

PUBLIC MEETING

GOVE — Wednesday 20 July 1988

PRESENT:-

Committee:

Mr T Harris (Chairman)

Mr B. Ede (Deputy Chairman)

Mr W. Lanhupuy

Mr R. Setter

Mr T. Smith

Absent (unavoidable)Mr M. Perron

Officers assisting the committee:

Mr R Gray (Executive Officer)

Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Mr Dan LEO

Mr Syd STIRLING

Mr Tony Macmichael

EDITED TRANSCRIPT

Issued: 12 August 1988.

Mr HARRIS: Welcome to this fourth public hearing of the Select Committee on Constitutional Development. First of all, I would like to introduce the members of the committee. My name is Tom Harris and I am the Chairman. Brian Ede is the Deputy Chairman. Here are Terry Smith, Wes Lanhupuy and Rick Setter. We also have Graham Nicholson, who is interested in constitutional law and he is the committee's adviser, and Rick Gray, who is our executive officer.

I would like to emphasise that this is a committee on constitutional development, it is not a statehood committee. That needs to be made very clear. The whole matter of statehood is one that will have to come from the people. People will have to decide if they wish to pursue that particular objective. We are a constitutional committee. We are looking at establishing the groundwork on which to form what will become our Northern Territory constitution.

There are 3 relevant documents which are available. They have been available since October 1987 and if anyone present has not received copies of those documents, they are on the table in front of us here.

The first document is entitled 'Options for a Grant of Statehood' and that sets out the 2 options available to us. One is the creation of a new state by an act of the Commonwealth parliament under section 121 of the Australian Constitution under which statehood may be granted on certain terms and conditions including the extent of representation in either House of the federal parliament as the Commonwealth thinks fit. The other method is by national referendum to alter the Commonwealth Constitution under section 128 by way of a grant of statehood. That is one document.

The next document is a 'Discussion Paper on Representation in a Territory Constitutional Convention'. It sets out a 3-stage

process which has been proposed to draw up a new state constitution. The first aspect of that is that we, as the Select Committee on Constitutional Development, move throughout the Territory to establish the form of a constitution. That constitution would then be presented to a constitutional convention and finally a referendum of Northern Territory electors to approve the constitution as ratified by the convention. In this booklet, we also look at the convention's membership. There are 3 methods that are put forwards as options. Those options are for wholly-elected convention membership, wholly-nominated, and partly-elected and partly-nominated membership. Those are the 3 options that are available.

The third document before you is a document which leads into a whole range of issues. The legislature, which deals with the form and composition of the new state parliament, the electoral provisions, the executive, the judiciary, local government, matters relating to land, Aboriginal rights and human rights. Those issues are all canvassed in this particular document.

It is a difficult process that we are embarking on. In fact, it impacts on some 35 Commonwealth acts. Those acts are documented in paper No 1 and we still have to determine the precise nature and extent of amendments that would be required.

We aim to have the same constitutional rights, privileges, entitlements and responsibilities as people in the existing states. We look to having political representation on the same basis as do the existing states and we are looking at settlement of secure financial arrangements with the Commonwealth in line with those which are provided to the present states. The view of all members of the select committee has been that the new state constitution must be prepared by Territorians and, with that in mind, the committee has embarked on travelling throughout the communities in the Northern Territory to receive written and oral submissions in relation to constitutional change.

As I said at the start, this is the fourth meeting that we have had. The committee is going through a learning experience as well. The method of notifying the various communities that we are in town, that we are willing to discuss and want people to come forward to present evidence has not met with a great deal of success to date, but we are addressing those issues. We have an extensive mailing list, and that list includes the judges, the unions, business and employer groups, local governments and community governments, political parties, teachers, educationalists, land councils and private citizens, and we expect that mailing list to grow over a period of time. If anyone belongs to an organisation or group that he or she feels would be interested to receive the documents that have been prepared and further discussion documents that will come out of this particular committee, then please contact our executive officer, Rick Gray, and give the name of that organisation or group or of any private person who you feel would like to receive that information.

For the hearing here in Nhulunbuy, we have not received any written submissions as such. I am not sure if any people here today would like to present oral submissions but please bear that possibility in mind because we would like people to come forward and make comment in relation to this very important exercise. If anyone does wish to come forward to give evidence, I would just ask that they state their name and address and indicate whether they are presenting that evidence in a private capacity or are representing some organisation or group. Does any member of the committee wish to say anything at this stage?

Mr EDE: Only to emphasise what you said about the danger of confusing this particular issue with that of statehood. There are people who maintain that the states should eventually wither away and that we should be looking at a unitary system of government for Australia, possibly with some form of regional government. However, that would require an amendment to the national Constitution and a very substantial period of time would be involved in that.

I think the most likely outcome is that we will be moving to become a state whether that is the final system that Australia opts for or not but, if at some stage, we are to move to become a state, we have to look at a constitution. A constitution can be regarded as the skeleton, if you like, of the laws and the way that we relate to each other, the way that we live together. We must then decide just how much meat we want to put on that skeleton at this stage or whether to give the government of the day complete freedom to decide what sort of system we will live in in the Northern Territory.

We have a great many issues to canvass. If we look at the way in which the states in Australia generally formed their constitutions, we see that they just say that there will be a parliament, a judiciary and so on whereas the more modern constitutions around the world have often been prepared closer to the American model where they have looked at things like Bills of Rights and being able to somehow say: 'How do we as Territorians relate to each other? What is the form and style of society that we will have?' It is for that reason that we are seeking to get very substantial community involvement. If people want a constitution which provides just the very bare bones then, as 1 journalist has said, that could probably be

knocked up in 5 minutes. However, if people wish to indicate the style of society that they believe we should have, what freedoms we should lock into the constitution and what things should be embedded as representing the very crucial core of Territory life, this process will provide them with the opportunity to start giving that indication. Now is the time to start discussing those aspects in order to reach a decision about how we will do it and how we will live together, not just during this century but also the next.

Mr HARRIS: Is there any further comment from members of the committee? Does anyone wish to give evidence, make any comments or ask any questions?

Mr STIRLING: Is there a time frame in operation for selecting the option by which the constitutional convention will be selected?

Mr HARRIS: No, that has not been reached at this stage. It has been floated that perhaps the convention could be set up at the end of next year, but we have to discuss that. To a large extent, it depends on our movements and the feedback that we get because there is a great deal of work involved. There is no strict timetable. We have to report back to parliament as a committee within a year of establishment.

Mr SETTER: May I comment on that, Mr Chairman? In this document, 'Discussion Paper on Representation in a Territory Constitutional Convention', it is indicated that the committee has already discussed that issue at length and proposed a range of options which still have to be considered. That is one of the reasons why this document has been circulated to the community so we can get some feedback. We will consider that at a future date and decide which is the best range of options.

Mr STIRLING: The committee does not have (inaudible) ?

Mr SETTER: No.

Mr HARRIS: There are a great many issues we really do have to come grips with. We have heard evidence given in Alice Springs regarding local government's participation. Of course, there is the matter of land which is very real in our situation in the Northern Territory where we have land rights and consideration must be given to our particular situation. There is also the makeup of the parliament. Those and many other aspects do need to be considered by the community and, as I mentioned at the start, it is vital that the people of the Territory make those decisions and put forward their views and ideas because it is only by them doing that that we can get a feeling of what the community really wishes.

It is difficult for us. We move around the communities. We are looking at ways of improving the means of informing people that we are available and we will be reviewing that when we meet in Darwin shortly. However, I would urge people here to consider the matters I have mentioned. It is obvious that to fulfil this exercise, we will need to revisit a number of areas and communities and hopefully, at that stage, more people will come forward to give evidence and to tell us of their ideas and views.

Mr LEO: Tom, I am interested to keep the conversation going but I am not sure of the answer to this one. You said that the committee was of the mind that we should become a state with the powers and privileges of the existing states within the Commonwealth and obviously we would have similar constitutional integrity within our own boundaries. Has there been any discussion about whether we should have a unicameral or bicameral system, an Upper House and a Lower House? Has there been any discussion about that?

Mr EDE: In the committee's discussions to date, it has generally rejected the idea of having an Upper House. It is the committee's feeling that a Lower House only would be sufficient for our needs and that anything else would be an indulgence and ...

Mr LEO: Yes, I can appreciate that point.

Mr EDE: An interesting point was made in Tennant Creek. We received a submission from a gentleman there who stated that he thought that all the laws that were passed by the Legislative Assembly, meaning the Lower House, should then go for ratification to local government. In fact, what he was proposing was almost an Upper House which comprised the third tier of government. It is an interesting concept and, again, it is one that is taken on board because, theoretically, it is possible to have such a system. It just goes to show that there is an incredible variety of forms of government that we can look at and determine what we want for ourselves.

Mr HARRIS: Page 15 of this book canvasses that issue.

Mr LEO: Yes, I appreciate that.

I think there could be a fear in the minds of many people that the single-member-seat situation does not, in fact, necessarily guarantee broad representation. This could apply to the present situation in the Northern Territory, the present situation in any state in Australia. The result need not necessarily be broadly representative. Many people, certainly Aboriginal people and a number of European people, are genuinely concerned about that.

This is pure theory, but if you have single-member seats, you need only hold 51% of the seats or 50% of the seats plus 1 seat and then you only need 50% of the votes plus 1 vote in those seats to win them so, in fact, you can govern on 25% of the vote. That is in theory. I know it does not happen in practice. You need a little more than 25% of the vote actually to hold government with single-member seats. I believe one of the concepts behind an Upper House is that it is proportionally representative, it represents far wider and more diverse views.

Mr SMITH: I would like to make a comment on that. What you are raising is quite a valid proposition and those concerns can be addressed in 2 ways. One way is by having an Upper House, and I think that is probably pretty undemocratic. I don't think you would get much sympathy from many people at present for having an Upper House.

However, a second way is to have a serious look at having multi-member constituencies, as they do in Tasmania. I am not getting much help from my learned colleagues on the bench here at the moment, unfortunately, but I think it was in the mid-1970s that propositions were put forward by Senator Jim Keefe and others that we could move to a multi-member constituency in the Northern Territory. As a member of this committee, I would like to see a case argued for multi-member constituencies for people to examine.

For example, we have 26 members in the Legislative Assembly at present but, if there were only 25 members, the Territory could be divided up into 5 constituencies, each electing 5 members. In theory, that would give a prospect of having 5 people in each electorate representing, at the least, the majority interest groups in the electorate. It does not work like that particularly well where it is tried but, certainly in Tasmania where it is tried under the Hare-Clark system, there is the ability for independents to get up, a much greater ability than independents have here. There are a couple of independents in the Tasmanian House at present. That may provide a way to guarantee reasonable Aboriginal representation, for example, that will not occur if we have single-member constituencies. Having said that, let's not forget that we have 2 Aboriginal members in the existing parliament and that that is because, under our single-member constituency system, Aborigines constitute a majority of some electorates.

Just to conclude on that, certainly I would like to see someone argue before this committee, next time around hopefully, a case for multi-member constituencies because I think it is a viable option that we should consider in this exercise.

Mr HARRIS: Does anyone else wish to comment?

Mr MACMICHAEL: My name is Tony Macmichael. Obviously, most of the people present would be aware of the various option papers that were produced for public observation late last year. In talking about constitutional development what we are saying really is, do we want to have a Northern Territory state, and why do we want to have that Northern Territory state? The reason seems to me to be that, over the 10-years of self-government in the Northern Territory, Commonwealth funding has constituted the lifeblood of the Territory government's ability to govern. Once those funding arrangements become suspect or are placed under review, increasing restraints are placed on the government of the day. In turn, the Territory's growth and prosperity is reduced to austerity in areas where proper development of our resources cannot proceed.

To me, as a citizen and a person who is interested in the future of the Territory, the important question concerning the east Arnhem region concerns the future of towns like Nhulunbuy and Jabiru in the context that they are not directly under the control of the Northern Territory government per se. In fact, in this regional community of Nhulunbuy, we are on a lease tenement that had been provided by the Commonwealth government prior to self-government being granted to us. The provisions of that lease term extend to the year 2053. Theoretically, then you will be reconstructing bushland that was here prior to the commencement of the bauxite mine.

In the intervening period, most members of the community arrived here, have settled here for a given length of time and

will pass onwards to other parts of the nation leaving the new community. At this point in time, we do not have what we call open local government in Nhulunbuy. We have local government under an administrative arrangement which Ben ..?.. would be quite willing to give evidence on. It doesn't (inaudible), we don't have any voting rights. It does provide a form of control which, in effect, is cost efficient. It is perhaps for that cost efficient reason that local government does not exist in Nhulunbuy. If local government were to be put into place here, there would be a price to pay for it, and that would be an increase in costs. As most people are employed by the mining company, Nabalco, or in government institutions, semi-government authorities, with the government providing accommodation, I doubt that there would be a local demand for local government.

When it comes to state-type government, where we are in east Arnhem on an Aboriginal land area with a community based on a mining town, what is the future of Nhulunbuy in a state? What is the possibility of this constitutional development committee looking at the future of regional communities such as Nhulunbuy and Jabiru and saying: 'Will that community exist into the future state or will it be one of those expendable areas which, once mining is finished there, becomes an Aboriginal land area with perhaps a small infrastructure for administration of Aboriginal needs?' These are issues which I think go well beyond the tenure of the existing community.

I believe that an options paper should be considered by the Northern Territory government, not by a ...(inaudible)... based on what would be the effect of statehood on east Arnhem as it applies to the towns of Nhulunbuy and, if you like, Jabiru. The fact is, of course, that in the community most people are asking themselves: 'If we want statehood, what will it cost us?' In my view, there would be a perception that Mr and Mrs Average Resident would not want to be seen to be putting into place constitutional equal rights with the rest of Australia at a cost of a \$30 a week increase in the cost of living. Everybody is of the view that they would like to have equal rights. We all want that. Essential to that, of course, is the question of government of our land and a broadening of that patriation component, the Aboriginal Land Rights Act. The policy options that will be available must be a matter of some significance to Aboriginal communities in Arnhem and east Arnhem, given that the Commonwealth government agreed to them.

I would ask the committee also, if the Northern Territory government is going to address statehood through its Select Committee on Constitutional Development, what is it doing in relation to a land use capabilities study so that we know that the land in our future state can be utilised? I have put the proposal that, running parallel with any drive towards constitutionally equal rights with the states, we should be developing, through scientific and practical data, a land-use capabilities resource so that we can direct the thrust of our capacity to produce and use our natural resources to support the income of a future state in a proper and correct way. We must have some form of strategy for the management of our state.

Danny spoke about the composition of parliaments and Upper and Lower Houses, and Mr Smith mentioned that there is probably a valid case for a multi-member constituency and representation in parliament. Others will be asking if we should have the full number of senators in the federal parliament. I would submit that they would be extremely bored with the number of our population and the amount of work they should be able to do in the area of ...(inaudible). Right on the ground, I would like to see an options paper being given to this community to consider, even if it were such that it became a strategy as to whether mining, the future of land management and the future of European settlements in Arnhem Land and east Arnhem Land were viable in a future state.

Mr HARRIS: Thank you, Tony.

Before opening that up for discussion, I would like to indicate that some of us felt that perhaps we were going about this exercise back to front and that we needed to talk about the whole statehood issue. However, when you start getting into that debate, it is extremely difficult because there are strong views on either side of the fence. This committee has been set up to look at the concerns of the community about the makeup of parliament and the sort of issues that you have raised about the implications for an area, and so on. We could look at those issues. But, when you talk about the cost to the people and factors of that sort, really it becomes a political argument. The subject of education has been raised on a number of occasions with this committee and, on such topics, we start to get into the political battle. Really, we are trying to get down to the relevant issues and to talk about them in an open manner without getting into that kind of heavy, political debate at this stage.

I felt that perhaps we should have discussed the statehood issue before we got to this stage. However, this is the direction that we are following at the present time. Could I just say that the government is also looking at putting forward a further series of papers. The one I mentioned last night related to industrial relations upon statehood, a very important issue and there are 4 options that are to be considered. One is that the Commonwealth system be retained. Another is to have an

integrated state system, a third is to have a separate state system, and the fourth is to have no formal system at all. The government has commissioned Sir John Moore to come to the Territory and prepare papers in relation to that. I will give the dates that Sir John Moore will be visiting Darwin and Alice Springs and the address to which submissions on that can be sent. He will be visiting Darwin from 4 August to 11 August and Alice Springs on 12 August, and he will be receiving representations from unions and employer groups on this particular subject.

Other papers are being prepared on a government basis. However, this committee itself is really trying to obtain comment from the communities. People are welcome to make comments of that kind, but whether or not debate on those subjects will ensue is a matter for conjecture. I don't intend to become deeply involved in those particular debates.

Do other members of the committee wish to comment?

Mr EDE: I have just a couple of items. I think that you explained the confusion that exists about the role of the committee as to whether we are talking about statehood or whether we are talking about constitutional development but, going on from that, you mentioned fiscal arrangements and the possibility or otherwise of people being financially disadvantaged by statehood.

This committee has asked the Treasury to prepare a paper on that so that we can have a look at it and see where that fits in. That will come to the committee and we will assess whether, in our view, it addresses the issues. People here would know, for example, the situation regarding mining royalties which are currently paid under federal legislation. We will have to see what sort of arrangements could be made on that and consider the possibility of Nabalco paying an 18% profit-based royalty, which is our system, rather than continuing to follow the federal system.

You spoke about the future of an area such as Nhulunbuy, which exists under Commonwealth legislation and on a lease from the traditional owners which is handled by the federal government. When you talk about a future for Nhulunbuy, I presume that you are speaking about the time after the mine has closed and that you envisage that the town will have an economic future then. You are not saying that we should build it up simply as a service centre? You are looking at tourism or something like that perhaps?

Mr MACMICHAEL: I would imagine. ...(inaudible)... The Aboriginal people in east Arnhem are counting on a town to service the big community areas. That might be the end of the matter but, on the other hand, at some stage in their children's future, the traditional Aboriginal owners will have to address the question of whether or not they want Nhulunbuy to be part of east Arnhem as a regional town? If this becomes a regional town, it can be governed. While we are operating on the present basis, we cannot be governed. Nabalco governs us and the Territory government slips in cooperatively.

Mr EDE: Right. How do you see that developing? What would you like to see yourself as the situation after statehood?

Mr MACMICHAEL: Well, in that sense, all sorts of matters arise because land tenure becomes a major item. Whether European people are allowed to invest here and sublease land to help build the community if it isn't a mining town. The question then is whether the Aboriginal people will ever want that. These are areas which I believe need to be addressed as part of the ongoing process of constitutional development.

Mr EDE: But have you yourself formulated some ideas on these areas that indicate a direction in which you would like the committee to go, not just in terms of conducting studies but in terms of actual results?

Mr MACMICHAEL: In terms of a European approach, I would say that, from the point of view of private enterprise within this region and not from the point of view of Aboriginals, I think that Aboriginal people are looking to private enterprise opportunities in their communities to give their children some occupation and cultural sharing in exchange. If you take that as a philosophy that is going to grow and blossom, then Nhulunbuy should become a regional Territory town. In those circumstances, I would strongly support such a move particularly in light of the potential for it to become an area for visitations and tourism.

Mr EDE: So it is not particularly the core title or the base title that you are concerned about. To your mind, the difficulty relates to the terms and conditions of lease, the way in which land is leased, the term of the lease, and the way that people will be able to obtain leases. Is that the area that you are exploring?

Mr MACMICHAEL: That is a matter that should be out in the open, for sure. The basic principle is - do we want

Nhulunbuy to be part of the Northern Territory community under the future constitution and or state?

Mr EDE: I think it goes without saying that we would want Nhulunbuy as part of the Northern Territory, but what has to be determined is what that would entail. There can be modes of words which can mean different things in different people's view.

Mr MACMICHAEL: In commercial terms, it means that Nabalco built the town, Nabalco managed the town, and the government assisted in providing services and infrastructure on the land leased from Nabalco. The question is whether a Northern Territory government of the future, of whatever political persuasion, will be able to govern here. It would have to go along to the Nabalco joint venture partners and the federal government with the Aboriginal traditional owners and say: 'Let's not write this place right off. People want it to grow a little'. Opportunities would need to be created so that people would have the confidence to invest in joint ventures, if you like, with the Aboriginal people.

Mr EDE: You are worried about the winding down period towards the end of the mining, the possibility that the mining company itself could make a conscious decision to amortise, for example, the housing stock by doing no more maintenance work on it and by allowing it to run down to a zero point at the end of the lease period.

Mr MACMICHAEL: Well, that could be part and parcel of it. Some people have been here for 15 years, mainly working directly for the mine. Most people in private enterprise and working for the government in semi-government authorities and service industries do not have that sort of track record of residence. It is changing all the time.

Therefore, it is up to the existing community to decide with the Aboriginals, who are the perpetual occupiers of the land and perpetual area holders, whether they want a European community as partners, so to speak, in developing this area. If so, what restraints will there be. Restraints exist in pretty real terms today. If they can change as we progress along the way to constitutional development, so they should.

Mr LANHUPUY: Mr Chairman, this committee is going round to most of the major communities and listening to people who have concerns or wish to make submissions on how constitutional development should progress. I think the committee will be splitting up in the very near future in order to visit small communities like Yirrkala, Ramingining, Croker Island, Jabiru and other small places. Certainly, what you are talking about is essential from our point of view. A great many people come onto a mining lease like Nhulunbuy because they work for a company and would like to see some sort of long-term, continuing development in the area after the life of the mine expires. That is something which I think the community will certainly take up with the landowners of the areas concerned, both here and at Jabiru, bearing in mind some of the comments that you have made. I think oral or written submissions along those lines to the committee would be appreciated. It is a sound talking point in terms of the interest and the concerns that you have expressed because of the type of land tenure that we have in an area like Nhulunbuy. From our point of view, I think that is a starting point anyway.

Mr LEO: What you would be aware of, and I am sure that most of the committee is aware of this, is that your difficulty is that, in the absence of any other industry, on the completion of mining this town will close down. All sorts of time periods have been put on that: 10 years, 20 years, 50 years, and 100 years but, in the absence of any other economic activity, the place will close down. That is a simple reality and, unless that economic activity starts to develop now, whether it involves tourism, fishing and tourism, professional fishing or whatever it may be, the town will close.

A replacement industry cannot just start up overnight. It just doesn't happen like that. It takes years to develop an industry and I think that it is important for this community. I think also that it is very important for the community of the Northern Territory generally to know whether or not the community at Nhulunbuy is perceived as an entity in its own right, that is, as a free-standing entity. If that is the case, then people can start investing with a degree of certainty that is lacking at the moment.

Mr HARRIS: Following from what Wes said, I would indicate that the committee will be identifying different groups and or people to comment on issues relating to their specific areas. I think that is important and, rather than just putting an advertisement in the paper or making an announcement over the radio that a hearing is to be held in a specific place, we do need to get feedback from the people who are directly concerned. We will be making a great deal of effort to ensure that that does happen.

Tony, you spoke about senators. There is a feeling that, at some point down the line, we must achieve full Senate representation. Whether you like it or not, we don't want to go into the whole state issue and be seen as a second-rate state or a state that does not receive exactly the same benefits that the other states are able to have as a result of the muscle they

have in Canberra or the numbers. That is very important in the political game. I think the general feeling is that we should achieve that, at some stage down the line, though not necessarily at the start; it could be phased in. But, at some stage, we would need to have full Senate representation. Would you agree with that?

Mr MACMICHAEL: I certainly would agree with you on that in principle. We are Australians who are really second-class citizens at this present time because we cannot even vote in referenda and I think the 1967 referendum regarding rights for Aboriginal people in every respect was something that we were denied. In my view, constitutionally we need to have equal representation on equal constitutions with the states. As a private person and irrespective of what views might be held over the wide political spectrum, I feel that ultimately we should have the same number of senators as Tasmania, based on some formula where we get 5 to kick off with and the other 6 after a given period of population growth.

Mr STIRLING: Following on from a few of the points Tony was making, because of the unique nature of the town, ...(inaudible) and all those restrictions, a few years ago, the federal government put a 1¢ a litre levy on petrol to generate funds for road construction during the bicentennial. That levy is to continue, and I think it is now 2¢ a litre. A place like Nhulunbuy, for example, pays that levy, yet no new roads have been constructed, will be constructed or can be constructed because of the unique nature of the lease. Now that is fine, that is how it should be, but it is unfair taxation to be paying for roads that are built between Sydney and Melbourne or wherever else.

In a Northern Territory constitution, I think specific reference has to be made to a situation like that. Indeed, that should occur with any legislation that has an effect right across the Territory but which has a unique effect here because of the special nature of this town which precludes it from receiving any benefit in return. As I understood him, Tony was making that point in respect of local government as well. In a sense, we are subjected to taxation but don't get anything back.

Mr HARRIS: Thank you. Do members of the committee wish to make any comments at this stage, before discussion moves into other areas?

Mr SETTER: Mr Chairman, I would like to comment on some of the matters that Tony raised. He did raise quite a range of issues and it is not possible to recall them all.

Tony, with regard to the matter of future development plans for Nhulunbuy, I certainly take your point, but understand that that situation is not unique to Nhulunbuy. I am sure a similar situation does exist in Alyangula and Jabiru and, perhaps at some time in the future, a similar situation will develop in other communities depending on development that may or may not take place. In my opinion, there is a need to undertake a study of the legal arrangements relating to such communities because those legal arrangements or agreements do vary from community to community. However, we need to study those so that we understand where we might go at some time in the future with regard to negotiations with the Commonwealth and with the various Aboriginal communities involved. We need to know what the situation is and, as time goes by, to listen to and respond to the needs and the desires of people who live within those communities, whatever they might be. The starting point is to identify, by way of a position paper, exactly what those situations are from community to community.

Mr MACMICHAEL: Certainly, Mr Chairman, I would support the idea of an options paper on east Arnhem and constitutional development, indicating what are the solutions and what are the problems.

Mr SETTER: In addition, you suggested that position papers be developed on a range of issues. That has been done already on quite a wide range of issues and, in general terms, they are collated within these documents here. I don't think those documents include all of the position papers - no, they don't. But papers on issues not covered in these documents are available. Graham, perhaps you might mention the other papers that have been produced.

Mr NICHOLSON: Actually, there are 3 options papers ...(inaudible)... There is 'Land Matters upon Statehood 1986', (inaudible) 1987 and there is a third (inaudible) which is also from 1987.

Mr SETTER: Those papers are available.

Mr MACMICHAEL: (inaudible) ... produced which is yet to be released on the policy areas concerning a patriation land rights act.

Mr SETTER: That is the land matters paper, I think.

Mr NICHOLSON: (inaudible).

Mr SETTER: Yes. A further paper is being produced which the Chairman alluded to earlier with regard to industrial matters and I think there is one other, too?

Mr NICHOLSON: There is one covering financial matters.

Mr SETTER: On financial matters? Right. Probably, they will be released by the end of the year, or so one would hope.

You raised a point about the cost of statehood and I hasten to point out that this committee is investigating or considering constitutional development as opposed to statehood. My understanding is that the reality is that the Northern Territory is already funded on the same basis as are the states. Treasurer Keating made the announcement several years ago that that would occur and that has come to fruition in this current financial year. There is no financial advantage left in the self-government situation that existed at 1978, because the financial arrangements ...

Mr EDE: This statement has been written and authorised by the Country Liberal Party.

Mr SETTER: ... the financial arrangements that we have, to confirm what Treasurer Keating said, ensure that we are funded on that same basis as the states.

Mr STIRLING: When New South Wales and Victoria receive 80% funding from the Commonwealth government then I accept that what you are saying is correct. However, that clearly is not the case. We are not on the same basis by any stretch of the imagination.

Mr HARRIS: Can I just indicate that this is the kind of issue that I referred to earlier. The views held on them are many and varied and I guess could be argued for a considerable period of time. Those matters will be argued on the political front, but I do not want us to get into that debate here. I believe that Rick was offering his point of view.

Terry, do you want to comment at this stage?

Mr SMITH: I want to respond to Tony to start with.

Tony, you pointed out a mixture of economic arguments relating to whether the town has an economic future, political arguments about the actions of the government at that time and the attitude that that government will adopt towards this area, and constitutional arguments. Quite clearly, the major constitutional argument that you raised, as have other people, related to what is to happen on the question of land, particularly Aboriginal land, under the Territory as a state.

As I see it, there is an argument to be developed by people in this community to be addressed to this committee on the question of the status of Aboriginal land and the particular status of land in Nhulunbuy.

It would certainly be my view that the constitution that we develop for the state will not have particular clauses to cover particular situations. We will not have, for example, a section 25B subsection (3) that will apply to the particular situation here. What we want is a set of principles that can be applied across the board on the question of land. That is my personal view. The committee has not established its view on that, because you have brought something up that is new. Obviously, the committee will consider that matter. However, we would have a horrendous situation if we went through the Northern Territory hearing about people's individual situations, and then attempted to cover every one of those in a constitution. We have to come up with some broad sets of principles, and I would urge you to think about the broad principle that would be satisfactory to help ensure the future of Nhulunbuy.

The same situation applies to the comments that Syd was making. How far do you take this argument about taxation? Would you argue that, if your children were grown up, you should not pay the same amount of tax as do people with school age children because your children are out of the education system or that, if you are young and healthy, like myself, you should pay less tax because you are not using hospital services? There are all sorts of arguments that have to be considered. There is a constitutional bar at the Commonwealth level. It cannot discriminate between the states in terms of tax raising. There is no constitutional bar, that we can discover, to a state charging differential taxes within its own boundaries but certainly there may be a problem at the Commonwealth government. Of course, the petrol tax is a Commonwealth tax so that is something that you need to think about as well.

I want to semi-defend Rick for a minute if I could, on the question of funding by the Commonwealth?

Mr HARRIS: All right, all right!

Mr SETTER: Thank you!

Mr SMITH: When Keating, and Rick Setter, make the statement that the Territory is funded on the same basis as are the states, they are not saying that each state gets the same proportion. There is a formula worked out by an independent Grants Commission which takes into account the needs of the states, the population of the states, etc, etc and works out how much money they are entitled to, and that is the argument. It is not a question of each receiving the same percentage but what is received according to the formula that has been worked out by the independent body. That is the amount of money that we get.

I don't quite subscribe to Rick's view that we are being funded at a similar level at present. There are still a couple of uncertainties about that level. One of the uncertainties is that Keating has said that the Territory really did get \$40m too much but that the Commonwealth will not take it off us this year. He has not said that to any of the states. But, certainly it is the Commonwealth's intention - and it doesn't matter particularly whether it is a Labor government or a Liberal government federally - to fund us along state lines, and I think that will continue. It is one of the factors that we do have to take into consideration when examining this question of constitutional development.

Mr HARRIS: Coupled with that of course is that we have the disadvantage of not being on the Loans Council and others in making the decisions.

Mr SMITH: Oh, yes, yes!

Mr HARRIS: I am getting my bit in too!

Does any other member of the committee wish to comment before we move on? Does anyone else wish to make a comment on any issue that has been raised or speak on any other issue?

UNKNOWN: I have just 1 question, Mr Chairman. I haven't had a good look at those documents, but is there anything in there which indicates the cost of setting up statehood for the Territory?

Mr HARRIS: No.

UNKNOWN: I imagine it will be a very significant figure. How would it be funded?

Mr HARRIS: As has been pointed out, there are a couple of papers which are still to be distributed. Those are issues that have to be considered but, as Terry said, we are looking at the principles on which to base our constitution. The other matter I should mention is that all of this will go back to the Assembly. The step in the process is that, once we come up with what we believe is a reasonable constitution, that will go to the Legislative Assembly for debate. I guess those political issues will be raised at that stage..

Mr EDE: It is very difficult to crystal-ball this sort of thing as far as financing goes. We are hoping to be able to get down a set of principles and to be able to get some variations on that that will enable us to see just what the financial implications of statehood are. Everyone recalls Everingham's statement that self-government would cost us a packet of cigarettes and a can of beer a week. If they have a look at their electricity bills now, they will see that either beer and cigarettes have gone up or that statement was not quite accurate.

Obviously, even when we have a picture of those implications and they indicate that our situation when not a state is like this and if we were a state it would be the same, that would not take into account the ability of the Northern Territory government of the day to decide, for its own reasons, that it will increase charges or taxes as they increase locally. So, while we can say that statehood of itself won't necessarily cost you an extra dollar, it may cost you that dollar if the government of the day decides that it is going to.

Mr HARRIS: Another issue which people may like to comment on is that of land rights and whether that subject should be patriated back to the Territory should we become a state. These are some of the issues that we will be identifying people to make comment on at a later stage. Whilst we are here, does anyone would wish to comment on that particular issue?

UNKNOWN: I thought it was heartening to read recently that Mr Coulter at least thought the NT Land Rights Act was workable and we look forward to his putting very solid effort into making it work ...(inaudible)...

Mr EDE: We found political agreement on a subject, and put it all behind us.

Mr SMITH: I think it is fair to say that, if we are to become a state, there is really not much choice. Aboriginal land rights has to become a state responsibility. I do not think there is any point in hiding behind the idea that you can have a state without it having control over its land. That would be different to anything that has occurred in Australia's brief European history.

Really, the question is not whether the responsibility should be transferred, in terms of the present discussion on constitutional development, but the terms on which it should be transferred. In other words, there is this concept of entrenchment. Should there be special provisions in the constitution governing the matter of Aboriginal land rights which will make it harder to change provisions concerning land rights than relate to other areas covered in the constitution? For example, under the Australian Constitution, of course, you have to have 50% plus 1 in 4 of the states of the people supporting it. In the Northern Territory constitution, I would expect that, for most issues, we would settle for 50% plus 1 of the people who vote, or perhaps the people who are eligible to vote but, on important questions like land rights questions, we might want to make it more difficult than that. It might be decided to make it 60%, 65% or 70%. That is the sort of question that we are particularly interested in exploring.

Mr Chairman, Brian is something of an expert on what has occurred in Papua New Guinea and, with your concurrence, I might ask Brian to make some comments on that. There have been some entrenchment-type provisions put in on important issues there. I cannot recall the phrase now.

Mr EDE: They have a system of what they call organic laws. These introduce a degree of difficulty in changing the constitution. There are special organic laws and these require more than a simple majority of the parliament to get through. There are degrees of inventiveness, if you like, or degrees of difficulty in maintaining those principles. For example, if we look at systems of provincial government, in Australia, our states exist in their own right whereas, in Papua New Guinea, the provinces, which are the equivalent of our states, exist because of an act of the federal parliament, but that act is not an ordinary act - it is an organic law. It requires quite a degree of difficulty in changing it. The lives of these people are governed by the constitution, but the way in which they exist is written into an organic law.

We could have a system like that. For example, we could establish the principle of ownership of land and guarantee in the constitution that land shall not be taken off somebody, and we may decide then to incorporate many more of the principles that involve land rights, which could be things like vetos on exploration, the distribution of royalties etc, into an organic law. Then the ordinary law of the parliament of the day may provide for other issues which basically represent the nuts and bolts of how the act operates, who appoints commissioners and who operates where the land councils report back to.

I would like to make a point about what Terry had to say concerning the need to - 'patriate' is a non-word ...

Mr HARRIS: Devolve!

Mr EDE: Devolve is the word! Terry spoke about the need for responsibility for the federal legislation governing Aboriginal land rights in the Northern Territory to be devolved onto the Northern Territory parliament. It is an anomaly, as things are at the moment because, if that were to stay with the national parliament, we would be the only state where that was the situation.

Of course, there is another possibility. At some stage, the federal government may decide to go back to a position that it held some time ago of legislating for national - either uniform or non-uniform - land rights. If we did get to that situation, of course, that would be different again in that every state would have its land rights enshrined in a piece of legislation of the federal parliament. If that situation arose, it might then just be a matter of us saying that we would like to have complementary legislation in the Northern Territory which, in fact, might be word for word what the federal legislation was. Or we might decide that the federal legislation did not go far enough in certain areas and that we thought that a much more practical advantage to people could be gained by going further. We would have the ability to do that under statehood, but we would not have the ability to resile from a position which the federal government had taken.

Mr HARRIS: Does anyone wish to make any further comments? Do members of the committee wish to say anything more at this time?

That being so, I will thank you very much for your attendance and we hope to see you again in Nhulunbuy in the not-too-distant future. Thank you for attending.