

PUBLIC MEETING

NHULUNBUY — Monday 8 May 1989

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 Marian MAURER

Mr Syd STIRLING

Mr Frank FARLEY

Mr Greg SMITH

Mr Tony McMICHAEL

Mr Adrian WEIKE

Mr Dave PERMEZEL

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

ISSUED: 4 October 1989.

Mr HATTON: Thank you for coming along tonight. Let me introduce myself and my committee. My name is Steve Hatton. I am the member for Nightcliff but I am here tonight as Chairman of the Northern Territory Legislative Assembly's Select Committee on Constitutional Development. I have with me Dan Leo, who I am sure you all know as the member for Nhulunbuy, who is also a member of our committee. Rick Setter, the member for Jingili, is also a member of the committee. At the back of the publication that you received, you will see the photographs of all 6 members of this committee.

This committee is unique in the Northern Territory parliament and probably in parliaments in the Westminster system in that it is a genuinely bipartisan committee which has equal representation from both the government and opposition sides of parliament. For obvious reasons, most committees of the parliament have a majority of government representatives. However, in this committee, both the Labour Party and the Country Liberal Party, the major political parties, have worked consistently together towards a common objective. We have worked very hard to avoid this process being caught up in party political games. That, in itself, is unusual in politics. We are doing that because we believe that the job that we have

to do is more important than the day-to-day party political process. We have sought to keep this issue outside of our respective campaigns to maintain government or defeat the government from time to time.

Our job fundamentally is to work towards the writing of a constitution for the Northern Territory. Over the last 2 months, we have been visiting some 60 communities around the Territory to explain what we are doing and why it is very important for people to become actively and directly involved in this process. You must ensure that, in the writing of this constitution, you have your say and that what is important to you is taken into account.

I would like to introduce it tonight by giving a little of the background. In the absence of a written constitution, governments are all powerful. Some countries, Britain among them, do not have a written constitution. In such a country, the government can pass any law or take any action that it is able to have passed through the parliament. There are no limitations on the power of government or the power of the parliament because there is no constitution to create those limits. A number of nations have sought to impose limitations on the parliamentary government process. These limitations are imposed by the people. In a true democracy, the people should be the ultimate source of power and, in what we call a constitutional democracy, the people actually set the limits of power of the government. If there is no constitution, there is no limit to the power of government. That is the first important thing to learn. A constitution does not limit the people; it limits what governments can do. It says what governments can do and what governments cannot do. It is also the vehicle through which the people determine how they want their democratic process to work.

There are 3 elements to government: the legislature, the judiciary and the executive. The executive is the head of state. In our society, that is the Royal Family which is represented by the Governor-General and the Governors or the Administrator. The legislature is the parliament and the judiciary is the court system. All 3 elements comprise the process of government. How do you think that should work? How should you go about electing a parliament? Who should have the right to vote? Who should have the right to stand for parliament? How long should parliaments be able to sit before they have to go back for re-election? Do you think there should be fixed-term parliaments?

What should the parliament be allowed to do? Are there certain laws that you think the parliament should not be allowed to make? For example, should the parliament be able to restrict your religious practice? Should it be able to restrict your right to meet and discuss matters or your freedom of speech? Should parliaments be able to interfere with your privacy? If you think that there are some things that are so absolutely basic to your life and rights as a citizen that no government should have the right to interfere with them, how do you ensure that it cannot interfere? The answer is that you write those in a constitution. That sits over the top of the government and becomes the framework within which the parliament and the government must work.

There are questions of which we in Australia would be well aware. Do you think, for example, that the Governor should have the ability to sack the government? Do you think there should be a repeat of the Whitlam-type dismissal and, if so, under what situations? If you think that there should be some controls on that, some rules set down, where are you going to write them? You write them in a constitution. If you think the government is acting outside its power, how do you obtain redress? What gives the courts the power to tell the parliament that it acting beyond its power? How do you protect your rights through the court system? Where do you give the courts the power, in certain respects, in relation to the parliament? Again, the answer is that you do that in a constitution.

What we are saying is that you should write the rules relating to how you think your society should operate, how people should deal with other people, how the law makers should act, what the limits are on the power of the law makers, the limits or the roles of the courts and how that comes together. It is a horrible and frightening thing. You might say: 'My God, I cannot think of all those concepts'. However, you can if you take one little piece at a time. You can work through it and decide what you think is important. For example, I think it is important to have a unicameral system, one House of parliament, rather than having an Upper House and a Lower House. Somebody else might disagree with that. How should the matter be decided? Do you think the community should decide or should the decision be left to a few politicians? These are your institutions. They are not ours. The courts and the parliament belong to the people and the people must make those laws and determine the direction in which they want their society to go. You cannot leave those decisions to a group of politicians or lawyers or academics because, once a constitution is set in place, it is very hard to change it. That is why it must reflect the views of the people. Only the people should have the right to change that law. Through the constitution, the people have the power, not the parliament.

Our job as a committee is to start the community thinking about producing a constitution which sets down how the parliament and the courts should operate, how we should relate to other people and what rights are so sacred that they

should not be interfered with by anybody in government. You set those in place and create a future for the people of the Northern Territory. That is our job. That is the task before us. It is a unique opportunity in Australian history. It has not been done for 100 years. 100 years ago, the people were not asked. The politicians framed those old colonial constitutions. They did not even consult the people when they were formulating the Australian Constitution. For the first time in our history, a populace is being asked how it wants its society to run and how the rules should be written.

You can say: 'That is all very fine, but why do we need them? We are getting on all right. How is it going to affect us anyway?' It is very easy to say that. We are plugging along with our ups and downs. If we get a good run from the federal government, things kick on a bit. We have our own parliament in Darwin and a few decisions could be made there. Many people in Nhulunbuy would think that is a bit irrelevant to them because this is a mining town and the influence of the whole mining community is sitting over the top of them.

You might ask what it all means to you. As a society, what do you want? What do you think you want as a society? Do you want the Northern Territory to keep going exactly as it is now? Do you think it can be improved? Do you think there are some rights that you do not have and that you think you should have? How are you going to get them? You have to reach out and take them. Those things can be achieved only if the people want them and demand them. This is a vehicle to do that. We all have an obligation to future generations of Territorians to do this and to do it properly. We must not put it aside because it is too hard or because we would rather go to a basketball game or watch Dallas on the television. What sort of place are we going to leave for our children or grandchildren? Or do you want to ignore their future? If you can accept the responsibility and the opportunity that is given to you now, you will start talking about this among your community, get your ideas together and ensure that you participate to developing a constitution in the Northern Territory which we are proud to hand on to future generations and of which they too can be proud.

That is a daunting task but it will not happen quickly. It is a task that we must take up. If we walk away from it, the problems will not go away. They will be exacerbated and some future generation will have to do it. It will become harder and harder. The responsibility is here now for us to start to think about this and to come to terms with the reality of the Northern Territory society. How are we to resolve the quite serious conflicts between Aboriginal and non-Aboriginal society? How are we going to create a society in the future where cultures and races can live together side by side in true equality and mutual respect? Those are issues that we must deal with because they are issues which will affect our children. Do you want to ignore that and leave the problem to fester for the future? Or are you prepared to take up the challenge of addressing those problems? That is the process that we are talking about today.

You must understand that every state and the federal government have constitutions. They might be small, relatively ineffectual or quite comprehensive, but they are there. The Northern Territory has no constitution. Because you live in the Northern Territory, you do not have any of the individual or community protections that flow from the Australian Constitution. That constitution refers to a federation of states and the rights flow down to the citizens of the states. We are outside that. Your right to vote for a government in the Northern Territory arises from a federal act of parliament and the functions of the Northern Territory government arise from regulations under a federal act of parliament. I am not suggesting that it would happen, but the reality is that the federal government has the power, for example, to wipe out the entire Northern Territory education system simply by amending a regulation. That would not even have to be debated on the floor of the House. There is nothing that we could do about that. By repealing an act of parliament, it could remove any form of government whatsoever in the Northern Territory and we could revert immediately to the sort of direct Canberra control that existed before 1978. We have no protection against that. The states have a constitutional guarantee against such a thing happening.

You have the right to elect a member of the House of Representatives in the federal parliament. From the 1920s - when we first had a member in the federal parliament - until 1968, that member was not permitted to speak in the federal parliament except on matters relating to the Northern Territory and he was not allowed to vote. By amending an act, the federal government can remove the right for a Territory federal member to speak or vote. The reason for that is that we have no constitutional protection. The only reference in the Australian Constitution to the Northern Territory is in section 122 which basically says that the federal government can do what it likes with us.

If you own property in the Territory, you might be interested to know that the federal government has the power to acquire property from you and is not required to pay any compensation to you. It can take it from you without compensation. That has been upheld in the High Court of Australia because the constitutional guarantees for citizens of Australia do not apply here. If you want the rights that you would have if you crossed the border into Queensland, you will start becoming involved in this program. You will start to work towards obtaining a constitutional basis for the Northern Territory for

yourselves and for your children. That is why I am so patient about this. People say to me that this is a very esoteric argument and ask me who really cares anyway. I care. I care about the sort of society in which my kids and their kids will have to grow up. As a parent, I feel that I have a responsibility to do what I can to create a society for them that is better than the one in which I have grown up or live in. If I have the opportunity to do that, I will do it. I am trying to convince other parents and other adults to take on the same responsibility, and write a law for the Northern Territory that gives us the basis from which to start work.

In what I have been saying, you will notice that I have not mentioned statehood at all even though it has been a matter of debate in the community. There are people who are fervently in favour of statehood and there are others who do not believe that we are ready for it. Some people are very nervous about the thought of statehood. I can say categorically that we cannot even consider the question of statehood at the moment and I am known as an advocate of statehood. We cannot do that because, as a community, we do not know what we want. We will not know what we want until we have written a constitution. After we have done that job, then we can ask when we want to become a state because we will then at least know what it will mean. But, without that rule book, without those guidelines that have been written by the people, we will not know where we are going or what we will walk into. Thus, the question of whether you are for or against statehood is one for the future. However, I ask you to accept that, one day, whether it is next year or in 5 or 20 years time, the Northern Territory will become a state and will take its place on the basis of equality with the existing states. Let us take the opportunity now to start to write the rules in relation to the sort of a place we want the Northern Territory to be in the future. Don't let us do that job for you. It is too important for that. You must do that job, along with the people in Docker River, Alice Springs, Darwin, the Tiwi islands and everywhere else in the Territory. It is just as important for them as it is for you.

How do we intend to go about this job? At the moment, we are visiting the various communities and telling the people that this is the task ahead of us. We are asking them to read the material and to think about the issues. If you need extra information, there is a toll free telephone which you can ring. We can arrange for somebody to come and discuss individual aspects with you if you so desire. Later this year or early next year, the committee will come back and you can tell us your views on the various issues. Then, we will take the views of people from all over the Territory and come up with a draft of what we believe the Territory community wants. We are not doing this job for you. We are just presenting the preparatory material.

The second question that we are asking people relates to the composition of what we call a constitutional convention which is basically a very large committee of representatives of people from all over the Northern Territory. These are people who can represent the diversity of opinions, cultures and communities throughout the Territory. We need advice on how you think we should put that committee together. That constitutional convention will work through what we have done and determine whether we have got it right. If they think it should be amended, they will do that. They will argue the issues out until they have what they believe the people of the Territory are saying. That proposed constitution will then be put to the people to vote on in a referendum. If the people are not 100% happy, they should vote no and the constitutional convention will go back to its community consultation and keep working on it until it has a document for which the people can vote yes. The people must say that this is how they want the Territory to be and that these are the rights that they want entrenched and locked away from the government. That will be the foundation stone for the future and it will have come from the people.

Our job is to act as catalysts and coordinators. You live in Nhulunbuy and on many occasions - and justifiably so in many instances - you have said that the government does not listen to you or take account of your views. The feeling of people over here is that it almost seems like you are not part of the Northern Territory. I know because I felt the same myself when I lived here quite a number of years ago. It is a real feeling. This time we are saying that we want you to be involved in this most fundamental task for the Northern Territory and ensure that the needs, aspirations and attitudes of the Gove Peninsular community are taken into account in the writing of this constitution. The writing of this constitution is your task as much as it is the task of other people in the Northern Territory.

This will not be a case of your saying: 'Why didn't they ask us?' I hope that it will not be a case of our saying: 'Why didn't they get involved?' It is important for your future and for your children's future. This is a unique moment in Australia's history. It has not happened before and it will not happen again. This is a chance to get it right for the future. It is too important to walk away from. I urge you all to become involved, individually or in groups, and help us to work for the future of the Northern Territory.

Dan, would you like to say a few words?

Mr LEO: Yes, I will. Steve Hatton and I have known each other for many years. We have crossed swords over many issues over that period of time. Actually, we have different reasons for pursuing this common goal. I cannot speak for Steve's reasons and I cannot speak for the CLP's reasons. I can speak for my reasons and for my political party's reasons. I am sure that most people in this room would appreciate my political future and therefore my contribution will be rather more esoteric than his has been.

Like it or not, I have been lumbered with the consequence of being a good old-fashioned Australian nationalist. I am an Australian. I am not a Territorian. I am not a Queenslander, New South Welshman, Tasmanian, Victorian, Western Australian or South Australian. I am an Australian. Like it or not, that is what I am going to have to live with. I am an Australian. Unfortunately, what we are faced with in the Northern Territory is a crisis of confidence about the Northern Territory. We are not a state, we are not Australians, we are a territory. I do not think that that is particularly healthy, productive or in any way germane to being an Australian. I think there are very good reasons why the Northern Territory should have a developed constitution, not the least among those is to become part of the general Australian community.

Most people here are aware - Yumbulul excluded - that their time here, like mine, is relatively limited. We could perhaps go and live in other parts of Australia during our lifetime. Our children will have the opportunity to do that. But, this land mass that we call the Northern Territory - no matter what people live here or for how long - needs to be part of what we call Australia. Unfortunately, the problem at the moment is that we are not part of Australia. The legal and constitutional problems all exist. However, the psychological problem is that we are a frontier, we are perceived as being a territory and that we are not part of Australia.

For those reasons, I believe that we need to develop a constitution. Statehood is further down the line. However, we need to consider our part as Australians. You have the right and the ability to leave here and live in some other part of Australia. Other people may come and go. However, the bottom line is that this land mass called the Northern Territory is not going to depart. There will always be people here. I disagree with Steve who says that you have to contribute, that you need to be heard. I do not see it that way. I think you have a marvellous opportunity, a once-in-a-lifetime opportunity, that will never be afforded any other generation, to contribute to something that is meaningful to Australia - not to your own lives because that is fairly transitory. You have an opportunity to contribute to Australia generally. As human beings, you are being afforded an opportunity that in the future will not be afforded to anybody else. It has not been afforded to anybody since the states were first formed at the turn of the century. It will not be afforded to anybody else in the future. You are being given an opportunity. If you do not accept that opportunity, you are fools or you are scared. It is one of the two. You are either cowardly or you are dunces. That is something that I cannot accept in any human being. That is why it is not a matter of asking people what they can contribute. I think you have an opportunity to make a contribution to this country and you are ridiculous if you do not make it.

Mr HATTON: Thanks, Dan. Dan has made a couple of very valid points there. Rick, would you like to make a couple of additional comments?

Mr SETTER: I think it is important to reflect back on the history of the Northern Territory when one talks about a constitution for the Territory. We should cast our minds back to the 1820s when this area of Australia was first taken under the umbrella of the colony of New South Wales. It was not until the 1860s that it was passed over to South Australia and administered from Adelaide as the Northern Territory of South Australia. That continued until 1911 when South Australia put it into the too hard basket. The only access to the Northern Territory was by boat around half Australia or by camel train or horseback up through the Centre. It was an horrendous business either way. Thus, in 1911, it was passed over to the Commonwealth of Australia.

Mr HATTON: At the price of a railway line that we never got.

Mr SETTER: Sure. That is where we have been ever since. I will not go into detail about the political history of the Northern Territory since that time but it was not until 1974 that we had our first fully-elected Legislative Assembly. During all that time, the Territory had been under the direct or indirect control of the bureaucrats in Canberra. Because of the agreement that Nabalco has with the Commonwealth government, an agreement which was put in place before self-government, there is a unique situation here. The Northern Territory government's powers and responsibilities in this area are fairly limited because we are still locked into this Commonwealth agreement which was never repatriated to the Northern Territory government.

It was not until 1978 that we achieved self-government. Thus, it has been a long and tortuous path to arrive at where we

are today. However, since 1974, and more particularly since 1978, the Northern Territory has really come into its own. We still have an awful long way to go but you have seen considerable development in this place since that time. The main reason for that is because we have had a fully-elected Legislative Assembly, consisting of people who live in the Northern Territory and who are responsible to their constituents whom they see almost every day of the week because they live in the same communities. That is when the right decisions are made for the people of the Northern Territory. In other words, you have your own elected representatives representing you in the parliament or on the council and they are accountable to you because they will have to front up next time for re-election. You can lobby them and have an influence on their decision-making. That was not the case in the old situation.

We believe the time is now right for us to develop a constitution. Steve told you earlier all the reasons why we should have such a constitution. I will not go into those again but let us look at the Northern Territory in relation to the Commonwealth and the rest of the states. As you all know, we have the Commonwealth government as an umbrella over all the existing states. That was established in 1901 and, at that time, all of those states had their own constitutions in place. Most of them had had a constitution for quite a number of years. The Australian Constitution came into being in 1901 and therefore it is almost 90 years since anybody has developed a constitution in this country. Times have changed because, as Steve rightly pointed out, back in those days, politicians got together and it took them 13 years to put the Australian Constitution together. It was done by politicians and it took even them a long time.

This is the first time in this country where the people have been consulted on this matter. We have now visited more than 40 communities throughout the Northern Territory - some of them twice - and spoken at meetings such as this. We will come back and talk to you once more because we want to give everybody ample opportunity to have input into this constitution. As I said a moment ago, times have changed. It would be very simple for us to sit down and write a constitution on your behalf. We could do it. We have obtained legal advice. It has taken us 3 years to put together that document and a couple of others. I refer, of course, to the 'Discussion Paper on a Proposed New State Constitution for the Northern Territory'. It contains a range of options which we have debated over the last 3 years. We could do it but there are many other issues that were not around in 1901 and they are issues that we believe you should be consulted about.

That is why we are here. We are not here to tell you how it should be done. We are here to explain to you what it is all about and to seek your input. There is a whole range of issues. We would like you to read these various documents so that, when we come back, you will be able to have your say. It is very important. You owe it to yourself, to your children and to your grandchildren to ensure that you grab the opportunity with both hands and have your say.

Mr HATTON: Thanks, Rick. We have done enough talking to you about this. We are here to explain why we are coming around to talk to you now. We really do not expect people to have been studying this material in detail and be ready to give us detailed submissions. However, if do you have any thoughts, do not hesitate to tell us. Basically, however, we are here to ask you if you would like know more about this task. Ask about anything that you are unsure about. What is a constitution? What sort of things can go into it? What do you think? Are there any questions that you might have or points you would like to make? We would like to answer your questions. It is hard for us to try to second-guess what you might want to know, but we really are keen to listen. It is open to you to raise anything you wish.

Ms MAURER: How long is it likely to take?

Mr HATTON: We were hoping to return here to receive submissions towards the end of this year. That may not be long enough. We may need to do it early next year or perhaps 9 months from now. The Christmas period is pretty hopeless for such a visit. Basically, most of December and January are out because everyone switches off and the wet season affects our ability to visit some communities. We were hoping to visit a number of places in October/November. Apart from that, it will be February, March, April next year. At the moment, we are supposed to be preparing a report to the Assembly by April next year. However, we were supposed to provide a report by last year and the year before. We keep obtaining extensions of time as we come to realise the depth of work that must go into this job. There is no time frame. We are not going to rush it.

If things run smoothly, it might take 3 to 5 years to have a constitution written. However, given some of the issues that are arising, I do not think it will go quite that smoothly. You have to think about the Northern Territory community in totality, and that includes the Aboriginal people. They have some very serious and important concerns about ensuring protection for their land rights, sacred sites, language and law and culture. Those are fundamentally important things to the Aboriginal people. I know that because I have spoken with many Aboriginal communities. I know that there are many people who do not understand what that means. People in the white community are saying that they want equality with

Aboriginal people because they believe that non-Aboriginal people are more equal than non-Aboriginal people in some respects, and that is a valid point to make. When I go to Aboriginal communities, the people there say that they want equality. They say that they have inequality in terms of health, education, housing, water, job opportunities and a future for their kids. I think it will be very interesting in this process to see the communities sitting down together and putting their views to each other. If people have the persistence to talk it through, you might be surprised to find that what everybody is asking for is equality. Perhaps if they start listening to what the other side is saying, they will find a way to proceed side by side in equality. If the process works properly, we can break through some of the serious concerns that exist in both the Aboriginal and non-Aboriginal communities. With understanding, there will come mutual respect. That is why it will not be a quick process.

Mr STIRLING: Steve, the last time you were out here, I remember there was something about the convention either being elected or nominated but the constitution itself ... (Inaudible).

Mr HATTON: There is a discussion paper which was also available last year. We have not taken that any further. We are not prepared to establish a convention until we have taken submissions from the community or to make a recommendation until we have done that. As Rick said, we could sit down and write some ideas. I can guarantee that, no matter what we put together, the people would say that we had rigged it somehow to come up with the result we want. I am not going to give you that opportunity. I am asking you to tell us how you think it should be put together, whether it should be elected or appointed from sectional groups or regions or whatever. Give us some ideas. They will go on the public record so that everyone can see what you are saying - just as tonight's meeting is being recorded. I am not prepared even to put forward my ideas. I want you to think about it and, when we come back, tell us what you think. It does not matter how way out you might think your ideas are, we would rather hear them. Come up with some ideas because there will be groups whom we might not think about. I am saying the same thing to every community.

Mr FARLEY: Can the constitution, once written, have the power to change any laws that are in force at present?

Mr HATTON: Provided they do not step outside the Australian Constitution, the people can write whatever rules they want in a constitution. That is what it is all about. For example, there has been a suggestion from Aboriginal communities that it should be written in the constitution that Aboriginal people should first be accountable to Aboriginal law in terms of punishment for offences and face European law only after the Aboriginal law has finished with them. That is pretty draconian but it is a view that has been expressed by quite a number of communities. We have had submissions that there should be a constitutionally entrenched requirement to ensure that any development that occurs cannot be damaging to the environment. We have had suggestions from a very strong lobby to have what it calls 'citizen initiated legislation'. That means that, if you can get a certain percentage of the Northern Territory electorate to sign a petition for particular legislation to be enacted, the government is compelled to put the proposal to a referendum of the people and, if they vote for it, it will become law whether the government likes it or not. That exists in some states in the United States and I think in Switzerland. That option is there. I cannot say whether I think it is good or bad. Those sorts of things are being raised.

That same group proposed a process called citizen recall. This means that, if you get a certain percentage of the populace to sign a petition, you can force the government or an individual member to go to an election. You can put such things in a constitution because the people make these laws. The only restriction is that you cannot step outside the Australian Constitution. For example, you cannot create a republic because Australia has a monarchical system of government. The rules demand that we have a monarchical system. The Governor is the Queen's representative and we cannot change that part of it.

This book discusses many of those sorts of things. Should you directly elect the head of government? Should the ministers come only from among members of parliament? There is a system in the United States where the head of government appoints ministers and they do not need to be members of parliament. The parliament has a separate role from that of the executive. Our system of government is called responsible government where the parliament is responsible to the people and the government is responsible to the parliament. In the United States, the executive government has a separate role. You could do that and it is discussed in here too. There are all sorts of ideas in here. There are some things that I like and others that I do not like. There are some things that you will like and others that you will not like. However, the options are there.

We have prepared a list of questions that are raised in this book. The questions alone take up 11 pages. Thus, it is necessary to take it a bite at a time. Take one subject at a time. For example, do you think we should have an Upper and Lower House or just one House of Parliament? There are arguments for and against that in there. Have a look at it and

form your views on it. That is pretty easy to handle, isn't it? Just take it step by step and you will be surprised that, at the end of the day, you will have a pretty good idea of what you want. That is how you should go about it so that it is not as frightening as it might have sounded when you first addressed it.

Mr LEO: I must admit that I have not attended many meetings of the committee. In fact, tonight would be the second public forum that I have attended. The big problem that the committee faces is that there is the view that politicians are trying to impose something on people, that somehow or other both sides of the House have got together and said that the people need this constitution and we will distill their views to our collective advantage as politicians. I believe that that is perhaps the public perception of what is going on. Speaking for myself, and I would be surprised if any other committee members disagreed, that is not what is going on. What is going on is that politicians have recognised that there is a vacuum in Australia and we are part of that vacuum. Perhaps, because we are politicians, we are towards the pinnacle of that vacuum.

The important thing is not that we believe that that vacuum needs to be filled. It will be filled only if you believe it needs to be filled, if you believe there needs to be change. If you do not believe there needs to be change, it will not occur. We could continue to have meetings in Nhulunbuy, a community with a population of some 4000 people that is represented tonight by some 15 or 20 souls. That vacuum will not be filled. Nothing will be done. However, when the Northern Territory's population believes that the vacuum needs to be filled and that we need a constitution, then indeed we will have one. In a sense, the committee is in the role of devil's advocate. We point out the problems and it is up to you to decide whether or not you want to fill the vacuum and whether or not you believe that there is something more to offer. That is your business. It is not ours. It is very much your business and you can indicate what you want in a constitution. It could be 2 Houses or 5 Houses. I do not care how many Houses you want in parliament. Argue it all out. It is a community decision, not a political decision. It is something you will have to do.

Mr SMITH: Steve, at what point do you decide whether you are going to get a constitution or not going to get a constitution and how do you make the decision? How do you decide the people have said that they want it?

Mr HATTON: The constitutional convention itself will make those sorts of judgments. I am uncomfortable. I would like to think I can say that these are the steps and, boom boom, it will be done. However, if we are to do this job properly, some of those sorts of decisions must be left to the convention. The convention could have a series of what I would call 'sub-referenda' where it might take a single aspect such as the structure of the parliament and obtain feedback from the people by means of perhaps a multiple choice questionnaire. It could then deal with the matter of the courts and so on. Thus, it might put a series of questions to the vote of the people to assist in developing a constitution. We will know we have got one when a good majority of the people indicates that that is the constitution that they want.

Mr McMICHAEL: Mr Chairman, I had the opportunity to be present when this committee was in Gove on 20 July 1988. Danny Leo, who is now on the committee, and I were the 2 parties from Nhulunbuy who spoke. I should refer the committee to pages 6 to 12 of the transcript of that forum wherein I identified some regional, on-the-ground difficulties that I envisaged as a Territorian. I say that because I also am Australian. However, having spent some 20-odd years in north Australia and having lived in this area almost 4 years, I have come to realise that we are a captive community. I look at the philosophy, if you like, of a very well-consulted Territory electorate that says that it wants a constitution and I then look at my status in this mining town and I say: 'If there is a constitution that gives rights to all Territorians to be equal with the other Australians who live in the states, what happens to my rights if I live in Nhulunbuy?' The answer to that, as I see it tonight, is that my rights are abrogated to a mining company which has the right to govern the town in which I live under special agreements with the Commonwealth which are 20 years old. This town does not have the very basic third tier of government in terms of formalised local government. It is a town which, cost-effectiveness or otherwise, enjoys or 'disenjoys' a wonderful set of community facilities, but which has one of the highest per capita rate bases that I am aware of in the Northern Territory.

I come down to the simple question of saying that, if we are to look at the Aboriginal land of the Northern Territory and the towns that are formed within the Aboriginal land of the Northern Territory, we have to look at this unilateral agreement. It has to be through the consultative process that your constitutional committee is about in relation to remote areas. We have to find a way whereby the Aboriginal owners who own the freehold land under the Aboriginal Land Trust are prepared to look at Europeans working in their region, albeit for government administration, health and community services, unemployment services, social welfare, airport services, customs and excise or mining companies, retailers and the like. One thing that we cannot do, even today in the Northern Territory, is to put our roots here permanently because we have no guaranteed land tenure. I therefore commend to you, gentlemen, the thought that the constitutional convention

must take up as an issue the question of acknowledging in the constitution certain fundamental elements and the rights of the Aboriginal people to retain their land and to have the control of their land. However, by means of that consultative process, it needs to be incorporated in the constitution in such a manner that it should not land-lock Europeans. They should have the right to public access corridors or the right to put their roots down and share the benefits of working with Aboriginal people in Aboriginal communities on the basis of equality.

I make the specific point that there should be public access corridors over freehold Aboriginal land to towns like Nhulunbuy which I hope one day will also be in freehold form. If we cannot get that, it should at least be leasehold in perpetuity, and that opens up a very complex and very lengthy series of consultations. It involves an off-shore principle of a mining participatory joint venture with a local mining manager and a small town of people of whom a large proportion are highly transient. What we are saying tonight will be recorded in Hansard. I may not be here next year, but I believe it is fundamental that a constitution must not overlook towns like Nhulunbuy, Jabiru and Angurugu. The fundamental basis of land tenure has to be enshrined in some form that will create equal opportunities for all people in this part of Australia for all time.

Mr HATTON: Thank you. I have no doubt that there will be debate. I have picked that up in discussions around town today and elsewhere. For example, the issue is raised in this booklet as to whether there should be a constitutionally entrenched right to local government. If there should be, what are the implications for a place like Nhulunbuy? There are things that will have a direct or potentially direct impact on your own community. I am not going to suggest anything, Tony. The point is noted and I am pleased that it is now on the record. We will proceed on that basis.

Mr FARLEY: Could the constitution have the power to change the application of European law as we know it to traditional Aboriginal society?

Mr HATTON: Yes, I think it can. As a community, you can write those provisions into a constitution and you can wrestle with the technicalities of how to achieve that result if that is what you want. Subject to the Australian Constitution, the sky is the limit. It is the people's chance to write the rules. Such an opportunity will not occur again.

Mr FARLEY: Indecipherable.

Mr LEO: The difficulty with a committee like this is that, in the popularity stakes, politicians rank somewhere between used car salesmen and dentists. We all accept that politicians are not universally popular. Individuals are the framework and the cause of whatever transpires within any state. I assume that we are about order as opposed to chaos. If you take it beyond the point that we are into order, the individual has a once-only opportunity to exert himself within this Northern Territory.

Mr WEIKE: We have representative government and then you turn around and say ...(Indecipherable) ... try to ask each one of those to have input into a constitution ...

Mr LEO: It won't work.

Mr WEIKE: Inaudible.

Mr HATTON: We cannot get 160 000 people all sitting in the same room at the same time.

Mr WEIKE: That is why we have representative government.

Mr HATTON: That is right. In a sense, this is a process that you go through from that. Your input comes from making submissions to this committee or to the constitutional convention at some stage in the next year or so. Those views will be considered. There is a potential for you to participate directly in a constitutional convention or to have a say in its composition so that there is someone on it whom you believe will honestly reflect the views of your community and provide feedback to you. The convention will be a representative body. With a population of 170 000, there is a real opportunity for the individual to have a say - far more so than if we had a population of a million people.

Mr STIRLING: Does that mean there could be a problem of lobby groups getting together and having an undue influence on what is to happen?

Mr HATTON: That could be the case. That is why our committee has gone to great lengths to contact the broad

community rather than merely calling meetings and asking for submissions because that is the mechanism whereby the organised interest groups will come forward with their views. We are trying to go beyond that to consult with the broad, so-called silent majority of citizens.

Mr WEIKE: Do they exist though?

Mr HATTON: Well, whether they do or they don't, we are trying to find out.

Mr WEIKE: You are suggesting that they go back to a sort of multiple referendum basis.

Mr HATTON: Maybe.

Mr WEIKE: After the first referendum, it would probably be a disaster. After the tenth one, you probably wouldn't get anyone turning up to the polling booths. Nationally, referenda are not very successful either.

Mr LEO: So be it. That will be a decision of the populace.

Mr SETTER: I think you will find that many of the issues will be sorted out in the constitutional convention. There will be some that cannot be sorted out there and they should be put to the people. Thus, there might be one referendum which offers options on certain key matters. Certainly, you would not have a referendum that involved a hundred questions or something like that.

Mr HATTON: I agree. Personally, I think that the mechanical clauses to establish the basic structures of the parliament, the judiciary and the executive will come together reasonably quickly. Those are not major contentious issues. But, when you start dealing with issues of the possible entrenchment of human rights or the maintenance of the concept of common law and the interrelationship between Aboriginal people and non-Aboriginal people etc, these will be significant and emotive issues. These issues will drag the debate out into the open and I will be amazed if the people do not take a significant interest in them. They might not become overly-enthralled about whether there should be a 4- or 5-year term for parliament but they might have some very significant views on the level of constitutional entrenchment of land rights.

Mr WEIKE: There were some quite basic issues brought forward in the last referendum.

Mr HATTON: Yes. However, the problem with the last referendum was that there were number of questions and within each question there were a multiplicity of issues. That is why it is my personal suggestion that there could perhaps be a series of sub-referenda. I think that within each of the questions there were elements that the people would have voted yes for. However, if you liked 3 aspects but not the fourth, you had to take the fourth as well if you voted yes. That was the problem with the referendum last year. That is why it was doomed to failure.

Mr PERMEZEL: How and by whom will the membership of the constitutional convention be decided?

Mr HATTON: We will be making recommendations to the Legislative Assembly based on the submissions that we receive. It is proposed that we will be tabling copies of all the submissions with that report. It will be up to the parliament to determine the final structure, whether it accepts our recommendations or not, and to establish the convention.

Mr PERMEZEL: The main recommendations will come from the committee?

Mr HATTON: Yes. And we are seeking submissions on that. Are there any other issues that anyone would like to raise?

If not, I would like to take the opportunity to thank you for coming along. I know it is not necessarily the most immediately exciting subject on which a public meeting has been called. I hope that we have been able to convince you of the significance of this and that you start to become involved and tell your friends about it. If anybody would like more information or if you would like us to discuss these matters with any groups, do not hesitate to contact us. The contact number and the address are in the back of this booklet. We will do all we can to keep you informed and to provide all the information that you need to develop your ideas. Thank you again for coming along.