

## PUBLIC MEETING

**DARWIN — Wednesday 27 September 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:**

Mr Earl JAMES

Mr David SHANNON

Mr Graham NICHOLSON

representing the Baha'i Faith

Mr Max ORTMANN

representing the Small Business Association

Mr Robert TREMETHICK

Mr Richard CRESWICK

representing COGSO

NOTE: Edited transcript.

ISSUED: 9 October 1989.

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Mr HATTON: This is the Select Committee on Constitutional Development. In opening this meeting, I would like to make a couple of comments and I will seek to keep them brief. The terms of reference of our committee are set out in a publication that has been circulated widely in the community along with more detailed submissions. Principally, our committee's task is to prepare recommendations in relation to the creation of a Northern Territory constitution and, in doing so, to look at issues such as the legislative, executive and judicial powers and the methods to be adopted to have a draft new state constitution approved by or on behalf of the people of the Northern Territory. That is set out in the terms of reference of our committee.

I should point out to people who are making submissions or who have an interest in the matter that it is not our committee's job to draw up the constitution. Both sides of the Legislative Assembly have decided that the procedure to be followed in creating a Northern Territory constitution is as follows. First, our select committee will prepare or receive submissions and views from the community, engage in a community education process, attract the views of the broad community and seek to bring those together and prepare a draft constitution. That constitution will be taken to the Legislative Assembly along with an additional recommendation to establish what is known as a constitutional convention. In layman's terms, that is a large drafting committee of representative Territorians which will take our work - our draft constitution, all the submissions made to us, all the views expressed to us and all the research that we have done over the last several years - and work through it. It will accept, reject, vary or adjust our material in order to develop what would be called a proposed constitution. That is the second stage. When the convention has completed its task, its proposed constitution will be put to a referendum of the Northern Territory people. If the people accept it, it will then become the Northern Territory constitution. If the people do not accept it, then we will work through the process again and keep working until we arrive at a document that the people are prepared to support in a referendum. We would go through that same 3-stage process.

Thus, you can see that it will not be a quick job. It will not be a rushed presentation. Most importantly, it will not be a job that is done simply by politicians and lawyers with a bit of advice from the occasional academic. Our committee and the parliament are determined to ensure that the people will undertake the process of preparing this fundamentally important document and, in the end, it will be the people's law. That is our objective. That is the process that we are striving towards. We believe that, if we are able to achieve it quickly, we are talking about a 3- to 5-year time frame. That would be the case if we did not have any major problems and that is highly unlikely. Most probably, the community will have difficulties debating what sort of society it wants for the future. That is your challenge. It is an opportunity not only to write the constitution, but also to deal with the realities of the Northern Territory and set the framework and the direction for the future society that we will leave for our children and grandchildren. That is the task we have before us. We should take the time and put the effort in to meet our obligations to the future.

Having said those few words, I am very pleased to note that we have a number of people here who propose to make submissions and a number of people who have shown significant interest in this subject. We may be set up in a formal way, but I hope the proceedings will not be treated in that way. The committee would like people to feel comfortable and express their views freely and have them recorded. I can assure you that everything you say will be recorded and used by us in the preparation of our reports to the Assembly. It will also be available for the consideration of the constitutional convention. Therefore, if you do not think that we have put enough emphasis on what you have to say, a second bite of the cherry will be available later. That is part of the process of ensuring that the people will write this constitution.

Before proceeding to the first submission, I would like to introduce my committee. On the right, we have Dan Leo, the member for Nhulunbuy, Col Firmin, the member for Ludmilla, and Wes Lanhupuy, the member for Arnhem. Mr Gray is the executive officer of our committee and Mr Nicholson is wearing 2 hats today. He is our legal adviser on constitutional development and, later this morning, he will be presenting a submission on behalf of the Baha'i Faith. He is the man whom we turn to when we require legal advice on constitutional matters.

I will now ask Mr Earl James to come forward. This is for the purpose of recording your comments, Earl, not to make you feel as if you are being put on trial.

Mr JAMES: I look like a witness.

Mr HATTON: I feel particularly uncomfortable in this setting too.

Mr JAMES: When Vern told me this morning that I was giving evidence, I thought: 'Hello, hello'.

Mr FIRMIN: When obtaining information from people on Aboriginal communities, we have sat on the grass under the trees. Nevertheless, it was still recorded for Hansard. This is a little more comfortable.

Mr JAMES: I think I might have been more comfortable under the trees.

Mr FIRMIN: Mr Chairman, before we proceed, I would like to point out for the benefit of people in the gallery that there are documents on the table by the door, including a shortened description of the work of the committee, that may be of assistance to them.

Mr JAMES: Mr Chairman, thank you very much for this opportunity to speak to the committee. By way of introduction and in order to establish some bona fides and provide some evidence of my qualification to make a submission on this subject, I propose to tell you briefly about my association and my wife's association with the Northern Territory. I hope you will accept that. I came to the Territory in 1952, at the age of 21, and except for a short period in Melbourne, I have lived in the Territory for 37 years. My wife claims to be a true Territorian, having arrived here at the age of 2 in 1937. The mathematicians among you may be able to work something out from that.

Mr HATTON: She will greatly appreciate that, I have no doubt.

Mr JAMES: We have 4 sons, 2 of whom were born in the Territory and all of whom have lived here virtually all their life. During my 37 years in the work force of the Territory, I have worked in government service and in private industry. I served under a federal administration as a public servant for 15 years. Of my subsequent 21 years in private industry, the first 10 were served under the same constraints of rule from Canberra. I am a land surveyor by profession. I have travelled widely throughout the Territory during the course of my professional career. I have an appreciation of at least some of the problems faced by miners and pastoralists. I have served as an elected member in local government and, as a result, I have an appreciation of problems facing those organisations.

During my term as an alderman of the Darwin City Council, my wife and I travelled to Alaska where we discovered the remarkable similarities that exist between that former territory and this one in which we live. We took an avid interest in the Alaskans' successful fight for statehood and, on our return to Darwin, I was successful in reviving the council's interest in the Darwin Anchorage sister city relationship.

My profession is concerned with land, the efficient administration of land and the appropriate planning for the use of the land. These are matters which must be under the control of those who are closely associated with them and not by those who rarely if ever see the land they purport to administer. We have seen Darwin go from a frontier town of 5000 people to a beautiful city of 75 000 and we have seen the rest of the Territory grow with it. My wife and I have a stake in this country and so do our children. We have experienced the frustrations of total control from afar. We have experienced the difficulties associated with partial self-government and we believe the time has come for total local control. We do not profess, of course, to know all about statehood or the problems associated with the transfer of powers. However, we have read the various discussion papers provided by your committee and the ministerial statement on the subject promulgated in 1986. We wish to take this opportunity to comment on various aspects of those papers.

We are in total agreement with the Chief Minister's view that the Territory has a legitimate claim to statehood and we would suggest the same would apply to any other territory of similar size and population were one to exist. We agree that the present constitutional disadvantages to the Territory are no longer acceptable because the expressed policy of the federal government is to treat the Territory as a state anyway, as I understand it is doing now. Under these circumstances, we believe Territorians should have full and equal status to that of the people in the existing states - which I will refer to from here on as 'the other 6' - in much the same way as the Alaskans referred to the American mainland states as 'the lower 48'. We believe that this equal status should come sooner rather than later. Our view is based more on philosophical reasons rather than on specific argument about the rights or wrongs of any particular subject or any particular constitutional disadvantage.

We have studied the long list of perceived disadvantages published in the ministerial statement and we have sympathy with most of them. We believe it to be iniquitous that such a long list of differences between the rights of people in the Territory and those of the people in the other 6 should exist. We believe that all Territorians should fight to have the situation reversed. By the same token, we urge caution against the dogmatic adherence to principles which no federal government of whichever persuasion will be prepared to accept. For example, Aboriginal affairs and Aboriginal land rights is an area over which the federal government is adamant that it should have control in all the states. It is an argument which is hard to dispute and is one which the majority of Australians would probably support. It would be senseless to have our move for statehood defeated through a belligerent attitude to compromise on such subjects.

With regard to the options for a grant of statehood, let me now move to those open to the Territory and, in particular, to make some comment on the options published in Information Paper No 1. As stated in the paper, there are 2 ways in which a new state can be created. One is by act of the Commonwealth parliament under section 121 of the Australian Constitution and the other is by a national referendum under section 128. The select committee's preferred option is for the section 121 method. Although we realise that the method used will be decided by the federal government, we believe the Territory government should push for a national referendum on the subject and that is at odds with the select committee's

view. It may be that our understanding of the system is not quite right but, from what we have read, we believe that only through a national referendum will the Territory gain equal rights with the other 6.

Acceptance of the section 121 method should be the fall back position only after hard negotiation in favour of a national referendum. The people of Australia are not stupid. If sufficient argument is placed before them to show that there is no justice in the grant of unequal rights, we are sure that the spirit of giving everyone a fair go will prevail. However, before any substantive negotiations with the federal government are likely to succeed, it is essential to convince it that the people of the Territory share the desire for statehood. Whether or not Territorians share this desire can be determined only by asking them. We therefore concur with the select committee's view that a Territory referendum on the subject be held within a reasonable time.

For the same reasons that we believe Australians will support a call for constitutional statehood, we believe Territorians will do likewise. All that is required for success is an appropriate education program. There is no doubt in our minds that the present program of informing Territorians about the subject is totally inadequate. There is a desperate need for a dedicated campaign of information exchange using every medium possible, coordinated by a professional organisation over a short period of time, leading up to a Territory-wide plebiscite. If such a plebiscite should fail, there would be little point in continuing in the matter. The thought of such a disaster should be sufficient incentive to those controlling the exercise to ensure an advertising campaign of the highest quality. We are convinced that, given the proper information, Territorians are bound to vote for statehood.

We understand that work by the select committee on the preparation of a draft state constitution is proceeding. We believe it is essential that the plebiscite already referred to should be held soon to ensure that this work is not rendered superfluous. The action proposed by the committee to finalise the constitution seems to us to be appropriate. The creation of a constitutional convention to consider the draft and to produce the constitution in its final form is the way the matter was handled by Hawaii and Alaska and we see no reason to depart from that procedure. The ratification of the final constitution by the people of the Territory is absolutely essential.

Whichever method is finally decided on for the granting of statehood, whether by means of section 121 or section 128 procedures, the Territory will need the support of the public at large - that is, throughout Australia. We will need the support of the politicians in the other 6. To gain public support, it is our view that it is essential to first gain the support of the media, especially the support of prominent newspapers, both here and in the other 6. Let me emphasise this point, Mr Chairman, by quoting from the book 'Alaska's Quest for Statehood' by Robert Frederick. He says:

By the early 1950s, 3 of the territory's newspapers were pressing for statehood. While most Alaskan papers covered the campaign, it was the 'Times', the 'Chronicle' and the 'News Miner' which championed statehood.

He goes on:

Colonel Carol Glynis, in an objective study, titled 'Alaska's Press and the Battle for Statehood', concluded that statehood was attained because Alaska's newspaper publishers provided the stimulus and kept the public aroused until the battle was won.

We believe that we have to do the same. What those quotations do not tell us is that the Alaskan cause was also taken up by such influential mainland papers as the 'Washington Post', the 'Chicago Tribune', the 'Seattle Post' and the 'Nashville Banner'. In our view, it is essential that Australia's news magnates be convinced of our need.

I turn now to the constitutional convention itself, Mr Chairman. As stated in the discussion paper on representation in the constitutional convention, there is a need to agree on the way that the membership of the convention should be determined. The committee suggests 3 possible methods: wholly-elected, wholly-nominated or a mixture of both. The advantages of a wholly-elected system, in my view, are self-evident. However, I do not believe the disadvantages of such a system indicated in the select committee's paper are entirely valid. To say that the exercise would be costly and time-consuming is, under the circumstances, nonsense. The whole operation will be costly and time-consuming. In our view, to talk of low turn-out, deficiencies in representation and unsuitable candidates is negative thinking. None of those problems will arise if the community is sufficiently motivated by the publicity given to the subject. The one really important disadvantage to a wholly-elected convention is the lack of opportunity for interest groups, and I suggest members of parliament are in the interest group category, as are Aborigines and others.

On the other hand, a wholly-nominated convention has fewer advantages, even though it allows for the representation of

minor groups, and even more disadvantages. Whilst it allows for a deliberative choice of candidates, it certainly does not ensure participation by the best-suited and best-qualified representatives as suggested in your paper. Such a qualification is a matter of opinion. The real disadvantage is that a wholly-nominated convention would lack legitimacy and certainly would be criticised as unrepresentative. We believe that representation in a Territory constitutional convention should be determined using option 3: a mixture of elected and nominated delegates.

Having said that, it remains to comment on the election system to be used and on the nominating process. In the Alaskan experience, all delegates were elected but 11 of the 55 delegates were elected at large by the whole of the territory. Of the remaining 48, 15 were elected from newly-created, single-delegate districts which bore no significant relation to population distribution thus giving rural areas the opportunity to be adequately represented. The remaining 33 were elected from the existing electoral subdivisions which had always been dominated by urban voters and urban candidates. The select committee has suggested that, in an election with single-member constituencies, minority interests do not fare well. We suggest that this deficiency can be overcome, at least partially, by substituting nominated members for the 11 that the Alaskans elected from the territory at large. The election of the remaining 44 should be carried out in a manner which would ensure that rural interests are seen to obtain an equitable representation. The multi-member electorates suggested by the select committee may achieve that result. I am not an expert. However, it may be that consideration should be given to a number of new single-delegate districts together with the existing electoral districts as in the Alaskan experience.

Whatever is decided in this regard, the result to be achieved is epitomised in the words of Vic Fisher in his treatise 'Alaska's Constitutional Convention'. He says: 'Even though limited, the re-districting produced a legislative body that was the most representative group of popularly-elected officials in Alaska. This factor added to the good feeling about the work of the convention during its progress and to the ultimate acceptance of the constitution by the voters'. The latter is the important thing.

The select committee has sought expressions of interest from parties desirous of representation in the convention. It is our submission that politicians per se should have no particular right to nomination. However, we believe that both the government and the opposition should be represented, as should the Aborigines. If the word 'parties' includes individuals, I would advise that I would deem it an honour to take part in the deliberations of such a convention myself either as a representative of the surveying and construction industry or in my personal capacity as a Territorian experienced in matters relating to the land.

I turn now to the operation of the convention. On pages 6 and 7 of the select committee's paper on representation, subparagraph (v) describes a possible form in which the convention could operate. Unfortunately, in my view, that text is written in the present tense and gives the impression that a decision in this matter has been taken already. We hope that this is not the case because we believe the form proposed there is not appropriate. However, we note that the committee has asked for public comment on this matter.

In the form proposed in the paper, there is too much emphasis placed on specialist membership and the participation of members of the Legislative Assembly. I have already commented on the role that politicians should play in the matter. We believe that, generally, they should take their chances along with the rest of those who offer their services. As for specialist membership, we believe there will be no end of specialists offering their services for membership, both as nominees and for election. We believe the form and method of operation of the convention should be decided by the convention itself. It is the prerogative of the convention to decide whether it makes its decisions in plenary session or with the assistance of committees. These matters should not be forced on it before it comes into existence. It can be fairly said that a constitutional convention is not a legislative body. Fisher puts its function quite clearly when he says: 'The most distinctive feature is that its end product' - that is, the constitution - 'must be a unified instrument dealing with broad policies and structural arrangements in a consistent, clear and logical manner'. We agree with Fisher when he says that the rules of procedure of a constitutional convention 'need to be designed to coordinate the work of all the delegates and all committees towards producing a unified whole and this can only be done when the convention decides upon those rules itself'. Rules and procedures should not be imposed on the convention.

Of course, this does not mean that the convention cannot be given some guidelines. The Alaskan convention drew on the experience of Hawaii, Missouri and New Jersey and a set of draft rules was devised by the Alaskan public administration for consideration by the convention. We would hope that the same would be done here. In this regard, Fisher's treatise on the Alaskan convention contains a wealth of information which I would think must be compulsory reading for anyone making recommendations about the form and method of operation of this Territory's constitutional convention. We recommend that guidelines for the form and method of operation of the Territory's constitutional convention be drawn up

using the successful Alaskan convention as a model and we offer the following comments on the subject.

The first prerequisite for such a convention is that it should be free from politics. Of the part that politics had to play in the Alaskan experience, Frederick had this to say: 'When it came to the people's right to statehood, law, justice and fair play were anticipated by the citizens. In these matters, a concern about which political party controls the Senate or the House should not be the question, yet for a time it was and Alaska paid the price with statehood's delay'. We would hope that similar things do not happen here.

In our view, the second prerequisite is that all of the convention's deliberations should be open to public scrutiny. The public has a right to know why the delegates made a particular decision and should not have to suffer the indignity of being presented with a *fait accompli*. Whilst many believe that coherent debate can be stifled by open proceedings, the benefit that can be achieved by public feedback via the media makes such a process obligatory. The Alaskan convention accepted a compromise on this issue and its rules provided for committees to invite the public to attend. In our view, that arrangement is not particularly desirable although Fisher does say of the Alaskan convention that the rules finally adopted did nothing to hinder an open convention.

Finally on this subject, I would urge the employment of adequate staff and consultants to assist the convention in its task. The select committee has posed the question as to whether outsiders should be eligible for membership of the convention. We would say that no one from outside the Territory should have the right to make decisions on the content of a constitution for the Territory. However, we certainly believe that learned constitutional lawyers and academics from the other 6 should be employed as consultants to the convention. An examination of Fisher's text will show that a large number of consultants is desirable and also that not all of them would be required for the entire convention. In fact, only 1, the representative of the public administration service, was employed for the whole period of the Alaskan convention.

In conclusion, I would like to comment on a few of the subjects suggested by the select committee for inclusion in a draft constitution. We agree wholeheartedly with the principle of a single House parliament and with the suggestion that the number of members should be stated in ordinary legislation. However, we believe that, somehow or other, the constitution should contain a formula by which the number is determined. While the select committee recommends the principle of one person, one vote, we are of the opinion that there should be a preferential voting system and the system should be a voluntary one.

We favour the constitutional recognition of local government in accordance with the terms proposed by the Northern Territory Local Government Association and we believe the rights of Aborigines as opposed to other ethnic groups should be entrenched in the constitution, but not in the form of a treaty or bill of rights. Lastly, we believe that human rights is not an issue that needs to be enshrined in the constitution.

Having said all this, I wish to thank the select committee for giving us the opportunity to express our opinions, and they are our opinions not just mine. We look forward to a successful conclusion to the fight for equality with the other 6 and we wish the committee success in its further deliberations. Thank you, Mr Chairman.

Mr HATTON: Thank you, Mr James. That was a very comprehensive and excellent submission. I thank you very much and congratulate you on it. It is not the result of 5 minutes thought. Obviously, it has been a matter of some serious debate and I can appreciate that because I know the close interest that both you and your wife have in this subject.

Mr JAMES: I do have a copy.

Mr HATTON: Even though your comments have been recorded, I would appreciate a copy.

I have a couple of questions, but perhaps other members of the committee might have questions that they would like to ask first.

Mr LEO: Has your view of the value of a unicameral system, as to opposed to having a bicameral parliament and a House of review, been altered at all as a result of the recommendations of the Fitzgerald Inquiry?

Mr JAMES: No. To be quite candid, I think it is a waste of time and money to have 2 Houses deliberating on the same subject

Mr LEO: You do not see any need for a House of review?

Mr JAMES: No. If you elect a government to govern, it is my view that that government should have the right to do it without interference from a House of review.

Mr FIRMIN: Mr James, could you give me the reference to Fisher's treatise?

Mr JAMES: I have a copy of it at home. I might add that it is an autographed copy.

Mr HATTON: The parliamentary library has a copy which I have on loan at the moment.

Mr JAMES: I can provide one on loan to you, Colin.

Mr FIRMIN: Thank you very much.

I wanted to refer to your comment about a referendum after an education program. No doubt, you are well aware of the difficulties in trying to convince some people that statehood is absolutely necessary, particularly people down south. You spoke about the necessity to ensure that the education campaign is a dedicated campaign. What sort of campaign do you consider that we would need to undertake?

Mr JAMES: I do not know how long it would take but I do know that it has to be professionally coordinated. This morning, I was telling someone who has been in the Territory longer than I have that I was coming to this meeting to present a submission today. He is a strong member of one of the political parties. Even he said: 'What advantage will we get out of this statehood business?' People simply do not know.

A ministerial statement contained 4 or 5 pages of disadvantages that Territorians suffer in comparison to people in the states. We know that, if we get statehood, we will not get more money, but we will get more rights. One basic one is that we do not have a vote in any referendum. Why not? God knows, we are Australians, aren't we? Those disadvantages are the things which will win the faith of the Northern Territory public, not any promise of monetary gain from the federal government or anything like that. Those disadvantages must be stressed to the people in a forceful manner over probably a 6-month period. It must be done by a professional organisation which can coordinate the process in much the same way as Hogan coordinates the advertising of Australia in the United States. It needs that sort of campaign.

Mr HATTON: I might make one brief comment. Firstly, we do get a vote in the referendum, but we are not counted as a separate identity from the states. The referendum in 1974, in which we did not have a vote, gave us the right to vote. The last time they gave us the right to vote in a referendum related to matters that would have no effect on us. Those are the sorts of complications that we have.

We agree with your view that there will be no financial bonanza from statehood. However, it is equally important to explain to the community that no financial disadvantages will flow from it because we are funded already exactly as if we were a state.

Mr FIRMIN: Mr James, I was very interested in some of the comments you made about the Alaskan experience, particularly the options for the constitutional convention. I missed out on some of your comments because I was writing something else. I did not quite catch your suggestions about the composition of the constitutional convention in respect of the representation of the total area.

Mr JAMES: I suggest that you have perhaps 10 or 11 nominated members representing interest groups. Alaska had 55 members and I think this committee has used a similar figure somewhere in this paper. Thus, with the balance of 44, you should make some attempt to ensure in some way that the rural interests are represented adequately. Alaska did it by dividing the territory into 7 or 8 divisions that took no account of population but rather the country ...

Mr FIRMIN: Basically, geographical areas?

Mr JAMES: Yes. One delegate was elected from each of those 7 or 8 divisions and the balance were elected from the existing electorates. That gave adequate representation to both the rural and urban communities. Whatever system is used, you need to ensure that you have adequate representation from both sectors. That is all that I am saying really. One way of doing it would be to examine what the Alaskans did and find some way of doing something similar.

Mr FIRMIN: Thank you. I was interested in your comment that it was important to ensure separate recognition of

Aborigines in the constitution but not by means of a treaty. We have some very similar views on that. There is support in this committee for that proposition. However, one of the hardest problems that we will face will be convincing people that we are genuinely interested in that sort of response. At the Commonwealth Parliamentary Association Pacific Regional Meeting last week in Kiribati, the constitutional recognition of the rights of people was raised by a delegate from Victoria. In answer to a question raised by the Cook Islands in respect of sovereignty and constitutions, he responded that the Northern Territory had been pushing for constitutional development for some time, but ought not be granted statehood because it is too small, it does not recognise the rights of its people correctly and it does not do this that and the other. This was from a politician from Victoria who ought to have had much more knowledge of the way in which we are operating in the Territory and have been for some considerable time. I make that comment in the context of the need to educate people.

Mr JAMES: Again, I suggested that one of the things that the Territory will have to do is to influence southern politicians as well as the southern people. We need to find some way of overcoming the ignorant attitude of people like that. I do not know what the answer is. I do not purport to be a miracle man. I am simply indicating what I believe to be the problem that you will have to face.

Mr HATTON: I hope that it is a problem that we, as a community, will face.

Mr JAMES: Exactly.

Mr LANHUPUY: During your trip to Alaska, Mr James, did you you have any opportunity to discuss matters relating to statehood with Eskimo people?

Mr JAMES: Unfortunately, I did not have the opportunity. My knowledge of their situation is virtually nil, other than to say that they have land rights similar to those that Aborigines have here. A friend of mine, whom we visited, has a company in which a group of Eskimos - the equivalent, I guess, of one of the smaller land councils here - has a half interest. I am sorry, but I do not know how that melding is arranged.

Mr LANHUPUY: The reason why I asked is that it would have been interesting to learn about their approach.

Mr JAMES: Yes, I agree that it would be interesting to see what is contained in their constitution. However, I am afraid that I cannot help you in that regard.

Mr HATTON: I would think that there would be similar circumstances with the Polynesian Hawaiians.

Mr JAMES: Yes. I mentioned the Aborigines particularly. I do not believe any other ethnic group needs to be specifically mentioned. However, the Aborigines do need to be mentioned and I am pleased to note that the committee thinks along similar lines. What you say about this in the constitution is a different matter. I do not think it needs to be gone into in great depth. However, if you have insufficient detail and the wording is loose, all sorts of interpretations can be made in the future. Thus, it will involve a complex drafting task.

Mr HATTON: I believe that we and the constitutional convention will have some very interesting debates on that subject. In my opening remarks, I referred to the need for the Northern Territory to come to terms with its own reality. In the process of debating these issues and writing a constitution, I believe the Territory community will be forced to come to terms with the society in which we live. The process of making the constitution is at least as important as the end result in that it will provide a vehicle which will enable us to determine how we can develop a common future that is based on mutual respect among the various cultures that make up the Northern Territory. That is an important element of the community involvement in this constitutional development.

I have a couple of questions. You expressed a preference for the section 128 national referendum option. Your view is that, by that course, we will obtain equal rights whereas otherwise we may not.

Mr JAMES: In my ignorance, that is what I assume.

Mr HATTON: I am not certain whether that in fact may be the case. As you know, a section 128 referendum is similar to a referendum to amend the Australian Constitution. First, there would need to be an act of the federal parliament to hold the referendum. As it is the terms of that act of parliament that would be put to a vote of the people, it is possible that the referendum could relate to the creation of a new state with limited powers. That is the reason why the committee opted for the section 121 method. Because of other sections of the constitution and the fact that it will affect the relative voting



power of the existing states, it may require a majority in every state in Australia for the referendum to be carried. That is a far stricter requirement than any amendment of the constitution would require. Those were the types of reasons. We have to go through the section 121 process to begin with anyway.

Mr JAMES: If what you are saying is correct, section 121 is all you need. It is simply my view that ...

Mr Hatton: What you are saying is that whatever we come up with, we must stand up and fight for equal rights. I think that is the point you are making.

Mr JAMES: That is right. I believe that the people of Australia, as distinct from the politicians in Canberra, are more likely to say yes if asked and if they are given sufficient preliminary publicity on the subject.

Mr HATTON: Fine. Do members have any other questions to put to Mr James?

Mr FIRMIN: No, but I would like to commend Mr James, and his wife, for the enormous amount of work which they have obviously put into the submission, and to thank him for attending today. That is probably one of the most comprehensive submissions that the committee has received in its long search for truth.

Mr HATTON: I look forward to your continuing and valued involvement, Earl.

Mr HATTON: I now ask Mr David Shannon to present his submission.

Mr SHANNON: I cannot imagine a greater contrast than that between myself and the previous speaker. I have only been here since November last year. Also, I have made a very detailed study of constitutions and control and management structures as they apply to constitutions. Do you have a copy of my submission?

Mr HATTON: Yes, we do.

Mr FIRMIN: Mr Chairman, perhaps I might ask Mr Shannon if he could give us some idea of his current employment so that we can get some idea of the context.

Mr SHANNON: I am presently employed as a school assistant at Darwin High School.

Mr FIRMIN: A school assistant?

Mr SHANNON: Yes, it is a varied job.

Mr FIRMIN: Thank you. Sorry, Mr Chairman.

Mr HATTON: That is all right. That information is just for reference purposes in the future, in case somebody wants to follow it up.

Mr SHANNON: Certainly. I was not sure of the format for this meeting.

Mr HATTON: We are trying not to be too formal. You can be as formal as you like or as informal as you like.

Mr SHANNON: Right. The letter referred to a discussion and I presumed that you would have questions to ask.

Mr HATTON: That is fine too. If anybody feels the desire to just come and ask questions or to learn something, that is as important as anything else. We are a long way from the end of the road. We are only at the beginning and, if we can use these sessions to encourage people, so that they can come back to us later when they have thought about things in more detail, or write to us for more information, that is part of the process of developing awareness of the issues. There will be more hearings next year and the approach is very open.

Mr SHANNON: Okay. First of all, do any committee members have any questions on the basic information which I have already presented?

Mr FIRMIN: I have one question. On page 1 of your submission, you state that, if the Northern Territory becomes a state, the quality of life will decrease by 17% and the standard of living by 3% against that which we currently enjoy. Can you

explain how you arrive at those percentages and what it really means?

Mr SHANNON: It means that the pattern in the states is such that, given a complex and not particularly effective structure of government, they encourage types of industrial development and so forth which are not particularly relevant to the quality of life of people. Are you with me so far?

Mr FIRMIN: No, not yet.

Mr SHANNON: Did you see the programs on ABC television a couple of months ago which showed a pattern of coastal developments occupying over 80% of the seaboard? Places like Runaway Bay and so on. That is news to you, I take it.

Mr FIRMIN: If you are asking me whether I saw the program, the answer, unfortunately, is no.

Mr HATTON: I am aware of the debates in respect of coastal development and environmental issues.

Mr SHANNON: I have yet to see any arguments that that sort of development produces noticeable increases in the standard of living in any state.

Mr FIRMIN: Sorry, I am not trying to be antagonistic but my problem is that I really do not understand what you are trying to tell us in your submission. You say that the performance of governments is measured per person on a standard of living quotient based on an American dollar value and you give an example which involves India and Australia. You divide the GDP of each country by its population to produce a figure of \$286.32 per capita for the standard of living in India compared with a figure of \$10 500 per capita for Australia, and you state that on those figures, Australia's standard of living is 36.91 times that of India's. I can understand that if you are just relating it in terms of the dollar value of GDP per person.

I might argue with the standard of living ratio because, in some cases, standard of living is probably not measurable simply in terms of the amount of money earned by a country divided by the population, as you would probably admit yourself. However, you go on to say that quality of life is measured by such things as the cleanliness of the environment, nutrition, education, freedom and living space per person. You then make this statement: 'Installing the same system of government as exists in the other states will reduce our standard of living by 3% and decrease the quality of living by 17%. You give no indication of how or why that occurs and that is what I cannot understand. I do not understand how that would necessarily happen.

Mr SHANNON: I expect it to happen because a government which operates on the same basis as the Queensland and New South Wales governments will inevitably increase development, in the sense of fostering heavy industry and other polluting activities. Is that clear enough? Because I expect an increase in heavy industry and development to the point of over-development, I expect the quality of life to drop.

Mr FIRMIN: What you are saying is that if we do not become a state, we will not be developing. If we do become a state, we will develop and our standard of living will therefore drop. I am still lost. I do not understand.

Mr HATTON: You have developed that argument on page 2 of your submission where you set out a series of constitutional recommendations. The early arguments are the philosophical foundation of the 24 recommendations which you have made. Would that be an accurate account of what you have done?

Mr SHANNON: Yes. The idea is ...

Mr HATTON: Perhaps, in order to assist people who are present at this hearing, you could express in your own words the philosophical foundations which have led to these recommendations.

Mr SHANNON: Okay. Strictly speaking, a government which goes to an election only once every 2 or 3 years is only accountable in the few days or weeks before the election. Because it is not particularly accountable at other times, it loses touch with the people it is supposed to be working for and makes unwise or even stupid decisions.

Mr HATTON: Or has the potential to.

Mr SHANNON: No, it does. End of story. I have yet to find an example in which it does not. In situations in which the government is continually accountable to its people, through whatever mechanism, the measures it takes are observedly

better. Switzerland, for example, has provision for referenda to be held 4 times a year. They are not necessarily held 4 times every year, but the mechanism is available to the citizens at large. One of the results is that, in the 400-odd years since that was instituted, Switzerland has changed from being one of the world's most war-torn countries to a country without wars. That situation applies simply because the feedback mechanism is in place.

If we become a state with the same structures as apply in the other states, with the same limited feedback into our system of government, we will end up making the same mistakes they make. We cannot change this situation except by having a better governing structure.

Mr HATTON: I understand what you are saying. You are suggesting that the electoral process for the formation of the parliament should occur more frequently.

Mr SHANNON: No, only that that could occur. For example, I believe that the citizenry should have a right to overrule the government.

Mr HATTON: So it is the argument of citizen recall.

Mr SHANNON: Recall in state referenda or veto legislation. It does not matter how it is done as long as the citizens can, at very short notice, change what their elected representatives are doing or dismiss those representatives.

Mr HATTON: You are arguing for the constitutional right of the citizens, through a mechanism or otherwise, to institute a referendum to make a law or to overrule a law which the parliament proposes to make or has made.

Mr SHANNON: Yes, that would be adequate.

Mr HATTON: Right. I think it is known as citizen-initiated legislation.

Mr FIRMIN: No, he is not saying legislation. He is not talking about putting legislation forward. He is talking about the right of veto over proposed legislation.

Mr HATTON: It is the same process.

Mr FIRMIN: Except that in one case the people can actually put forward their own legislation.

Mr SHANNON: It does not matter how it is done provided that, somehow, the citizens can change what you do at short notice.

Mr LEO: There would seem to be a bit of an internal contradiction when item 19 of your proposed constitution suggests that 50% of the voting population could in fact change the entire constitution. That will be one of the biggest difficulties that this committee will have to come to grips with. How is the constitution to be amended?

Mr SHANNON: This is the proposed Territory constitution?

Mr LEO: Yes.

Mr SHANNON: Did I mark an 'x' beside that, indicating that the figure could be changed without changing the result?

Mr HATTON: Yes.

Mr SHANNON: It does not matter whether the figure is 50% or more than that, as long as the figure is set and understood to be the basis for change.

Mr LEO: Yes, that will be a problem.

Mr HATTON: You suggest that you need in the order of 20% Northern Territory voters to provide the grounds for holding a referendum.

Mr SHANNON: Approximately. It could be 10% or 15%.

Mr HATTON: And if 50% are in favour of the question put at such a referendum, it shall come in effect.

Mr SHANNON: It just provides a threshold for actually taking notice of the people's view.

Mr HATTON: So it would not be possible for 1% of voters to force a referendum to be held.

Mr SHANNON: Yes. The figure should be just high enough to weed out the insignificant stuff. With apologies to this gentleman here ... sorry, your name?

Mr FIRMIN: Firmin.

Mr SHANNON: Firmin. If the figures are puzzling you, I can tell you that I chose them on a field basis to show the extent that I expected. I could not prove them.

Mr FIRMIN: I have understood that now, thank you. I should have said earlier that I realised what you are getting at. When I first read the opening section, I thought that you were relying on a special formula which you would advise us about.

Mr SHANNON: I could probably find 3 or 4 parallels in other countries but I could not nail it down to 1%.

Mr FIRMIN: Did you give any thought to looking back at what has occurred in the Northern Territory since self-government and assessing whether there was any reason to consider that the standard of living had dropped since the Commonwealth ceased to totally control us or, indeed, that the reverse might have occurred?

Mr SHANNON: I bet it has dropped since the Commonwealth let us loose.

Mr HATTON: What is this?

Mr SHANNON: The standard of living.

Mr HATTON: No.

Mr FIRMIN: I would have said that our standard of living has increased by probably around 30%.

Mr SHANNON: Have you got any figures?

Mr HATTON: We could get them without much difficulty.

Mr FIRMIN: I think the trend would have been in the opposite direction. That is part of the reason why I could not understand where you were coming from. It is only a short time since self-government. I have been here for almost the same number of years as the previous speaker, and I have lived through the problems.

Mr SHANNON: I do not use any figures until they have been extant for a year and a half. That tends to remove some of the waves in the data.

Mr HATTON: It also removes the preliminary figures.

Mr SHANNON: Yes. I have noticed some slight contradictions in the Australian Year Book as put out by the government.

Mr HATTON: Because they are the preliminary figures. You only get the actual figures a year later.

Mr SHANNON: Yes, so I do not use that information until it is a year and a half old.

Mr FIRMIN: But what you are saying is that you have not looked back at all.

Mr SHANNON: You have only had self-government for a year.

Mr HATTON: No, 11 years.

Mr FIRMIN: 11 years! 11 years is a fairly substantial time.

Mr HATTON: 1978. Last year was the 10th anniversary.

Mr SHANNON: Sorry about that.

Mr FIRMIN: It is a substantial period of time to look at. That is why I was just saying ...

Mr SHANNON: I will check and get back to you.

Mr FIRMIN: I think you will find that there is quite a substantial change for the better and, certainly, most Territorians who have lived here for any length of time would certainly say that.

Mr SHANNON: Okay.

Mr HATTON: By any measure of the quality of life - and that includes environmental issues - the Northern Territory has become a vastly improved place in the last 11 years.

Mr FIRMIN: We think you should have a look at that as well.

Mr SHANNON: Will do.

Mr HATTON: Perhaps we could deal with some of the detail of the submission. You support a single House of parliament.

Mr SHANNON: Yes.

Mr HATTON: You say, 'The government is solely charged with the management of public property so as to provide (1) liberty, (2) safety and (3) profit for its residents, in that order of priority'. Would you stipulate that prioritisation in the constitution?

Mr SHANNON: I would if I could.

Mr HATTON: That is what I am asking.

Mr SHANNON: Yes.

Mr HATTON: We will debate the philosophy of society in the process but it is equally important, from our point of view, to look at the sorts of things people believe should be included in the structure of the constitution. If I ask questions in that format, it is only for that formal purpose.

Mr SHANNON: Okay.

Mr HATTON: You say that the area of the Northern Territory should be divided by law into approximately 14 electorates, and you have an 'x' beside that number.

Mr SHANNON: Yes.

Mr HATTON: You say that this is so that the numbers of voters in each electorate would be within 10%. You would limit the number of electorates constitutionally as distinct from having it determined in ordinary law?

Mr SHANNON: It is not crucial, but yes I would.

Mr HATTON: The consequence of that is that the numbers in parliament could only be changed by means of a constitutional amendment.

Mr SHANNON: By an amendment to the Territory constitution, yes.

Mr HATTON: So it would not be up to the parliament to, say, increase its numbers from 25 to 27 or, for that matter, to reduce them.

Mr SHANNON: Correct.

Mr HATTON: And you are saying that they should be single-member electorates?

Mr SHANNON: Yes.

Mr HATTON: There should never be a constitutional option for multi-member electorates?

Mr SHANNON: Not unless it is made so by means of a referendum for that purpose.

Mr HATTON: You are saying that the structure and the size of parliament should be a constitutional matter subject to the decision of the people, not the laws of the parliament?

Mr SHANNON: Correct.

Mr HATTON: And that we should work with a 10% tolerance, or thereabouts?

Mr SHANNON: 10% or less. It would be in that order of magnitude.

Mr HATTON: Any Australian citizen resident in the Territory who is over the age of 17 would have the right to vote.

Mr SHANNON: Yes.

Mr HATTON: You chose the age of 17.

Mr SHANNON: Yes, it is chosen as an age at which people would understand the magnitude of the decisions they are making as voters.

Mr FIRMIN: Presumably, you are proposing a reduction in the voting age from 18 to 17. Is that correct?

Mr SHANNON: Yes.

Mr FIRMIN: That is all right. I just wanted to clarify it.

Mr HATTON: You do not mind whether it stays at 18?

Mr SHANNON: I do not mind.

Mr HATTON: You are not supporting the notion that there should be a minimum residential qualification for the right to vote in the Northern Territory.

Mr SHANNON: Not particularly. No.

Mr HATTON: I ask about that because you did not mention it in your submission. Effectively, that means that a person could arrive in the Northern Territory this month and vote in a Northern Territory election next month.

Mr SHANNON: That is not important.

Mr HATTON: Constitutionally, should we enable people to have that right?

Mr SHANNON: That is not important.

Mr HATTON: So you do not mind whether we do or do not?

Mr SHANNON: Correct.

Mr HATTON: Or whether there is a qualification period of 6 months or 12 months.

Mr SHANNON: As long as it is not more than that. 5 years would be an excessive period but an administration period of 3 months to 6 months would make no difference to the effect of what I have put forward.

Mr HATTON: Fine. You say that on the hundredth day of every fourth year there should be an election. You are arguing

for parliaments with a fixed term of 4 years.

Mr SHANNON: A regular fixed term, yes.

Mr HATTON: To be held on a particular day?

Mr SHANNON: Yes, I wanted to set a particular time.

Mr HATTON: It could be 30 March every year or whatever?

Mr SHANNON: Yes, or even 29 February.

Mr FIRMIN: If you started off in a leap year.

Mr SHANNON: It is just a measure providing a very clear fixed term.

Mr HATTON: You are arguing very clearly for a 4-year fixed term parliament.

Mr FIRMIN: It would be interesting if you started off on 29 February.

Mr SHANNON: 3 years, 5 years, it makes no difference.

Mr HATTON: The decision about when to have an election should not be made by the parliament. You would not even countenance the option of a partially fixed term.

You say that, as often as a seat becomes vacant, an election shall be held in that electorate for a representative. That applies in the case of casual vacancies, the by-election situation.

Mr SHANNON: A lot of that was taken from the federal Constitution. You might recognise the phrasing.

Mr HATTON: What time frame would apply for the holding of the by-election?

Mr SHANNON: It is not important.

Mr HATTON: So it could be 6 months from the time the vacancy is created to the holding of the by-election.

Mr SHANNON: It could be, but I think you will find that a referendum would come about pretty quickly to shorten that.

Mr HATTON: Do you think that 20% of the Northern Territory population would support that? We are not talking about 20% of voters in the electorate concerned.

Mr SHANNON: You are talking about the filling of a casual vacancy?

Mr HATTON: As occurred in the recent Wanguri by-election.

Mr SHANNON: Yes.

Mr HATTON: I am asking this question because you referred to a lot of constitutional controls and limits in respect of fixed term parliaments. I just want to find out whether you would apply similar rules in respect of by-elections.

Mr SHANNON: No.

Mr HATTON: You say: 'A representative shall be dismissed by a petition of more than 50% of the voters of the electorate'.

Mr SHANNON: That is a mechanism for voter recall.

Mr HATTON: Voter recall of an individual member?

Mr SHANNON: Of an individual member.

Mr HATTON: By way of petition?

Mr SHANNON: Yes, to a court of law, for example.

Mr HATTON: I would like to take this up. You also support the concept of the secret ballot.

Mr SHANNON: Yes.

Mr HATTON: How would you guard against coercion to sign that petition?

Mr SHANNON: You could not.

Mr HATTON: So you would have a democratically elected person thrown out on the basis of a petition which, potentially, could be signed by people who were subject to coercion.

Mr SHANNON: Yes, that is a risk. I think it is a worthwhile one.

Mr FIRMIN: I think it would be a certainty. Let me explain. If you look at petitions closely and find out who has signed them, and if you go to those people and ask them what petition they signed, you will find that, as little as 3 days after signing, they have no recollection of the petition and no understanding of its contents.

Mr SHANNON: The subsequent re-election would be a secret ballot.

Mr FIRMIN: I do not wish to debate it with you. You are saying that a member can be removed from office provided that 50% of voters in the electorate sign a petition along those lines. The former member can campaign for election again and is quite likely to be re-elected. If that occurs, all you have done is cost the Territory taxpayer in the vicinity of \$80 000.

Mr SHANNON: I did not know any other way to make that mechanism available.

Mr FIRMIN: Mr Chairman, do we need to actually go through every point individually? If we do that I will find myself debating them all and I do not think it is necessary to do that.

Mr HATTON: I am just trying to get specific views and clarifications. I am not seeking debate.

Mr SHANNON: It is fuzzy, I know, but it is the best I could do with what I had.

Mr HATTON: That is fine. That is why I am trying to get exact clarification of what you are trying to put.

You say that any Territory resident who is an Australian citizen, is 17 or 18 years of age, who permits the disclosure of such public service records as are normally held confidential and is under no allegiance or obedience to a foreign power, may be a representative.

Mr SHANNON: Yes.

Mr HATTON: Does that mean that you would need to sign a declaration that you would make any documents for which you are responsible available to the public?

Mr SHANNON: If I was running for office?

Mr HATTON: Yes. Would you have to sign an oath of declaration?

Mr SHANNON: Yes. I am talking about tax records and so forth. Things that would normally ...

Mr HATTON: But you are talking about personal records.

Mr SHANNON: Yes, I am.

Mr HATTON: You said 'permits the disclosure of such public service records as are normally held by ...'

Mr SHANNON: Directly held by the public service.



Mr HATTON: Does that mean that I am responsible for records of government, for example?

Mr SHANNON: I am sorry?

Mr HATTON: Well, I am now the Minister for Health and Community Services and documents may be held ...

Mr SHANNON: I understand the question. Insert the word 'private' there please.

Mr HATTON: Rather than 'public service'?

Mr SHANNON: Yes. I was referring to records which the public service holds in relation to individuals.

Mr HATTON: Private records.

Mr SHANNON: Yes.

Mr HATTON: So you are looking at the full disclosure of the candidate's financial and other affairs?

Mr SHANNON: Yes.

Mr HATTON: That is fine. I needed to clarify that. Would the provision relating to allegiance include such things as being the honorary consul of a particular country?

Mr SHANNON: Provided it is not a position which the individual has to accept. For example, Bob Hawke was made an honorary citizen of Israel, but that does not disqualify him from being ...

Mr HATTON: Some people have migrated from other countries. They become Australian citizens but from time to time they take on roles such as acting as the honorary consul of their nation of origin.

Mr SHANNON: As long as it does not place them under a contractual allegiance to somebody.

Mr HATTON: So your allegiance must be to Australia?

Mr SHANNON: Yes, demonstrably.

Mr HATTON: A contractual allegiance?

Mr SHANNON: A demonstrable allegiance. It is a statement of principle rather than ...

Mr HATTON: You have to be careful because, when people become citizens of Australia, they are not required to renounce their previous allegiances.

Mr FIRMIN: Unlike the USA, which requires people to renounce previous allegiances.

Mr HATTON: That is right. You are required to accept allegiance to Australia but not ...

Mr SHANNON: In this case, if you had dual citizenship, you would be required to renounce the previous allegiance.

Mr HATTON: Citizenship does not require the renunciation of previous allegiances.

Mr FIRMIN: But he is saying that he thinks it should.

Mr HATTON: For this one? Okay, fine.

You say that the House should select the premier. Presumably, the premier would be the leader of the majority party in the parliament. That is just a mechanism to achieve the result that we achieve now. You select a speaker, the head of government and so forth.

You refer to a maximum lapse of 40 days between sittings?

Mr SHANNON: Unless otherwise specified by the House.

Mr HATTON: No. 'The Speaker shall set the session times. It shall not be such as to let more than, say, 40 days lapse between sittings'.

Mr SHANNON: Again, that was again a carry-over from the federal Constitution. I do not know if it is effective.

Mr HATTON: The recommendations here were for a period of 3 months or something in that order. Certainly, a specific period was recommended.

You say that the government 'shall have no authority to exact revenue from its citizens. Fines levied by a court shall be dispersed at the discretion of that court'. Can you explain that? Do you mean that we cannot tax citizens?

Mr SHANNON: Not without a referendum.

Mr HATTON: In any form?

Mr SHANNON: In any form. If the government wants to tax its citizens, it has to convince the citizens that it is a good idea.

Mr HATTON: To have any tax.

Mr SHANNON: For any form of taxation.

Mr HATTON: Right.

Mr SHANNON: The government simply says to the people: 'These are our reasons and they are pretty good ones, so please sign'..

Mr HATTON: So what you have, in fact, is a clayton's parliament.

Mr SHANNON: I do not see how that applies.

Mr HATTON: You elect members to meet in parliament to make laws and look after the public wealth, to do things like making roads, running schools and hospitals, providing a police force to protect the community, creating legislative controls to protect the environment from industrial pollution, but you do not give that parliament the power to raise the funds to do those things.

Mr SHANNON: Correct. Doesn't this state get its funds from the federal government?

Mr HATTON: No. We get some funds, but that funding is based on the premise that, first and foremost, we make a reasonable revenue-raising effort. If we do not, we do not get the money from the federal government.

Mr SHANNON: All you have to do is convince the voters that the sums you are asking for and the manner in which you are going to collect them are reasonable.

Mr HATTON: Okay. My point remains. I do not support your view on that.

Mr SHANNON: I know.

Mr HATTON: If you tax people too heavily you get voted out and that is the bottom line.

Why would you give the courts the rights to disperse funds? The courts are not made up of elected people.

Mr SHANNON: They are appointed by the government.

Mr HATTON: They are appointed for fixed terms and cannot and should not in any way have their jobs threatened. The moment the parliament subjects them to inducement for their livelihood, they cease to be independent and therefore become unable to act in a judicially independent manner. When the politicians take control of the courts, that is the mark of a dictatorship or an undemocratic country. If you want to maintain the independence of the courts, they must be kept

free from interference by the parliament or the people.

Mr SHANNON: Who pays the wages of the present judges?

Mr HATTON: We pay them but we have to pay them according to the determinations of a remuneration tribunal, through the parliament and not through the government.

Mr SHANNON: Who appoints the tribunal?

Mr HATTON: The parliament.

Mr SHANNON: Bingo. It makes no difference.

Mr HATTON: It only sets their salaries. Even if they did not receive salaries, they still have their full powers as judges.

Mr SHANNON: I do not see what that has to do with what I have written in my submission.

Mr HATTON: My point is that you would give to a person who is not elected, a person who, according to your definition, is not answerable to the people in any way, the right to disperse public monies in whatever way he sees fit.

Mr SHANNON: Yes.

Mr HATTON: Without any recourse to the people at all.

Mr SHANNON: If you are a government and you ...

Mr HATTON: That is as distinct from enforcing and interpreting the laws of the land and the rights of citizens. It is distinct from that, which is the role of judges. You are giving them the role of distributing public funds.

Mr SHANNON: If it does not work, the referendum situation should take care of it.

Mr HATTON: By changing the constitution.

Mr SHANNON: Yes.

Mr HATTON: And the government has no rights to lend or borrow funds.

I need to go through these points because it is important to identify their consequences. If you do not give the government the right to borrow ...

Mr SHANNON: Yes, its books have to balance.

Mr HATTON: That means that, if you want to build a power station to supply power for the next 50 years, the people of today would pay for it out of their taxes whilst the people who would use that power for the next 50 years would pay nothing towards the cost of providing it.

Mr SHANNON: Yes, that is roughly the idea. But ...

Mr HATTON: As distinct from giving governments the right to borrow and to have citizens pay for the capital cost as they use the power.

Mr SHANNON: Why not convince one of your leading citizens to build it for you?

Mr HATTON: Privatisise it?

Mr SHANNON: It is going to be profitable, why not?

Mr HATTON: That is an interesting concept. Private industry. The same would apply for schools and every other public institution, of course.

Mr SHANNON: Yes, if you cannot fund them by taxes on the citizens raised with the permission of those citizens.

Mr HATTON: If you cannot do that, you do not provide those services.

Mr SHANNON: You have to convince the people that the thing you want to spend money on is worthwhile.

Mr HATTON: Right.

Mr SHANNON: That should be the way it works.

Mr HATTON: Essentially, your argument is one for tightening up decision-making by the people. You would not allow anything to happen other than by an open, representative, general decision, basically by plebiscite.

Mr SHANNON: Yes.

Mr HATTON: Fine. I have covered all the points which I wanted to clarify in my mind. I am sorry, but I wanted to try and draw out the thinking behind the various points. Are there any other matters people would like to raise?

Mr SHANNON: As far as the constitutional convention is concerned, I think that any of the 3 proposed methods will work. It does not matter which one is used. Just pick a good director of committees and a serjeant-at-arms and muddle through. The decision should be the same at the end, whatever method you use.

Mr HATTON: Thank you very much. Do you have any questions to members of the committee?

Mr SHANNON: No, just do the best you can. I am sorry about the figures but there ...

Mr FIRMIN: That is okay. Perhaps at some stage ...

Mr HATTON: Some clarification could be useful. You have said that you included plus and minus figures and ...

Mr SHANNON: It was to give an idea of the order of magnitude that I expect, not to ...

Mr HATTON: That is fair enough. I know that the concept has a lot of currency in the community and it is good to see it clarified and the ideas put forward for consideration.

Mr FIRMIN: I certainly recommend that you have a look back at the history of the Territory under Commonwealth administration and compare it with what has occurred since self-government. See if you can work out whether the principle still applies. I think the results might be exciting.

Mr HATTON: Thank you. I now ask Mr Nicholson to come forward, putting on his other hat as a witness before this committee. Mr Nicholson, could you please introduce yourself and the organisation you represent prior to commenting on the submission.

Mr NICHOLSON: I have the privilege of appearing before the committee in a purely representative role, to present the submission of the National Spiritual Assembly of the Baha'is of Australia which is the governing body of the Baha'i faith in Australia. In fact, it is part of a wider world organisation which comes under the ruling international body, the Universal House of Justice. In virtually every country or major territory there is a national body. Australia has its own national body. The local assemblies come under those national bodies, so it is a global pyramid structure.

The national body is very appreciative of this opportunity to make a submission to the select committee and would like it to be said that the task that the select committee is undertaking is of great consequence. Constitution-making is of a fundamental importance to any society and the national assembly commends the select committee on the way in which it is approaching the task. The consultative process is supported in Baha'i writings, which state that these things are more appropriately done in a consultative way than by using other methods that are sometimes used for legislation. Does the committee wish me to read the submission or simply to speak to its contents?

Mr FIRMIN: I have read most of it. Perhaps you could just speak to it.

Mr HATTON: Just speak to it and draw out the points which you feel are important to make.

Mr NICHOLSON: The situation in Australia as far as religious tolerance is concerned is not unsatisfactory in a practical sense. In a constitutional sense, it is considered to be not entirely satisfactory. Section 116 of the federal Constitution provides a guarantee of a sort but does not give a totally comprehensive guarantee of religious freedom. It has a number of deficiencies. Firstly, it is limited to the Commonwealth. It is clear that it does not apply to the states and there are conflicting High Court dicta as to whether the guarantee in section 116 applies in territories.

Members will recall that one of the questions in the referendum put to electors last year involved a 4-part proposal on a variety of human rights. One part involved the expansion of section 116 of the federal Constitution to include states and territories. It also proposed to remove the limitation of the present guarantee, which applies only to laws as distinct from executive acts. At the moment, section 116 applies only to the Commonwealth and only to laws of the Commonwealth. As we all know, that referendum was unsuccessful. I do not know that the reasons for that can necessarily be ascribed to opposition to the particular provision on religious freedom which was encompassed within a wider set of proposals, the possible effects of which were the subject of some confusion in the community.

This submission does not necessarily support a similar provision in our constitution. That is because, as I have said, the provision in section 116 of the Commonwealth Constitution is not a comprehensive guarantee of religious freedom. Nor does this submission necessarily support the only other relevant provision in Australian constitutional law, which is a section of the Tasmanian constitution. It is not a comprehensive provision on religious freedom and it is not an entrenched provision, unlike that which this committee is looking at in the case of the proposed Northern Territory constitution. In contrast to the Tasmanian situation, section 116 of the federal Constitution is an entrenched provision which can only be changed by a national referendum.

The provisions that the National Assembly prefers to look to are those on religious freedom contained in the various declarations and conventions in international law on human rights, and I have detailed some of those provisions in the submission. The first one, which is in fact annexed to the select committee's primary discussion paper, is the Universal Declaration of Human Rights of 1948. That is included in schedule 2 of the discussion paper. That does have a clause dealing with freedom of religion. It is Article 18.

Mr FIRMIN: Mr Nicholson, what page was that in that discussion paper?

Mr NICHOLSON: That is at page 123 of your larger discussion paper - Article 18.

Mr FIRMIN: Page 123, thank you. I was close but I was not there.

Mr NICHOLSON: Of course, that was a general statement of human rights. It was the first such statement prepared and adopted by the General Assembly of the United Nations and it was the precursor to a number of later international conventions and declarations on more specific topics. I might say that Australia took a leading part in the adoption of that convention. In fact, Dr Evatt was the General President of the General Assembly at the time when the declaration was adopted and he played a leading role in the drafting and preparation of the document.

Since that declaration was adopted in 1948, there have been a number of further conventions including the International Covenant on Civil and Political Rights, which Australia is a party to, and which is scheduled to the Human Rights Commission Act of the Commonwealth. That contains more detailed provisions on a number of human rights including the freedom of religion, and that is the provision that has been detailed in the Baha'i Assembly's submission, at page 3, as perhaps the more appropriate model that the select committee might care to consider.

Omitted from the submission, but of considerable importance, is the fact that, in 1981, the United Nations adopted a further declaration - and I have a copy of the actual text. It is called 'The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief', and that was adopted by the General Assembly of the United Nations on 25 November 1981. Article 1 of that declaration is in exactly the same terms as Article 18 of the International Covenant set out at page 3 of the submission. The declaration goes on in more detail to spell out the sort of considerations that are specifically appropriate in relation to freedom of religion.

Since the inception of the United Nations, the Baha'i Faith itself has been a very strong supporter of the United Nations system and the program of development of declarations and covenants dealing with human rights. In fact, the Baha'i Faith is a registered non-governmental organisation with the United Nations both at the General Assembly level and with the various subsidiary organs of the United Nations and frequently attends, in a representative capacity, at meetings of these

bodies, including the Commission on Human Rights in Geneva. And it participates in the deliberations on the preparation of these various declarations and conventions. The Faith is of the view that these provide a benchmark, if you like, against which human rights should be tested.

In addition to international documents, most countries of the world do have now provisions in their constitutions dealing with a variety of human rights. In fact, I understand that, in the Pacific region, the only countries now that do not have comprehensive provisions on human rights are Australia and New Zealand.

Recently, New Zealand issued a White Paper on the subject and it is looking at the possibility of adopting comprehensive provisions. As you know, recently Australia had a Constitutional Commission that was looking at the question, and some of its proposals resulted in that referendum question last year, although the referendum question last year was not a proposal to adopt a comprehensive Bill of Rights. This submission is not necessarily arguing that this select committee should adopt a comprehensive Bill of Rights. It is merely inviting the select committee to look, in particular, at the question of religious freedom and to consider whether, in a new state constitution, there should be a provision of that nature and whether or not the select committee wishes to go further and look at other forms of human rights that might be appropriate.

I might say that, in the United States of America which, as you know, has had a Bill of Rights by way of constitutional addition since the 18th century ...

Mr FIRMIN: 1776.

Mr NICHOLSON: ... the late 18th century, the states also have their own constitutions. Most of those - if not all, and I would have to check that - have their own Bill of Rights contained in their state constitution and that includes Alaska and Hawaii when they became states in the 1950s. Other countries are moving to a similar situation, so it is not without precedent for a state to consider provisions on human rights in its constitution, that is a state in a federal system, and whether or not they might be entrenched.

Of course, in Australia, none of the states have comprehensive human rights provisions and, as I said, Tasmania has a very short provision, not of an entrenched nature, and dealing only with the question of religious tolerance. The matter was considered recently by the Victorian Committee of Parliament on Legal and Constitutional Affairs and a report was issued in about 1984 in which the committee did recommend the adoption of a non-enforceable form of Bill of Rights in Victoria. As far as I know, that has not yet been implemented legislatively but at least the question has been addressed in a serious context in Australia in so far as states are concerned.

Probably that is a sufficient introduction to what has been said here. I am happy to answer questions.

Mr HATTON: You have fairly comprehensively covered the subject you wanted to raise.

Mr LEO: I think it would be fundamental in the drafting of any constitution to implement the notions that you have expressed so clearly. I do not think there would be any doubt about that in anybody's mind. (inaudible).

Mr FIRMIN: I have a couple of questions, Mr Nicholson.

At page 3 of the submission are set out the freedoms of religion and so on - the freedom of speech, observance, practice and teaching and belief in worship. I have a little worry, and you may be able to clarify it for me. Statement No 4 says: 'The State Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions'.

Mr NICHOLSON: Yes.

Mr FIRMIN: To your knowledge, what would be the case, for example, where one has splinter religions that are not normally accepted as being desirable, and there have been many of those around? In this case, if you entrench that sort of wording in a constitution, really it denies access by the state presumably to assist in withholding children from the inferences of those sort of problems that might arise. Would that be your view? Have you any knowledge of anything like that?

Mr NICHOLSON: Mr Firmin, I think the best way to answer that question would be to say that none of these freedoms is

absolute. In fact, both the Universal Declaration of Human Rights and the International Covenant, from which this is taken, recognise that all these rights are to be balanced, firstly, one against the other and, secondly, against the wider public interest. In fact, the provision of the International Covenant provides for just that. It is contained in Schedule 2 to the Human Rights and Equal Opportunity Commission Act. It is part of the law of Australia, in that sense.

Mr HATTON: It says the rights of the ...

Mr NICHOLSON: The International Covenant is a schedule to the Commonwealth act. I cannot see ...

Mr LEO: Have to ... (inaudible).

Mr FIRMIN: No, that is all right.

Mr NICHOLSON: Apart from the expressed provisions of the covenant itself, which indicate that this has to be balanced against public order and good morals and things of that nature, there is the recognition in several High Court decisions in Australia dealing with section 116 of the Constitution that the rights expressed in that section are not absolute. For example, there was an early High Court decision, Krygger's Case, where there was a question as to whether the right guaranteed by section 116 enabled a person to object to conscription on religious grounds, and the High Court said no, the right is not an absolute right. Your right to religious freedom and, in particular, the right to practise in an actual manner is to be balanced against the other requirements of society. Therefore, that case failed.

There have been other examples, more numerous in cases before the US Supreme Court than in Australia, because there have not been many cases where this has come before the High Court, where repeatedly the court has said there is a balancing process. So the right in 1.4 of the submission, to undertake the religious and moral education of your children, would be balanced against the requirements of public order and good morals. So, if that meant enforcing that your children did certain things which community standards thought were just intolerable, then that right would give way. There is no doubt about that.

Mr HATTON: It raises other complications, and you raise the issue there of guardianship. In a practical case that I am aware of, a conflict arose between a child who had been removed from the parent, as a consequence of a child abuse case, and was placed with another family with the minister being the guardian. I might say that that occurred when I was not the minister.

The issue that arose was that the natural parents were Muslim and the guardian parents were Christian. In a situation like that, do the natural parents have the right to have their children educated in the Muslim religion? How do you balance something like that? That is the sort of situation where the sort of issues raised in item 4 come to a sharp point, if you like.

Mr NICHOLSON: I cannot quote you an exact case where the state wardship situation has been considered in that context. There may have been some case on that in the USA, but I cannot recall it offhand.

Mr HATTON: But it creates a real dilemma, doesn't it?

Mr NICHOLSON: The normal provision on state wardship is that, once a child becomes a state ward, the rights of the parents with respect to the child are terminated and the rights invest in whomsoever the appropriate government officer is. Therefore, the natural parents would not normally have the right to insist on a particular form of upbringing once that occurred. I think that would be entirely consistent with the provision of this government ...

Mr HATTON: Even though, in those situations, the objective is to try to reunite the family through a process of education and counselling etc.

Mr NICHOLSON: Yes. I am assuming ...

Mr HATTON: That should be taken into account, obviously.

Mr NICHOLSON: I am assuming that the process for declaring the child a state ward was a fair process, that there was a public hearing ...

Mr HATTON: I did not say 'state ward'. I do not know whether that is the terminology. It is when a person is taken into protective custody.

Mr NICHOLSON: Well, whatever the legal description ...

Mr HATTON: Guardianship.

Mr NICHOLSON: ... yes. But, assuming that that was done with proper judicial hearing and what not ...

Mr HATTON: It would be a matter for the legal guardian, which I think is the minister of the day, to determine those questions in the interest of order.

Mr NICHOLSON: Yes, and I would not see any inconsistency with that provision.

Mr HATTON: Fine, thank you. It was a matter of interest to me to try and sort out that issue.

Any questions? Do you have any questions?

Mr FIRMIN: No, thank you, Mr Chairman. Thank you, Mr Nicholson.

Mr NICHOLSON: I will try and find that provision in the international covenant, and I will let you know.

Mr HATTON: Mr Ortmann, would you come forward please.

Mr ORTMANN: Good morning, gentlemen.

Mr HATTON: Please sit down.

Please excuse the apparent formality of the place. This is the way they do things here. We are trying to deal with this in as informal manner as we can. We would like you to tell us exactly what you think and what your views are on this. This process is the start of what will be an extensive program of community involvement to hear what people are thinking and also to seek to answer questions that people might have. This certainly will not be the last opportunity you will have to comment in the process.

Mr ORTMANN: Thank you, Mr Chairman. I appreciate the informal attitude because I am not very good at formalities.

I presume the letter I received was in response to a document I gave to the previous Chairman, Mr Tom Harris, in August last year. That was based around the idea of a new industrial relations system for the Northern Territory. At that stage it was new, but nowadays of course it has been overtaken by moves in Queensland and coming moves in New South Wales, and the federal opposition coalition is also moving in the same direction. I believe you all have copies of the document ...

Mr HATTON: Yes, we have.

Mr ORTMANN: ... and it would probably be a lot quicker if we fired some questions and then see if we can bounce the ideas off.

Our association is firmly convinced that we have to free up the industrial relations system. That is now being addressed by peak bodies, such as the ACTU, the federal Labor government, and state governments all around Australia. We believe that the way to increase our productivity in this nation and start to create more wealth is to free up the industrial relations system.

The way we see it is that there should be equality, and that large businesses and union organisations who wish to stay within the arbitration system should be allowed to do so because, after all, it is a democratic right of the workers and the employers in that situation to make those decisions. However, we also see that the way small business and its employees are going today, really they are working outside the law, because they are working under a voluntary system. Although they are doing that under the guidelines of awards and wage structures, really they are working under a voluntary employment system that, to date, is not legalised. So we seek the formalisation of that type of system and encouragement of trade-offs for productivity etc, etc. But please, do not draw any similarities with the pilots' dispute!

Mr HATTON: Basically, getting in first is it?

Mr ORTMANN: Yes.



That is basically how we see it. It is hinged around the fact that it is productivity-based. Really, it is a matter of getting rid of the me-and-us society, and letting people work together and become productive, and I think the Northern Territory is one of those areas that is a productive and entrepreneurial place.

Mr HATTON: Do you want to ask questions?

Mr LEO: Do you see a system of state awards and federal awards working side by side?

Mr ORTMANN: I would see that as appropriate if it was so decided by the people that wished to stay within the system. The voluntary employment agreements take you outside of the award system and I could see that you may bring up a system of state awards to cover that and make sure that voluntary employment agreements are within certain parameters.

Mr LEO: So you would have minimum conditions?

Mr ORTMANN: Minimum conditions, yes.

Mr LEO: It is probably headed that way anyway. How would you see that interacting? You would have voluntary awards and if the practice became as you say (inaudible) ...

Mr Hatton: Legally enforceable.

Mr LEO: ... the Northern Territory?

Mr ORTMANN: Yes, there is no point in having an agreement that is not legally enforceable.

Mr HATTON: So perhaps there could even be a process of registration of the agreements to ...

Mr ORTMANN: Yes, and I see ...

Mr LEO: And under the system developing these agreements?

Mr ORTMANN: As a role model, we would probably use something along the lines of the system that is going now in Queensland. There are 3 or 4 different agreements they can draw up that are on proper pro formas that have been formalised. I also see a role to play for the private sector in the arbitration system. There are a lot of industrial relations experts running their own businesses in the private sector field now, and they could be given briefs or given the opportunity for you to use those as the arbitrators in terms of a dispute.

Mr LEO: Oh, not in terms of a dispute. But if you are developing a private employment agreement with your employer, would you have to seek your own legal advice? What would you work it through? How would it be developed?

Mr ORTMANN: The idea of it is ...

Mr Leo: I mean most people, you will appreciate ...

Mr HATTON: You are not talking about enterprise-based negotiations where, say, in your own case, you would negotiate with your employees as a group?

Mr ORTMANN: Exactly.

Mr HATTON: That is the situation that you are talking about?

Mr ORTMANN: That is exactly it.

Mr HATTON: Okay, so it is the enterprise-based bargaining which, in fact, is part of the current wage fixing principles in the federal jurisdiction?

Mr ORTMANN: Yes.

Mr HATTON: Right.

Mr ORTMANN: The idea is ...

Mr LEO: Opposed to individual bargaining?

Mr HATTON: We are not talking about individual bargaining. That is right.

Mr ORTMANN: What happens is that, in a place of employment with more than 1 person, there has to be a vote taken amongst the employees. It becomes difficult to say 60% where there are 2 employees, but you are really aiming for 60% to 65% in favour of the agreement or else in favour of the other way. So you draw up an agreement and some similarities may be that I will give you 5 weeks annual leave instead of 4 weeks, but that leave will be given over the Christmas period and I will not pay 17.5% leave loading. It would be like that so that there are individual trade-offs and agreements.

It may be that the Kakadu Motor Village says that it will not pay penalty rates during the period November to March, but it will pay penalty rates of 20% on normal hours during the peak season. So, individual arrangements are tailored to that business and to the marketplace.

Mr HATTON: Presumably with the agreement of the employees.

Mr ORTMANN: They have to vote in favour of it. More than 60% have to vote in favour of the specific agreement.

Mr HATTON: Would you see the trade unions being involved in the process?

Mr ORTMANN: If the employees wished them to be so, yes. It is totally an employee-based decision.

Mr HATTON: So that ...

Mr ORTMANN: In some cases ...

Mr HATTON: So the rights of unionism are protected?

Mr ORTMANN: Entirely.

Mr HATTON: But, as your submission says, you would also give the employees the right not to have a union, if they so charge?

Mr ORTMANN: Yes. Because, in some instances, with the union structure as it is today, although we are moving towards award restructuring, it is still based on craft unions, and there are many employer groups who are nowhere near the craft system. They are not tied in. That applies especially to the new service industries. It is very interesting to find a union allied straight along the lines of a craft of a computer analysis.

Mr HATTON: The conceptual approach you are talking about can be dealt with under most forms of industrial regulation. You can certainly provide the opportunity for guidance as to the policy and direction.

If we can bring that back to step 1 - unless anyone wants to go through the philosophy - I would like bring the discussion back to the issue of the constitutional questions as well. As you know, there have been a number of discussions in papers around the issue and there are discussions in the community now on a paper that we have not yet come to a view on, as a committee, and that is industrial relations on statehood. It is one of the powers that are not a transferred power to the self governing Northern Territory. So we operate totally under the federal jurisdiction at the moment.

The question that arises is whether, in the minds of the community, those powers should be transferred in line with the powers the states have. But, if that were to happen, is it appropriate that we have both a federal and a state jurisdiction or some mechanism to create one jurisdiction. As you are aware, in his consultancy paper, Sir John Moore deals with that and, in fact, recommends that we take the constitutional power and enter into an administrative arrangement with the federal parliament whereby it forms a Northern Territory panel and they have joint commissions of the state and the Commonwealth. In that way, we would not have 2 jurisdictions and the problems referred to as Moore and Doyle, the battle between state and federal registered trade unions and ...

Mr Firmin: Perhaps we could ask Mr Ortmann what his feelings are about on that, Mr Chairman.

Mr HATTON: ... federal awards and state awards competing with each other, and all those sorts of issues. Even within that mechanism, it is possible to develop the sort of systems that you are referring to.

Mr ORTMANN: Yes.

Mr HATTON: There is a view current in the community that to create yet another industrial tribunal may not be in the interests of employers or employees in the Northern Territory, if you can do it constitutionally. One thing we do know is that we cannot remove the federal jurisdiction, because they have constitutional rights federally.

Mr ORTMANN: That is right.

Mr HATTON: So it is a question of whether you bring them together and guide them into a system that is fundamentally under the direction of the Northern Territory or whether we split off and have 2 systems. That is really the question I will be interested in hearing your viewpoint on.

Mr ORTMANN: As you started by saying, I think we should move along the lines of Sir John Moore's recommendations. We take the powers and retain the federal jurisdiction, with the panel having representation from the Northern Territory. I believe in that, but I believe then we should still sit aside with the voluntary employment agreements. I think you will find that the voluntary employment agreement system will be used Australia-wide within 3 or 4 years.

Mr HATTON: It is already part of the national wage fixing principles.

Mr ORTMANN: That is right.

Mr HATTON: To enable that to happen, and the productivity oriented bargaining, job restructuring and that process.

Mr ORTMANN: It still is within the rigid rules of the arbitration system at the moment.

Mr LEO: Do you think that those things should be laid down within a constitution?

Mr Firmin: No.

Mr ORTMANN: No. This was part of the submission. The reason we put the submission in is that we believe that, in its formulation of a constitution, the Northern Territory should take industrial relations powers.

Mr Firmin: And I think, in fact, ...

Mr HATTON: But then we want to talk about how it should operate.

Mr ORTMANN: Yes, how it should operate.

Mr FIRMIN: Looking at it in time, Danny, this submission came up in August 1988, prior to Sir John Moore deliberating. As you may remember, he was not at all well and he visited several times. Then he went away and deliberated, and sent his paper back.

Mr ORTMANN: That is true.

Mr FIRMIN: And really I suppose that this has been brought forward to highlight your organisation's feelings about this matter. As our chairman said, other people have done similar things to bring us back to that focal point when we finally deliberate, when we actually come to that point.

Mr HATTON: I think the point I am trying to make here is that an analysis of the federal system at the moment shows that the rules are that employers should go and negotiate with their employees but those employees should not come and ask for money unless they are going to offer something by way of productivity or efficiency.

Mr ORTMANN: The problem we have ...

Mr HATTON: I would be surprised if the small business community would not regard that as a dramatic freeing up of the system.

Mr ORTMANN: It is, up to a stage. The problem we have is that, in small business, we do not have a lot of room to move on productivity because we do not have the entrenched practices that have been built up in large industries and through the conglomeration of large companies.

Mr HATTON: So you may totally restructure the package.

Mr ORTMANN: We have to look at the package. In my instance alone, my blokes will work to 10 o'clock at night if we have to meet a barge, and they would rather have Monday off. Under the laws, that is illegal. You cannot do things like that. We believe you should be allowed to free it up and say ...

Mr HATTON: Under your award.

Mr ORTMANN: Sorry.

Mr HATTON: Unless you developed an enterprise-based agreement, which you have the power to do.

Mr FIRMIN: Which you would have to have approved ...

Mr ORTMANN: But if you faced the Industrial Relations Commission today, the unions have the right to represent the employees. That is clearly stated. Now my employees might say: 'That does not suit us. We do not want to do that. We believe in working together and we want to work this way'. Without denigrating the union movement, if the union movement takes the view that my employees are counterproductive in the totality of the argument, they will miss out - and I think that is unfair.

Mr HATTON: Okay. So that is the key point you are trying to make.

Mr FIRMIN: In the context of the current discussion that is taking place in Sydney, and certainly of a discussion I had with our own Jamie Robertson and Bill Kelty in Sydney yesterday afternoon about the same sort of thing, it may well be that it might be worthwhile ringing him at some stage, outside of this committee's structure obviously, but just to put those sorts of points to him again, because they are starting to look at that sort of relationship down there at the moment.

Mr ORTMANN: Recently, I appeared before the Industrial Relations Commission for superannuation, and I was told quite clearly that my employees did not count. There was a union man there to represent them.

Mr FIRMIN: This was a point I was putting to them yesterday, when we spoke. It was the same sort of proposition, and that is where the system is falling down in my view.

Mr ORTMANN: That is right.

Mr FIRMIN: I could relate things where I was employing as well, where I have had representatives come in and demand that things be done within the system that I am operating in, without doing any background research at all. I have found that in fact what they were trying to force my staff to take on was a lesser arrangement that had been previously arranged with them. They could not understand why then they had great problems. In fact, most of the staff just said they did not want to know and told them to get out.

Mr HATTON: From the submissions that you made, I take it that, even in your enterprise-based bargaining, you would support some minimum standards?

Mr ORTMANN: Our philosophy is that the minimum award wages are the lowest level.

Mr HATTON: Yes, that is right.

Mr ORTMANN: We have that and we build on that. The interesting part of the concept, which becomes apparent the more you talk in the community and the more you discuss this with people, is that they are not worried about the (inaudible). They are worried about trying to keep staff against competition from other enterprises which are taking the good people. It is very much payment on productivity.

Mr HATTON: I think there is a public argument to say that there should be some foundation below which no agreement should be allowed to go.

Mr ORTMANN: I agree wholeheartedly. In fact, that is laid out in the Queensland documents. If you get hold of the Queensland documents it will tell there the minimum agreements. They contain such things as sick leave, entitlements to superannuation and long service leave, the minimum length of time for holidays ...

Mr Leo: The Mines Safety Control Act.

Mr Firmin: Come on, keep this conversation tidy.

Mr Leo: I will start on my socialist bag.

Mr HATTON: Do you have any other points that you would like to make now.

Mr FIRMIN: We were getting on really well there for awhile.

Mr ORTMANN: No, that is fine.

We have gone on and commented on Sir John Moore's submission too. That paperwork is available too.

Mr HATTON: I think you have made the key points.

Mr LEO: I think you are probably right about where it is going in the future anyway. It is heading that way.

Mr FIRMIN: But it is worthwhile keeping reiterating that in whatever forum you can.

Mr HATTON: Would it be reasonable to say that the Small Business Association supports the idea of taking the constitutional powers, but on the basis of entering into an arrangement with the Commonwealth for a joint jurisdiction, so we would have one group of people who were handling the industrial ...?

Mr ORTMANN: Yes. I can see no value in duplicating the whole system, providing that you give me the trade-off of voluntary employment agreements.

Mr HATTON: Right, I hear you.

Mr FIRMIN: May I just ask you, Mr Ortmann, what your association feels about our move towards constitutional recognition?

Mr ORTMANN: We fully support it, but we wish it would speed up a bit. We believe that the future of the Northern Territory lies in it having its own state powers, its own constitution, and getting on with the job. In fact, if we look at everything I say and many of the things I write down, in 1978, we set the pace for Australia, and we have now started to bog down. I believe the Northern Territory is a pacesetter. It is a big wealth creator. It has a huge future and the more we tinker at the edges the worse off we will be.

Mr FIRMIN: Later on, I will see if I can get you a copy of another paper that was presented to us here this morning which I think is very much along the same lines and probably one of the best submissions I have seen.

Mr ORTMANN: I would say one thing that I would like to see someone do, whether it is this committee or not. I believe a balance sheet should be produced, as soon as we can do that. That is not an easy situation but, if that could go out to the business community ...

Mr HATTON: A balance sheet on ...?

Mr ORTMANN: The costs and the benefits, in financial terms.

Mr HATTON: I can tell you. It is a very simply story.

Mr ORTMANN: Yes, I know.

Mr HATTON: There are no financial differences.

Mr FIRMIN: I think what Mr Ortmann is saying is, so that the public at large could become aware ...

Mr HATTON: Yes, I know.

Mr ORTMANN: I read balance sheets weekly, and I know that you are correct in what you say, but it is very difficult for me to pass on to other people the knowledge that we will better off.

Mr HATTON: No, we will not be better off financially unless we produce more wealth.

Mr ORTMANN: That is what we are after. That is what voluntary employment agreements are about.

Mr HATTON: That is right. Also, there is a process of whether the decision-making rights as a state would give us the ability to generate more wealth. We will not get more tax money.

Mr ORTMANN: No.

Mr HATTON: We will not get less tax money for the equivalent level of productivity. We have to go to work to earn money.

Mr ORTMANN: Yes.

Mr HATTON: So as long as that is clear. It is a question of reshaping how the money comes in but no additional funds will come to the Northern Territory per head of population, purely as a result of statehood. There will not be less either.

Mr ORTMANN: No, but we would have more of an opportunity to create more work.

Mr HATTON: Yes. Thank you very much.

Mr ORTMANN: Thank you.

Mr HATTON: Unless there are any people who have not made an appointment for a submission who would like to ask questions or make any points now, I would propose to adjourn the matter until 1.30.

There being nobody who wants to make any comments, I declare this committee session adjourned until 1.30 pm.

The session resumed at 1.58 pm.

Mr HATTON: Mr Tremethick, thank you very much for coming along. We may appear to be disorganised, but we are not. Our last appointment did not materialise so we were taking the opportunity for a small break.

To explain the proceedings briefly, we try to keep this as informal as we can. Please do not feel constrained by the atmosphere or apparent formality of the structures. Our objective is to try to find out what is in people's minds, what they think, and to answer any questions that you may have about this process of writing a constitution. The floor is yours.

Mr TREMETHICK: I trust everyone has a copy of the letter that I put in written submission. I did not really expect to speak here. Basically, I propose that the constitution contain words to the effect that - and I put that because I am not a legal beagle - for each change to the constitution, a referendum be held and that only 1 item or topic be worded in each question and put to that referendum. That relates to the public hearing that was held at Palmerston in March of this year. I did address the issue then and I just wanted to address it formally at this public hearing, as put to me at the Palmerston meeting.

Mr FIRMIN: Yes, I remember that.

Mr HATTON: What you are saying basically is that, for the process of amending whatever constitution eventually gets created, it has in it 2 things: first, that it must be determined by public referendum of the people of the Northern Territory and not through some other mechanism; and, secondly, that unlike, for example, last year's federal referendum, each separate item shall be dealt with individually by the citizens in voting on the referendum.

Mr TREMETHICK: Yes, that is correct. I was aware, and you made it quite clear at the Palmerston meeting, that you had

already put in the constitution for change by referendum but ...

Mr HATTON: That is our recommendation.

Mr TREMETHICK: ... or a recommendation had already been made to that effect. I just wanted to extend that recommendation and ask that only a single question be put, because I felt that millions of dollars were wasted last year. I do not really know how much was wasted in the federal referendum but, as Mr Setter pointed out at the Palmerston meeting, they put together something that was palatable to one organisation, but this thing that was not perhaps quite as palatable they put with it as one question and hoped that the majority would vote 'yes' so that they would get the 2 items through. I know that I was in favour of half of one of the questions and not in favour of the other half and, because of that, I was inclined to vote in the opposite direction.

Mr HATTON: To vote 'no' rather than ...

Mr TREMETHICK: To vote 'no' than rather 'yes' and have some constructive change occur within our constitution for Australia.

Mr LEO: I do take your point about some of those questions but, as I recall it, some of those questions involved a change to one part of the Australian Constitution which necessarily led on to a change to another part of the Constitution. So, whilst it did not appear that they were directly linked, in fact, some of them were.

Mr HATTON: Yes, but I think there were ...

Mr LEO: There were some cases where they were just ...

Mr HATTON: Certainly, in the minds of the community, they were not related.

Mr LEO: No, that is right, but some of them were linked. One change was consequential on another one.

Mr HATTON: Have you any questions?

Mr TREMETHICK: It is pretty hard to get the freedom of speech to link with the local government ...

Mr HATTON: Mr Firmin?

Mr FIRMIN: No, I am right thanks, Mr Chairman.

Mr HATTON: Well, that is great.

Mr TREMETHICK: That is all I had to put forward as a public member.

Mr HATTON: Great. Are there any other questions you would like to ask of us?

Mr TREMETHICK: I really have not had much chance to sit down and delve into it too much further. That just was a very outstanding point that I felt needed to be addressed and that is why I am here.

Mr HATTON: We appreciate that you have done that, and I hope you will take the opportunity to read through some of the booklets that are available.

Mr TREMETHICK: I have actually read the 2 books.

Mr HATTON: If there is anything that you would like to raise, opportunities will still be available in the future so please take those opportunities.

Mr Nicholson, I believe you have some comment to make in respect of this submission.

Mr NICHOLSON: There may be a bit of a problem in determining what is one matter per referendum. You will remember that the referendum last year was actually 4 referendums but, within some of those individual referendums, there were more than one question, and with others, within the one question there were a number of clauses that were interlinked. So

you may have a problem in determining what you mean by one referendum ...

Mr TREMETHICK: Okay.

Mr NICHOLSON: ... and what is one matter within a referendum.

Then there is a further question of whether 2 quite distinct referendums, on quite distinct matters, each dealing only with one matter, can both be put at the same time. Do you understand what I mean? There are 2 separate questions there.

Mr TREMETHICK: I looked at my information on last year's referendums to try and use it as an example. I considered that the difference was that there were 4 separate referendums, and I am agreeable to that, within one referendum - or 4 major questions were put to the people. But I felt that within a topic, or a question, which I had to vote 'yes' or 'no' on, too many issues were covered which were unrelated. One issue and another unrelated issue were addressed in that question. That has led me to feel that we need to ensure that we address only one issue in any one question.

Mr HATTON: You are saying that you take it down to the point where one is able to make a separate 'yes' or 'no' decision.

Mr TREMETHICK: Yes.

Mr HATTON: Where there might be 4 points, they are asking for one 'yes' or 'no' in respect of those 4 separate points.

Mr TREMETHICK: Yes, I think ...

Mr HATTON: For example, you would be arguing that 4 separate questions be asked.

Mr TREMETHICK: Yes.

For one, I think one question contained something about religion, but it also contained something unrelated to religion.

Mr NICHOLSON: That is correct. One question had 4 parts. One on trial by jury, one on religion and then there were 2 other parts.

Mr FIRMIN: Recognition of local government.

Mr NICHOLSON: No. That was a distinct question and on its own.

Mr Firmin: It was too, wasn't it. Yes, it was.

Mr HATTON: It was not by itself because it was linked with other matters as well.

Mr NICHOLSON: I know that there was one question that had 4 human rights provisions. They were all quite distinct, but they were within the one referendum proposal. That is the one you are talking about.

Mr TREMETHICK: That is the one I am talking about. If those 4 human rights issues had been put as 4 individual questions it would have been better. I take Mr Leo's point there that they may be interlinked and I accept that that may be a possibility, but I felt personally, as a citizen, that they were not. As there were 4 topics covered in the one question, I felt that I should have had to vote 'yes' or 'no' 4 times.

Mr HATTON: So it is a point of saying, if it were: do you believe that we should have freedom of religion in the constitution ...?

Mr TREMETHICK: 'Yes'-'no'.

Mr HATTON: Do you think we should have freedom of association of religion? Freedom of assembly?

Mr NICHOLSON: Trial by jury was one.

Mr HATTON: Trial by jury. With a series of issues like that, you ask 'yes'-'no' on each of those?

Mr TREMETHICK: Yes.



Mr HATTON: You do not bundle them all together and say: do you agree that these things should go together, conjointly, into a constitution. That was the point you were making?

Mr TREMETHICK: That is correct.

Mr NICHOLSON: Thank you.

Mr HATTON: Thank you very much.

Mr TREMETHICK: Thank you. Mr HATTON: I take the opportunity of inviting Mr Creswick to address us on behalf of the Northern Territory Council of Government School Organisations. Welcome along, Mr Creswick.

As I have indicated to other people, our committee is here to discuss what goes into a constitution, as I am sure you are aware. Please ignore the apparent formality of the occasion, including the formal words that we are required to use from time to time. We are seeking to receive information or questions from people in whatever manner they feel comfortable to deliver it.

Mr CRESWICK: Thanks very much.

Good afternoon. I believe you have a copy of my submission.

Mr HATTON: Yes.

Mr CRESWICK: I have made some changes. They are fairly minor, but I will give you the amended version. I do not know whether you want me to read this or ...?

Mr HATTON: Perhaps if you would speak to it and try to draw out the essence that you want us to register.

Mr CRESWICK: I am speaking for the Council of Government School Organisations. We wanted to address only 2 issues. Specifically, whether there should be a constitutional convention, and I have addressed that in the affirmative. We think there is a place for a constitutional convention, as outlined in the preliminary documentation, and I have put that we believe it should be partly elected and partly nominated. By 'partly elected' I am assuming that would draw the people's elected representatives from the Legislative Assembly and from the local government area. I do not know whether all of those people would be included, and I am not suggesting one way or the other.

Mr HATTON: Maybe there would be separate elections for people to become members of the convention.

Mr CRESWICK: No. I actually perceived it as being the people who are already elected, either at local government level or at the Legislative Assembly level. That would offer some way of achieving balanced representation automatically. In addition, there would be scope for recognised community-based organisations, such as ours, to nominate people. I think you will notice that I have said that there should not be ministerial veto. Our organisation believes that we should be able to directly nominate a representative, not to put forward a group of possible representatives from which the minister selects a single individual. Our representative should be our nomination.

The second issue is, of course, the question of a statement of human rights. We say that such a statement should be embodied in this constitution. We are not prescriptive about other rights but we specifically seek the inclusion of a statement related to the right to education, that being our particular point of interest. As I have pointed out, we found the UN declaration to be a reasonable starting point. However, if it reached the discussion stage, we would like to have some input in terms of minor changes.

That is all I wish to say at this stage, thank you.

Mr HATTON: Would members like to ask any questions?

Mr FIRMIN: Yes. I need a little time to clarify exactly what I want to ask. You have raised something which has caught my imagination but I want to think about it before I frame a question.

Mr LEO: What sort of support was there for these 2 propositions? Was there unanimous support, were they the

recommendations of a committee, or what?

Mr CRESWICK: I will tell you how it happened and you can gauge the degree of support from that. Like all other groups, we were invited to make submissions. We asked our research officer to come up with some guidelines but, unfortunately, she left. The matter went into limbo until fairly recently when we received another letter. At that stage, our half yearly conference was being planned. I told members of our executive that, if they were willing, I would draft a submission for discussion by the executive. That is what I did. The executive discussed the draft and a couple of changes were made. You will notice the amendments in the submission. They are fairly small and involve the deletion or alteration of the odd word. The original submission made reference to human rights such as freedom of speech, freedom of assembly and the right to own property. I have deleted those references because it was felt that it was most appropriate to address only the educational aspects in this submission and allow the others to develop separately.

Mr HATTON: The proposed statement on education makes no mention of the development of numeracy and literacy skills. Rather, it says that 'education should be directed towards the development of the human personality and the strengthening of respect for human rights and fundamental freedoms which are important goals for all of us'. That almost seems prescriptive. It seems to be saying that that is the role of education rather than also providing some technical skills to children for their future.

Mr CRESWICK: There are 2 parts to an answer on that. The first is that I have said that the UN declaration provides a basis and I would see us changing that in the consultation stages. If there was a decision to incorporate a statement of human rights and if the right to education was to be included in that, we would then reach the stage of prescribing what that education should provide. That is where I see the substance of the statement being developed.

The second part of my answer relates to the difficulty of finding an acceptable definition of literacy and numeracy. It varies ...

Mr HATTON: Just as there is in respect of the matters you tried to define.

Mr CRESWICK: Yes, indeed.

Mr HATTON: That is the problem with constitutional provisions in many respects, isn't it.

Mr CRESWICK: If we reached the stage where it became apparent that this would be accepted, we would be looking for something along the lines of what you are talking about.

Mr HATTON: I raised the issues of literacy and numeracy in the sense of the development of technical skills. Such skills could also apply in the teaching of foreign languages, history or the sciences. I used numeracy and literacy as examples of practical skills alongside the personal and social issues. We all seek that balance, don't we.

Mr CRESWICK: One of the problems is determining how prescriptive you become. You run the risk of either leaving things out or including so much that it becomes bogged down...

Mr HATTON: In detail.

Mr CRESWICK: Yes, in detail. Exactly.

Mr HATTON: I guess that is the issue you would need to address. That is why I am seeking to draw that out. If you start to write things down in constitutions, they become part of the fundamental law of society, the immutable law.

Mr FIRMIN: It is very difficult to avoid that ...

Mr HATTON: You have to get the words and the sense right.

Mr CRESWICK: I believe that, through its aims and objectives, COGSO perhaps has the basis. Like any organisation, however, COGSO is evolutionary. Things change and that is a problem because a constitution written now has to attempt, to some extent, to look to the future. It cannot ...

Mr HATTON: The Northern Territory community will have to make a decision about the extent to which it wants to prescribe things and lock them up in the constitution and the extent to which it will seek to direct and guide by means of

the second tier of law, which is legislation, or through the third tier of regulations or the fourth tier of administrative procedures. There are stages of entrenchment and the question society has to wrestle with is the extent to which it wishes to have the right to move and adjust as time passes. Society will have to deal with such questions in the process of writing a constitution.

Mr CRESWICK: Right, I understand that. To that extent, I think it would be most appropriate to make reference in a broad sense to the right to an education. You could list the broad goals that would flow from that but ...

Mr FIRMIN: Actually, you probably might even go back to the original wording: everyone has the right to education. You may find that that bald statement might provide the strongest possible constitutional mechanism.

Mr CRESWICK: Yes, except that I believe the state must continue to have the principal role as provider of that education. I believe that that has to be written into the constitution. The word 'free' is also relevant. Although we use it now, we all know that education is not free. It costs in taxes and there is also a contribution ...

Mr HATTON: If you wrote 'free' into the constitution, it could only mean what it says. There could not be those other costs.

Mr FIRMIN: I do not think you could have private schools either.

Mr CRESWICK: What I am getting at is the fact that, at the moment, we do not charge for education in the public system although parents contribute. I would like to see that essence of freedom preserved: that there is no charge to attend a government school.

Mr HATTON: Per se.

Mr CRESWICK: Yes. That is what I feel is important.

Mr HATTON: There may be some ways in which a contribution is made to that education.

Mr CRESWICK: I imagine that that would be covered in the acts and regulations.

Mr HATTON: The acts and regulations are naturally limited by the constitutional provisions. It stands supreme over anything parliament does.

Mr CRESWICK: To ask you the question, are you saying that, if we write into the constitution the right of everybody to a free education ...

Mr HATTON: That may well mean that the government has to provide access to absolutely free education. I would think that would be how judges and lawyers would interpret that statement.

Mr FIRMIN: That is why I say you have to be very careful. As you said a moment ago, when you start to try and write in the things you are really trying to achieve, you may omit some things that should be there and then find later that you cannot provide them because they are not written in. Conversely, you might find that something you have written does not mean exactly what you intended it to mean.

Mr HATTON: I understand the concept of what you are trying to promote. I am trying to alert you and your organisation to the fact that there is a need to address some of the issues that arise when things are written into the constitution. If you refer to free education in the constitution, it is part of the supreme law of the land.

Mr CRESWICK: As you are aware, we had a situation last year in which the Minister for Education established a working party on school fees. The recommendations of that working party, which he read into Hansard, allowed school councils to request the payment of school fees but without any legislative backing in terms of compulsion. I do not see how such a situation conflicts with what we are suggesting in terms of the constitution.

Mr HATTON: It may not. I just raised the question because I want to stress the sorts of issues which the Northern Territory community will have to wrestle with in the writing of the constitution. This committee is really just a catalytic force in that process. We are aware of instances in which specific freedoms are written into constitutions and then superimpose themselves across the common law and a whole range lot of legislation. They are subject to interpretation by

the courts of the day and those interpretations can vary significantly from the intentions behind their original inclusion. I am just alerting the community about the need to be very conscious of the words which are used. You have to look at these things in light of the fact that they may be dealt with at some stage by an antagonistic lawyer.

Mr CRESWICK: In which case I would argue for the inclusion of the word 'free'.

Mr HATTON: Absolute freedom?

Mr CRESWICK: Free in the sense that no charge for education could be imposed within the government education system.

Mr HATTON: That would mean that, if a class was going to a school camp, the school could not charge people to attend that camp.

Mr CRESWICK: I do not mean that.

Mr HATTON: But that is the consequence if that camp is undertaken as an educational activity. Do you see the point?

Mr CRESWICK: Yes, I see the point. I am not sure that ...

Mr HATTON: A recalcitrant parent might say: 'I am not going to pay but my child is going to go on that excursion. I have a constitutional right to a free education and you cannot stop my child going'.

Mr CRESWICK: I would be interested to see a constitutional lawyer's interpretation of that.

Mr HATTON: I suspect the parent would get away with it. I realise that that is not what you are intending. All I am suggesting is that there are difficulties which you need to be aware of. Basically, your organisation is putting forward the concept that nobody should be charged for the privilege of going to a classroom, learning from teachers and having an education in government schools. Is that correct?

Mr CRESWICK: Yes.

Mr HATTON: You believe that that is so important that it should be entrenched in the constitution, not just included in the laws of the land.

Mr CRESWICK: I think that it should be entrenched in the constitution as, indeed, I personally believe that ...

Mr LEO: There are such things as the costs borne by parents in providing school uniforms and bus fares. Those are educational costs.

Mr HATTON: I am only raising these points because of the need to recognise that, if we are going to address these things, we need to be aware of the potential implications. It may be an interesting exercise to refine what you are looking for in terms of the most specific statement possible.

Mr CRESWICK: I would imagine that the acts will specify what is ...

Mr HATTON: No, they cannot.

Mr LEO: Why can't they?

Mr HATTON: An act is subservient to the constitution. The constitution provides the framework within which the acts have to fit.

Mr FIRMIN: It provides the foundation.

Mr HATTON: That is the fundamental importance of a constitution. It sets the framework for society's operation. It sets down the rights and freedoms of citizens. Those rights and freedoms are protected by the fact that no parliament, politician or judge can go outside the words written down in the constitution.

Mr CRESWICK: Yes.

Mr HATTON: That is how the people take supremacy in a democracy.

Mr CRESWICK: I accept all of that.

Mr HATTON: So we have to get the words right. That is what I am saying.

Mr CRESWICK: Sure. I will not go beyond the area of education at this stage. I would like to pursue some of the other areas but ...

Mr HATTON: You are welcome to raise those with the committee as an individual. I appreciate that you are constrained in what you can say because you are here representing an organisation. As far as the educational matter is concerned, perhaps your organisation may want to look at further suggestions. I note that your submission states that your organisation represents an important group, those parents who are involved in the education of their children, and that you are seeking representation on the constitutional convention.

Mr FIRMIN: Mr Chairman, might I also point out to Mr Creswick ...

Mr HATTON: If I could just finish first.

Perhaps you might want to address that, even if you come back to the committee with some further ideas, having had the opportunity to consider it in context. Should you find, with the effluxion of time, that you are sitting there thinking about matters associated with the constitutional convention ...

Mr CRESWICK: If that situation arose, I would certainly come with a bigger brief of ideas and some constitutional backing for them. If the occasion arises, I certainly look forward to it.

Mr HATTON: This is very early days in the whole process. It gives us a chance to bounce ideas around so that each of us can go away with things to think about.

Mr CRESWICK: That is why I am here. That is what I wanted to do.

Mr HATTON: Great.

Mr FIRMIN: Sorry, Mr Chairman, I just wanted to make a comment to Richard in respect of his mention of the possibility of a ministerial veto over an organisation's nominated delegate to the constitutional convention. I want to point out to Richard that that could not occur. Such a delegate would be there to represent the organisation concerned and there would be no interference from this committee, the minister, or any member of the government. The delegate would be the organisation's nominee.

Mr CRESWICK: That is fine, I just wanted ...

Mr FIRMIN: It would just be a matter of whether your group fulfilled part of the criteria ...

Mr CRESWICK: Of course. I understand that.

Mr FIRMIN: ... which will have to be faced up to at some time in terms of how many people will be represented and how they will be chosen.

Mr CRESWICK: I fully understand that. It may be that we do not get a guernsey and that is fine. I was just putting it in the broadest possible perspective.

Mr FIRMIN: There is no interference.

Mr HATTON: There can be no mechanism, through ministerial intervention or administrative process, to pick and choose from a group. There is a fundamental difference between this convention and a ministerial council, which interrelates with the government.

Mr FIRMIN: Or a government subcommittee of any sort, or a statutory authority.

Mr HATTON: This is a body of the people.

Mr CRESWICK: In raising the issue, that is the sort of assurance I was seeking.

Mr LEO: It has to be kosher and it has to be seen to be kosher because it will require the support of all Territorians and a hell of a lot of other Australians. If there was any hint of political interference, the whole process would immediately lose all credibility. It would go right down the drain.

Mr FIRMIN: I suppose some measure of our success to date is the fact that we have been working on a bipartisan basis for some 2 years. We have obviously demonstrated the ability to work together without getting involved in politics and that is one of the committee's aims.

Mr CRESWICK: Perhaps it did not need to be raised in the submission but ...

Mr HATTON: The point is made and the circumstances which led you to bring it forward are appreciated. We can give you an assurance that, if the convention includes representatives of organisations through any mechanism at all, those organisations will be responsible for the selection of their representatives.

Mr CRESWICK: Good. Thank you. I appreciate that assurance.

Mr HATTON: Great. Thank you very much.

Before concluding this hearing, I ask whether any other person present wishes to make a submission to this hearing.

Given that there are no further scheduled contributions and that no other person present wishes to appear before the committee, I would like to thank all those people who have made submissions today. A number of useful and interesting points have been made and these will certainly assist us in these early stages of deliberation on the constitution.

I declare closed this hearing of the Select Committee on Constitutional Development.