

PUBLIC MEETING

OENPELLI — Tuesday 9 May 1989

PRESENT: —

Committee:

Mr S. Hatton (Chairman)

Mr B. Ede (Deputy Chairman)

Mr C. Firmin

Mr W. Lanhupuy

Mr D. LeoMr R. Setter

Officers assisting the committee:

Mr R. Gray (Executive Officer)

Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Mr Stan TIPILOURA

Mr Joe SINGH

Mr Steven MANSFIELD

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

ISSUED: 4 October 1989.

Mr HATTON: Ladies and gentlemen, my name is Steve Hatton and I am the Chairman of the Select Committee on Constitutional Development. I would also like to introduce Brian Ede, the member for Stuart and deputy chairman of the committee and Rick Setter, the member for Jingili, also a member of the committee. Of course, you all know Stanley Tipiloura, who is the member for Arafura, your electorate. He is also present, although not as a member of the committee.

The booklets that we have circulated contain photographs of all members of the committee, who number 6 altogether. This committee is different from any other committee of the Legislative Assembly because it has the same number of members from each side of the House, the CLP and the ALP. That is because, for once, we are all working together in the same direction. We are not fighting about this one. We think that this job is too important to fight about and that we should try to work together to do something really good for the future of the Northern Territory.

Our committee's job is to write a special law, or to work with the people to write a special law. That special law, which might be called the people's law, is called a constitution. A constitution is a law that the people make to say how they want this Northern Territory to go, where they want it to go and how they want to make the laws for people to be able to live together properly. It involves laws about how governments should be elected, how the courts work, and so on. This law is the one which stops the government from mucking around with the rights which are so important that the people believe they should not be interfered with.

This law does all those things. The government cannot write this law. Only the people can write it and it has to be what the people believe. We are visiting places throughout the Territory to talk to people about the job of writing this law and to say

that it is a job we have to start doing. I am not going to ask you today what you think should go in this law. I am coming here today to say that we have to start working to make this law. We would like you to start to think about it, and to start to talk about it amongst yourselves. Go and talk to your friends. Talk as a group. Talk at your council meetings, and think about these things. If there are things you are not sure about, get more information and study it. When you have thought about things and decided on what is important for you and where you want this to go, we will come back later this year or early next year. Then, we want you to tell us what you think should go in this law. That is the first stage. We are not rushing anything. We want to just make a start on the job today. We are asking you to make sure that you think about this business so that you will be able to have your proper say and so that the things that are important for your community are properly looked after in this law.

I said before that the constitution is a special sort of a law which comes from the people. It is a very powerful law. This law becomes the boss. It is on top of the government. It sets the rules for the government and you can say that the government is allowed to do certain things but that it cannot do others. You say to the government: 'We are going to go down that road'. In doing that, we have to ask ourselves how we are going to make this place so that everybody in the Northern Territory - black, white, yellow, the lot - can be equal and go down the same way with mutual respect. How do we make the rules to achieve that? How do we make people think about that? How do we make the government think about that? We do it through this sort of law.

Every other government in Australia, including the government in Canberra, the federal government, has a constitution on top of it. The governments in Queensland, Western Australia, New South Wales, South Australia, Victoria and Tasmania all have constitutions over them. But we do not have one in the Northern Territory. Because of that, the federal government can do what it likes with the Northern Territory. There is a clause in the Australian Constitution which says that the federal government can do what it likes with the Northern Territory. It can do that because your rights are not locked up inside this people's law.

That is why we think the people now have to start thinking about this one. Start thinking about it, and start to work to write this law. We will come back later this year or early next year to ask you what you think. We are visiting places all over the Territory. We have been down in the Pitjantjatjara country, at Kintore and Docker River and the Finke. We have been to Yuendumu, into the Barkly area, the Gulf, Arnhem Land, the VRD - all over the Territory. We have been to Alice Springs, Darwin, Katherine and Tennant Creek, to more than 60 communities altogether, saying the same thing to people: start thinking about this.

We have to hear from everybody. We have to go around and talk to everybody and get all the ideas. Then we have to try to write down what we think the people are saying. We cannot do this job for you. We just get the ideas down. After we have done that, a special committee will take over, a committee of people who represent you, people you trust to speak for you. These committee members will be drawn from all over the Territory and the committee will be called a constitutional convention. Its job will be to look at the work we have done after talking to you and other people throughout the Territory and see whether it thinks that is what the people are thinking. The constitutional convention will go through the work we have done and change it, fix it up and make it so that it fits with how it thinks the people's law should be. That will be the second stage.

After that convention, the law will go to the people in a referendum in which they can vote. If you think the law is good, you vote yes, and if it is not quite right you vote no. If the people vote no, we keep working until we get a law that the people agree with. Once that law is made, it stays there. It does not change. The government cannot change that law. Only the people can change it because it is the people's law. It sits over the top of the government and it has to stay there. It can only change if the people say: 'We want to make a little change to fix it up'. But, the government cannot touch it. The same applies with the constitutions of other governments. Remember last year, when the federal government asked you to vote yes or no to 4 questions in a referendum. It wanted to make some changes in Australian Constitution. The people said no and the government could not touch that law.

It would be the same with this law. You can make it and you can put your rights in place through it. In many ways, this part of the white man's law is like Aboriginal law. The Aboriginal law has been there for thousands of years. It is always there, always going the same way, isn't it. People know where they fit into things, know how they are supposed to talk to other people and relate in ceremonies. All the law is there and it keeps going the same way all the time. The white man's law keeps chopping and changing direction all the time, doesn't it. This law, though, this constitution, does not change unless the people want it to. The government has to obey it. It cannot go wandering off over here or shooting off over there. It has to go down the road that the people make for it.

This is a job that we have to do, not just for ourselves but for the young people, their children and their grandchildren. It is something we are doing for the future, to make this Northern Territory a place that the people of the future will be proud of. We want them to look back and say: 'Those old people did a good job for us. They made these laws. They made this place go the right way so that it is a good place to live in'.

If you do not do this job, if you say that it is too hard and you do not want to do it, the problems and fights will not go away. They will continue and the people who come after us will say: 'Why did they not do that job for us? Were they too lazy? They did not look after the future'. That is why we all have to work together to find out where we want this Northern Territory to go and to write a people's law which will look after the future. It has to be there for a long time and to keep going the same way. It has to set a direction for this Northern Territory which will allow everybody to live side by side and keep working together.

We have come here today to ask you to start thinking about this and to start looking at the questions. We want you to get some ideas together so that later, when we come back, you will be able to tell us your views and not leave these things for other people to look after. You need to make sure that you do this properly so that your community is properly looked after and this becomes your law and the white man's law, so that everyone is going the same way together. Making this law is your chance to make the Northern Territory the sort of place you want it to be, and to make the future the way you think it should be.

Mr EDE: When this committee started, a lot of people came to me and said: 'What are you doing, as deputy leader of the Labor Party, on a committee with Steve Hatton and those CLP blokes? Are you all together now? What has happened?' I had to explain that there were 2 reasons for that. One of them was things which I know as a Labor Party politician and the other was something Aboriginal people have been telling me down in my electorate. My electorate covers all that area from Lajamanu down through Yuendumu, right over to the Western Australian side and across to Lake Nash on the Queensland side, taking in places like Ali Curung and Utopia on the way. It takes in the Walpiri mob, Anmatjirra, Alyawarra, Kaititja, all those mobs out there.

Although we are together on this committee, that does not mean that the CLP and the ALP suddenly agree on everything. We still have lots of very different ideas about how the Northern Territory should run. But there is one thing that we do agree on and that is that we have to sit down together as Territorians and try to make this law, this constitution, work properly. If we can do that, we can decide about statehood afterwards. This one has to come first. Statehood might be 5, 10, 15, or 20 years away but this one has to come first, because we cannot talk about statehood until we know what we are talking about. You cannot eat statehood, you cannot feel it. What is it? It can only be what we make it after we make this constitution which says how we are going to live together as Territorians. After we have done that, we can talk about statehood.

There are a couple of really strong reasons for looking at this constitution very seriously. The first one, as I said, comes from what I know through being a politician. I have looked at things which we have won over the years, some of them coming from the Liberal side and some from the Labor side. I look at things like land rights, which started back in the 1970s and continued into the 1980s. I know that, if there was a change of government in Canberra, a new government could get rid of land rights just by passing a law. We would have no protection because we are just the Northern Territory. I know that land rights would be stronger if it was in a constitution of the Northern Territory. It would be harder to change because it would have to be changed in both Canberra and the Northern Territory. The bosses of land rights would be Northern Territory people.

When you write a constitution, you can write in a law about how it gets changed. You can say that it can be changed if half the people agree, or you can say that certain things can only be changed by three-quarters of the people. You can entrench things; you can tie them down so that they stay the same or are very hard to change. You can leave other things so that any government can change them.

That brings me to my second point. Aboriginal people in my electorate keep coming to me and saying: 'Kardiya, this whitefellow law is always changing. It goes one way and then it goes the other. You tell us about how it is being pushed one way and the next thing we know it is being pushed the other way. That is completely different to our law. Aboriginal law goes one way. It comes from right back, thousands and thousands of years, and it goes forward in one way all the time, to our kids, our grandchildren and our great grandchildren. It keeps going on, not like the whitefellow law which is always changing, always moving around. We have a problem when your law changes and it bumps against our law. It leads to big arguments about sacred sites, the way we teach law in schools, and things like that. These problems happen because your

law keeps changing and moving around'.

In a constitution, it is possible to write in the things which are really important and which you believe should not change all the time. If we can get everybody to agree, we can write in things about land rights, about looking after sacred sites and law and language. Those things can be written in and made strong in a constitution. People in my electorate have said that they want that. They say: 'We want our Aboriginal law and your white law going together in the same direction. We do not want one on top and one underneath. We want the laws separate but going in the same direction without changing all the time'.

A constitution is a way of doing that, but it will not be done if everybody walks away and says: 'Oh, let's not worry about it. We will go and sit down. I am all right. My outstation is all right. I will not worry about the rest of the Northern Territory. I will not worry about all this talk about a constitution'. If people do that, important things will not be in the constitution because nobody will be there to speak up for them. It is no good if just a couple of us stand up and speak for them; the people have to stand up and speak out strongly for the things they want. If they want protection of land rights and sacred sites, they have to speak up for it.

As Steve Hatton said, other places have constitutions - Queensland, South Australia, Western Australia and so on. But in those places, the people were not asked what they wanted. A couple of lawyers and clever fellows sat down in an office in Brisbane or Sydney or wherever and just wrote things down. They did not ask people about protecting things like land rights and sacred sites and that is why those things are not in the constitutions of other states. We are only beginning here, though. We have self-government and we are starting on a constitution. We can do things differently.

If we believe and if we try hard enough, we can find a way of writing a constitution that everybody can agree on. We can put in the things that are very important for us as Territorians and, afterwards, we can look back and say: 'We made a good start. We have a strong constitution and we can go ahead together, Aboriginal and white people working together to make the Territory a good place for all the kids and young fellows without the big fights that have happened in the past'. That is why I am here on this committee and that is why I want everybody to think about this business.

We are not going to ask you today about what you want in the constitution. We just want you to start talking about it, and to look at these books. If you have some ideas about how we can get better information out to you, so that you know more about what is going on, let us know. A lot of people have said that they want tapes in language so that people can listen to the ideas and talk about them more easily. You might have other ideas about how we can give you more information so that you can let us know what you think about this constitution.

Mr SETTER: Steve Hatton and I are from the CLP government. Brian and Stanley are from the Labor Party and, as they said to you before, we all agree on this issue. We all agree that we need a constitution in the Northern Territory because we want a strong law that will give us rights in this country of Australia, more rights than we have today. I am proud to be a Territorian and I know that you are proud to be Territorians, as are all my colleagues here. As Territorians, we do not have the same rights as people who live in the states. We have certain rights but not as many rights as people in the states. It is very important that, at some time in the future, we get those rights.

The Northern Territory is just a territory. It is not a state and it is not a Commonwealth. It is like one of these young fellows over there. It is not yet grown up. The Australian government is like you old fellows, you elders, and the states are perhaps like your brothers. The Northern Territory is still growing up. It grew up a little bit when it achieved self-government. It grew up from being like these small children to being like these young fellows. One day, though, we want it to grow up so that it is like your brothers. We cannot do that without a constitution, without that strong law.

The Commonwealth government and all the state governments have had their constitutions for almost 100 years. But we do not have one. We do not have the protection of that strong law and we believe the time is now right for us to develop a constitution. It would be easy for us to sit down and write one. We can do that and, in fact, we have been working for 3 years to put together a range of options for a state constitution in that book. If you want to read it, you will see all the information about how it can be done. However, we do not want to do it ourselves. We want to come out and ask everybody to help us because we want you to have input. We want you to have your say.

You will see this poster in your community very soon. It says: 'Have your say on proposals for a new state constitution for the Northern Territory'. That is what it is all about. We are coming here to explain what we are trying to do and to ask you for your help. We are asking you to think about this matter, to read these books and to have discussions amongst

yourselves. One day, perhaps early next year, we will come back and ask you for your opinions. When we have spoken to everybody in the Northern Territory, we will consider what they have said and then we will be able to write the constitution. That is why we are here today. We are here to explain what is happening and to ask you to take an interest and to think about what you want to say to us when we come back next year. Thank you, Steve.

Mr TIPILOURA: I will not say too much. Steve, Rick and Brian have explained what this is about and how the committee is looking for the views of the people in making this law. (Uses an Aboriginal language). This will be the law made by the people, not the government or the politicians. It is a law which comes from the people having their say and it is a law which will stay the same. It is not like the other laws which they make, laws which change from year to year. This law is like our law. Our law goes straight down the line and that is it. This law will be written down but it will not be written down until you have had your say about what you want to go into the constitution. That is the main thing you need to understand, from the kids to the adults.

If you do not understand something, I can always come out with Steve, Brian, Rick or any other member of the committee. We could come next month or next year, because this will not happen within the next 2 or 3 years. It will take time for people to understand what is to be written in this law and, as I have said, it is very important for you to properly understand this and to give the committee your views about what you want in the constitution.

As Rick, Brian and Steve have said, all the states have constitutions. We do not have one. We are still governed by the mob in Canberra. We have our own law but there are certain limits on what we can do. We still do not have power over land rights. Land rights is the most important thing, along with sacred sites. The Northern Territory has some legislation but Canberra has legislation as well and, every time we want to make a law here, there is always another one in Canberra. At the moment, Canberra has all the power. It can overrule our laws because its laws are much stronger.

It is very important for you to get together, the men, the women and the council, so that you can decide about what should go in this law. You have to determine that yourselves. I think the main things would be land rights, our language, our customs and our culture, but other things are important too, such as the laws which affect the courts, the right to vote and so on. We do not yet have our own laws about all those things. We are still a territory; we are not even a state. It is very important for the councillors to understand, and for the women and the kids to understand as well. If you do not understand, by all means get the council to write to me and I can come out with someone from the committee to talk to you again.

We are not going to rush this business. The committee has visited all the communities seeking information and asking people to have their say. As I said, it will not happen in 2 or 3 years. It might take 10 or 20 years before the job is finished but the most important thing is for you to understand properly and to have your say. That is why the committee is here, to tell you what is happening and to listen to you. The committee will be back, but it will be no good if you just go away from this meeting and forget about it and just let things happen without you. You have to have your say because this law will govern everybody in the Territory.

Mr HATTON: We have done a lot of talking, probably more talking than you want us to do, but we are trying to explain the importance of this. We are asking you, for the sake of your people and your future, to be part of this one and to work with us to make sure that it is done properly so that you are happy with it. This law will not chop and change. It will still be in place in 100 years and will affect people then. We have to do this for the future. I do not want to talk any more. You can see how important this is. If anyone, Aboriginal or non-Aboriginal, would like to say anything now or ask any questions, please do so.

Mr SINGH: You may be able to help us out. What happens if the committee changes while this is happening? You are the chairman now and you are from the CLP, but what happens if someone else wins your seat at the next election? Does this start all over again? Does the new person change everything?

Mr HATTON: You mean while we are making the constitution?

Mr SINGH: Yes, during the process.

Mr HATTON: It will not affect it. Of course, I hope that I do not get voted out, but it would not matter even if there was a change of government because the CLP and the ALP are both agreed about this and on the way we have to go about it. We are not arguing about that.

Mr SINGH: What I was really looking at are the stories the politicians tell to Aboriginal people. They come out and say: 'This law, this policy'. The same stories come back. Do you know what I mean?

Mr HATTON: Yes. You will find that the stories are the same this time because both political parties agree. If someone else becomes the chairman of this committee that will not affect how this law is made. It is not the politicians who will write this law. You cannot trust politicians to do it and you cannot trust lawyers or university academics to do it. This law has to be written by the people. We are only here to get you thinking about it, to bring you together to let you write this law. If I get voted out and someone else gets voted in, it does not matter. It is the people who have to write this one.

Mr SINGH: What happens if the people do write it? Can it easily be changed by the politicians or government?

Mr HATTON: No. The only way this law can be changed is by a vote of the people. Politicians cannot touch it. It is their boss. Right? It sits over the top of them.

Mr EDE: But that has to be put into the constitution.

Mr HATTON: Yes, that is what I said. You have to write it in.

Mr EDE: If you do not write that into the constitution, if you just say that it can be changed by an ordinary vote of parliament, that gives the politicians the power to change it. You have to lock it up so that it cannot be changed without a referendum. For some things, you might want a three-quarters majority of the people, and for others you might be satisfied with half.

Mr HATTON: You write those rules. We will leave copies of this book, which Rick spoke about. I call it the starter kit. It gives you a few ideas to start thinking about. When you want to find out about something, you can look at it. It talks about all sorts of different things and gives lots of different ideas. We obtained information from all over the world in making this book, from the West Indies, the United States, Canada, Africa and all over Australia. The book contains some ideas which I like and some which I do not like. There will be things that you do not like and things that you like. Perhaps there are things which we did not think of. We want you to let us know about any such things which you think of.

We also have to find a way of letting you know what other people are thinking, such as the people down in central Australia, and of letting them know what you are thinking of, so that the information flows backwards and forwards and all over. It is up to you to write this law. Do not trust us to do it. If there is something that is so important to you that you believe no government should be allowed to trust it, or if you do not trust the government and want to keep some things away from its power, use this law to protect those things.

If you do not have a constitution, the government can do anything it likes. Some countries, such as Great Britain, do not have a constitution. Its government can pass any law it likes. However, if the people make a constitution, the government can only do what the constitution says it can do. It is a law which puts the people on top of the government, not the government on top of the people. Do you understand what I am saying? That is why you cannot trust us to write it. You also should not trust us to work out the membership of the constitutional convention. Have your say about that. This the the people's process and the people have to own it, not the government. Have I explained it?

Mr MANSFIELD: Steve, I have a question for you. I think a lot of people are worried about whether Aboriginal rights will stay the same under this constitution or whether people have to get in and say their piece now so that they can be covered all the way. When the constitution is brought in and it is put to the vote, will it be decided on a first-past-the-post vote or will a certain percentage of the vote be required?

Mr HATTON: I do not know. It is up to the convention to decide that.

Mr MANSFIELD: Okay, so people have to get in and have their say now. Otherwise, a whole lot of balanda will do it, because the white community has more votes than the Aboriginal community and, if Aboriginal people do not stand up and say what they want, it will just be left out of the constitution. It is no good people saying that they do not want to be part of this. People have to get involved now.

Mr HATTON: I will say something else too. You know that, if I talk to some people in Alice Springs and Darwin about things like land rights and sacred sites, they are not very happy. A lot of that is because they do not understand. What you say is right: people have to get involved and put their view. There will be a lot of arguments. It will not all be smooth and

easy with everybody patting each other on the backs and saying what good blokes they all are. We will have lots of arguments. However, if you want to make something for the future, you have to talk things through. People have to be prepared to have their say and explain why things like land rights, sacred sites, the law and language, are important to them. There might be some fights, but the more you explain things the more chance there is that people will understand and work out a way together. Other people have their problems too and, if both sides hear what the other is saying, there is a better chance that they will come to an agreement about the best way for the future. The process of making this constitution should develop understanding and, through that, respect. For that reason, I believe that the process is at least as important as the actual document.

Mr MANSFIELD: What I was coming around to saying is that, if people do not say anything about this, when the constitution is finally drafted and put to the vote, the vote might be 60-40 or something like that. In that case, it will be in and people will not be able to do anything about it. It will be a new law and people will not be able to say anything about it.

Mr HATTON: There has not been a constitution written in Australia for nearly 100 years. That is a long time. The other states completed their constitutions nearly 100 years ago, as did the federal government. The people who drew up those constitutions never once went out and spoke to the people and, certainly, they never ever went out and spoke to the Aboriginal people. When they wrote those constitutions, they did not include any protections for Aboriginal people. Aboriginal people still do not have some rights in those states because of that. This, however, is your chance. This has never been done before in this country. You can have a say and make sure that the things which are important to you are properly locked up and looked after for the future. But if you do not have a say ...

Mr EDE: We should clarify this. It is not necessary now to stand up and say that you want this, that or the other. It is necessary, when you are at meetings of the community council or the school council or the outstations, to talk about the things in these books, to decide on the things that are important to you, and to send the messages to us. You can send resolutions and letters. You can communicate your ideas in language. Just let us know what you are thinking so that the word is coming back from your side all the time. Do not let it be just the mob in town which says what it wants with its big mouth and comes in over the top of everyone.

If Aboriginal people are strong on this one, they can make sure that a lot of the things that they want can be part of this constitution. We might not win every point but we can win a lot because, in the final analysis, you can say no to anything which you do not like. The big committee meeting, for example, can be set up so that it takes more than a simple majority to have things accepted. You can say: 'This is too important for things to be decided by half of the people. We think three-quarters of the people should have to accept things before they are agreed to'. Remember that Canberra will have the last word on this. I am pretty certain that, if there is something in the constitution which all the whitefellows want and all the Aboriginal people do not want, the federal government will knock it back. You should also remember that it is all right to say no to the constitution and that you can say no to the whole lot even if you are just unhappy with one little bit of it. If the people do say no, we will just have to go on working at it until we get it right.

Aboriginal people have been here for thousands of years and people will be here for thousands more years. We do not need to do all this in a year or in 5 years. We can keep going until we get it right. If you are not happy with what happens, you can say so. It is no good standing outside throwing rocks on the roof. You have to be inside talking about what you want. If it is not the way you want it to be, you can say no and the work can keep going. As long as people are talking, it is all right to say no. But it is no good staying outside saying: 'We do not like what you mob are talking about in there'. You have to be inside too.

Mr HATTON: Are there any other matters you want to talk about? Do you reckon it is worthwhile having a go at working on this?

I think we have probably talked enough. I just ask you not to just walk away from this. If you need any information, there is a telephone number in the back of the book. Please let us know if you want someone to come out and talk to you, whether you want it to be a member of the committee, a lawyer or somebody else. We really want you to make sure that you are part of this. In 3 years or in 5 years you will not be able to ask why we did not ask you to be part of this. We are asking you now. Okay? Thank you very much.