

**BORROLOOLA — Thursday 20 April 1989**

**PUBLIC MEETING**

PRESENT: -

**Committee:**

Mr S. Hatton (Chairman)

Mr B. Ede (Deputy Chairman)

Mr C. Firmin

Mr W. Lanhupuy

Mr D. Leo

Mr R. Setter

**Officers assisting the committee:**

Mr R. Gray (Executive Officer)

Mr G. Nicholson (Legal Adviser)

**Appearing before the committee:**

Ms Anne WENKE

Mr Ron KERR

Mr Bernie WENKE

Ms Fiona DARCY

Ms Judy RETTER

Mr Charlie POWICK

NOTE: This is a verbatim transcript that has been tape-checked.

ISSUED: 1 August 1989.

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Mr HATTON: I am not sure what is happening in respect of the Aboriginal people here. There has been a clash with meetings between the Northern Land Council on another matter and I understand they have gone down to try to organise the Aboriginal people here for the meeting. I am not quite sure what the timing is likely to be for that. I propose to proceed with this meeting now and, when the other people arrive, I will just start again. I do not think it is reasonable for you to be sitting around for some indeterminate period. We do not know whether people will arrive or not. If it is all right with you, I will proceed to explain what we are here for.

My name is Steve Hatton and I am here as the chairman of this committee of the Legislative Assembly. It is called the Select Committee on Constitutional Development. There are 6 members on the committee, 3 from the Country Liberal Party, the government side, and 3 from the Labor Party, the opposition side. It is the only committee of the Assembly that has equal representation of government and opposition. The reason is that, in this particular case, we are not engaged on our party political warfare. This is an instance where the parties are actually working together for a common objective. The

gentleman with me is Mr Rick Setter, the member for Jingili, who is a member of our committee. If you look at the back of this publication, you will see the names and photographs of all 6 members of the committee. You will also find the terms of reference of the committee.

You have heard a lot of discussion over the last few years about the issue of statehood and whether the Northern Territory should become a state. The first thing that I have to say to you is that we are not here to ask you whether you support the idea of statehood for the Northern Territory or are against it. We are not here to sell the idea of becoming a state tomorrow. We are not even asking that question. We do ask you, however, to recognise that, one day, whether that is next year or in 5 years time or 10 years time or 20 years time, the Northern Territory will become a state. Before you can even think about that question, however, you need to know what you are walking into.

What sort of a place do we, as Territorians, want the Northern Territory to be like in the future? How do we want our government to operate? What sorts of things should we allow government to do? What do we want the government to be able to muck around with? What sort of a society do we want to create for our children and for our grandchildren? What sort of rules are we going to put round the government and general life of the Northern Territory? This is done by the people setting the rules. They set those rules by means of a law which is known as a constitution. A constitution is very much the people's law. It sets the framework and the ground rules for government, for the legal system and for the protection of individual and community rights. Within that framework, the governments and the people work.

The way in which you write that constitution sets the direction in which your society will go. That is the law that becomes the government over the government. If you have a government but not a constitution, the government can do what it likes. A constitution does not give powers to government. A constitution gives power to the people and controls and limits the power of government. The people tell the government that it can go so far and no farther. All the states and the federal government have a constitution standing over the top of them. Some of those constitutions are flimsy affairs and some, like the federal constitution, are fairly comprehensive and tight and indicate what a government can do and cannot do. The Northern Territory is the only place in Australia where there are no constitutional limits on government. It is the only place where the people do not have their rights protected by a constitution, not even by the federal constitution. There is only 1 clause in the federal constitution that refers to the Northern Territory and that is clause 122 which says that the federal government can do what it likes with a territory. And, as you know, it does that.

One of the things that the federal government wanted to do was to create a self-governing territory and therefore it passed a federal act to create a Northern Territory parliament. But, what governments can give, governments can take away. It would merely require the federal government to repeal an act of parliament and all form of government and political representation in the Northern Territory would be wiped out overnight. Your right to vote for a political leader could be taken away. I am not suggesting that it would happen. I am merely saying that that is the extent of the power that the federal government has.

Aboriginals have been talking about how strong land rights are and how they want to keep the matter with the federal government. What the Aboriginal people need to know is that they have no guarantees because what the government gives, the government can take away. If the federal government changes or the attitudes in Sydney and Melbourne really change against land rights and it became politically expedient, a future federal government could repeal the Land Rights Act and all that land could be taken away. It has the power to do that. Not only that, in the Territory, the federal government has the power to acquire property without compensation for whatever purpose it wants. Again, this is because we do not have the protection of the Australian Constitution.

For the first time in the history of the Northern Territory, we are asking the people to take control of their lives and write the rules on how you want the Territory to be. What rights are fundamental and important to you? What rights do you want protected against government intrusion? How do you want the government to operate? What do you think the government should be able to do and should not be able to do? We need to write those things into a law, a people's law, that will stand over the top of government and give the power back to the people. Once that law is in place, governments cannot vary it, cannot change it and cannot go outside it. If governments wanted to have that law changed, they would have to ask the people to vote in a referendum. Only the people can change that law. That is what they mean when they talk about democracy and the power of the people. It is a law made by the people, for the people and it is the people telling the government what it can do and what it cannot do.

We do not have that now. We have what the government and what the federal government says can be done. We are saying to you that, as a community, we should sit down and start doing this job. I am not going to ask you necessarily

today to answer all the questions or to say what you think should be in that law. I am asking you to take into account the fact that this is where your future lies and your children's future lies and where you will lay the foundations for the future Northern Territory. If you walk away from the job, you will walk away from building a future for your children and grandchildren and the problems that we have, the fights and arguments that are going on, all the things that we regard as unreasonable and unfair, will continue because there will be nothing to prevent them from continuing. The domination of your life by government in areas where you believe government should not interfere will be able to continue.

I am a politician but, in a true democracy, people cannot trust the politicians to be all powerful. People have to put the limits on that. They put the limits on that through this law. We are here to tell you that we are about to start on this work. We want the community and you as individuals to start thinking about it and to look at the material that we have provided. This book is like a beginner's guide. It indicates some of the bits and pieces that we are looking at. What is a constitution? What do the courts do, what does this do and what does that do? It will give you an idea of some of the things.

We have put a lot of work in over the last few years. We have produced some other books, most importantly that one. We will leave some copies of it with you. It is called a 'Discussion Paper on a Proposed New State Constitution for the Northern Territory' and it represents about 3 years work. We have looked at constitutions in different parts of the world, in the southern states, at the Australian Constitution and at our own Self-Government Act and we have come up with a whole series of ideas. There are some that we like and some that we do not like. There will be some things in there that you will like and some that you will not like. It does not matter. It will give you an idea of the sorts of things to think about.

You should take 1 subject at a time, think about it and talk it over. I will give you a simple example. Do you think that, in the future, the Northern Territory should have 1 or 2 Houses of parliament? In Canberra, there are 2 Houses, the House of Representatives and the Senate. Do you think that the Northern Territory should have an Upper and Lower House or just 1 House. There are arguments for and against both those proposals. That is something you can read about, think about and arrive at your own conclusion. Do you think that we should write into the constitution a guarantee of the right of all adults to vote and to vote by secret ballot so that governments cannot change that? If it is not in the constitution, there is potential for governments to take away people's right to vote. If you lock them into a constitution, they cannot do that. Should you put in there things like rights to free practice of one's religion or a range of other issues? What is the role of the courts? Can the courts tell the parliament what to do? Can the parliament tell the courts what to do? There is discussion about those one-off subjects.

There are many questions in there but you can take them 1 question at a time, talk about it, think about it and, bit by bit, formulate your ideas about this whole matter. You will develop a picture of what you think should be in the constitution and about the less important things that can be left to the legislative process but within the basic framework and rules laid down in the constitution. The things that have to remain constant go in the constitution and there is flexibility through legislation to put flesh around the bones, so to speak. That is the job that we are going to do.

How we are going to go about it? I know that Rick will agree that you cannot entrust this job to politicians or lawyers or academics. You cannot have a bunch of us sitting up in Darwin - as much as we might think we are able to do it - writing this law. It has got to be your law. It has to come from the people and be the property of the people. You must become involved in this and have your say.

We have come to tell you that we are about to start this job. We have information for you and, if you want more, we will provide it. If you would like us to come back and talk to you about any particular issue, we will do that. We ask you to think about it, form your own ideas and, when we come back later in the year or early next year, you will be able to tell us what you think should be in the constitution. We are doing this all over the Northern Territory. On this trip, we are visiting 59 different communities and saying the same thing to them as we are saying to you. Please become involved and have your say. After we receive the submissions from all the people, we will prepare a first draft of a constitution on the basis of what we believe the people are saying.

But, that is only stage 1. The second thing we want to do is to bring together a special meeting of representatives from all over the Northern Territory. It is called a constitutional convention. It will almost certainly meet several times. The question of how many times and for how long is something for it to determine. What we need to determine is how we get such a group of people and how many there should be. What sort of representation should be on that and how do we go about selecting them? Should there be representation from local and community governments, from Aboriginals, from the business community, from the trade unions, from women etc from different areas of the Territory? How do we bring all that together?

We need to have a really representative group of people who have the confidence of, and the ability to make decisions on behalf of, the different sections of the Territory community. Their job will be vital. Their job will be to pick up the work that we have done and go through it. If we have done it really well, they will accept it but, if they think it needs to be changed, they will change it. They will debate all the pros and cons and all the arguments raised by different sections of the community as to what should or should not be done. When they have finished their job and have prepared what is called a proposed constitution, it has then to be put to a vote of the people. If the people vote no, we will have to start again. We will keep going back and working through it until we get something that the people agree is what they want.

It is clear that it will not be a quick job. We will not be producing a constitution by Christmas. If we take 3 to 5 years, I reckon that will be pretty quick. There is plenty of time for people to become involved and come to grips with this. But, I cannot emphasise enough how important it is. I know it is easy to say, 'Oh, that is too much hard work and I have a business to run' or 'I have problems with my kids' or all those sorts of things. That is true. We all have those problems. But, if we take a bit of time to think about this, we will be doing something that is really worth while. It is not a pretend job. It is why we can get the Labor Party and the CLP actually working together because it is too important. It is our chance to make the Northern Territory a place that we will be proud to hand on to our children and to our grandchildren. If we do not do this job, we will let down the future generations because we did not take on the responsibility of making a place that will be good for our children.

That is the job that we have to work at. As I said, I am happy to take comments today but, if I can walk out of here with you thinking that this is important and that you should read about it and become involved, I will have done my job. That is what this is about. We must work as a community, black and white, and find out how we can live together side by side with some semblance of mutual respect. We have to come to terms with the realities of the Northern Territory, the different cultures and races that are here and how we will bring those together as a total Northern Territory community. That is not an easy job but you know deep down inside yourself that it is a job that we have to do because, if we do not do it, we will leave a mess behind us for our children and our grandchildren. That is why we are doing this.

When we finish this job, when we know what we want and where we want to go, then we will talk about when we should become a state. We cannot even think about that until we have done that job. Rick, would you like to say a few words?

Mr SETTER: Thanks, Steve. Before I start, I want to make sure that everybody understands that this is a bipartisan committee and that Steve and I are both members of the government side. Steve mentioned that there are members from the opposition and from the government side. I did not want you to think that I am from the opposition side.

It is very important that, after years of being kicked to death by people from other places, we continue to establish our own identity and to protect that identity first of all by means of a constitution. That is what this is all about. In my opinion, and I am expressing a personal opinion, at the end of the day, we must have statehood because that will provide for us the protection that the states enjoy. But, I am not here to talk about statehood. I am here to talk about the constitution.

It is also important to understand the history of this place. In fact, many of us were not born in the Northern Territory. We came from somewhere else. That is fine. I am one of those people. I have made the Territory my home and I am proud to be able to say that. In the early 1800s, 1830-odd I think it was, the European settlement in Sydney took some interest in this part of Australia and made this part of New South Wales. It was part of New South Wales from about 1831 until about 1862 when it was passed over to South Australia and became the Northern Territory of South Australia. Many people have probably forgotten about that or did not know about it. But, in 1911, we became too difficult even for the South Australian to handle so it passed us over to the Commonwealth which had been in existence for about 10 years at that time. You can imagine how difficult it was to administer a place like the Northern Territory in those days from Melbourne, the then centre of the Australian government.

Since that time, we experienced a very chequered history in terms of development because the Territory was regarded almost as the end of the earth, given the communications and transportation at the time. Eventually, we struggled our way through to the point where, in 1974, we achieved our first self-governing Legislative Assembly. For years and years, our member of the House of Representatives could not vote. Prior to that, he could not even speak. It is only in the last couple of decades that our representative has been able to speak and to vote. In 1974, we achieved our first fully-elected Legislative Assembly, but we were still directly under the control of the Commonwealth. In 1978, we achieved self-government and that was quite a milestone. However, as Steve rightly pointed out, that is only an act of the Australian parliament which can be rescinded or amended at any time by any Australian government. That is not good enough for us. We need some additional protection and, of course, our ultimate goal is the achieving of statehood and full state rights

similar to those in all the states.

As part of this process, the first step that we need to achieve is to write the constitution. It would be very simple for our committee to sit in Darwin and write a constitution. In fact, if you read this document, you will find that we have already spent about 3 years researching and developing a whole range of matters that need to be considered in relation to our constitution. In fact, with regard to some matters, there are various options because the committee, being bipartisan, did not agree on a number of issues. We have included options in there. However, we could follow that through quite simply and produce a draft constitution from it. But, we do not believe that that is the right way to do it. We do not believe that it would be acceptable to the people for us to do it and say: 'There it is'.

What we are doing is visiting every community in the Northern Territory and making people aware of the job that we are undertaking. We are asking you to read the documentation that we have provided, think about it, discuss it and develop your opinions and, later this year or early next year, we will come back and discuss it with you again. It will be a long hard road because there is no way we will all agree about everything all the time. It is probably much more complex than any other constitution that has been written in this country, bearing in mind that the last one was the Australian Constitution and that was written before 1901. This country has changed greatly in that time and a whole new range of issues have emerged. Steve mentioned a couple, including land rights, that were not about in 1901. However, they are a reality today and those are the sorts of issues that we need to be talking about. There are the human rights issues and a whole range of other things. Whether or not they are to be included in the constitution is a matter for consultation. We are trying to reach as many people as possible and explain to them what we are doing. We are asking for input from them so that, perhaps by the middle of next year, we will be able to produce a resume of recommendations that will go to the constitutional convention that Steve spoke about before.

We are on a fairly tortuous path here but it is a very important path because we are doing this for the future of Territorians for the next 100 years or 200 years. Thus, 5 or 10 years is a very short span when you look at that whole scenario. We would like you to have a think about it and, when we come back next time, provide some input that we can put to a constitutional convention.

Mr HATTON: Thanks, Rick. I hope that we have outlined basically what we are trying to do. I know some people have some ideas that they would like to raise. Please tell us what you think or feel free to ask any questions. It open for anyone to talk about anything on the subject.

Ms WENKE: I thought you might go through it starting from page 1 and let us ask questions as you go along.

Mr HATTON: Okay.

Ms WENKE: Get through it that way.

Mr HATTON: The parliament first?

Ms WENKE: Yes.

Mr HATTON: This is easily explained. If you are looking at the structure of a constitution, you will find what are called mechanical clauses: how do you put the parliament together, how do you put the judicial system together, how do you put the executive or the government system together? Those are 3 items and there are some questions about the parliament on pages 4 and 5. Should the new parliament or the new state have the same powers as other Australian state parliaments have? What are your thoughts?

Ms WENKE: I guess that we could incorporate a few that are better or bend them around. As you say, you have to kick ideas around and talk about them and know what you are talking about. We have not got written out what a constitution stands for, item by item, so that we can kick it around. When it is itemised, we can look through it at a later date and say that this or that could be done or this and that could be added. Until we do that, nobody knows what they are really talking about.

Mr SETTER: Yes. All that we can do - and you will see it in this book - is to talk in reasonably gentle terms about specific issues. The matter of the actual words that end up in the constitution would be a matter for the constitutional lawyers to go through.

Ms WENKE: Right.

Mr SETTER: None of us will actually know exactly what will go in until after the lawyers have done their work at the end of the consultation process. In here, you will find that we talk about the issues in general terms.

Ms WENKE: But, we have to know what the issues are.

Mr HATTON: Yes, sure.

Mr SETTER: And any others that you might want to be added.

Mr HATTON: Our people went through this book. You only have that book there. I have here 11 typed pages of questions that are in that book. There are some interesting ones. For me to read the questions out to you at the moment would not mean anything to you because you need to read the arguments surrounding the questions. However, there are questions such as whether a new state must have a Governor as the head of state. Should the Governor have to assent to any legislation passed by the new state parliament before it becomes a law? Did you know that, in the states, the Governor has to approve and sign legislation that the parliament has passed before it becomes a law?

Mr KERR: (Inaudible).

Mr HATTON: I beg your pardon?

Mr KERR: The voters don't get a say.

Mr HATTON: Well, they do. Every time that they vote.

Mr SETTER: They get a say with regard to the government that they install.

Mr HATTON: Do you write into the constitution that the Governor must do what the government tells him to do?

Ms WENKE: The government is elected by the people in the first place and therefore it automatically becomes the people's wish. It should be if it is put before the people correctly so that they can use their brains and vote accordingly.

Mr HATTON: That is right. What happens if the parliament has passed a law and sends it to the Governor or the Administrator for approval and he doesn't like it? Should he be able to send it back?

Mr WENKE: I wouldn't think so.

Ms WENKE: He has not been elected by the people.

Mr POWICK: (Inaudible).

Ms DARCY: He was picked by the government.

Mr HATTON: Must he act on the advice of the government?

Ms DARCY: Well, what is the point of having him there?

Mr HATTON: We have this constitutional monarchy and that is why he is there. Under the Australian Constitution, he is the monarch's representative. We cannot break away from that system because it is part of the Australian system.

Ms DARCY: But what is the point of saying that he has to sign each act if he has to sign it?

Mr HATTON: That is right. That is the question that I am asking you.

Mr SETTER: That is a good point. But, what if the government gets off the rails and comes up with some ridiculous policies or legislation and it has to go to the Governor for assent? Perhaps the Governor should have a watchdog role and have the ability to be able to say: 'I do not agree with that because you are doing the wrong thing. Take it back and have another think about it'.

Mr HATTON: Do you think he should have that right?

Ms DARCY: Oh, yes.

Ms RETTER: He does not have to sign it.

Mr HATTON: A person appointed by the Queen should have the right to overturn the elected government?

Ms RETTER: The person who is appointed by the Queen will not be just some riffraff. He is selected by the main people of the country, isn't he? That is put to the Queen and she says yea or nay. The Queen doesn't just publish those and say: 'Okay Jackie, you are Governor of such and such'.

Mr HATTON: Like Sir John Kerr.

Ms RETTER: Yes, but ...

Mr SETTER: Obviously, an eminent person.

Ms RETTER: He will be a very outstanding person. I think that you do have to have some final ...

Mr HATTON: To give an example, Bill Hayden has just become Governor-General. If there were a change of government and the Liberal National Coalition government came into power, should Bill Hayden, as the Governor-General, be able to say, 'I don't like that law', and then send it back?

Ms WENKE: I think it was disgusting that he was made Governor-General to start with.

Mr HATTON: Be that as it may, that is where it is. The question is whether, as a Queen's representative, he should have the power to stop or block the will of the parliament. You can see how you can get into an interesting debate.

Ms WENKE: The person who is in that position should not be a strong political figure. He has to be a non-political figure.

Mr HATTON: What do you think about it?

Mr WENKE: He should have the say, but he cannot say it straight off until he a look at what the rest of the country feels about it. He might not know anything about it or about what is going on.

Ms WENKE: I think Governors should be appointed by the Queen, as they are, with the approval of the Australian people or the people in a particular state.

Mr HATTON: Or on the recommendation of the government.

Ms WENKE: Obviously, they are recommended. Bill Hayden was recommended by Bob Hawke. Perhaps it should be done on a bipartisan or broader basis.

Ms DARCY: Do we have to have a government representative appointed by the Queen?

Mr HATTON: Yes. That is because the Australian Constitution creates a monarchical system of government.

Mr WENKE: What about a period of time that ...

Mr HATTON: Can I explain the difference between those 2 elements? Countries like the United States have what they call an executive government system. They have an elected president, who is the executive government, an elected parliament, which is the legislature, and the judiciary. Those are the 3 arms of government. There is a balance of powers between the president and the Congress and one cannot sack the other. There are rights of veto that create that balance.

We have a different system called representative government where the parliament is responsible to the people and the government - that is, the prime minister and his ministers - are responsible to the parliament. There is also a link to the monarchy and the responsibilities are flowing back to the people in a continuous line, not in a series of separate lines. How do you make that link between the elected representatives and the monarchy? How much power do you give the

monarchy? Henry VIII and King John had a lot of power but, over the years, more and more of that power was whittled away and placed in the hands of the people. However, there is that link between the parliament and the Governor. It is a question of how much power you are going to give to the royal family versus how much power you are going to give to the people and the people's representatives.

We have to confront that in our constitution. We think that we have some ideas on how to do that. One suggestion is that he must agree with it unless, in his opinion, it is unconstitutional and that the government is acting beyond its constitutional power.

Mr KERR: The point is the prime minister is elected by the people. He can be put out in 3 years but you cannot get the Governor out in 3 years. He is there all the time. You must have a head of state or head of the country somewhere. The prime minister only lasts 3 years and you might get somebody else in who has totally different ideas. But, you still have that head of state. It is his job to find out what the country wants.

Mr HATTON: It is going to be an interesting debate, isn't it?

Mr SETTER: It sure is.

Can I just come back to the first question of whether the parliament of a new state should have the same powers as the state parliaments have now. Do you realise that, at the moment, whilst we are a self-governing territory, we do not have control over all the normal state-type functions? We do not have control over Aboriginal land, over uranium mining, over national parks nor over industrial affairs. The Chief Minister has written recently to the Prime Minister to ask for the transfer of those powers. Do you think that, when we become a state in the future, we should have have those powers because the states have them?

Mr WENKE: We would not want to start off with anything less, would we?

Mr HATTON: With respect, Rick, could I say that we can talk about that later. It is not part of this committee's work.

Mr SETTER: No, but the question is asked there.

Ms WENKE: Yes.

Mr SETTER: It the first question on page 5.

Ms RETTER: Just a point of interest. Is the Territory government in control of all other land and all other mining?

Mr HATTON: Yes. All mining and all land is under the responsibility of state governments in Australia.

Mr SETTER: With regard to uranium mining, whilst the state governments have control over it, the federal government retains control over its export. Thus, whilst the state government can mine as much as it likes, the federal government may not allow its export. Therefore, the federal government still holds a good hand as far uranium mining is concerned. But, in the Territory, we do not even have the right to do what we want. Quite obviously, nobody will develop a mine unless he has an export licence. We still do not have that right.

Mr HATTON: In respect of the constitution, do you understand how we are going to go about doing it? Are you comfortable with that procedure we are going to adopt? I cannot emphasise enough how important it is. It is not good enough for us just to do this job. If you do not become involved and have your say, if you do not ensure that your views and aspirations for the Northern Territory are reflected in this fundamental law, then you are not doing justice to the future. I know that it is easy to say that it is too hard and to walk away. However, that may be the hardest and most tragic decision you could make. In 3 or 4 years time, when people have been working away at this and there has been a gathering of momentum, it may be too late for you to suddenly start taking an interest in it and complaining that nobody spoke to you. Now is the time to become involved - when the ideas are being developed and brought together. Now is the time to come together as a Northern Territory community.

If we can involve people across the board, we can start to resolve some of the differences and conflicts. We can start to set some rules by which we as a community will be able to live and work together in the future. I have no doubts, and I know that Rick too has no doubts, that there will be some monumental fights on the way. But, first of all, let us at least find out



the things that we agree on. We must put all those things together and then identify where we have arguments. We can then sit down and talk about those and negotiate solutions that we can all live with. That is how we must set the rules. It is not a job that I can do. It is a job the people have to do. If you become involved, when it is completed you will feel that you own it. The government will not own it. You as individuals and as a community will own it. You will have power coming from that. It will give a consistency, a direction and a basis of growth for the Northern Territory. It will put the foundation stones underneath where we are going. Surely there cannot be anything more important than that. If we care anything about the future of the Northern Territory, the future of our own kids, that is the job that we have to do. It is a unique historical opportunity that probably will not happen again in this country. These things do not come along every couple of years. They occur once in several lifetimes. I think I have said all I need to say.

Ms RETTER: I can add to that, Steve, that we have to get it right the first time because referendums are seldom won and cost big mobs of dollars.

Mr HATTON: It is very hard to change. That is why we have to take the time and the effort to work through it and we cannot think only for ourselves. We have to try to think also from the other person's perspective. If we do that, we might actually find a solution. It is a big responsibility but also a big opportunity. Thank you very much