

PUBLIC MEETING

ALYANGULA — Tuesday 2 May 1989

PRESENT:-

Committee:

Mr S Hatton (Chairman)

Mr B. Ede (Deputy Chairman)

Mr C. Firmin

Mr W. Lanhupuy

Mr D. Leo

Mr R. Setter

Officers assisting the committee:

Mr R Gray (Executive Officer)

Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Ms Kay WRIGHT

Ms Julie WADDY

Mr Alan WRIGHT

Ms Susan GILMOUR

Mr Colum DONALDSON

Dr Dan NAIDOO

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

Issued: 21 August 1989.

Mr HATTON: Thank you for coming along tonight. My name is Steve Hatton. I am the Chairman of the Select Committee on Constitutional Development. On my right is Col Firmin, the member for Ludmilla, a member of the committee. Wesley Lanhupuy was to be here but he has been required to attend a funeral on Elcho Island today. He was unable to leave, as I am sure you would appreciate, and he sends his apologies.

As you will see from the booklet which has been distributed, this is a unique committee of the Assembly in that it has equal representation from both the CLP and the ALP, with 3 members from each side of the House. It is the only committee of the Assembly which has ever had equal numbers from both parties. Normally there are 3 members from the government and 2 from the opposition. Since its inception, this committee has worked on a bipartisan basis and striven to maintain a bipartisan approach to the questions we are dealing with. I must say that this is one case where party politics has no place nor has it had any place. That approach has been actively followed by both sides of the Assembly.

You have heard a lot of talk over the years about statehood. Some people are of the view that we should strive for the granting of statehood as soon as possible. Others are a bit nervous about it and believe that it should be held off for a while

and some people are totally opposed to it at present. There is certainly a lot of apprehension in the community as to what it means. You can feel comforted by the fact that I am not going to ask you whether or not you support the move to statehood and, in particular, statehood in the immediate future. That is really a separate question to the work of this committee.

There is no doubt that this committee's work is related to the eventual attainment by the Northern Territory of constitutional equality with the rest of Australia. That certainly is the long term goal. However, before you can even start to think about whether or not we should become a state and under what conditions, the first thing you should ask yourself is: what sort of place do you want the Northern Territory to be? How do you want it to work? What sort of ground rules are you going to set for society? How do you want your parliament and your courts to operate? What will be the rules in this new society that we are going to move into? Until you have worked out the answers to such questions, you really do not know what you are walking into when you walk into statehood.

The rules are set by writing a constitution, just as they are when you set up a club, a local government authority or community government authority. You have to set the rules down and you do that in a constitution. In this situation, the constitution stands as a fundamentally important document. It is the people's law. It is where the people set down the rules for government, for the courts, and where the people enshrine the rights or freedoms that they regard as so fundamental that no government should have the power to interfere with them.

You need to appreciate that, in the absence of a constitution, governments can do what they like. A constitution enables the people to put a fence around what the government can do. It sets the focus and the direction and puts the limits on what government can do. It does not give power to government; it limits the power of government. In the absence of a constitution, governments have unrestrained powers. For example, Great Britain does not have a written constitution. Custom and practice have evolved over the years and can be adjusted as society changes and different points of view are resolved through the courts and the parliament, but there is fundamentally no restriction on what the British parliament can do, subject perhaps to the Magna Charta. Mr Nicholson might be able to assist here. I believe that the Magna Charta does not limit the British parliament as such but, rather, limits the Crown.

Mr NICHOLSON: The theory of British constitutional law is that the parliament has unlimited powers.

Ms WRIGHT: How is it that the New South Wales Attorney-General has the power to say, as he has done recently, that a prisoner in jail must serve an extra sentence?

Mr NICHOLSON: That must be pursuant to some statutory provision in New South Wales.

Mr HATTON: If I can pick up that point, Australia is a constitutional democracy, as are Canada and the United States. Each has a written constitution that limits the powers of government. In the federal sphere in Australia, those powers are limited, with residual powers held by the states. As to exactly where the balance lies, many a lawyer has made a lot of money arguing, as they will no doubt continue to do in the future. Basically, however, there is a constitution which sets out what the federal government can do and what it cannot do.

Each of the states also has a constitution. Most are leftovers from the colonial constitutions established in the last century but they do impose varying degrees of limitations on what the various state governments can do. The Northern Territory, however, does not have a constitution at all. The closest we have is a federal act of parliament called the Self-Government Act which, for us, is like a pseudo-constitution. Because we are a territory, the limitations on the federal government in relation to us are non-existent. Section 122 of the Australian Constitution effectively says that the federal government can deal with the Northern Territory as it pleases. Most of the individual protections of the Australian Constitution do not apply to citizens of the Northern Territory because they specifically refer to the citizens of a state. The Commonwealth is a federation of states and we stand outside that. Thus, for example, it has been held by the High Court that the federal government has the power to acquire your individual property without compensation and without reason. That cannot occur in the states because the Australian Constitution says that the federal government can only acquire property for Commonwealth purposes on just terms, which means that it has to pay for it. There has to be a justification for any compulsory acquisition.

Ms WADDY: Does the Land Rights Act override that?

Mr HATTON: The Land Rights Act is an act of the federal parliament and, whilst I do not believe it will happen, what governments can give they can also take away. It is possible for the federal government to repeal the Land Rights Act and

simply resume all that land as Crown land.

Ms WADDY: But so long as the Land Rights Act is in force, it cannot take Aboriginal land?

Mr HATTON: It would have to repeal the act.

Ms WADDY: So as things stand at present, it can take land from Europeans but not from Aborigines?

Mr NICHOLSON: It would have to pass an act to do it.

Ms WADDY: The Commonwealth is bound by the Land Rights Act.

Mr HATTON: The Commonwealth can amend the act.

Mr FIRMIN: Ms Waddy is correct. Under the Australian Constitution, land can be taken from the ordinary white citizen of the Territory with no restitution if that is the way the Commonwealth wants to act. In respect of Aboriginal land, however, it cannot do that.

Mr HATTON: Unless it amends or repeals the Land Rights Act, which is the Commonwealth's own legislation.

Mr WRIGHT: It is inalienable freehold title as opposed to freehold title.

Mr HATTON: But it is only inalienable whilst that legislation is in force.

Mr WRIGHT: Yes, although it would take a courageous government to repeal it.

Mr FIRMIN: What is being said, however, is that an inequity exists.

Mr HATTON: Although I would not suggest that this is likely to happen whatever government is in power, the point I have made to communities is that it is technically possible for the Land Rights Act to be repealed. For example, if it was expedient in the context of anti-Aboriginal sentiments in Sydney or Melbourne, and appeared to be advantageous or imperative in terms of winning government, it could occur. A party which promised to repeal the Land Rights Act could do so if it won a majority in both federal Houses. There is no entrenchment or guarantee which protects land rights.

Equally, the very existence of democracy in the Northern Territory depends on a federal act of parliament. Although I do not think this would occur either, it is possible that, by amending a regulation to an act of parliament - which does not even have to be debated on the floor of the House - the Commonwealth could wipe out the entire Northern Territory education system.

Mr WRIGHT: A political party could promise to wipe out taxes in order to win government on the basis of votes in Sydney and Melbourne but I do not think that will happen.

Mr HATTON: I am not saying that such things will happen. I am simply trying to explain the constitutional position of a territory versus a state. By repealing an act of parliament, the federal government could remove any right to political representation in the Northern Territory. There is no constitutional guarantee of your right to have your own government. That is the difference between a state and a territory.

Mr NICHOLSON: It is not purely an academic question because there have been examples where the Commonwealth has passed legislation to acquire property in the Territory expressly excluding any compensation.

Mr WRIGHT: One involved a station.

Mr NICHOLSON: Yes. Another involved mining interests. There was also a small acquisition at Ayers Rock where the boundaries were changed without compensation.

Mr WRIGHT: I am not suggesting it is academic but it would perhaps be likely to happen in those areas where ...

Mr FIRMIN: Actually, it happened in Darwin. I was a landholder in the 32 mile acquisition area back in 1972 and we were told that all our land was to be acquired. We made representations to the federal government about compensation. The

minister came up and agreed to consult with us. He went back to Canberra and, in the last sittings of the House, he tabled the acquisition document without talking to the land-holders. Parliament rose for 30 days and the law became an act without any debate whatsoever. Because it had lain on the table for 30 days, it became law. In the January of the following year, we found that all of our land had been taken. It took 3 years to obtain any compensation and we got 1% interest on what the Commonwealth determined was the value of the land 5 years before.

Mr WRIGHT: I am suggesting that they might do it to small groups but would not do it where large groups would be affected.

Mr FIRMIN: That was a large group. Quite a number of people lived in the 32 square miles of the Darwin area. In fact, there were about 200 landholders in that region.

Mr WRIGHT: I am talking in relative terms. The Land Rights Act was introduced into the Territory because of the numbers of people involved. It was a vehicle to see whether land rights could be put in place in the context of fairly widely held views that they should be granted, and I do not believe that those land rights will be removed. If, however, you are talking about a couple of thousand people, that is not many in the context of the total Australian population.

Mr HATTON: As long as the views of the broad Australian community are in sympathy with or are not antagonistic towards that legislation, I agree that it will continue. I am not suggesting otherwise. I have tried very hard to emphasise the fact that I do not believe the act would be repealed, whoever was in power. I just do not believe that that would occur. My point is simply that there is no constitutional impediment to that happening and that the fact that such things are decided only by an act of the federal parliament helps to illustrate the difference between a state and a territory.

In the Northern Territory at present, the rules that determine the rights of government are set up under a federal act of parliament. They were given to us in the Northern Territory (Self-Government) Act. They determine the shape of the parliament, how we go about setting up electorates, voting procedures, who has the right to vote in elections, who has the right to stand for parliament and so forth. The question we are now asking people is: how do you want the Northern Territory to operate in the future? What sort of a parliament do you want? How do you want governments to be formed? What will be the role of the Governor or the Administrator? How will the courts relate to the parliament? Where do powers reside in these various elements of government? At present, an act of the federal parliament determines these things.

We are asking you about the directions which you consider to be appropriate for the Northern Territory society of the future. What sort of fundamental rights should be protected from governments of any persuasion? Should the right to vote by secret ballot be constitutionally protected so that no government can remove it? If such a right is not entrenched in a constitution, it is possible for a government to remove it.

To use another example, do you want to entrench the right of freedom of religion? In discussions with Aboriginal people, I have raised the issue of whether there should be some constitutional entrenchment of land rights or an entrenchment which protects Aboriginal religion, culture, language or law. Those things are really important to Aboriginal people in terms of preserving their culture, law, language, history and identity. How can we do that whilst ensuring that Aboriginal and non-Aboriginal society can coexist with some sense of mutual respect and equality?

There are many hard questions and there will be many arguments between now and the day we find the answers. However, as a society, we must come to terms with the reality of our environment. We must find answers to these questions, not just in our own interests but in order to create a society that future generations will be proud to live in. It is not just an opportunity. I would put it to you that, in fact, we as a society have an obligation to deal with these matters. If we fail in that obligation, if we walk away from this job, we will hand on to future generations the problems that we now have and possibly even worse problems. That will come about if we do not accept our responsibility to set down the ground rules for our society in the future. We have a unique opportunity in Australia but, as a generation, we also have a very heavy responsibility to discharge.

Until we have done this, we cannot properly address the question of when we should achieve statehood. First of all, we have to ask ourselves what sort of state we want. That is the question we are putting to the community. We are not expecting people to have the answers today. We are putting the questions to you and saying: 'Please take the opportunity to start reading about them, thinking about them, talking about them and getting your ideas together'. We have also produced a summary of questions which address one issue at a time. For example, in respect of the legislature, do you think that we

should have 1 House or 2 Houses of parliament, a unicameral or bicameral system? Should we have an Upper and Lower House?

Ms WRIGHT: What does the Hare-Clarke system have?

Mr HATTON: That is the Tasmanian system of voting. It is an option that you may wish to write into your constitution.

Ms GILMOUR: That option was not mentioned in the booklet.

Mr HATTON: No. I do not think we have mentioned specific options.

Ms GILMOUR: I think you said that something was agreed.

Mr HATTON: As a committee, we would recommend single-member electorates but the Hare-Clarke system involves multi-member electorates.

Ms GILMOUR: The Tasmanian system has multi-member electorates.

Ms WADDY: How does that work?

Mr HATTON: They have 5 member electorates.

Ms GILMOUR: It is supposed to be the best system in the world.

Mr FIRMIN: It is very complicated.

Mr HATTON: It depends whether you come from Tasmania or not in my view.

Ms GILMOUR: No. It was an independent study.

Ms WADDY: How do they get 5 members?

Mr HATTON: Can I give you a response to that? The Darwin City Council, for example, has multi-member wards. Each ward elects 3 aldermen. It sounds very good because it means there are fewer electorates with several alderman representing each. However, when a problem arises, which alderman do you nail?

Mr FIRMIN: I can tell you. I was an alderman on the Darwin City Council for 8 years - 3 elections. I reckon that I carried a couple of my colleagues for about 4 of those years because I was the only one that seemed to be accessible and the only one that seemed to want to do any work.

Mr HATTON: You have 3 to choose from which also means that they have 2 others to blame. There really is a major problem trying to pin down an alderman on a particular problem within the ward. In a single-member electorate, there is no way the elected representative can escape.

Mr FIRMIN: The buck stops.

Mr HATTON: There are different arguments for and against. Whereas the multi-member electorate has the potential to get a more balanced proportional representation in the parliament, it also provides a better avenue for minority groups to enter parliament and instability may flow from that. One could have a great time arguing about such issues over dinner one night.

Mr WRIGHT: If an electorate like Arnhem is represented by a single member who happens not to be of the government party, it does not really do much for the electorate. It is very difficult to get things done.

Mr FIRMIN: Correct. It can happen that way.

Mr WRIGHT: It is one of the disadvantages of the current system. I am just following up Steve's reasoning, and pointing out that if your member is not of the government party it may not be as easy to get things done as it might be otherwise.

Mr FIRMIN: That could be because he just does not want to listen. We don't actively work against the local sitting

member. If a dishonourable state of affairs is brought to the government's attention and if something needs to be done, we get on and do it, I can tell you.

Mr HATTON: We need to back off a bit here. This is a committee meeting, not a government meeting. I have to draw a very careful distinction between our role as members of a select committee and as members of a government. I have an added responsibility because members from the opposition have not been able to be present. I do not want to take any political advantage of that situation.

Ms WADDY: That is right. Fair enough.

Mr HATTON: I think that is important in terms of the work of this committee. I am happy to debate those issues when I close the meeting.

I suppose it is a good example of how you can get into a debate. The other question which arises is whether that sort of detail - the question of multi-member or single-member electorates - should be determined in a constitution, or whether it should cover the really important things such as who has the right to vote, who has the right to stand for parliament, how many Houses of parliament and so forth. The question of multi-member or single-member electorates could be dealt with under an electoral act.

Ms WADDY: But you do not necessarily know what is important in advance.

Mr HATTON: No, but we can spend a long time talking about it as a community. We have put the various options in the discussion document. One of the questions you need to decide is the extent to which you want to entrench detail in a constitution. Once it is there, the probability of changing it is very minimal. You have to find a balance between the stability of foundation stones versus the flexibility to move with changes in society. For example, the demographic composition of the Northern Territory could change. Once you lock something into a constitution, change could be very difficult in a situation such as a changing demographic structure. The result could be a very unhealthy direction which is extremely difficult to alter.

Mr FIRMIN: There are 3 different levels. Firstly there is the constitution, which is the foundation stone. Then there is legislation, which provides external packaging and flexibility and, lastly, there are the regulations which allow for the day-to-day operations. You do not want to put a vast number of nitty gritty little details into a constitution because, whilst they may be appropriate today, they may not be appropriate in a few years time. Constitutions can only be changed by referendum and that can be a difficult process.

Mr WRIGHT: I have a couple of questions. Firstly, do you have any vision of a time frame for the development of the constitution and the next step?

Mr HATTON: Yes, I have, but please accept that we are very deliberately not setting time limits on what we are doing. It is more important to do it properly than to do it within a particular time.

Mr WRIGHT: I was actually leading up to another question. You have talked about the importance of a constitution and nobody would disagree with that. You have also spoken about how, once it becomes part of our life, it could be very difficult to change. It seems to me that, when such a small number of people turns up to this meeting on a subject of such importance, there is a great need to educate the community about the things which are being discussed. I would like to ask how you propose to get information to the community and how you propose to get debate going. Obviously, you do not want people just to be disinterested. The questions posed in the discussion document and in your remarks so far are highly complex and people need to be well informed before they can have an input. There would be very few places in Australia, if any, where people have had the opportunity to take part in this sort of exercise in the last 70 or 80 years and people are just not geared for it.

Mr HATTON: Basically, it has not happened for 100 years.

Mr WRIGHT: I would think that your committee would have a big responsibility to work out mechanisms for disseminating information and getting debate under way.

Mr HATTON: We are always examining those mechanisms but let me explain how we are going about the process of developing a constitution. If this committee has any say in it, and I think it does have a fair say, this constitution will be

written by the people, not by the politicians. We are approaching our task by moving around the Northern Territory. We are visiting 59 communities on this particular round. We are simply talking to people, sometimes in small groups and sometimes in large groups of up to 100 people. We are explaining the process that we are going through and asking people to think about what we are doing.

The committee is already discussing backup systems such as newsletters, perhaps videotapes, and other materials in local languages. This trip has certainly confirmed that English is hardly spoken at all in many Aboriginal communities, where 80-90% of the people speak their own language and have no television, radio or other forms of communication. We will have to find mechanisms to reach such places.

In addition, we are looking at ways of exchanging views between communities, perhaps through newsletter updates. At its next meeting, the committee will be discussing the possibility of making a documentary type video presentation to be circulated in communities. It would explain what a constitution is and set out some of the issues that are involved. Video is a very significant way of disseminating information around the Northern Territory and it could be very useful in this case. So we are looking at the possibility of getting programs onto television or through the video networks, in addition to newsletters. We are also considering picking up particular issues and asking particular questions about them to get people in the community to start thinking about them - bite-sized chunks of information for people to get their teeth into.

At the end of this process, later this year or early next year, we will be coming back saying: 'Well, now is the time for you to tell us what you think. You have heard and you have had a chance to read. Now we really want you to have your say'. That is what these posters are about. We would encourage you to put them up around the town to put the concept in front of people, to tell them what is happening and to encourage them to find out about it and have their say. When we come back we will be asking people, individually or in groups, to make submissions on the constitution. These would set out the things people believe should be included in a constitution. We will gradually collect that information from throughout the Territory. It will then be our job to distil that input and to come up with a constitution which, in our opinion, best reflects the views of the community. We will not, however, be writing the constitution. That will simply be a draft constitution, a working document.

Ms WADDY: In other words, people can say that they do not agree with particular aspects.

Mr WRIGHT: I just wonder how you can stimulate more interest, discussion and debate in the community so that you get the input from the people. That is important. Otherwise, the politicians will make the decisions.

Ms GILMOUR: Or else you will just get a 'No' vote.

Mr WRIGHT: It will happen but it will not happen the right way unless people are well-informed.

Mr HATTON: That is where the second question is really important. That question concerns the formation of a constitutional convention, which is like a giant drafting committee of representatives of Territory people. How should that convention be put together? How do we ensure that we get a group which is large enough to reflect the diversity of views in the Northern Territory? How do we ensure that people are confident that the views of their communities are represented whilst confining the convention to a size that is not unwieldy. The putting together of this convention will be one of our major tasks because that convention will consider the work of this committee and all the submissions received by it. The convention's job will be to go through our work, accept it, reject it, amend it, vary it and work through to eventually produce a proposed constitution. That is the second of 3 stages.

This committee will do the background work and call for submissions. It will then produce a draft constitution and a process for forming a constitutional convention. If that is accepted by the Legislative Assembly, the constitutional convention will be formed and will meet until its job of drafting a proposed constitution is complete. When that is done, the proposed constitution will be put to a referendum of the Northern Territory voting population. If the population accepts it, that will become the constitution. If the people reject it, it will go back for further consideration. It may be important, therefore, in the processes of the constitutional convention, to have a series of sub-referenda dealing with specific subjects. Rather than having the entire constitution accepted or rejected, the various parts could be considered separately and, hopefully, at the end of the day the result would reflect the wishes of the people.

Mr FIRMIN: Steve, I would just like to go back to Alan's earlier point. I take your point, Alan. How do you get people interested? Do you have any ideas?

Mr WRIGHT: We could have a constitution club on the island, a focal point people could turn to. Are we going to see somebody from the committee once every 2 years? That would be no good. Interest would wane. To keep interest alive, you need a local focal point.

Mr HATTON: I think that is a tremendous idea.

Ms WADDY: I would just like to comment on something rather interesting. The last meeting on this subject, the October or November meeting, was very poorly publicised. This meeting was well-publicised in the newsletter, The Echo, and so forth. However, about the same number of people have come, despite the fact that people have known about the meeting for weeks.

Mr FIRMIN: It has been on Imparja.

Mr WRIGHT: I think the constitutional goal is too far down the track for people to be interested in it. You really have to get some information out.

Mr HATTON: But at least people know that there is some work under way towards the development of a constitution.

Ms WADDY: Right, at least that stage is happening.

Mr FIRMIN: I think the message will get across. Let me just tell you what happened in Alice Springs. We attempted to have a meeting there on a Friday evening in a 2-week visit to the region. Only 4 people turned up. It was another wet night.

Mr HATTON: And they only turned up after we had decided that no one was coming.

Mr FIRMIN: There was some bad publicity in the newspapers over the next couple of days. There was some confusion in relation to timing.

Mr HATTON: The Peace Council lambasted us because we were not there to hear its submissions.

Mr FIRMIN: Its members arrived at 7.15 pm or so. Our people had been there since 5 pm but there was no one there when the Peace Council people arrived. We decided to hold another public meeting on the following Thursday. The night before the meeting, rather than accompanying the committee in its sessions outside Alice Springs, I stayed in town and contacted as many community interest groups as I could get hold of. I spent virtually all day on the telephone and, by the time I had finished, about 50 people had told me that they would definitely attend the meeting and would probably bring other representatives as well. Altogether 9 people turned up.

Mr GRAY: I think it was 13

Mr FIRMIN: That is right. The 4 girls from the Tourist Commission came in. They were not among those I had spoken to during the day. I had spoken to organisations like the service clubs, church organisations, the Small Business Association, the Master Builders Association and so on.

Ms GILMOUR: (inaudible).

Mr HATTON: Those that did attend went away saying: 'Hey, this is important. I want to find out a bit more about this'.

Mr WRIGHT: But they probably do not see it as important as the ABC News at 7 pm?

Mr FIRMIN: That is probably right.

Mr WRIGHT: That is the time when the meeting is held. You have to think about little things like that when you are organising things.

Mr FIRMIN: You have to find a night which is not basketball night or card night, when there is nothing special on television and so on.

Mr WRIGHT: It is hard to get people along to a meeting if they have to make special arrangements for looking after their

kids and so on.

Ms GILMOUR: You are obviously distinguishing the constitutional work from the statehood movement and that makes it more difficult to get people interested. If it was linked to the statehood movement, people would probably take more interest because they relate to the idea of statehood and unifying over a long period of time.

Mr HATTON: We thought about that. However, our view was that combining the 2 issues might polarise the community into those who already oppose statehood versus those who think it might be a good idea. That would be a difficult situation to be in.

Mr WRIGHT: I would be looking to try and get some organisation, such as a constitution club, which would provide information to generate some community interest rather than taking any particular stand. There is no local government here. Local government is based on private enterprise and there is very little private enterprise here. Whilst you will not get that sort of interest, there are lots of people here who would contribute if they understood what was happening and the processes which will occur.

Ms WADDY: But at least there is now a vehicle for getting information into the community at a wider level. That is through The Echo. The newsletter has been upgraded since the committee was here last and there is an opportunity for some meaningful information, via press releases and so forth, relating to particular issues. A well-worded statement in The Echo will reach a considerable number of people.

Ms GILMOUR: Since it is such a long-term objective, perhaps the education system could be accessed.

Mr HATTON: We are accessing the education system.

Ms GILMOUR: The adult education system.

Mr HATTON: We are working right across the education system including the schools. The process of constitutional development is being built into the SACE program at schools. Explanations of the workings of parliament and so on are now part of the SACE curriculum and the issue of constitutional development is being incorporated in the SACE program for secondary schools. We have had approval from the Education Department to talk to senior students in high schools on a bipartisan basis. We have already had a couple of very successful meetings in schools. Literature is being sent to the high schools, particularly for the SACE faculties. We are using the education system. We have received some information in relation to adult education and we will be following that up further when we get through the end of this round of trips.

Ms WADDY: You have to have the interest before you get the participation in any sort of formal education.

Mr HATTON: It is very hard to get the interest until people know that something is under way. If I can get you to look at the issues and say: 'Hey, something pretty significant is happening and it is not the sort of thing I want to miss out on being involved in', I will have you sufficiently encouraged to take some steps to become better informed. If I can do that, I have made a step in the right direction.

Ms WADDY: Whoever came here last time succeeded in doing that.

Mr WRIGHT: You have a tough job ahead. You have to sell it. You have some information.

Ms WADDY: There are the 2 or 3 of us who were here last time, and we are back again.

Mr WRIGHT: How you sell that information is what counts. You can have guest speakers at community-based organisations. You have to make it interesting. Public meetings will attract a few people like us but if you really want to get information into the wider community, you have to look at ways and means of making it interesting.

Mr FIRMIN: We are looking at the Rotary Clubs, the Lions Clubs, the Penguins, the Quotas and so on.

Mr HATTON: We are looking for speaking opportunities.

Ms WADDY: You could provide something for The Echo, following this meeting up fairly closely, saying: 'Look, you have missed out on an opportunity but this is what we are on about and this is what we are after'.

Mr HATTON: And this is where you can get more information.

Ms WADDY: Yes. You also need to sell the fact that this is a historical first, not just in Australia but elsewhere. I think that approach would really help to sell the idea and get people interested.

Mr HATTON: It is a unique opportunity in Australian history.

Ms GILMOUR: Wasn't it this time last century when people started working on the federal constitution?

Mr NICHOLSON: It was 1893.

Mr HATTON: It came into force in 1901 but work actually began in the 1880's. It was 13 years in the making. Remember, too, that the people who wrote the federal constitution were basically politicians.

Mr FIRMIN: Well, they were the colonies' representatives.

Mr GILMOUR: It wasn't as bad as the formation of the United States Constitution, where there was a great amount of politicking.

Mr FIRMIN: It was the colonies trying to sort themselves out.

Interjection: What's your name, O'Malley?

Ms GILMOUR: What was that?

Interjection: What is your name, O'Malley?

Mr FIRMIN: King O'Malley.

Ms GILMOUR: You could even use that sort of historical information in an education program, along the lines of: 'This is how the federal constitution was made. That is what happened then and this is what we are doing now'.

Mr WRIGHT: Perhaps you can get people who have a lot of public appeal to become the full bottle on this and get them to give sections at the CWA, the Lions clubs and so forth. I am thinking of people like Monte Dwyer the weather announcer, people with some crazy charismatic appeal. Peter Forrest, the historian, would be another good one. Any number of things could be done but the distances involved certainly present a problem, as do the costs.

Mr FIRMIN: Monte has already given us a burst during the weather report one night. He said something like: 'I hope the constitutional development committee is getting along all right out there'.

Mr WRIGHT: All I was saying is that those people are listened to. They have more public appeal than you and I. Who is going to listen to a dry old politician?

Ms WADDY: In this context, though, it is politics without point of view. In other words, education.

Mr HATTON: This is the ultimate politics, isn't it? It is not party politics.

Mr WRIGHT: People will identify this with politicians if it is delivered by a politician.

Mr DONALDSON: What are the main areas of concern that have been raised?

Mr HATTON: They have varied greatly. We have received individual proposals. There is no doubt that, within Aboriginal communities, the significant issues are land rights, sacred sites, protection of Aboriginal law and culture - broadly speaking, the human rights issues. Those issues have all been raised by every Aboriginal community we have visited. The emphasis may have differed from one place to another, but those issues have always been there. In the non-Aboriginal communities, equality has been the main theme.

Actually, when you look closely at what both communities are saying, it is the same thing in different words. Aboriginal people are saying that they want protection so they can get equality. An interesting debate occurred at Utopia, which is a

very traditional community. There is no central community and people have really strengthened their traditional way of life. One elder suggested that Aboriginal people should be in their place and the white people in theirs, and a giant argument broke out. People were saying: 'No. We want to be side by side, not one in front of the other'. That tends to be the very firm view. Aboriginal people are saying: 'We are not going to be subsumed by you. We do not want to be subsumed by you nor do we want to subsume you. We have to find a way of existing side by side and going forward down the same road. We want to have our own culture and our law and find a way of working together'. That is the challenge for people in the Northern Territory. The white community is saying exactly the same thing. People do not want to wipe out Aboriginal culture but they do not want to feel that Aboriginal people have rights over and above their own. They want balance.

Ms GILMOUR: That raises an interesting issue which has occurred to me. How does multiculturalism fit with the recognition of Aboriginal culture? The way it works at the moment is that there is recognition of a dominant language and a dominant way of doing things. The recognition of Aboriginal culture and language will almost be an exception to multiculturalism because, when people from other cultures come to this country, they do not have the right to be taught in their own language or to use their own system of law.

Mr HATTON: There is a need to come to grips with the unique circumstances of an indigenous Aboriginal people.

Ms GILMOUR: But it does not sit easily with equality, does it?

Mr WRIGHT: There is a more diverse gap between our culture and Aboriginal culture than there is between our culture and many others.

Ms GILMOUR: There is a distinction, though, between the Aboriginal culture which already existed in this country and the cultures of people who have come to it as migrants. Such a distinction might have to be made in the preamble to the constitution so that it is clear that Aboriginal culture is not just another culture in the multicultural society, and that it has a special status.

Mr HATTON: Yes, that certainly relates to the question of a preamble. I am certainly not throwing the answers on the table. I am just saying that we have to wrestle with these issues as a society and as a community because, if we do not resolve them and find satisfactory solutions to some of the problems, we will leave an inheritance of conflict.

Ms GILMOUR: In drawing up its constitution, is the Northern Territory able to acknowledge the pre-existence of Aboriginal people in a way that Australians as a whole have not? Is that possible?

Mr FIRMIN: It is possible but you would need to get it right.

Mr HATTON: It is possible. If there was a way of doing it without creating problems in terms of dealing with some of the radical people, without walking into a morass of international law and massive reparations for the events of the last 200 years, it would be done tomorrow. That is the problem. I do not think that there is anyone who does not understand that Aboriginal people were before we came and that they have their own language, culture and religion. That is not the issue. The issue is whether we do what Mr Mansell says we should do and pay 25% of GDP forever in compensation for taking land from Aborigines in the last 200 years.

Ms WADDY: I do not think Aboriginal people as a whole are wanting that.

Mr HATTON: I agree, but that is the potential danger of a preamble. If you can find the answer to that problem, you will resolve it. I do not know any non-Aboriginal person who does not say: 'Yes, they were here first. They had their own language, their own tribal areas and their own rituals. I understand that and, yes, they were badly treated. But I cannot change that. What can I do from now on?' That is what the non-Aboriginal community is saying and I think that, basically, Aboriginal society is also saying that. How do we put that together?

Ms GILMOUR: It seems that the value of preamble would be as a statement ...

Mr HATTON: A statement of recognition.

Ms GILMOUR: ... that would be a greater influence on policy-making than many things. When there is contact between white Australian institutions and Aboriginal culture, such a statement could influence the policies that govern those institutions. I am thinking in terms of departments like health, education, and all the other arms of a state government. If

the preamble to the constitution stated that Aboriginal languages had to be recognised, there would have to be bilingual programs in the schools. You cannot confidently say that you recognise Aboriginal languages if you force Aboriginal people to learn English. The same goes for a lot of other things.

Mr DONALDSON: I would be very reluctant to do that in a constitution. The weight of evidence about bilingual programs is that ...

Ms GILMOUR: I am not talking about whether the bilingual program is good or not. I am saying that, if you want something like that, such a statement in the constitution gives ...

Mr DONALDSON: An opening to do it.

Ms GILMOUR: An opening, yes.

Mr DONALDSON: But you should not be legislating that in a constitution.

Ms GILMOUR: You will not be. A preamble would not go into details such as a requirement to have a bilingual program in every school. It is just policy; that is what I am talking about.

Mr DONALDSON: The aim is to find points of principle. It has been said that the 2 communities are effectively saying the same sort of things. The problem is to find a way of expressing those broad principles rather than addressing specific matters in detail.

Mr HATTON: The task is one of finding the words that can express things so that they are not offensive to one side of the community or the other whilst saying what both sides are trying to say.

Mr DONALDSON: Managing to do it in a fashion which will allow for reasonable interpretation in the future without being too specific. I do not think that, in considering a constitution, you should be setting out to prepare for the future of the Northern Territory. I think you should be setting some standards which should not be breached but there is a limit to the extent to which you can define directions.

Mr HATTON: You can set a broad direction and broad rights.

Ms GILMOUR: But constitutions never contain much detail.

Mr HATTON: Unless they are like the constitution of Papua New Guinea.

Mr WRIGHT: It depends who writes them, how they are written and what language they are written in.

Ms WADDY: I am thinking of some sort of statement which encourages the process of bilingual education without being prescriptive. In other words, something which would not leave it to the whim of a particular government as to whether there should or should not be a bilingual program but which ensures that, if the community wants to take that direction, it is given every support rather than having things chopped and changed at the top level of government.

Mr HATTON: Can I just throw in an example? If the constitution provided for the protection of Aboriginal language, that could place the government under an obligation to provide a dictionary recording all the languages of the Northern Territory.

Ms WADDY: In other words, to give support for those things that ...

Mr HATTON: That could be justified on the basis that people who felt they were losing their language, or wanted to learn their traditional language, must be provided with the means to do so. Whilst that might meet a constitutional requirement, it might be counter to the prevailing wisdom or educational approaches to bilingualism, unilingualism or appropriate approaches to educating people.

Ms GILMOUR: Fair enough. I am talking about giving a level of support at that sort of basic level.

Mr HATTON: There are ways of making the education system more culturally sympathetic. For example, it does not make much sense for children in places like Nyrippi to the west of Alice Springs to be read stories about Snow White and the

seven dwarves. Such stories do not have much significance for those children. Nowadays, more culturally relevant material is becoming available. That is a way of making the education system more culturally sympathetic.

Ms GILMOUR: The suggestion that Merv Brown made in Angurugu today about recognising Aboriginal law is surely far more radical. It is almost a contradiction for a constitution to recognise that there is a pre-existing law which could possibly override the constitution itself. Such a step would probably be a lot more radical than the recognition of Aboriginal languages, which might have no practical implications.

Mr FIRMIN: There are ways of allowing for Aboriginal law to function within the context of the normal judicial law. That occurs to some extent at present in respect of penalty structures.

Ms GILMOUR: So we define their law in our legal system?

Mr HATTON: Our existing legal system now makes provision for traditional law, doesn't it?

Mr NICHOLSON: Only in relation to penalties and things like that. Not in the full sense.

Ms GILMOUR: It is really a fairly token approach.

Mr HATTON: The basis is already there and the question is how far it can be extended and what is appropriate? That is a question that you are going to have to deal with and it is a question that it is in the mind of the community.

Ms GILMOUR: But that is what I was wanting.

Mr HATTON: At least 22% of the community, or a percentage of that 22%, has that in its mind.

Ms GILMOUR: You do not want to lead people to believe that Aboriginal law ...

Mr WRIGHT: These things need to be examined and explored.

Ms WADDY: Of course they do.

Mr WRIGHT: The Navajo in the United States have their own judiciary and their own laws within their reservations.

Mr HATTON: I am saying that the questions are on the table. You cannot ignore them and you need to develop an opinion on them because, one day, somebody is going to ask you whether you think we should do this or that.

Ms WRIGHT: What right have we got to come here and tell these local people what our laws are and how they should live by them?

Ms GILMOUR: That is what the British did when they landed. It is imperialism. That is what it is all about.

Mr HATTON: Whether we had the right or not, we did it. The question is: how do you deal with the situation that has resulted?

Ms WRIGHT: In this small town of Alyangula, we have 36 nationalities.

Mr HATTON: You cannot exactly describe it as an Anglo-Saxon British society, can you?

Ms GILMOUR: Everyone describes it as European.

Mr HATTON: I feel distinctly un-European myself. The fact that I am Caucasian is an entirely separate question.

Mr FIRMIN: I like to think we all should be Territorians and a lot of people are saying that to us now. Rather than talking about the different ethnic backgrounds, they prefer to talk about Territorians.

Ms GILMOUR: That is where you are going to get the statehood mentality.

Mr FIRMIN: I hope so because that is really what we are.

Mr WRIGHT: I heard somebody talk about Australians and Aborigines at a conference. A well-known Aboriginal man who is a good friend of mine said: 'If you are going to call me an Aboriginal, please call me an Aboriginal Australian'. He said: 'I believe I am just as Australian as anyone else in here'.

Ms GILMOUR: I have heard people use the term 'Australian' in that way. At this stage, it seems that you are not looking for more specific comments about things.

Mr HATTON: I really am happy to receive them. It also helps us when we go to other communities. We can say: 'This is what other people are saying'.

Ms GILMOUR: Well, I support the unicameral system.

Ms WADDY: That is the Queensland one.

Mr HATTON: Yes. It is the same as we have now. A single House of parliament, without an Upper House.

Ms WADDY: What is the advantage of that? I would have thought that the checks provided by the second House would be preferable.

Mr WRIGHT: The second House is there to protect the people, isn't it?

Ms GILMOUR: It is supposed to be. Whether or not it actually does that is another question.

Mr HATTON: If you had a bicameral system, how would you elect the 2 Houses and what different roles would the 2 Houses have?

Mr FIRMIN: With a small population, it means a duplication of the existing parliamentary system and all the structures that go with it, which is another expense.

Ms WADDY: So how does it work out in other states?

Mr HATTON: Most of the Upper Houses evolved out of the old legislative councils, which were the Houses run by the squattocracy in the colonies. The plebs were given the right to elect people to the Lower House provided that the ruling classes could oversee what they were doing. The role of the legislative councils was similar to that of the House of Lords in Britain, to oversee what the common people were doing and make sure they did not go overboard. They provided a check to maintain the power of the ruling classes. The situation has changed now, particularly in the last decade, as more and more of the positions in the Upper Houses have become elected. On the whole, however, Upper Houses tend to be more stable and to have more time to review. In New South Wales, members are elected to the Upper House for 12 years. A member can remain in that House without facing election while 3 or 4 governments come and go. That situation certainly allows for stability and continuity of thinking. That is the argument for the Upper House.

Mr WRIGHT: To make an informed comment on those things in response to your questions, the community needs to know more about the background to these systems.

Mr HATTON: Alan, that is where this discussion booklet is useful. It does present the arguments for and against various propositions so that people can think about the issues and made decisions as to what options they prefer.

Mr DONALDSON: There is a very strong argument for checks and balances, and that certainly applies in the American Constitution.

Mr HATTON: Yes, we had this discussion at Angurugu this afternoon. The United States has an executive government system as distinct from a responsible government system like ours in which the government is responsible to the parliament. It is a continuum. The people elect the parliament and the parliament is formed from the parliament with the leader of the majority party becoming the head of government. The leader chooses a ministry but the government is responsible to the parliament which is in turn responsible to the people. That is the concept of responsible government.

In an executive government system, like that in the United States, the head of government is elected by the people and that person then chooses the members of the government, who can be politicians or, as occurs in the United States, people who are not elected representatives. The head of government appoints his Cabinet and it functions separately from the

parliament. There are various checks and balances between the parliament and the government and, of course, the third element is the courts. It is the courts which draw the checks and balances between the 3 arms of government.

The executive is the government with its head of government, the legislature is the parliament and the judiciary is the courts. There is a balance of powers and, as the booklet indicates, our constitution would deal with the 3 arms of government. The executive in our monarchical system is the head of state, the Governor or the Administrator.

Ms GILMOUR: That embraces the public service.

Mr HATTON: No, that is the administration. That is the fourth arm. The executive is the Governor, who is the representative of the Queen, the head of state. Then there is the legislature, from which the government is formed. The government is the ministry. Only the ministry is the government. The ministers meet, outside their role as the Cabinet, in what is called the Executive Council. That is when they meet to advise the Administrator or the Governor, who actually has to give assent to all the laws and regulations. Whilst the parliament legislates, that must then be assented to by the executive. Once again, this invokes the question of the balance of powers between the 2 arms.

Mr WRIGHT: It is like when Mr Whitlam ...

Mr HATTON: When Mr Whitlam got sacked by the Governor-General.

Ms WRIGHT: In 1975.

Mr HATTON: Yes, 1975. The Dismissal.

Mr WRIGHT: 11 November.

Mr HATTON: Yes, 11 November. The date when Ned Kelly was hung and Gough Whitlam was sacked.

Mr FIRMIN: And it was Armistice Day.

Mr WRIGHT: That is right. The only way I remember.

Ms GILMOUR: It is a big topic then, isn't it.

Mr HATTON: Yes, there is the question of whether the Governor should have that role. Such questions relate to the balance of powers. In an executive government system, the parliament has no say in such matters. The arms function separately. Whilst each arm may have the power of veto over the other, there is not the same continuum of flow.

Mr DONALDSON: Although there are checks and balances in the form of legislative tiers which do not really exist in the unicameral system.

Mr HATTON: In some respects, there are also checks and balances through the common law. The judiciary actually plays a role through its interpretations of laws and its adjudication on the constitutional powers.

Ms GILMOUR: In practice, there are not many situations in which the Senate, as an Upper House, rejects legislation which has been validly supported. Although the Senate has the power, it does not really have the mandate.

Mr HATTON: But it can do it.

Ms GILMOUR: Yes, technically it can.

Mr HATTON: I can think of examples in the last 2 years, in both Victoria and New South Wales, in which Upper Houses have frustrated government legislation.

Ms GILMOUR: That is what I mean. You say 'frustrate' ...

Mr HATTON: By rejecting it.

Mr DONALDSON: The Upper House has the ability to force change in legislation anyway. The government will not put

forward legislation if they believe it will not pass through the Upper House, so it adapts its legislation accordingly.

Mr HATTON: The Upper House can just reject legislation and send it back to the Lower House, even if it relates to a legislative program which was specifically put to the people and voted on at the ballot box.

Ms GILMOUR: I suppose the question is whether an Upper House is an appropriate body to have that power. Perhaps it might more appropriately lie with the judiciary which, of course, functions differently. It could not just reject legislation like an Upper House.

Mr HATTON: The most legitimate argument I have seen for an Upper House relates to the federal parliament because the Commonwealth is a federation of states. The argument for the creation of an Upper House arose from the enormous concentration of population in the south-eastern 10% or 20% of the land mass. People in the other regions of Australia said: 'If there is to be a House of Representatives with electorates of roughly equal population size, all the politicians will come from the area of Australia where the population is concentrated and they will make sure that all the money is pumped into that area. If that happens, we will miss out. We want a mechanism which will counter that imbalance. What we need is a House of review which is elected on the basis of equality between the states, no matter what their population size'. That is how the Senate came about.

Ms GILMOUR: But that does not apply.

Mr FIRMIN: It does not apply to the Territory.

Mr HATTON: No, because we are not a state.

Mr FIRMIN: Or the ACT.

Mr HATTON: It applied between 1901 and 1911 when we were part of South Australia.

Ms GILMOUR: I meant that the argument does not apply in terms of the need for the states themselves to have 2 Houses.

Mr HATTON: That is correct. It is a particular argument in respect of Australia as a whole. It would be interesting to see whether a similar argument could be generated in the Northern Territory for the provision of equal regional representation in a House of review. For example, Alan pointed out that there is no representative from this area on the government side of the House. Another example is the argument, sometimes heard in central Australia, about the so-called Berrimah Line. One could speculate that regional representation might overcome some of these perceived problems.

Ms GILMOUR: That is potentially divisive though.

Mr FIRMIN: It is.

Mr HATTON: I am putting a point of view.

Ms GILMOUR: It is like the wrangling between the states.

Mr DONALDSON: It might be something to keep as an option to resolve any difficulties that might arise in constitutional law.

Mr HATTON: You were here at the start of this debate, which began with the question of whether we should have 1 or 2 Houses of parliament. We have simply been looking at the arguments for and against and some examples.

Ms WADDY: But why is it potentially divisive?

Ms GILMOUR: Because you would be dividing Territorians into regions. People would identify with their regions and soon you would have people saying things like 'We are not getting enough', or 'You are getting more than us', and 'Oh yes, but you have such and such'. It would be like the states squabbling over grant moneys.

Mr WRIGHT: That is why ATSIC is being developed, isn't it? To overcome the problem of inequitable distribution of representation, which results in smaller groups not having a say.

Mr HATTON: All I am saying is that arguments can be developed to justify varying points of view. Think about the issues and look at the pros and cons. We have presented some ideas there in the booklet and you could probably think of many others yourselves. What we are asking you to do is to form your own conclusions about the most desirable options for the Northern Territory.

Ms GILMOUR: The select committee has agreed on that particular aspect so there would have to be very strong arguments for any change.

Mr HATTON: No. If we get representations from all over the Northern Territory saying that people want a bicameral system, then the select committee will react to that. As 6 individuals who are members of the select committee, our recommendation was for a unicameral House. That is our view, on balance. But there are arguments for and against and it is quite possible that the community would think differently. We are not here to enter a debate for or against with the community. We are here to encourage you to think about the different arguments and to then come and tell us what you think.

Mr DONALDSON: You can have an Upper House elected by the people on a Territory-wide basis.

Mr HATTON: You could use the Hare-Clarke system to elect it.

Mr DONALDSON: It would enable the various interest groups to be represented. For example, Aborigines and the pastoralists would probably succeed in having their representatives elected to such a body and they would then be forced to sit down together and resolve some of the issues generated from the Lower House. If it became too institutionalised and polarised it could be detrimental. On the other hand, it could offer opportunities to harmonise and improve relations between the various groups in the Territory.

Ms WADDY: (inaudible).

Mr DONALDSON: Yes, but you are only electing half a dozen people from the entire Territory, not on an individual ...

Mr HATTON: Can I throw this in? Please accept that I am a unicameralist myself but in this case I am playing the devil's advocate. Imagine how different the Australian Senate would be if the 2 to 1 nexus with the House of Representatives was done away with. At present, there has to be 1 Senator for every 2 House of Representatives seats. The only reason each state has 12 Senators is to create enough House of Representative seats. If the 2 to 1 nexus was broken, we could perhaps return to the original 6 Senators from each state. There would be no reason why that could not happen. Senators could be paid the same salary as ministers on the basis that they could not be members of the government but had to play their part as members of the House of review. They would sit in their regional groupings, from New South Wales, Victoria and so on, no matter what parties they belonged to. They would have no chance of promotion and therefore would not have to curry favour with the Prime Minister or the Leader of the Opposition. Their number would be small enough for the voters in their regions to determine whether or not they have been effectively representing their region. Do you think that might have an effect on the actual workings of the Senate or you do you think they would just vote along party lines?

Mr DONALDSON: This was the original intention of the Senate.

Mr HATTON: But it would be a dramatic change to the very structure of the Senate. It would be more like the United States Senate, where they have 2 Senators from each state. The entire United States has only 100 Senators.

Ms GILMOUR: It depends on the quality of the Senators.

Mr HATTON: You can see what they are doing. They cannot hide.

Mr DONALDSON: It is a good place to retire to.

Mr HATTON: I wonder whether it would be. It would tend to be what it was really intended to be back in Roman times, a House of elder statesmen. I am just throwing that in as a devil's advocate.

Ms GILMOUR: I still support the unicameral system.

Mr DONALDSON: A lot of the issues that come up are really party-political issues but there are important principles which should perhaps be enshrined in the constitution. I am talking about principles rather than issues. In many instances,

there is a need for options which could help to resolve some of the differences that exist within the Territory. A bicameral system which allowed various interest groups to be represented could be useful rather than destructive. It needs to be carefully considered, though, because it also has the potential to be hopelessly disruptive.

Ms GILMOUR: But you can see from the federal system that an Upper House does not necessarily have that effect.

Mr DONALDSON: I am quite opposed to state governments in general. I think that one government is preferable to state governments. I would be opposed to dividing the Territory into lots of little regions but I think that there are some interest groups which could be represented..

Ms GILMOUR: But that may not be an effective form because they may not get that representation in that way.

Mr DONALDSON: If there are 5 elected members, and given that 20% of the population is Aboriginal, that 20% would have the option of electing an Aboriginal person, if they felt it necessary, to that group of 5. It depends upon what system is used. The Hare-Clarke system has been suggested as one option. A system could be devised which required a person to receive 20% of the vote in order to be elected. 15% of the vote would not get a person elected, although preferences could play a part. The interest groups would have the possibility of achieving representation. There would be very few members. It would not be a large number. The aim is to be constructive rather than obstructive..

Mr FIRMIN: The problem is that if the number in the Upper House was very small, it would have a very heavy workload. It would have a very substantial task in researching legislation.

Mr DONALDSON: That depends on what you are asking members of that House to do. Perhaps they would not have to review all legislation. The constitution could spell out the requirements to be placed upon the Upper House. They do not have to be as all-embracing as the Lower House. The Upper House may have no power to instigate legislation. It may not have the power to review it. It may have specific powers such as the power to reject something if there is a large majority, such as one short of unanimous. You can determine the workload through the requirements set down in the constitution.

Ms GILMOUR: That would vary in accord with conventions.

Mr HATTON: You are in effect writing conventions when you write a constitution.

Ms GILMOUR: That is a question, isn't it. How much do you want to write?

Mr HATTON: That is right. There are other questions which need to be looked at. For example, do you think there should be fixed-term parliaments?

Ms GILMOUR: I agree with the select committee's recommendation, which is for a continuation of the present system.

Mr HATTON: No. What we have recommended is a 4-year term with a minimum of 3 years before an election can be called. In other words, a partially fixed term with some flexibility in the final year of office. In that year, the government must call an election at some stage. It is not absolutely fixed.

Mr WRIGHT: Why should there be flexibility?

Mr FIRMIN: If you want a straight answer, it is probably a political fact of life probably more than anything else.

Mr WRIGHT: Is it just to give the government of the day the opportunity to select the time.?

Mr HATTON: That is part of it.

Mr FIRMIN: That is basically it.

Mr WRIGHT: There are some advantages in the fixed term, which would allow the government to be judged on its performance.

Mr HATTON: Of course, there are arguments for and against.

Mr WRIGHT: Do you arrive at that view from an objective consideration?

Mr HATTON: I think so, yes.

Mr FIRMIN: If you have a fixed term, a campaign against the government can be more effectively mounted in the knowledge that the election will occur at a specific time. The opposition knows exactly when to begin its campaign and exactly how to time it.

Mr HATTON: I would like to be in opposition with a fixed-term parliament. For at least a year before the election, you would be able to exploit every opportunity.

Ms GILMOUR: That is right.

Mr WRIGHT: On the other hand, without that fixed term, the government can manipulate and engineer an atmosphere with the purpose of getting the fickle public onside at the right moment. For example, the promise of tax reform.

Mr HATTON: That can happen with a fixed term too.

Mr WRIGHT: Yes, but the circumstances of the economic climate and so forth are not at your fingertips then. You would be judged on your performance.

Mr HATTON: That is true.

Ms GILMOUR: But the government would start planning for the election at the beginning of the final year of its term.

Mr WRIGHT: Yes, but there would be influences which it could not control and which would be operating at the time of the election.

Mr DONALDSON: Yes, but those are there in any case. Governments have a great deal of power to create a very short-term good time for people. If the preceding 2 or 3 years have been lousy, people will be very cynical about that. If, however, things have been going reasonably smoothly, a government can very easily create a budget that looks appealing and say: 'This is the way we are going. It is great, isn't it. Let's keep going'.

Mr WRIGHT: I think fixed terms would enhance performance.

Mr FIRMIN: The Territory government has basically operated on a fixed term since day 1, as you probably appreciate. Strangely enough, although we do not have fixed terms, governments here tend to run their full term. It is totally different to the federal scene.

Mr WRIGHT: Has been and will be for a long time.

Dr NAIDOO: Mr Chairman, may I make a little contribution. I am not sure what the committee's terms of reference really are. I do not want you to think that I am trying to be cynical but I am a centralist. My views tend to focus upon Australia as a nation. Just 15 years ago, we had the third highest standard of living in the world but today we are 14th. There are many factors which have contributed to this calamity. When we look at it from a democratic point of view, we find that we are overgoverned. We have far too many politicians for number of people we need to take care of. Maybe the fathers of our constitution were over-cautious, for reasons of distance and lack of communications, and we have inherited a federal system that took into account the problems of that time. If our forefathers had operated in today's environment, with communications as they are now, I do not think that they would have arrived at the same arrangement which they arrived at 100 years ago. On Australia Day last year, Geoffrey Robertson was the guest speaker at a function in Launceston where he advocated the abolition of all state governments in favour of a central government and municipal governments with more extensive powers than exist at present.

Mr HATTON: And fewer municipal authorities. In other words, regional governments.

Dr NAIDOO: Yes, with a lot more powers.

Mr HATTON: And the constitution entrenching those powers.

Dr NAIDOO: Yes, although I cannot recall all the minor details of that speech.

Mr HATTON: I will fill you in if you like.

Dr NAIDOO: It made a great impression on me. In that context, I wonder whether it is within the scope of the committee to think about the possibility of splitting the Northern Territory between Western Australia, South Australia and Queensland. Darwin would then have to be a large municipal authority with far greater powers than it has today. If we began to think in those terms, we might make a big contribution towards solving our balance of payment crisis which, on a per capita basis, now puts us behind Brazil and Argentina. I am not blaming all this on the Northern Territory.

Mr HATTON: Good, because we are actually making money for Australia.

Dr NAIDOO: It is an Australia-wide question which I believe all thinking people should address. Can you respond to this rather radical approach?

Mr HATTON: Yes. I am happy to say that I was born and raised in Sydney. I moved to the Northern Territory in 1973, to a place slightly north-west of here, Nhulunbuy. At that time, I was fundamentally a centralist. I could not understand the role of state governments. I held many of the views which you have advanced tonight. At that time, there was no government in the Northern Territory except the federal government. There were local governments in Darwin and other towns but there was no Northern Territory government at all. As I soon discovered, the reality was I was stripped of my democratic rights as a citizen. I found that I was being governed by public servants and that I had no access to any political representative and therefore no means of complaining about bureaucratic excesses. The bureaucracy in question was reporting to a federal minister whose own electorate was in Victoria. He used to visit the Territory every 12 or 18 months and the public servants used to thumb their noses at him. Any request to the minister had to go through about 5 levels of the bureaucracy and, if it reached him, the response came back through the same channels. If you got a response to a letter to the minister within 2 years, you were lucky. If that is centralism, I am against it. Democracy is about people having access to their elected representatives.

Within a very short span of time, I became an avid federalist. Suddenly I found myself in an area well away from the centre of power, and well away from the politicians making the decisions. Even though we had a federal member who had the whole of the Northern Territory as his seat, you just could not get access. You were incredibly distant from where the decisions were made and I can tell you some of the decisions were frightening. A typical example is the Royal Darwin Hospital at Casuarina, which is exactly the same design as the Woden Hospital in Canberra. That hospital itself is a Norwegian hospital design transplanted to Canberra. The Royal Darwin Hospital actually has snow shields on the windows because some dumb bloody public servant in Canberra thought it was easier that way. There are suburbs in the Northern Territory which were designed in Canberra by people who had never visited the Northern Territory.

That is an unbelievable situation. A single department was responsible for the Northern Territory, the Department of the Northern Territory. Its initials spell DONT and that was more than appropriate. Its various sections did not communicate with one another because they reported to different departments in Canberra. If it was a construction matter, it was dealt with by the Department of Housing and Construction. If it was a health matter, it went to the Health Department, and so on. In one small town in the Territory, a community health centre right was constructed next to a sewage treatment plant. That occurred because there was no local political representation and no local knowledge at the decision-making levels. It was government by public servants who were responsible to Canberra. That is why the Northern Territory people are so determinedly in favour of self-government now and why the Northern Territory has blossomed under self-government.

I oppose the view that the number of politicians indicates that we are overgoverned. If we are overgoverned, it is because we have too many laws and regulations and too many public servants policing them. That is where government intrudes upon the people, not at the level of politicians. It happens at the level of public servants and that is what we faced in the Northern Territory. The fact is that a political representative, to whom you can make representations, has an influence over the decisions which affect your life. That is your best protection as a citizen.

We must also remember that Australia's demography is unique. It is very different to that of Europe. If you were to put all the European states together and call them the country of Europe, the governments of places like France and Germany would be the equivalent of state governments. After all, France is smaller than the Northern Territory. It has a much larger population but it is smaller. We forget things like that. The European nations are small geographic units and they have as many as 3 levels of government. Some European countries have regional governments as well as municipal governments. That happens in Germany, for example.

In Britain, there are 3 levels of government. There is a Welsh government and a Scottish government. There are other regional governments and there is a British government. There are 3 levels of government in Britain. Our system was developed on the United States model because we have a very large geographic area and a significant diversity of needs. It was also developed to ensure that the peculiar and differing environments of Australia are dealt with appropriately and that decisions which affect people in those particular environments are made by their elected representatives. The boundaries may happen to be those of the old colonies. Whether or not they should be broken up into more states which are more appropriate is a matter that Australia can and should wrestle with. Whether the Northern Territory should be 2 states, whether Western Australia should be 2 or 3 states, whether Queensland should be a North Queensland and a South Queensland, are questions for those states to deal with. That might be a way of achieving a series of regional governments. Perhaps what was being suggested was the abolition of local government and the concentration of local government powers into more state governments or regional governments. That is an alternative way of looking at it, isn't it?

Mr WRIGHT: We would not want to do that. Although this is not relevant to debate on the constitutional issues, I would like to comment. I would not like to see local government done away with because here on Groote Eylandt, we are just as far from the seat of the Northern Territory government as you were from Canberra. For years we have been disadvantaged because we have not had a voice into government. I could go on ad infinitum about such things but tonight is not an appropriate occasion for that.

Mr HATTON: That is important principle and it explains why local government has an important and valid role as one of the 3 tiers. Obviously, there are some things which just affect Groote Eylandt or which just affect your community. I am talking about local planning decisions, the routes for roads, the location of parks, the control of stray dogs and cats, and the organisation of garbage collection.

Mr WRIGHT: Getting a second doctor.

Mr HATTON: Yes, whatever. Those are the sorts of issues which local government can address. There are other issues which affect the Northern Territory as a whole but which do not affect people in Victoria at all. Why should people in Victoria have a say about things which have no effect on them?

Ms GILMOUR: When you went to Gove, there was no state or local government.

Mr HATTON: No, and it certainly drove home to me the point that Alan is making. When you are at a very great distance from the centre of power of a government, it is very hard to be heard.

Mr WRIGHT: They did not have local government in Gove and we were regarded as Gove's poor country cousin.

Mr HATTON: That is right.

Mr FIRMIN: I arrived in Darwin in 1966 and the situation there was pretty much the same.

Mr HATTON: I would like to deal with a couple of the other points which were raised because I do not want to miss any of them. I believe that, because of Australia's geographic size and diversity, there is a valid argument for 3 levels of government. But let me say this for the Northern Territory.

Dr NAIDOO: Can I just make a point here?

Mr HATTON: Can I finish what I am going to say and then you can come back.

The argument for splitting the Northern Territory between Western Australia, South Australia and Queensland was put by the federal member for Kalgoorlie at the Northern Australia Development Council seminar in Broome in 1986. My response was fairly immediate and loud but the general Northern Territory community's was equally vociferous and equally opposed to that viewpoint. People are very proud to be Territorians. That is a reality. They identify as a community.

Dr NAIDOO: Can they afford to be proud?

Mr HATTON: Yes, they can. Do you know that, per head of population - man, woman and child - the Northern Territory earns 3 times the national average international income? The Northern Territory and the 170 000 Australians who live here

produce a net annual surplus of about \$1500m. We are producing wealth for this country, increasing the standard of living in Australia and we are subsidising the standards of living of New South Wales and Victoria, which are net importers of goods and are spending Australia's wealth. It is the heavily populated states which are draining Australia, not the states with smaller populations like Queensland and Western Australia. The Northern Territory, in fact, generates more wealth per head of population than Queensland and Western Australia. We can certainly stand up and say: 'Yes we can afford it'.

I am also convinced, although I am having great difficulty in obtaining the figures, that taxes paid by Territorians or businesses operating in the Northern Territory at least equate to the funds that are spent directly by the Northern Territory government, including moneys provided by Canberra. All Territorians pay personal income tax to the federal government. We pay sales tax, import duties and a whole range of other federal taxes. Many companies like Gemco pay their tax via BHP, which is counted as a Victorian collection. However, the wealth is generated in the Northern Territory as company profits. Then there is the \$50m-odd paid each year by Ranger as company tax. When we take all those amounts together, it is clear that the Northern Territory is standing on its own feet.

We have not yet developed to the stage where we are contributing to the important national costs, such as national defence and so forth. We are not making those sorts of contributions to the federal government coffers. We are certainly generating national wealth though and we are certainly at least paying our own way in terms of tax paid by Territorians and tax spent by Territorians. As Territorians, we have nothing to apologise for on either of those grounds.

What is frustrating is that we are not being treated equally as Australians. We do not have the same constitutional and democratic rights, as individuals or as a society, as other Australians. If Australia decides to do away with the states and to have a single centralist government, fair enough. The Northern Territory is part of Australia. However, while Australia has a federal system and whilst individual constitutional rights rest with people who happen to reside in a state and whilst Australia is a federation of states, our achievement of constitutional equality as individuals and as a community depends upon our achievement of the constitutional equality of statehood at some stage.

Dr NAIDOO: I do not want to be misunderstood here. I am mainly Tasmanian. I lived in Tasmania for many years and I know something about living in a state with a small population. However, I want to interject into this debate an element which will us away from a regional parochial attitude and place the focus upon Australia as a nation. The nation has a lot of problems and in that context the notion of a new state can be considered together with the plans we have heard about for the construction of a new High Court building in Darwin and a new House of Parliament. These are highly costly projects.

Mr HATTON: With the support of the federal government, I might say.

Dr NAIDOO: Eventually it comes back to the taxpayer. These structures are being erected just so that we can think of ourselves as a state.

Mr HATTON: No, that is wrong. We need them.

Dr NAIDOO: Is that the way we should go? That is the sort of argument I am putting.

Mr GILMOUR: It would cost a lot of money to alter the federal system anyway, if you are challenging the federal system.

Mr HATTON: The purpose of the new Supreme Court building is to meet the needs of the court system. The existing building is unsatisfactory and unsafe and cannot be converted or extended satisfactorily. We need to build a new Supreme Court building. The current Parliament House does not just leak; it soaks water in.

Mr FIRMIN: We have to stop in the middle of the wet season.

Mr HATTON: It is very old. It was built shortly after the Second World War.

Mr FIRMIN: It is a fire trap.

Mr HATTON: It is dangerous. It has to be knocked over and we need to build a Parliament House. The size and shape of that has to be decided one day. We have to build it sooner or later, whether it is now or in 5 years time. We have to build it whether we become a state or not. We have to have a Parliament House for your parliament. The only way of avoiding having a Parliament House is not to have a parliament. You might think that is a good idea. I would be prepared to put that to a vote of the Territory people and I think you would lose. Territory people generally have seen self-government as a

success and they would not give that up. If you are going to have a parliament and a supreme court, do you do it in such a way as to provide a focal point for the community or do you just put up 2 concrete bunkers?

Mr WRIGHT: No, I think you should do it properly. I visited Washington last year and I was very impressed with the architecture. I could see what the country was about, how it was built on its history. The architecture reflects what the community is all about. In 50 years time, I would like my grandchildren to be proud of what is in Darwin and the Territory - their parliament, their court house and their public buildings. I think that just reflects the standard that you should aim for in your communities.

Mr HATTON: It is just a question of timing.

Mr WRIGHT: We have all zeroed in on Dan but I think ...

Mr HATTON: Yes. I have to admit that he touched on one of my raw nerves.

Mr WRIGHT: Before you came along Dan, I said that if this idea of constitutional development is going to get anywhere, there needs to be lots of debate. In spite of what has been said, what Dan has suggested may still be the best approach.

Mr HATTON: If my advocacy style has tended to be aggressive, I cannot help it. It is just my way. It certainly should not be taken personally.

Mr WRIGHT: That is the political breeding.

Mr FIRMIN: We have both lived through a difficult period in the Territory. We have both fought very hard for statehood and we both feel very strongly about it.

Mr HATTON: I get passionate about my arguments.

Dr NAIDOO: Geoffrey Robertson made a number of suggestions. For instance, the infrastructure needed for such things as the High Court and the parliament could be used for the Darwin City Council, whose role would be almost as important as the present role of the Northern Territory government in Darwin. That was what I was suggesting, so in no way would the people lose their avenue of contact with politicians and representation.

Mr HATTON: They would have more governments.

Dr NAIDOO: They would have more governments and the government would be closer to them. Alice Springs would probably have a bigger council and cover a bigger area. The same would apply throughout the country. Launceston would have a much bigger council. The idea is to abolish all state governments, which would be an enormous saving, and the result would be to bring government closer to the people.

Mr FIRMIN: Closer to the majority of people in the cities. That is the problem. You still would not cover the problems of the rural areas or the wider strategic necessities of development in a state.

Mr HATTON: You would also need to restructure the Senate. However, if Australia goes that way, fine. The Northern Territory goes with the rest of Australia. All we are asking for - and I am speaking personally here as an advocate of statehood rather than as chairman of this committee - is equality. If the rest of Australia goes that way, we will go with them. But while Australia happens to be a federation of states, we should not sit around for 100 years waiting for other people to make such decisions. In the meantime, we should have the same rights as other Australians. That is what it fundamentally comes down to. The issue of centralism versus federalism is an issue for Australia as a whole. Right now, the issue in relation to statehood is whether we should have the same rights as other Australians or whether you should lose some of your constitutional rights simply because you relocate your residence within Australia? That is what happens when people come to the Northern Territory. In coming from Tasmania to the Northern Territory, you lost some of your constitutional rights. I do not think that is right.

Ms GILMOUR: I was going to move onto the issue of entrenchment. I support the concept of entrenchment and I believe that it should be emphasised when talking about the constitution. That is fundamentally where the quality of the guarantee locked in the constitution comes from. The booklet says that the select committee favours some degree of entrenchment in the constitution. I believe that entrenchment is essential.

Mr HATTON: To what extent? 50% plus 1 vote?

Ms GILMOUR: No, more than that.

Mr HATTON: That is the question.

Ms GILMOUR: How much more?

Mr FIRMIN: Yes. In order to change the constitution, what percentage of the population needs to support change?

Ms GILMOUR: Obviously, the feeling is that the degree of entrenchment in the federal constitution is a bit too strict.

Mr HATTON: No, we are deliberately not saying that.

Ms GILMOUR: That is what I am making the intellectual comparison with - the federal constitution. I would support the same degree of entrenchment.

Mr HATTON: A majority vote?

Ms GILMOUR: A majority vote, yes.

Mr HATTON: That is 50%.

Ms GILMOUR: Well, in a referendum it will be ...(inaudible).

Mr HATTON: That is right.

Ms GILMOUR: That is a problem isn't it? It have to be more than 50% because otherwise ...

Mr HATTON: Or do you have different levels of entrenchment for different provisions in the constitution?

Mr FIRMIN: It could be a shandy entrenchment.

Ms GILMOUR: And will have to counterbalance what is in the constitution with the entrenchment. That is the problem with some areas of the federal constitution.

Mr HATTON: I will give you another example, just to get stimulate debate and discussion, as I have been doing and will continue to do.

Last year, in the federal referendum, you were asked to give a yes or no answer to a number of questions. Some of the questions linked issues in such a way that you may have been forced to vote no on the basis that you disagreed with part of what was proposed in spite of supporting another part. It may be that a constitutional amendment clause could specify that multiple issue questions would not be allowed to be put to a referendum. It may be that, if a single-issue question about whether the federal parliament should have a 4-year term had been put to last year's referendum, it would have passed.

Ms GILMOUR: Are you arguing that the simple fact of having a referendum creates a considerable degree of entrenchment even if a straightforward simple majority applies?

Mr HATTON: Not exactly. I am saying that it would be possible to prevent governments putting several issues together in a single question and asking for a yes or no answer to all of them at once. An alternative might be to have some sort of multiple choice arrangement.

Ms GILMOUR: You are talking about the conduct of referendum.

Mr HATTON: That is right. But that is part of setting the rules for amending the constitution, isn't it?

Ms GILMOUR: Yes.

Mr HATTON: Think of all the problems that exist under the federal system and ask yourself whether or not it is possible to avoid them here.

Dr NAIDOO: How many Senators do you envisage?

Mr HATTON: That is a statehood question.

Dr NAIDOO: The same as Tasmania?

Ms GILMOUR: Does this assume that there is an Upper House?

Mr HATTON: No. This concerns the number of representatives from the Northern Territory in the federal Senate.

Mr HATTON: We are moving out of the constitutional arena into matters associated with statehood. My view, and I think it is general view of other members of our parliament, including members of the committee, is that the only just and proper arrangement would be for the state of the Northern Territory to have the same number of Senators as other states. Whether that would be politically realistic in the beginning is another matter. However, in my view there must be eventual equality in Senate representation and there must be a guaranteed time frame to achieve it. To do otherwise would be to condemn the Northern Territory to second-class status forever and I would not be the person who would recommend that to the citizens of the Northern Territory.

Dr NAIDOO: So you are not demanding full representation immediately because it is probably not feasible.

Mr WRIGHT: It is unrealistic

Mr FIRMIN: It is feasible but it is not politically wise.

Mr HATTON: It is probably politically unwise. I personally think that the most likely solution will be that there will initially be 4 Senators, that the number will increase to 8 within 1 or 2 elections and that, after another 1 or 2 Senate elections, the number will increase to 12.

Dr NAIDOO: At the time of federation, what was the ratio between the population of Tasmania and New South Wales in terms of determining Senate representation?

Mr HATTON: I think Tasmania had about 150 000 at that stage.

Dr NAIDOO: It was closer, wasn't it?

Mr HATTON: No. New South Wales had close to 2 million people then, didn't it?

Mr WRIGHT: There was a very big gap in the case of Western Australia.

Mr HATTON: There have always been massive differences. Western Australia had only about 110 000 people at federation.

Dr NAIDOO: But it insisted on parity.

Mr HATTON: Absolutely.

Mr FIRMIN: All states did.

Mr HATTON: Our structure of federalism is substantially based on the United States system. The principle of equality has been applied and reinforced with new states like Alaska and Hawaii. The state of Wyoming, with 310 000 people, has the same Senate representation as the state of California with 24 million people.

Dr NAIDOO: So when Hawaii and Alaska came into the federation they each had 2 Senators.

Mr HATTON: Yes.

Mr DONALDSON: What is the political attraction of having 12 Senators? It strikes me that there will probably be 6 from each party.

Mr HATTON: The objections from down south arise because they have enough trouble with a self-governing Northern Territory government with 2 Senators and 1 member of the House of Representatives. They remember their experiences with Tasmanian Senators over the decades and they think that the Northern Territory is likely to be even more strident than Tasmania was.

Mr FIRMIN: It would not matter if there 6 ALP and 6 CLP Senators ...

Mr HATTON: That is exactly what we need because it would force the national government to think of the entire nation.

Ms WRIGHT: Did that experience occur when Brian Harradine was an independent Senator for Tasmania?

Mr HATTON: Yes. The argument for equal Senate representation has nothing to do with party politics. Rather, it would change the entire regional balance of power in Australia. In the Senate, the states with small populations would outnumber the more heavily populated states Senate by even more. I am talking about Tasmania, the Northern Territory, Western Australia and South Australia. Increasingly, Queensland has become part of the eastern seaboard block. Just by dint of population increase, it has become the third major force.

Mr WRIGHT: Queenslanders would not agree.

Mr HATTON: No, they think that they are the first major force. In terms of population size, however, that is where they are situated now.

The sorts of fears I have been talking about, held by decision-makers in the south, will make it politically difficult for us to achieve equal representation in the Senate.

Mr FIRMIN: They are also worried because there is 1 House of Representatives seat for every 250 000 people. They do not welcome the prospect of having 12 Senators in a region which has only 1 House of Representatives seat.

Mr HATTON: We are not asking for a minimum of 5 seats in the House of Representatives. The House of Representatives is the people's House and it should be based on population size. Unless we have the quota for a second seat, we cannot have a second seat. On statehood, our quota should be assessed on the same basis as the states - on population.

Mr WRIGHT: You spoke about the nexus earlier ...(inaudible).

Mr HATTON: It means that the other states would have more seats in the House of Representatives. They would in fact increase their power.

Mr WRIGHT: It would generate more seats for other states in the House of Representatives.

Mr HATTON: But none in the Northern Territory. Under the nexus, seats are spread nationally according to populations.

Mr WRIGHT: So you would have 12 Senators, 1 seat in the House of Representative.

Mr HATTON: Maybe 2 seats in the House of Representatives.

Mr WRIGHT: Maybe 5 extra seats in the House of Representatives elsewhere in Australia.

Mr HATTON: No. If you have an extra 10 Senators, that creates an extra 20 seats in the House of Representatives.

Mr FIRMIN: Under the nexus, another 20 electorates would be created in the rest of Australia, outside the Northern Territory.

Mr HATTON: And that has a ripple effect on electoral boundaries, requiring redistributions.

Mr FIRMIN: When some people look at that and see the possibility that they will lose their seats, they say 'No, no, no'.

Mr HATTON: If electoral boundaries change, it may change the balance of the gerrymanders.

Mr DONALDSON: What if there were 10 Senators for each state?

Mr FIRMIN: It would be nice to go back to 6 again.

Mr HATTON: What brave government will tell its party members that 2 of them will be out of a job because of a reduction in Senate numbers? You can see some of the implications of radical changes to Senate numbers. There are other factors, including the ripple effect on House of Representatives seats throughout Australia, which would make it very difficult for the Northern Territory to achieve 10 additional Senate seats upon statehood.

Mr DONALDSON: If you are going to have 4 additional Senators at each election, you are going to create lots of little ripples that will have to be resolved.

Mr HATTON: At least the change would be predictable, particularly if it occurred at every second election. It may well be that population growth in Australia will create the extra House of Representatives seats which would avoid the necessity of expanding the Senate generally.

Ms WADDY: These statehood issues are generating a lot more interest than the constitutional ones, aren't they?

Mr HATTON: Oh yes, they do. But they are part of the debate about how this place will function. How will you protect your rights, how will you mix together, how will you create a parliament, how will the parliament be elected, who has the right to vote, who has the right to stand for parliament, how will the powers be structured, what human rights will be protected in the constitution, and so forth. When you determine the answers to those questions, you have the framework for a state. You will have made statements about the sort of society you want. You will then have just as passionate a debate on the statehood issues.

Right now, in tandem with the work that is being done on the constitution, the Chief Minister is negotiating on a proposal for the transfer of powers to the Northern Territory under the terms of the Self-Government Act. That is going on side by side with this work. It is a unique moment in Australia's history.

Ms WADDY: That is what I think you need to sell when you are trying to communicate with people.

Dr NAIDOO: We have a precedent in the case of locating a capital city. Our constitutional fathers decided on a compromise and set up Canberra as the national capital. Is there any thought of moving our capital city away from Darwin towards the central region?

Mr HATTON: No. That would be a gross waste of money.

Dr NAIDOO: Before you build the Legislative Assembly.

Mr HATTON: No. Forget the Legislative Assembly building. That is a minor part of it. The important considerations are the location of the financial institutions, the centre of government infrastructure in terms of departments and department heads. The capital city has to be at the centre of government and any move would require the relocation of all that infrastructure. You cannot just leave it in Darwin whilst relocating the decision-making level of government. The administration and the government have to be located together.

Ms WADDY: And the reality of Australian capitals is that they are all on the seaboard.

Mr HATTON: If you moved the capital to the halfway point between Katherine and Tennant Creek, it would be in the vicinity of Elliott. It would be even further away from you.

Dr NAIDOO: But this has been done in other parts of the world.

Mr DONALDSON: There are very sound economic reasons for keeping Darwin or Alice Springs as the capital. In Europe, the closest point of economic contact is normally chosen as the capital. For the Northern Territory, the closest point of economic contact has to be Darwin or Alice Springs.

Mr HATTON: It would be Darwin.

Mr DONALDSON: That is where you will generate the economic activity.

Mr FIRMIN: Economic influence is going to be very important. It is already developing to the north.

Ms WADDY: The actual resources available to support a population are very important. Just think of the water supply to begin with.

Mr HATTON: People have to drink.

Mr WRIGHT: There are examples of what I am suggesting. Brasilia is one. In Nigeria the capital was moved from Lagos to a location in the interior because ...

Mr HATTON: I am not saying that it is impossible. A future government may make that decision but I cannot countenance it. I think it would be fair to say that, among the ranks of the major political parties in the Northern Territory at present, nobody is even remotely contemplating such an option.

Ms WADDY: How many communities are you visiting?

Mr HATTON: On this round of visits, we are going to 59 communities.

Ms WADDY: Apart from Darwin.

Mr HATTON: Yes.

Ms WADDY: But it includes Alice Springs.

Mr HATTON: Yes. Alice Springs, Tennant Creek, Katherine, Jabiru, Nhulunbuy, Groote Eylandt, Ngukurr, Numbulwar, Ramingining, Milingimbi, Milikapiti.

Ms WADDY: What is the smallest community you are visiting?

Mr FIRMIN: Nyirripi is probably the smallest we have been to so far. No, perhaps Wallace Rock Hole would be smaller still. Wallace Rock Hole is just out of Alice Springs, just out of Hermannsburg.

Ms WADDY: How many people attended?

Mr FIRMIN: I think there were about 40.

Mr HATTON: We have been to Kintore, Docker River, Yulara, Mutitjulu, Finke, Nyirripi, Areyonga, Harts Range, Wallace Rock Hole, Utopia, Mount Allen, Yarralin, Lajamanu, Dagaragu, Kalkaringi, Bamyili, Papunya ...

Ms GILMOUR: We believe you.

Ms WRIGHT: What about Umbakumba?

Mr HATTON: We have not been there yet.

Mr WRIGHT: Are you going to Umbakumba?

Mr HATTON: No.

Mr WRIGHT: It is all relative. Angurugu is the country cousin to Gove and Umbakumba is the country cousin to Angurugu.

Mr FIRMIN: They were going to come to the meeting today.

Ms WADDY: Yes, but that is not good enough.

Mr WRIGHT: It is not fair to that community.

Ms WADDY: The politics of this island is such that that is impossible.

Mr WRIGHT: 60 would have been a good round figure.

Mr FIRMIN: We will probably have to visit some of the other communities on the next round.

Mr HATTON: If a community says, 'We want you to visit us', we will do so. We would welcome that.

Mr FIRMIN: The same sort of thing has been said to us in other communities.

Mr WRIGHT: I think we all understand that.

Can I ask whether, in the case of the larger centres, you have established any means of servicing them with information on a continuing basis?

Mr HATTON: The Office of Local Government is our principal vehicle. We have been working with it since before Christmas and it has been substantially involved in organising our programs and carrying out preliminary work. We have had contact through regional conferences of OLG field officers. In addition, the government has approved and is implementing through the coordination committee a scheme which will utilise the field staff all government departments to assist in the dissemination of information or to operate as points of contact. This would include health centre staff and so forth. Of course, this has to be done in a careful, bipartisan way. We do not wish to drag public servants into a party-political debate. We are taking that road because the government administration infrastructure is a vehicle which can be used to get information to the people.

Mr WRIGHT: I asked the question in the hope that we might be able to receive a service equal to that received in the more populated areas. Without wanting to beat a drum, it is a fact that we miss out on everything. We do not want to miss out on things that are important. In areas such as health, education, telecommunications and so forth, decisions are not made on the basis of equality. They are made on the basis of location. The remoter communities need better access to these services.

Mr HATTON: I think it is reasonable to say that our committee has been very conscious of that. We have made a deliberate attempt to visit remote areas.

Mr WRIGHT: I do not know how you are going to build on that and keep it going. Let us hope, for our sake, that you can.

Mr HATTON: The intention and the desire are there.

Mr WRIGHT: I have made a mental note to remind you.

Mr HATTON: I have no doubt that you will. You have never stopped doing that in the 15 years I have known you.

Mrs WRIGHT: You should live with him.

Mr WRIGHT: I think it is these communities that make the Territory. Why should we be disadvantaged? We now have a good dentist. Why shouldn't we have a good dentist? We have good doctors now. Why shouldn't we have good doctors?

Mr HATTON: You should.

Mr WRIGHT: People here are just as important as people anywhere else.

Mr HATTON: I agree with you.

Mr WRIGHT: We pay our taxes.

Mr HATTON: Perhaps we ought to look at bringing local government to Groote Eylandt.

Mr WRIGHT: Why not, as long as it has something to offer?

Ms GILMOUR: And entrench it in the constitution.

Mr DONALDSON: Has the issue of local government been raised in the context of the constitution?

Mr HATTON: The entrenchment of local and community government is discussed in the booklet.

Ms GILMOUR: That is what the federal referendum was about.

Mr HATTON: One of the arguments against it was the fact that, in virtually all of the state constitutions, there is entrenchment of local government.

Mr WRIGHT: I am getting some signals about my other commitment. If you will excuse me, I have to leave. I would like to take one of the booklets.

Mr HATTON: Certainly.

Mr WRIGHT: Thanks very much for the time you have given us tonight.

Mr HATTON: Thank you. I have really enjoyed this evening's debate. I have found it very stimulating and I hope, Dan, that you will really be involved in the debate as it continues. I look forward to it.

Dr NAIDOO: Yes, I will. It is just that I have another meeting to attend now.

Mr HATTON: I am sorry that you missed the first part of tonight's meeting. Basically we were just explaining how we are going about the process.

(Recording suspended and subsequently resumed.)

Ms GILMOUR: I believe that the human rights aspects of the constitution and the question of Aboriginal land rights are very important. This is an opportunity for the Northern Territory to lead the rest of Australia in terms of the framing of a constitution which recognises these rights. There is no reason for Territorians to be as timid as the rest of Australia in terms of the recognition of human rights in legislation. I definitely support the inclusion of some form of protection of human rights in the constitution and the entrenchment of Aboriginal land rights, if not other rights.

Mr HATTON: There will be quite a debate in relation to the issue of entrenchment of rights. I am not expressing a view on the matter because I have not yet formed a clear view. It seems to me that there is a conflict between what might be called a North American and a British psyche. The attitude of the former is that your rights do not exist if they are not written down while the latter holds that history and common law are the protectors of your rights. There are different perceptions of how rights are guaranteed, rather than whether or not the rights should exist. This became very clear to me when, at a recent legal conference, an American stood up and said: 'You people have no rights. You do not have a bill of rights'. Of course, that is nonsense. The Australian people have rights which originate from the Magna Charta and have been developed with the evolution of the common law over a long period.

Ms GILMOUR: But there are gaps.

Mr HATTON: Yes. The people with the British psyche, if I can use that terminology, argue that their rights are deeper and have evolved more meaningfully through the wisdom of the courts over centuries than those that which exist under legislation in the forms of bills of rights or constitutions, which are subject to interpretation, sometimes flamboyant interpretation. I do not know the answer.

Ms GILMOUR: I should think that that whole area would have to be the topic of a discussion paper. We have already talked about the compulsory acquisition of land. That touches on human rights. If the constitution contained a provision about the right to freely own property, that problem would not exist. It is one of the gaps in common law protection of human rights. I do not have anywhere near enough information to even form an opinion on how big the gaps are in the common law or how effective a written bill of rights is. There is a need for much more information. It was discussed in the bicentennial year, together with the Aboriginal treaty. However, the Territory has an opportunity to lead the rest of Australia in this area and not just to consign it to the too-hard basket, to leave it to Canberra because it is too new and too different.

Mr HATTON: That is another question that needs to be answered. Is it appropriate for the Northern Territory to take the lead? Is it an appropriate matter to be dealt with in a state constitution or should it be a matter for federal constitutional considerations? I do not know the answer but it is a question that must be posed.

Ms GILMOUR: There is nothing to prevent it being addressed in both constitutions. So why leave it to the federal

constitution?

Mr HATTON: That is true but it is a fact that state constitutional rights cannot bind the Commonwealth. The rights would therefore exist only in respect of the state concerned.

Ms GILMOUR: That is better than nothing.

Mr HATTON: Maybe. I am only posing the question. I do not know the answer.

Ms GILMOUR: I cannot see the logic in saying: 'Do not have anything at all in the Territory constitution because it can be done in the federal constitution'. If it is a worthwhile thing to do, it should be done.

Mr HATTON: That will be the focus of the debate. Some will argue that you are protecting rights if you prescribe them in a bill of rights.

Ms GILMOUR: Other things flow from that.

Mr HATTON: Others will argue that, if rights are written down, they will actually be limited. There is a case to be argued.

Ms GILMOUR: I can appreciate that.

Mr HATTON: There is an argument that it is dangerous to constitutionally entrench rights. And, if rights are to be entrenched, which rights are they?

Ms GILMOUR: If you simply entrench the right to freedom of speech, it can be done in a very basic and generally worded way.

Mr HATTON: How does that affect the libel laws of the country?

Ms GILMOUR: I do not know.

Mr HATTON: It is a question that has to be asked.

Ms GILMOUR: I guess that is for the courts to interpret, isn't it?

Mr HATTON: No. You have to wrestle with that.

Ms GILMOUR: Are you are saying that the right to freedom of speech should not be protected?

Mr HATTON: No, I am not saying that. I am saying that there are no simple questions in relation to this constitution. We all believe in freedom of speech but is it the freedom to libel?

Ms WADDY: Obviously not.

Ms GILMOUR: Well that is the interpretation ... (inaudible).

Mr HATTON: Where?

Ms GILMOUR: Are you saying that you will have something that says everyone has the right to freedom of speech but not to libel?

Mr HATTON: I do not know.

Ms GILMOUR: I would have thought you would just stick to a general statement similar to that which Australia has already agreed to in the United Nations Convention. Something along those lines but not that exactly. The Territory has been pushed into the forefront of land rights and it is a question of whether we want to stay there, go backwards or go forwards. There is no reason why the same attitude cannot be adopted with respect to some other areas. You have to look at specific cases.

Mr HATTON: I am really being the devil's advocate. Please appreciate that. I asked the question.

Ms GILMOUR: That is your occupation.

Mr HATTON: Particularly in this particular role.

Ms GILMOUR: I can appreciate what you are saying.

Mr HATTON: I want to stimulate you to go away and say: 'Right, I had better think some of these matters through'.

Ms GILMOUR: It is not straightforward.

Mr HATTON: Yes. That is what I am trying to stimulate you to do. You could specify that freedom of religion should be included in the constitution. Now, on face value ...

Ms GILMOUR: I did not put that in.

Mr HATTON: No, let us speculate.

Ms WADDY: I am saying no.

Mr HATTON: If you write in freedom of religion, is that a Jimmy Swaggart clause? Does that allow somebody to set up business as a so-called religion for the purpose of avoiding tax?

Ms GILMOUR: I see those sorts of problems as interpretation problems. You say that the freedoms already exist.

Mr HATTON: That is what happened in the United States because its bill of rights contains a guarantee of freedom of religion.

Ms GILMOUR: And it was interpreted in such a way that such things were allowed to occur.

Mr HATTON: It is classified as a religion. Similarly, there is a simple clause in the Australian Constitution which says that trade and commerce between the states shall be absolutely free. One result of that is that truck drivers cross state borders in the process of making deliveries to their next door neighbours. They do that in order to avoid road tax by becoming interstate hauliers. That is why I am saying that you have to think carefully about the consequences of putting things into the constitution. The courts have to ask what the specific clauses of the constitution mean. If the constitution says that there shall be freedom to practice religion, whatever that religion may be, that is exactly what it means. This is where the arguments from the standpoint of the British psyche come in. All I am saying is that it is not a simple question. It needs to be thought through.

Mr FIRMIN: There is a reference on page 123 of the information paper to the United Nations Charter. Article 19 is about the expression of freedom of speech. Graham just pointed out to me that, if you read that in conjunction with article 129 clause 2, there is a limitation: 'In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and the respect for the rights and feelings of others and of meeting the just requirements of morality, public order and the general welfare of society'. That is the limiting factor.

Ms GILMOUR: And all of those things are open to interpretation as well.

Mr FIRMIN: To some extent, yes. Nothing is ever perfect.

Mr HATTON: Once you write something down, you superimpose it on centuries of common law.

Ms GILMOUR: Not necessarily. Not if there is a gap in the common law.

Mr HATTON: If there is gap, right.

Ms GILMOUR: I would certainly like a lot more information about that.

Mr HATTON: That could be a worthwhile subject for an information paper.

Ms GILMOUR: I would also like more information on certain human rights issues that have arisen. For example, Mr Firmin told the story of how his land was acquired. That happens to a lot of people in Australia but it also does not happen to a lot of people. Those to whom it does not happen don't know anything about it. Some people in this country would perhaps feel that they have not been accorded freedom of religion or freedom of speech in this country. I would like to hear about what happened in those cases.

Mr FIRMIN: I feel like the tree which has been hit by lightning. I have been hit by it twice, not just once. I have had 2 lots of land acquired.

Ms GILMOUR: There are brick walls in our law. You hit the wall and the law does not give you anywhere to go.

Mr NICHOLSON: There is a South Australian case that says that the common law contains no guarantee of freedom of religion. There is a gap in that respect.

Ms GILMOUR: That is the sort of thing I am interested in. I want to know exactly what the situation is. We all have a mentality which says: 'Oh yes, we are a free country. We know we can do this and that'.

Mr HATTON: I can feel a discussion paper coming on, Graham.

Ms GILMOUR: But we do not know what we can and cannot do.

Mr FIRMIN: I was just saying the same thing to Graham a moment ago. I have always believed that, because of its historical basis, common law was one of the strongest protections of our rights as individuals. However, there is just more food for thought on a couple of issues.

Ms GILMOUR: It is safe because it is hard to change, just like something entrenched in the constitution. Our closest thing is the Magna Charta.

Mr FIRMIN: I must admit that I feel comfortable with the common law.

Ms GILMOUR: I have been suggesting that we should not be too timid. Let's get more information. Let's realise that we may have a great opportunity here to do something new and to show people that something new can be good. It does not always have to be dangerous.

Mr HATTON: It is absolutely certain that we have many fascinating debates before us.

Ms WADDY: We have to consider the unforeseen problems that might be created. That seems to have happened with freedom of religion in the United States. Didn't Canada get more problems than it bargained for too?

Mr HATTON: Canada had some unbelievable problems when it introduced its Charter of Rights. We have a copy of it. One of the topics of debate at the conference I referred to was the issue of privacy and police investigations. Gradually, court interpretations are probing the question of what constitutes invasion of privacy in the case of police investigations to prevent the violation of people's right to protection from robbery. Is there a constitutional protection against that? I was bemused at some of the debates involving lawyers and academic lawyers. They were saying that, if a policeman walks past your car at night, shines his torch into it, discovers some stolen property inside and interrogates you about it, any evidence so gained is inadmissible because the search is illegal. They argued that the police officer would be intruding on your privacy by shining the torch into your car.

Ms GILMOUR: Are you saying that the search was illegal in terms of the Charter of Rights?

Mr HATTON: Yes. Those sorts of debates have been going on in Canada because the right to privacy sounded like a nice warm thing to have.

Ms GILMOUR: But that is new legislation. They are just in the process of thrashing it out and finding its limits.

Mr FIRMIN: It was put to us at one of our meetings that everybody should be guaranteed clean air and clean water. It sounds like a nice little motherhood statement until you start trying to work out how those things might be guaranteed.

Mr HATTON: They wanted a constitutional guarantee of environmental protection.

Ms WADDY: In Australia?

Mr FIRMIN: It was put to this committee as something which ought to be incorporated and entrenched in our constitution.

Ms WADDY: Goodness gracious! I have just been reading an article about some of the things that are carried through the air and are found in the middle of Australia because they have been transported through the atmosphere.

Mr HATTON: There is a very significant and organised lobby in favour of citizen recall and citizen-initiated legislation.

Mr FIRMIN: It means that, if a certain percentage of the population approves of proposed legislation, you can march into parliament and demand that it be passed.

Mr HATTON: It is suggested that if, say, 10% of the voting population signs a petition that the parliament should put up a particular piece of legislation, the parliament is compelled to do so.

Ms GILMOUR: But not necessarily to approve it.

Mr HATTON: No, the parliament does not have to say yes or no. It has to put it to a referendum of the people and the people can accept or reject a particular piece of legislation initiated in this way. It has been proposed that, if a certain percentage of the population signs a petition, the government can be forced to hold a general election or an election for a specific seat. A significant organised lobby is arguing for this form of citizen-initiated legislation and citizen recall.

Ms WADDY: They must be feeling that parliaments are not serving their needs.

Mr HATTON: There is a national lobby under way. It has been active in the federal parliament and the issue will certainly be raised in the context of the Northern Territory's constitutional development. The issues will be raised and they will be put before the various communities throughout the Territory. People are going to be asked: 'What do you think of this idea?' If you think it is a good idea, it may turn up in the constitution. If you say it is a bad idea, obviously it will not.

Dr NAIDOO: It might apply in the case of the third runway at Sydney Airport, or issues like that. People might feel strongly enough to generate the required number of issues. I don't see anything wrong with that.

Mr FIRMIN: Nor do I in some respects. The problem which has to be faced up to in the end, however, is that of the broader national interest.

Ms WADDY: There is the cost too.

Mr HATTON: What percentage of the population is regarded as sufficient to justify the cost?

Dr NAIDOO: So how do you determine the national interest?

Mr HATTON: The problem, as I see it, is this. In hard-core party political terms, the fact is that at least 30% of people are going to vote for Labor and at least another 30% will vote for the conservative parties. Those people will vote that way no matter what. In that context, imagine what would happen if the percentage required to force an election was 10% of the voting population. If a Labor government was in power, the conservatives might say: 'The time is right. Let's nail this government'. In a situation where it was politically advantageous, they could be certain of having 10% of their committed voters sign a petition which would force the government to the polls. Do you think that is good?

Ms GILMOUR: Only certain sorts of people will utilise that particular right.

Mr FIRMIN: I think you would find everybody trying to use the same system.

Mr DONALDSON: People can become very worked up on particular issues. Whitlam is an example but there are plenty of others as well.

Mr HATTON: High emotion.

Mr DONALDSON: Yes, there are many examples of people making very improper decisions based on the immediate needs before them.

Mr FIRMIN: A lot of people do not understand the issues at the time. I can think of a very small example. In the days before I was involved in politics, I was Chairman of the Road Safety Council for a number of years. During that period, we were trying to bring in random breath-testing. There was considerable opposition to that in the Northern Territory.

Ms GILMOUR: They all thought that they would get caught.

Mr FIRMIN: I ran a referendum throughout the Territory and found that it was about line ball. In the second year, I had a slight advantage which helped to put the politicians in a no-win situation. We ran a youth education program and, when we went back to the electorate after that, we got about 54% support. I managed to get the politicians to agree to put a bill on the floor of the House with a sunset clause of 2 years to see if it would work, and to allow a free vote on the legislation. They finally did that. Within 2 years, it had been generally accepted as one of the best things that had happened in the Northern Territory. The legislation was reviewed at the end of the 2 year sunset period and put into law for all time. However, I had to work for nearly 5 years to get it in place. It was very difficult.

Mr HATTON: Those are the sorts of issues you will have to face up to in the process of debate.

Ms GILMOUR: They are the area which will be the most ...

Mr HATTON: They will be the most emotional issues. I think the mechanics of putting together the structure of parliament and electoral provisions will come together in a fairly straightforward way. However, when you get into the questions of rights and freedoms ...

Ms GILMOUR: Except for maximum tolerance in electorates. I have been living in Queensland, you see.

Mr FIRMIN: We have always had a maximum tolerance of 20%.

Ms GILMOUR: Which is quite large.

Mr FIRMIN: When you are talking about electorates of 3000 voters, it is not very many people.

Mr HATTON: Under the constitution, you might have a maximum tolerance of 20%. That does not stop you legislating for a 10% or 5% tolerance. If the constitution determined that the tolerance must be 5% or 10%, does that mean that, if the population changed between elections and electorate numbers exceeded the tolerance, the constitutional provision would be violated and an immediate redistribution required?

Mr FIRMIN: If that was the case, my electorate would always be changing. I would have to go back to the voters every 6 months because I have the RAAF Base and the Coonawarra Navy Base in my electorate. Both have a considerable population turnover. I also have the Bagot Community in my electorate. People come and go there all the time. Sometimes there are 200 people from that community on the electoral roll for Ludmilla. Then they go somewhere else and the numbers change. Just 4 months ago the number was 40 but now it is 108. Sometimes it is impossible to cope with. In 3 elections, my electorate has had different boundaries each time.

Ms GILMOUR: That is the potential danger though.

Mr HATTON: That is the zoning system.

Ms GILMOUR: I know, but if it is left in ordinary legislation, a zoning system can be introduced anyhow.

Mr FIRMIN: My electorate is now is the largest city-based electorate. It is 26 km² but it still only has 2700 electors. It includes the Berrimah Jail, the Trade Development Zone on East Arm ... (inaudible). I am not sure what will happen next time.

Mr HATTON: Are there any further matters people wish to raise?

Ms GILMOUR: Not for the time being. Perhaps next time.

Mr HATTON: Thank you very much.