor should continue to have emergency powers, but should consult Cabinet or the Premier unless consultation is impracticable.*
- *The Constitution should make clear that in carrying out his functions the Governor (like the Ministers) must act for the benefit of this country, and in a way that is justified and proportionate. The Governor's decisions should be subject to judicial review in the same way as any other person or body performing a public function.*
- *In general, the Governor should be required to keep the Premier informed of the Governor's decisions and the reasons for them.*
- *The Governor should have discretion to delegate any of his special responsibilities and powers to members of Cabinet.*
- *The UK Government should consult the Premier before choosing a new Governor.*

The upgrading of the Legislature and Cabinet (Proposals 5 and 7) would involve an adjustment of the Governor's role. The Governor would continue to have a vital legislative role in that all new legislation would require his assent, or that of the UK Government. But the Governor's overriding legislative powers would be eliminated or restricted (see explanation of Proposal 5). The Governor would continue to have policy-making and executive power in his areas of special responsibility – see Proposal 10 (Defence and External Affairs), Proposal 11 (Internal Security and the Police) and Proposal 12 (Civil Service). The Governor would continue to have emergency powers, subject to a consultation requirement with Cabinet or the Premier, if practicable.

The Governor's policy-making and executive functions would be limited to these matters. The Cabinet would be responsible for policy and executive action in all other areas of Government, except where the Constitution gives responsibility to some other public body or official.

Some people assume that the Governor is in some sense above the law, and that his decisions and actions cannot be reviewed by the Courts. This is not the case under our present law and Constitution. Principles of judicial review have been developed in recent decades by the English courts, and these principles would be followed by our Courts. The Governor is subject to judicial review in the same way, and to the same extent, as any other person who has a public function. The only exception is that our present Constitution says there are two particular questions into which the Courts may not look. One is the question of whether the Governor is following instructions he has received from the UK Government. The other is the question of whether the Governor is complying with his Constitutional obligation to consult Cabinet and act on its advice. That second question is unlikely to arise in the future, if our Constitution is changed in accordance

with these Revised Proposals, because the obligation to consult Cabinet would apply only in limited circumstances.

It is proposed that the Constitution make clear that the Governor should have the same duties of good administration as any other person to whom the Constitution gives power. All such powers are held in trust for this country; must be used in ways that are justified and proportionate (and, among other things, this would mean that there must be no violation of the Bill of Rights); and are subject to review by the Courts. If any exceptions are to be made in relation to the Governor, they need to be clearly made and carefully limited. Here as in England, no one should be above the law, not even the Governor.

The other proposals listed above would assist in maintaining an efficient cooperative relationship between the Governor and Cabinet. The proposal for consultation when a new Governor is chosen has been added in response to comments from the Opposition.

Proposal 9: MORE CHECKS AND BALANCES ON EXECUTIVE POWER.

- *A clear rule that Ministers and public officials must exercise their powers and responsibilities in the interests of the country, not for their private interests or benefit.*
- *A Bill of Rights to protect our basic rights and freedoms from interference by the Government (Proposal 4 above).*
- *Constitutional backing for the Freedom of Information Law, so that its key features (including the whistleblower provisions) cannot simply be changed by the Government of the day.*
- *Greater oversight (Proposals 17 - 20 below).*
- *People-initiated referendums (Proposal 24 below).*
- *Constitutional backing for the limits on public debt contained in the Public Management and Finance Law, so that they cannot simply be changed by the Government of the day.*
- *The Constitution should provide for the Public Accounts Committee (PAC) of Parliament along present lines, i.e., to scrutinise Government accounts and the reports of the Auditor General. A separate PAC should be formed whenever there is a change of Government, to ensure that scrutiny of a Government's accounts and actions is not under the control of MPs who are or were a part of that Government.*
- *Term limits for the Premier: A person should not serve as Premier for more than two successive terms.*

Most of the items in the box above are explained under other proposals. Others are thought to be self-explanatory.

Presently, the function of the PAC is to scrutinise Government's accounts and the reports of the Auditor General. The PAC consists of both Government MLAs and Opposition MLAs. At present the Government MLAs have the chairmanship and a majority of the members. This will change when the PAC has finished looking at the accounts and reports for the previous Government, and starts to look at the present

Government. The point is that a PAC may not perform diligently if it is under the control of MLAs whose own party or Government is being scrutinised.

Meetings of the PAC are now being held in public.

The proposal is to give this arrangement Constitutional backing, and to require a separate additional PAC when there is a change of Government. The new PAC (in which the Opposition would have the chairmanship and a majority of members) would scrutinise the accounts and reports of the new Government. The old PAC would conclude the scrutiny of the accounts and reports of the previous Government. Having two PACs would speed up the process.

The Opposition has questioned the proposal for term limits for the Premier. The Government still recommends term limits. For those who disagree, there is a separate box on the ballot paper.

Proposal 10: THE UK GOVERNMENT AND THE GOVERNOR SHOULD CONTINUE TO BE RESPONSIBLE FOR DEFENCE AND EXTERNAL AFFAIRS, BUT THERE SHOULD BE RESTRICTIONS ON ENTERING INTO INTERNATIONAL AGREEMENTS, AND A PROVISION FOR SOME DELEGATION.

The UK Government and the Governor should continue to be responsible for the defence and external affairs of this country, but:

- *Cabinet should always be consulted in advance of any international agreement or commitment that would affect this country.*
- *If the international agreement or commitment would affect internal policy or require implementation by legislation, it should not be entered into without the approval of Cabinet.*
- *The Governor should have power to delegate to members of Cabinet responsibility for external affairs, and should do so wherever the interests of the United Kingdom are not significantly affected.*

This Proposal ties in with the proposals to restrict the overriding powers of the UK/Governor (Proposals 5 and 7 above). When an international agreement is entered into on behalf of this country, it becomes incumbent upon the Government to honour the agreement. So it is important to ensure that such agreements are not entered into without consultation (in all cases) and the approval of our elected Government if the agreement would require legislation, or would affect Government policy in matters for which the Cabinet has Constitutional responsibility.

The Proposal also permits or requires the Governor to delegate responsibility to the Cabinet to enter into international relations or agreements that are solely within the interests of the Cayman Islands, such as in the area of tourism or inter-Caribbean relations. Such a provision is contained in the new Constitution of the British Virgin Islands.

Proposal 11: THE GOVERNOR SHOULD CONTINUE TO HAVE RESPONSIBILITY FOR INTERNAL SECURITY AND THE POLICE. A NATIONAL SECURITY COUNCIL SHOULD BE ESTABLISHED TO ADVISE THE GOVERNOR.

- *The National Security Council should comprise the Governor, as Chairman; the Premier; the Attorney General; the Commissioner of Police; and two other Ministers appointed by the Governor on the advice of the Premier.*
- *The National Security Council should advise the Governor on policy matters concerning internal security and the police.*
- *The Commissioner of Police should provide the National Security Council with regular briefings. This requirement should be suitably qualified to maintain the security of current operations.*
- *The Governor should be required to act in accordance with the advice of the National Security Council, unless he considers that this would be contrary to Her Majesty's interests.*

The purpose of this proposal is to provide a more structured system for the Governor to receive advice on policy matters concerning national security and the police, and for Cabinet members to be involved in this advisory process. The proposal will also provide greater accountability for public funds allocated to this area of Government. There is no question of Cabinet being put in control of police operations. A similar arrangement has been made in other Overseas Territories.

The Opposition has suggested a civilian oversight body for the police. No specific proposal has been made, but it does not appear that there would be any Constitutional impediment. The desired changes could be made by Parliament, with the Governor's assent, amending the Police Law.

Proposal 12: NO CHANGE WITH REGARD TO THE GOVERNOR'S RESPONSIBILITY FOR THE CIVIL SERVICE.

- *The Governor should continue to have Constitutional responsibility for appointing, disciplining and dismissing civil servants, subject to the applicable legislation, presently the Public Service Management Law.*
- *The Constitution should express the overarching duty of civil servants, namely to implement Government policy to the best of their abilities and in accordance with the directions of the Cabinet or other responsible person or body.*

There appears to be general acceptance of the long-standing principle that there needs to be an independent civil service in order for Government to continue to function properly for the benefit of the country, irrespective of which party or group of elected representatives is in control.

Proposal 13: ESTABLISH A JUDICIAL AND LEGAL SERVICES COMMISSION.

- *The Judicial and Legal Services Commission should comprise the Chief Justice; the President of the Court of Appeal; one member nominated by the Law Society; one member nominated by the Bar Association; one non-lawyer member nominated by the Premier; and one non-lawyer member nominated by the Leader of the Opposition.*
- *The Commission should have responsibility for appointments of judges and magistrates, and for related matters including the creation of divisions of the Courts. The Commission should also have responsibility for appointing a Director of Public Prosecutions (Proposal 15).*
- *The Constitution should require the Cabinet to provide adequate financial support to the judicial administration.*

At present the judges of the Grand Court are appointed by the Governor in his discretion, and the judges in the Court of Appeal are appointed by the Governor on advice from the United Kingdom. Most countries nowadays (including the United Kingdom) appoint judges by an independent commission, which seeks to ensure that the judges are both highly competent and independent.

Proposal 14: LIMIT THE ROLE OF THE ATTORNEY GENERAL, AND CHANGE THE RULES FOR HIS APPOINTMENT.

- *The Attorney General should no longer be a member of Cabinet or Parliament. He should be the principal legal adviser to Cabinet. For that purpose he should be required to attend both Cabinet and Parliament.*
- *The Attorney General should no longer be responsible for criminal prosecutions. That responsibility should be given to a Director of Public Prosecutions (see Proposal 15).*
- *The Attorney General should be appointed by the Governor, on the advice of the Premier. His or her qualifications, independence and suitability for the office must, however, be endorsed by the Judicial and Legal Services Commission (Proposal 13).*

Under the present Constitution the Attorney General is appointed by the Governor in his discretion, and the Attorney General has a multiplicity of potentially conflicting roles. He is required to be principal legal adviser to the Government. But our Government has two elements, the elected part and the non-elected part (the Governor and the official members). So the Attorney General may be subjected to conflicting duties. Some Attorneys General have operated on the basis that their primary duty is to the Governor, though this is not what the Constitution says. To add to the confusion of the roles, the Attorney General is also a voting member of both the Cabinet and the LA. And he is exclusively responsible for criminal prosecutions.

The proposal is to rationalise the role of the Attorney General so that there are no conflicting duties, and to

ensure that Cabinet receives proper legal advice.

Proposal 15: CREATE THE OFFICE OF DIRECTOR OF PUBLIC PROSECUTIONS.

- *Constitutional responsibility for criminal prosecutions should be given to a Director of Public Prosecutions.*
- *The Director of Public Prosecutions should be appointed by the Judicial and Legal Services Commission (Proposal 13).*

Most countries nowadays give responsibility for criminal prosecutions to a public officer who is independent of any Government control or interference, and free of any conflicting duty. So we need to remove this responsibility from the Attorney General (Proposal 14).

Proposal 16: CREATE THE OFFICE OF CABINET SECRETARY.

- *The Cabinet Secretary should be appointed by the Governor after consultation with the Premier.*
- *The principal responsibilities of the Cabinet Secretary should be:*
 - *to provide frank and politically neutral policy advice to the Cabinet and, where appropriate, the Premier;*
 - *to coordinate the development and implementation of policy between ministries and portfolios and across the wider Government sector to ensure that Government policy is developed coherently and implemented as directed; and*
 - *to provide administrative and secretarial support to the Cabinet and the Premier, to allow high-quality and effective decision-making processes by the Government.*

Although the office of Cabinet Secretary is an established position in the Cayman Islands Government, it is not provided for in the Constitution.

Proposal 17: ESTABLISH A HUMAN RIGHTS COMMISSION.

- *The Commission should consist of a chairman and four other members. All should be appointed by the Governor after consultation with both the Premier and the Leader of the Opposition. At least two members should be experienced lawyers.*
- *The Commission's primary responsibilities would be to promote understanding of the Bill of Rights within Government and by the public; to give advice to persons who think that Government has violated their rights under the Bill of Rights; and to mediate where possible.*
- *The Commission should have no judicial functions.*

Like the existing Human Rights Committee (which has no Constitutional backing) this new Commission would seek to ensure that Government and people understand the Bill of Rights. It would also help people with credible complaints. In suitable circumstances the Commission could assist by mediation, but would

have no power to make decisions, or to provide legal representation in court proceedings.

Proposal 18: ESTABLISH A COMMISSION FOR STANDARDS IN PUBLIC LIFE.

- *The Commission should consist of a Chairman and four other members. All should be appointed by the Governor after consultation with both the Premier and the Leader of the Opposition. At least one member should be an experienced lawyer, and one an experienced chartered accountant.*
- *The Commission's primary responsibility would be to assist in laying down standards for public life, in order to ensure the prevention of conflicts of interest and corruption, and to monitor standards of ethical conduct, particularly by Ministers, MPs, Public Officers and senior civil servants.*
- *The Commission should supervise registers of interest and investigate breaches of established standards.*
- *The Commission should review the procedures for awarding public contracts.*
- *The Commission should review the procedures for appointing members of public boards and other public officials, and also their terms of appointment.*
- *The Commission should immediately assist in drawing up a law to impose sanctions on any Minister or public official who employs his or her power, or seeks to influence any person to use their power, for the purpose of obtaining or conferring any material benefit or advantage for any Minister or public official.*
- *The Commission should report to Parliament.*

This proposal is thought to be self-explanatory.

The items about public contracts and public appointments have been added for clarification, at the suggestion of the Chamber of Commence.

Proposal 19: OUTLINE THE RESPONSIBILITIES OF THE AUDITOR GENERAL.

- *Keep the present Constitutional provisions for the Auditor General, appointed by the Governor, but specify in outline the responsibilities of the Auditor General.*

This proposal is a technical one. There is no question about the desirability of this important public officer, or about his current activities. However, his core responsibilities should be outlined in the Constitution, so that they cannot be changed by the Government of the day.

Proposal 20: HARMONISE THE RESPONSIBILITIES OF THE VARIOUS OVERSIGHT BODIES.

- *Harmonise the responsibilities of the Human Rights Commission, the Standards in Public Life Commission, the Auditor General, the Complaints Commissioner and the Anti-Corruption Authority, to avoid duplication or the disruption of existing procedures for complaints and appeals, and to keep costs to a reasonable level.*

This proposal is thought to be self-explanatory. The proposed Anti-Corruption Law, currently on its way through the LA, will provide for an Anti-Corruption Authority.

Proposal 21: SIMPLIFY THE RULES ON ELIGIBILITY TO VOTE. NO CHANGE TO THE RULES ON ELIGIBILITY TO STAND FOR ELECTION.

- *A person should be entitled to be registered as an elector if he is a Caymanian who has attained the age of 18 years, is resident in the Cayman Islands at the date of registration, and has been resident in the Cayman Islands for not less than two years out of the four years immediately preceding registration.*
- *There should be no change to the existing rules on eligibility to stand for election to Parliament.*

The proposal to change the rules on eligibility to stand for election has been withdrawn in light of the public feedback since January. The proposed simplification of the rules on eligibility to vote is the same as in the 2003 draft Constitution. Those who are already eligible would of course continue to be eligible.

Proposal 22: ADOPT THE “ONE PERSON, ONE VOTE” PRINCIPLE, AND SINGLE-MEMBER CONSTITUENCIES THROUGHOUT GRAND CAYMAN.

- *Adopt the “one person, one vote” principle.*
- *Single-member constituencies throughout Grand Cayman.*
- *Cayman Brac and Little Cayman remain a single constituency, sending two members to the Parliament, but each voter should have only one vote.*

Although this has been a controversial issue, there appears to be widespread support for the “one person, one vote” principle. There also appears to be widespread support for single-member constituencies in Grand Cayman. The boundaries of the new constituencies would need to be reconsidered by the Boundaries Commission, to take into account the demographic changes since its first report in 2003.

For reasons of what is practical and what is fair, these changes to the constituencies and voting rights may not come into effect before the 2009 election; but, if not, they would apply to all subsequent elections.

Recognising the special circumstances of Cayman Brac and Little Cayman, and the views of people there, it is proposed that they remain a single constituency, sending two members to Parliament. But the “one person, one vote” principle would apply there, as in Grand Cayman.

Separate boxes are provided in the ballot paper, to allow voters to indicate if they disagree with any part of these proposals.

Proposal 23: IMPROVE THE REPRESENTATION OF DISTRICTS.

- *The Constitution should require MPs to make proposals to the Cabinet concerning the requirements of their districts. And Cabinet should be required to meet regularly with MPs, including Opposition MPs, to discuss the requirements of their districts.*
- *Put an enabling provision in the Constitution so that legislation can be adopted to establish District Councils to assist the local MPs.*

In its discussion paper the Opposition recommends the appointment of district councils consisting of unelected people. The recommendation is expressed in general terms, and there are a number of questions that would need to be sorted out.

One important question concerns the relationship between a district council and the MP elected for that district. The matters which the Opposition’s discussion paper describes as being for the district council are all matters which would otherwise be the responsibility of the local MP. But it cannot be suggested that an unelected district council should override the elected MP. So, in the Government’s opinion, the role of the district council could only be to advise or assist the local MP.

The Government’s view is that the responsibility of MPs for their own districts is of the highest importance, and central to our democratic system. To improve representation of districts, the most important thing that the new Constitution can do is to establish the responsibility of the MPs and give them an effective system for discussing district needs with Cabinet.

The establishment of district councils to advise and assist the local MP could also be constructive. However, the idea needs to be thought through in detail. Hence the Government proposes simply an enabling provision in the Constitution. This would leave it up to Parliament to consider specific proposals and make a decision whether legislation is needed.

Proposal 24: PROVIDE FOR PEOPLE-INITIATED REFERENDUMS.

- *Provision should be made for people-initiated referendums.*
- *Initiation should be by a petition signed by not less than 20% of the electorate. It would then be the duty of the Parliament to settle the wording of the referendum question(s), and to cause the referendum to be held within a reasonable period.*
- *The decision of the referendum should be binding, provided that there is no inconsistency with the Bill of Rights or other parts of the Constitution, if passed by more than 50% of the electorate. If the referendum is passed, but by less than 50% of the electorate, it would be advisory, not binding.*

This proposal is an important part of increasing the checks and balances on Government, and increasing democracy. On the other hand, the holding of referendums can be very time-consuming and expensive, and it is also important to ensure that important decisions are not made by a minority of the electorate (because of a low turnout). These are the considerations behind the percentage requirements proposed above.

Proposal 25: FURTHER CHANGES TO THE CONSTITUTION SHOULD REQUIRE A REFERENDUM.

- *After the present modernisation process has been completed, further changes to the Constitution should not be made without the authorisation of a referendum, unless the change is declared by the Premier and the Leader of the Opposition to be minor or uncontroversial, in which case a resolution of Parliament would be sufficient.*
- *The UK Government should be invited to agree that it would honour this referendum requirement.*

Since its 2005 Manifesto the present Government has been firm in its position that any significant Constitutional change should require the approval of a referendum. The exception (with regard to changes that are agreed to be minor or noncontroversial) reflects the considerable time and cost involved in holding a referendum, and the possibility that the change is a technical one involving a question of detail or drafting, rather than a question of principle.

BALLOT PAPER

THE REFERENDUM QUESTION IS:

Do you agree with the Revised Proposals for Constitutional Modernisation, published by the Government on 22 May, 2008?

PART 1 – THIS IS FOR ALL VOTERS.

Please put an X in one of the three boxes in this part of the Ballot Paper.

- A. I agree with the Revised Proposals
- B. I agree with the Revised Proposals except as noted in part 2 below
- C. I disagree with the Revised Proposals

PART 2 – ONLY FOR VOTERS WHO MARKED THE B BOX IN PART 1 ABOVE.

Please put an X in the box for each proposal that you disagree with.
Do not mark the box for a proposal that you agree with.

I DISAGREE WITH:

- B1 the proposal to eliminate or restrict the overriding powers of the UK Government and the Governor to make laws for this country without the approval of our Parliament (see No. 5 in the Revised Proposals).
- B2 the proposal that the Speaker should not be a Member of Parliament (see No. 5 in the Revised Proposals).
- B3 the proposal that a Senate should not be created (see No. 6 in the Revised Proposals). Note: If you check the box you are saying that you do want a Senate.
- B4 the proposal that the Premier rather than the Governor should chair Cabinet meetings (see No. 7 in the Revised Proposals).

- B5 the proposal that there should be term limits for the Premier, restricting the Premier to two consecutive terms (see No. 9 in the Revised Proposals).
- B6 the proposal to restrict the powers of the UK Government and the Governor to enter into international agreements affecting this country (see No. 10 in the Revised Proposals).
- B7 the proposal to establish a National Security Council to advise the Governor on questions concerning internal security and the police (see No. 11 in the Revised Proposals).
- B8 the proposal to establish a Judicial and Legal Services Commission (see No. 13 in the Revised Proposals).
- B9 the proposal to limit the role of the Attorney General and change the rules for his appointment (see Nos. 14 & 15 in the Revised Proposals).
- B10 the proposal to adopt the “one person, one vote” principle (see No. 22 in the Revised Proposals).

- B11** **the proposal to have single-member constituencies throughout Grand Cayman (see No. 22 in the Revised Proposals).**
- B12** **the proposal not to have single-member constituencies in Cayman Brac and Little Cayman (see No. 22 in the Revised Proposals).**

Note that additional points may be added to Part 2 of the Ballot Paper at any time before the referendum date is officially declared.



Shaping Our Future Together



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